

The complaint

Mrs G complains that Unum Ltd has turned down an incapacity claim she made on a group income protection insurance policy.

Mrs G is represented by a solicitor, but for ease of reading, I'll refer to Mrs G throughout.

What happened

The background to this complaint is well-known to both parties. So I haven't set it out in detail here. Instead, I've focused on what I think are the key events.

Mrs G was insured under her employer's group income protection policy. The policy provided cover in the event that Mrs G was unable to work in her own occupation, as a result of illness or injury. The deferred period was 26 weeks.

In May 2021, Mrs G became absent from work, suffering from anxiety. She'd worked throughout the Covid-19 pandemic and she said symptoms of anxiety and depression had been building-up during that time. Her GP continued to sign Mrs G off work and in August 2021, her employer made an incapacity claim on the policy.

Unum requested medical evidence to allow it to assess the claim. It calculated that Mrs G's deferred period would end on 15 November 2021 and so it determined that Mrs G needed to show she'd been incapacitated due to illness for the whole of the deferred period. Having considered the medical evidence, it acknowledged Mrs G had been prescribed anti-depressant medication and had been referred for self-guided cognitive behavioural therapy (CBT) during the deferred period. But it didn't think there was enough medical evidence to show that Mrs G was clinically limited or functionally restricted from performing her own occupation. And it considered that the trigger for Mrs G's absence had been anxiety surrounding Covid-19 and concerns about work. So it didn't think Mrs G had met the policy definition of incapacity and it turned down her claim.

Mrs G was unhappy with Unum's decision and she asked us to look into her complaint.

Our investigator didn't recommend that Mrs G's complaint should be upheld. Briefly, he considered the available medical evidence. And he felt it had been fair for Unum to conclude that Mrs G hadn't met the policy definition of incapacity for the whole of the deferred period. Therefore, he thought it had been reasonable for Unum to turn down Mrs G's claim.

Mrs G disagreed and so the complaint was passed to me to decide.

Following the investigator's assessment, Mrs G provided us with new evidence from her GP which related to her mental health during the deferred period. She also confirmed that her employment had ended in October 2022, after she was dismissed on capability grounds. I noted too that it appeared Mrs G had been entitled to full sick pay until December 2021 and she was then entitled to half pay.

The new evidence and information about Mrs G's sick pay entitlement was sent to Unum for

its review and comments. I'll summarise these briefly:

- The GP hadn't given any timescale for Mrs G's recovery; prospect of her returning to work or commented on her prognosis and response to treatment;
- Neither the GP nor a CBT practitioner (who'd opined that Mrs G wasn't fit for work) had offered any comment on Mrs G's functional impairment as the result of her mental health presentation;
- Both the GP's and CBT practitioner's letters were issued at least nine months after the start date of the deferred period. Neither stated when a diagnosis of depression and anxiety was made. The original medical evidence had showed a lack of consistent symptomology with a persistent presentation to meet the diagnostic criteria for depression or anxiety. Neither author had offered any insight or comment on how Mrs G's mental health presentation would affect her overall functioning;
- Mrs G was prescribed anti-depressant medication, which was incrementally increased during the deferred period. But her dosage remained the same for some months, which indicated that her mental health had been stable on this dosage. Mrs G had originally been referred for self-guided CBT, which clinical guidelines indicated was for less severe depression. While Mrs G was later referred for one-to-one CBT, it wasn't clear when this had been deemed clinically appropriate;
- Mrs G's medical records indicated that she felt she was being bullied at work. Her anxiety was largely focused on exposure to Covid-19 and whether other people were following the Covid-19 guidance. There was a lack of evidence to support a diagnosable mental illness during the period in question;
- Unum could potentially consider a new claim for proportionate benefit for the period Mrs G was being paid half-pay, if Mrs G's condition had deteriorated within 12 months of the deferred period start date. This would be dependent on the policy being live at that point and it would be for Mrs G to decide if she wanted a later period considered, as she had not asked Unum to consider this.

I issued a provisional decision on 29 June 2023, which explained the reasons why I thought it had been fair for Unum to conclude that Mrs G hadn't shown that she met the policy definition of incapacity for the whole of the deferred period. I said:

'First, I'd like to reassure Mrs G that while I've summarised the background to her complaint and her detailed submissions to us, I've carefully considered all that's been said and sent. I'm very sorry to hear about the circumstances that led to Mrs G needing to make a claim and I don't doubt what a worrying and upsetting time this has been for her.'

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably. So, I've thought about, amongst other things, the terms of this policy and the available medical evidence, to decide whether Unum handled Mrs G's claim fairly.'

I've first considered the terms and conditions of the policy, as these form the basis of Mrs G's employer's contract with Unum. Mrs G's employer made a claim on her behalf for incapacity benefit, given she wasn't fit for work. So I think it was reasonable and appropriate for Unum to consider whether Mrs G's claim met the policy definition of incapacity. I've turned then to look Unum's definition of 'incapacity'. This says:

'A member is incapacitated if we are satisfied that they are:

- Unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation, and are
- Not performing any occupation.'

This means that in order for Unum to pay incapacity benefit, it must be satisfied that it's a policyholder's illness which prevents them from carrying out their main duties of their own occupation. In Mrs G's case, it means that Unum needs to be satisfied that it was an illness which prevented her from performing the material and substantial duties of her insured role.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mrs G's responsibility to provide Unum with enough evidence to demonstrate that her illness had led to her being incapacitated in line with the policy terms.

Unum assessed the evidence Mrs G provided in support of her claim and concluded that it didn't indicate that she had a significant, impairing mental health condition or that she met the policy definition of incapacity. So I've next looked at the available medical evidence to assess whether I think this was a fair conclusion for Unum to draw.

The policy says: 'you will be entitled to the benefits shown in the coverage section when a member has been unable to work, because of incapacity, for longer than the deferred period.' This means that in order for benefit to be paid, a policyholder must've been incapacitated in line with the policy terms, for the entire deferred period and afterwards.

Mrs G's deferred period ended on 15 November 2021 and so the benefit became payable under the policy from 16 November 2021. So for the claim to be payable, Mrs G needed to provide Unum with evidence to show that she had been prevented from carrying out the material and substantial duties of her insured occupation because of an illness.

When Mrs G's employer first made a claim on her behalf, a claim form was submitted to Unum. I've looked closely at the claim form, to understand what Mrs G and her employer understood to be the cause of her illness. Mrs G recorded that she 'constantly felt down, depressed and hopeless, also feeling anxious and on-edge.' She noted that she was under the care of a psychological well-being practitioner.

Mrs G's employer noted that a factor for her absence was 'issues with Covid-19 when seeing customers face-to-face'. It recorded Mrs G's cause of absence as 'work-related stress.'

Unum also reviewed Mrs G's medical records for the relevant period and so I've considered these too. I can see that on 17 May 2021, a GP noted that Mrs G was 'feeling low in mood and anxious for a few months. (She'd) been working...all through lockdown...Would like to take some time off work, not coping with work at the moment.' The GP prescribed Mrs G with an anti-depressant and provided her with a number for IAPT – a talking therapy service.

Subsequently, on 24 May 2021, a GP issued a fit note for four weeks, signing Mrs G as unfit to work due to depression.

It appears that Mrs G underwent an IAPT assessment on 1 June 2021. During the assessment, Mrs G stated that the problem had onset over 12 months; she'd been a key worker; had had to self-isolate due to a co-worker having Covid-19 and her husband had had Covid-19. The record stated that Mrs G wanted help now for: 'Covid changes at work and anxiety.' And Mrs G's problem statement included the following:

'My main problem is and since Covid March 2020 and being a key worker...I have

experienced growing levels of anxiety associated with the pandemic people (sic) not sticking to guidance.'

The assessment noted that Mrs G had been offered support through work, but that she didn't wish to explore this.

On 4 June 2021, Mrs G's medication dosage was increased by 50mg per day. Over the following months, Mrs G was issued with further fit notes which stated that she wasn't fit to work because of depression. It's also clear that she attended self-guided CBT sessions and workshops and discussed her symptoms with CBT practitioners. And on 25 August 2021, Mrs G's psychological well-being practitioner recorded that Mrs G: 'aware mood worsens when ruminates about Covid, work – being bullied by colleagues, feeling others putting pressure on her...'

Subsequently, on 22 October 2021, Unum spoke with Mrs G. During the call, Mrs G told the claims handler that she'd been suffering with anxiety for some time due to Covid-19. She'd worked throughout lockdown as a key worker, but a few days before she became absent, she had a meeting with a manager, broke down and went to bed for days. This version of events is also set out in Mrs G's representations to us, which say that during the pandemic, Mrs G had become concerned about the arrangements at work, which meant she'd been reluctant to have face-to-face meetings. The submissions stated that few steps had been taken to alleviate Mrs G's concerns and she became the subject of severe bullying. During the meeting with her manager, Mrs G was asked how she was going to move forward from her concerns and during the meeting, Mrs G had become distressed and left work and hadn't returned since that date.

Unum assessed the available medical and other evidence, including with clinical members of staff. While it sympathised with Mrs G's position, it concluded that the evidence didn't indicate that she was suffering from a mental illness which prevented her from carrying out her role. Instead, it felt that Mrs G was suffering with a reaction to her circumstances and that there wasn't evidence to suggest that she was suffering with a significant mental health condition of a severity which affected her day-to-day ability to function.

I've thought very carefully about this. I must make it clear that I'm not a medical expert and therefore, my decisions must necessarily be based on an assessment of the available medical evidence. It's clear that Mrs G was suffering from symptoms which can also be indicative of a significant mental health condition. But at the point Mrs G was signed-off in May 2021, the evidence indicates that the reason she wasn't fit for work was because she wasn't coping at work, rather than because of a significant, impairing mental health condition. And by Mrs G's account, the trigger for her absence appears to have been the meeting with a manager. While I appreciate her fit notes stated depression at this time, the notes don't indicate how Mrs G was precluded from work in May 2021 and nor do they show that she was functionally impaired when the deferred period began.

So I think it was reasonable for Unum to conclude that the evidence showed that Mrs G was suffering from an understandable reaction to the very difficult situation in which she found herself, as opposed to a mental health condition which met the definition of incapacity for the whole of the deferred period. This means I don't think it was unfair for Unum to consider that Mrs G hadn't met the policy definition of incapacity for the entirety of the deferred period.

Since Unum issued its final response to Mrs G's complaint, Mrs G has provided new medical evidence from a GP dated March 2023, which I've carefully considered. The GP said that Mrs G had spoken to another GP on 17 May 2021, as she was severely depressed. She'd spoken to another GP a week later, who'd issued a fit note. In July 2021, it was noted that Mrs G's increased-dose anti-depressant had been found to be working for her. In November

2021, Mrs G had been placed on a waiting list for CBT. The letter noted that in January 2022, Mrs G had met with the GP who wrote the letter and at that point, her anxiety had become worse. Her anti-depressant dosage was again increased. The letter went on to discuss Mrs G's medical situation throughout the remainder of 2022 and early 2023.

I've borne in mind that the GP has referred to Mrs G having had severe depression in May 2021. However, I don't think the contemporaneous GP notes dated 17 May 2021 indicate that the GP felt Mrs G had severe depression at that point but suggest she had had low mood and anxiety for some time. And I've borne in mind that the GP who wrote the letter doesn't appear to have been dealing with Mrs G's care before January 2022 – which post-dated the deferred period. It's clear that by November 2021, Mrs G was waiting for one-to-one CBT, but it isn't clear from the notes at what point her symptoms had potentially worsened or when a one-to-one CBT approach had been deemed necessary. Neither does the letter state how Mrs G was unable to carry out the material and substantial duties of her role from May 2021 onwards.

On that basis then, I currently don't think it was unfair for Unum to conclude that this evidence didn't change its position and to maintain its decision that Mrs G hadn't shown she met the policy definition of incapacity during the full deferred period.

I'd add too that income protection policies are designed to replace a policyholder's income if they're unable to work due to illness or injury. Most, if not all, insurance policies say that an insurer will take into account any other income a claimant is receiving when they calculate benefit. The terms of this policy include such a provision. In this case, the evidence from Mrs G's employer indicates that she was being paid full pay until December 2021. So it isn't at all clear that at the point the deferred period ended, in November 2021, Mrs G had any loss of her income. And it seems to me that Unum would've been entitled to take any sick pay Mrs G was receiving into account when assessing if benefit was due. It's entirely possible that Mrs G wouldn't have been entitled to any benefit until after her full sick pay had run out.

It appears that Mrs G was entitled to half-pay after December 2021. A letter from her employer suggests this would be for 130 days, at which point she would've reverted to no occupational sick pay from that point onwards. If Mrs G feels that her symptoms deteriorated after November 2021, she may wish to explore the possibility of making a new claim for the period after her full sick pay ended. Unum has indicated that she may be able to do so and potentially make a claim for proportionate benefit, if her condition had deteriorated within 12 months of the date of first absence, even though she hadn't returned to work. Unum has stressed that it would depend on the policy being live at that point and on Mrs G asking it to consider a new claim. I make no finding as to whether any such claim would be covered by the policy terms or whether it would be successful – it would be for Unum to assess any new claim and accompanying evidence in line with the policy terms. I'm aware that Mrs G's employment ended in October 2022, so Mrs G may wish to discuss her options with Unum before deciding whether or not to make a new claim.

As I intend to find that Unum was entitled to conclude that Mrs G hadn't met the policy definition of incapacity for the entirety of the deferred period between May and November 2021, Mrs G won't be able to make a new claim for that particular period. Although it remains open to her to provide more medical evidence to Unum which demonstrates she was incapacitated for the full deferred period should she choose to do so.

Overall though, despite my natural sympathy with Mrs G's position, I currently find it was fair and reasonable for Unum to turn down her income protection claim.'

I asked both parties to send me any further evidence or comments they wanted me to consider.

Unum accepted my provisional findings. But Mrs G did not and I've summarised her solicitor's further representations below:

- There were repeated references in the provisional decision to Mrs G's concerns about Covid-19 and bullying at work. These are clearly causative matters. There is nothing in the policy definition of incapacity which permits an insurer to take into account causative matters when assessing whether a claimant meets the policy definition of incapacity;
- It cannot be denied that Mrs G was suffering from depression at all relevant times. The earliest diagnosis was made on 24 May 2021 and that diagnosis has continued to date. When Mrs G was first absent on 17 May 2021, it was on the doctor's advice and she was immediately prescribed anti-depressants. Mrs G felt these were actions indicative of a medical professional clearly recognising a serious mental health condition. When Mrs G's own testimony and the GP notes are taken together, the solicitor felt it wasn't reasonable to conclude that Mrs G didn't meet the policy definition of incapacity;
- Mrs G disputed too that it was reasonable for Unum to conclude that she didn't have a serious mental health condition. Mrs G had been through all of the relevant testing; had been prescribed anti-depressants and met many of the symptoms which would be used in the diagnosis of anxiety and depression (as set out in a well-regarded medical journal);
- Mrs G didn't think Unum had handled the claim fairly. Neither Unum nor her employer had told her that she could look into making a new claim for proportionate benefit and then full benefit once her sick pay became zero. All correspondence had been focused on leaving Mrs G with the impression that she wasn't entitled to any benefit. It hadn't been fair for Unum not to make this clear to Mrs G, given it was aware of her illness. Had it done so, it was likely Mrs G would've made a new claim at a much earlier stage – and she would've been unlikely to bring a complaint to this service;

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, whilst I'm very sorry to disappoint Mrs G, I still think it was fair for Unum to conclude that she hadn't met the policy definition of incapacity throughout the entire deferred period and I'll explain why.

I acknowledge Mrs G's point that the policy definition of incapacity doesn't explicitly refer to what factors Unum should assess when considering whether the definition has been met. Neither do I dispute that it may well be the case that an initial cause of depression (such as bullying at work) may ultimately result in a significant, impairing mental health condition. But in assessing whether a member has met the definition of incapacity, Unum needs to consider whether that member has shown their illness would prevent them from carrying out the material and substantial duties of their own occupation for *any* employer – not just their current employer. As such, it may be the case that where the cause of a member's symptoms are work-related stress or bullying, their illness may resolve if they carried out their own occupation for another employer. So I wouldn't generally or necessarily think it's unfair or unreasonable for an insurer to take into account the causes of a claimant's symptoms when assessing claims.

As I set out in my provisional decision, it's clear that both the GP and Mrs G's CBT

practitioner did state that Mrs G had a diagnosis of depression and anxiety. I accept too that the GP notes record a diagnosis of depression very soon after Mrs G was first absent from work and that she was prescribed anti-depressant medication. I don't doubt that she wasn't fit to work, nor that she's gone through a difficult time.

But in order for Unum to conclude that the definition of incapacity has been met, it needs to be satisfied that Mrs G was prevented from carrying out the material and substantial duties of her role because of her *illness* as opposed to her circumstances and the situation at work.

I've carefully weighed-up the GP and CBT practitioner's evidence, alongside the evidence of Unum's CMO (which I summarised in the background to this complaint). The CMO didn't think the medical evidence commented on Mrs G's level of functional impairment as a result of her illness, nor how her symptoms would've affected her overall functioning. And they felt the fact that Mrs G's medication dosage had been stable after June 2021 indicated that her mental state had also been stable. Taking into account all of the available evidence, I don't think Unum has reached an unreasonable decision. I don't think it was unfair for the CMO to conclude that there wasn't enough medical evidence of functional impairment or of a significant mental health condition which would've resulted in the incapacity definition being met. As I set out above though, it remains open to Mrs G to provide Unum with more evidence on this point should she wish to do so.

It's clear Mrs G feels strongly that Unum should have explained the option of making a new claim to her. Unum's role was to assess whether Mrs G met the definition of incapacity at the point the claim was first made. I wouldn't necessarily have expected it to be aware of Mrs G's future sick pay arrangements at that time and it couldn't have reasonably predicted whether Mrs G's symptoms would deteriorate or whether she'd return to work. The policy terms set out that a new claim can be made if a member doesn't return to work and therefore, this was an option which was open to Mrs G's employer, as the policyholder. I appreciate that Mrs G may not have felt the need to refer a complaint to this service had she been aware of this option, but I don't think it would be fair or reasonable to hold Unum responsible for Mrs G's choice to ask us to look into whether it handled her original claim fairly. It's still the case that Mrs G can explore the option of making a new claim should she wish to, although I can't comment on the what the outcome of any new claim would be.

Overall, while I sympathise with Mrs G's position, I find that it was fair and reasonable for Unum to turn down her claim.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 31 August 2023.

Lisa Barham
Ombudsman