

## **The complaint**

Miss R complains that Unum Ltd has turned down an incapacity claim she made on her employer's group income protection insurance policy.

## **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 set out a summary of what I think are the key events.

Miss R is insured under her employer's group income protection policy. The policy provided cover in the event that Miss R was unable to work in her insured occupation, as a result of illness or injury. The deferred period was 28 weeks.

In October 2022, Miss R was signed-off from work, after being diagnosed with mixed depressive and anxiety disorder. As Miss R remained medically unfit for work, her employer subsequently made an incapacity claim on her behalf.

Unum requested medical evidence to allow it to assess the claim. It calculated that Miss R's deferred period would end in April 2023 and so it determined that Miss R needed to show she'd been incapacitated due to an illness for the whole of the deferred period. Having considered the medical evidence, it didn't think there was enough to show that Miss R had met the policy definition of incapacity throughout the entire deferred period and it turned down her claim.

Miss R was very unhappy with Unum's decision and so she asked us to look into her complaint. She was also concerned that Unum had discriminated against her and had breached its legal obligations under the Equality Act 2010.

Our investigator didn't think Miss R's complaint should be upheld. Based on the evidence she'd seen; she didn't think it had been unfair for Unum to conclude that Miss R hadn't shown she met the policy definition of incapacity throughout the deferred period. Nor did she think there was evidence that Unum had discriminated against Miss R.

Miss R disagreed and I've summarised her responses to our investigator. She didn't think either Unum or the investigator had taken the available medical evidence into account. She found references to her being able to undertake some activities, such as yoga or shopping, to be insulting. She was concerned that if her complaint wasn't upheld, she'd have no access to any income and she was worried about the impact this might have on her recovery. She felt that Unum was acting with a poor understanding of mental health conditions. She didn't think the lack of a referral to secondary care should be detrimental to the outcome of her claim. She considered her anxiety and depression scores hadn't been taken into account. She raised concerns about Unum's complaint process. And she referred to articles regarding the welfare state.

The complaint's been passed to me to decide.

## 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 Miss R and I know how upsetting my findings will be to her, I don't think it was unfair for Unum to turn down her claim. I'll explain why.

First, I'd like to reassure Miss R 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 Miss R 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 that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this policy and the available medical evidence, to decide whether Unum handled Miss R's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Miss R's employer's contract with Unum. Miss R'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 Miss R's claim met the policy definition of incapacity. This says:

*'A member is incapacitated if we are satisfied 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 Miss R incapacity benefit, it must be satisfied that she had an illness or injury which prevented her from carrying out the material and substantial duties of her insured occupation.

The policy says that Unum will begin to pay incapacity benefit after the end of the deferred period. This means that in order for benefit to be paid, Miss R needed to have been incapacitated in line with the policy terms for the entire deferred period and afterwards.

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 Miss R's responsibility to provide Unum with enough medical evidence to demonstrate that an illness had led to her being unable to carry out the duties of her insured occupation for the full 28-week deferred period between October 2022 and April 2023.

Unum assessed the evidence Miss R provided in support of her claim, including seeking the opinion of its clinical staff. It felt her absence had begun due to personal stressors, including workplace and family issues. And it noted that Miss R hadn't been referred to secondary care and neither had she provided any documented restrictions on her function. While it sympathised with Miss R's position, it concluded that she wasn't suffering from a functionally impairing illness which prevented her from carrying out her role. So I've next looked at the available medical evidence to decide whether I think this was a fair conclusion for Unum to draw.

I've first considered the fit notes issued by Miss R's GP since October 2022 and Miss R's GP records. Each note provides a diagnosis of: 'mixed anxiety and depressive disorder'. In early October 2022, Miss R's GP recorded the following in Miss R's notes:

*'Increasing pressure at work... some issues in family – changed dynamic... refer to MIND.'*

The GP also noted that Miss R had a history of depression over the years and referred to: *'work stress and family issues.'*

Miss R was referred for talking therapies and she was prescribed anti-depressant medication, which she began to take in late 2022.

In January 2023, Miss R's GP noted that Miss R's *'job had been affecting her'*; she felt *'pressure within the role'*; she felt *'quite burnt out from job'* – and she had *'been talking to employment advisor and different options.'*

Subsequently, in March 2023, in view of Miss R's severe low mood and moderate anxiety scores (taken from testing), she was referred for CBT. Additionally, she was referred for investigations into potential Chronic Fatigue Syndrome.

During October 2022, Miss R had been referred to Occupational Health (OH) by her employer. Unum was provided with copies of OH reports dated October 2022 and January 2023, so I've carefully considered the OH Advisor's key conclusions which were set out in both reports.

In October 2022, the OH Advisor stated:

*'(Miss R) thinks that the cause for current mental health issues are ongoing; involving family issues as well as workplace and environmental factors. She explained that the world at large seems quite negative at the moment and she has also been feeling increasing pressure within work...*

*She feels that the workplace goalposts keep changing in terms of what they (the employees) have been asked to work on and what they have been asked to do. She feels the workplace pressures are being portrayed as quite serious (she explained this in terms of 'life or death'). She states that she has struggled with the changes and the adaptations in the workplace in the last couple of years. She reports that she enjoyed virtual working and feels she was able to adapt but was then expected to return to a hybrid working format. She reports that the (work) environment can also feel very negative which does not help her mood. She feels that within the company itself, there has been a lot of pressures and she explained that she feels worn down mentally over the last year....*

*Ms R reports that one of the reasons for the deterioration in her mental health has been due to work related factors.'*

The OH Advisor concluded that Miss R wasn't fit to work in October 2022, but that they anticipated Miss R would be fit to return to work in four to eight weeks.

In January 2023, the OH Advisor stated:

*'I undertook another mental health questionnaire with (Miss R) during consultation. Her depression and anxiety scores were both slightly worse than during our previous consultation in October 2022. In view of this and her emotional lability and apparent fragility, which was observed during consultation, it is my opinion that she is not fit to return to work.'*

- *Is the ill health work related?*

*In my opinion, the ill health is largely related to personal issues, although she did mention some work related factors in the previous consultation (and these are laid out in the previous report).'*

Following Unum's rejection of Miss R's claim, in June 2023, her GP sent Unum a letter in support of her position. The GP said:

*'This is a letter of support for the above patient who has been struggling with symptoms of anxiety and depression. She is engaging with talking therapy services and is receiving treatment with medication prescribed by myself.*

*She is taking all the necessary steps in order to try and recover from her difficulties and return to work. I do hope this can be taken into consideration and that she is offered all the support that is available to her.'*

I've thought very carefully about all of the evidence that's been provided and which was available to Unum when it made its final decision on Miss R's complaint. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive. It isn't my role to interpret medical evidence to reach a clinical finding – or to substitute expert medical opinion with my own.

It's clear that Miss R was suffering from symptoms which can be indicative of a significant mental health condition. And I appreciate that both her GP and OH concluded that Miss R was medically unfit for work.

But, I have to bear in mind the contemporaneous medical evidence which was available to Unum when it assessed the claim and when it issued its final response to Miss R's complaint. During the early months of the claim, both the GP and OH advisor listed the personal stressors Miss R was experiencing as the cause of her symptoms. I appreciate Miss R was prescribed medication for her symptoms and referred for talking therapies. But I haven't seen persuasive evidence that she was referred to secondary care – such as a psychologist or psychiatrist - for treatment during the deferred period. And I don't think the GP's fit notes or medical records indicate how Miss R was prevented, by an illness, from carrying out the material and substantial duties of her insured role. I've carefully considered the GP's letter of June 2023, but I don't think it explains why Miss R's symptoms do - or indeed would - functionally impair her from performing the duties of her own occupation.

As such, taking into account the totality of the medical and other evidence available to Unum when it assessed this claim, I think it was reasonable for Unum to conclude that the evidence showed that during the deferred period, Miss R was suffering from an understandable reaction to a number of personal stressors. And that the main reason for Miss R's absence during the deferred period was likely a reaction to the stress she was experiencing as opposed to a functionally impairing mental health condition.

On this basis then, I don't think it was unfair for Unum to conclude that Miss R's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Miss R's absence was more likely due to a reaction to her circumstances. I'd add that I'm satisfied Unum handled Miss R's claim and complaint in line with the regulator's rules.

I'd like to reassure Miss R that I'm not suggesting that she was fit for work. I appreciate she was medically signed-off. And I understand she's been through a very difficult time. But I need to decide whether I think she's shown she met the policy definition of incapacity for the whole of the 28-week deferred period. As I've explained, I don't think she has.

Miss R feels that Unum may have discriminated against her or breached its legal obligations under the Equality Act 2010, given the problems she's experienced. I can understand why Miss R feels this way, but having looked at all the evidence, I haven't seen any evidence that Unum discriminated against Miss R because of her illness. It's clear Unum did make some errors in its communications with Miss R, such as using the wrong name. And it's clear she found Unum's tone upsetting at points. I don't doubt that Miss R was upset by Unum's mistakes, but I think these were unfortunate errors rather than evidence of discrimination.

I appreciate the OH Advisor stated that they felt Miss R was likely to be covered by the disability provisions of the Equality Act. It may be that Miss R is covered by the Equality Act 2010, but it's not our role to make a finding on that point – because that's a finding for the Courts to make. Nor is it our role to say whether a business has acted unlawfully or not – again, that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account, including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not Unum has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint. And having done so, based on all I've seen, I don't think Unum has treated Miss R unfairly or unreasonably. I hope it reassures Miss R to know that someone independent and impartial has considered this point very carefully.

Miss R has referred to the fact that Unum didn't deal with her concerns about a potential breach of the Equality Act 2010 within its final response to her complaint. However, it seems to me that this is a complaint point about the way Unum handles complaints. And this isn't an activity we're specifically able to consider under our rules.

I appreciate Miss R has a further OH report dated July 2023 which she feels supports her claim. But I must make it clear that, as the investigator explained, I haven't taken that report into account when deciding this complaint. That's because Unum hasn't had an opportunity to review or comment on that report. Miss R would need to send a copy of the July 2023 OH report (and any new medical evidence she may wish to obtain) to Unum for it to consider and to decide whether or not it alters its understanding of her claim. If Miss R is unhappy with Unum's consideration of any new evidence, she may be able to make a new complaint to us about that issue alone.

Overall, despite my natural sympathy with Miss R's position, I don't find it was unfair or unreasonable for Unum to turn down her claim.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 2 January 2024.

Lisa Barham  
**Ombudsman**