

The complaint

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

What happened

Mrs C is insured under her employer's group income protection insurance policy. The policy provides 'gainful occupation' cover and includes a deferred period of 26 weeks.

In February 2022, Mrs C was signed-off work with family stress. A family member for whom Mrs C carried out caring responsibilities was very ill and Mrs C wasn't coping with the situation. The GP referred Mrs C for counselling. The fit notes initially recorded that Mrs C was off work with 'family illness' and stress at home, but in May 2022, the notes stated that Mrs C had 'mixed anxiety and depressive disorder'. In June and August 2022, Mrs C's employer referred her to occupational health (OH). Both OH advisers concluded that Mrs C wasn't fit to work due to personal stressors. In September 2022, Mrs C's employer made an incapacity claim on the policy.

Unum assessed the claim, including with clinical members of staff. Based on the available medical evidence, it didn't consider there was enough to demonstrate that Mrs C had a significant, impairing mental health condition. Instead, it felt Mrs C was suffering from an understandable reaction to her difficult family circumstances. So it didn't think she met the policy definition of incapacity throughout the entire deferred period between February and August 2022. And, therefore, it turned down her claim.

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

Our investigator recommended that Mrs C's complaint should be upheld. She thought the available medical evidence showed that Mrs C had been - and still was - suffering from depression and anxiety throughout the deferred period. She considered that Mrs C had met the policy definition of incapacity and that it hadn't been fair for Unum to turn down the claim. She recommended that Unum should pay Mrs C's claim, together with interest.

I issued a provisional decision on 3 August 2023, which explained the reasons why I thought it had been fair for Unum to turn down Mrs C's claim. I said:

'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 the insurance policy and the available medical evidence, to decide whether I think Unum handled Mrs C's claim fairly.'

'I've first considered the policy terms and conditions, as these form the basis of Mrs C's employer's contract with Unum. Mrs C'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 C's claim met the policy definition of incapacity. Unum provided 'gainful occupation' cover. I've turned then to look at this particular definition of 'incapacity'.'

The policy 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 of*
- Any gainful occupation with any employer for which they are reasonably fitted by reason of training, education or experience; and*
- They are not performing any occupation.'*

This means that in order for Unum to pay Mrs C 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 own or any gainful occupation.

The policy says that Unum will begin to pay incapacity benefit the day after the end of the deferred period. This means that in order for benefit to be paid, Mrs C needed to have been incapacitated in line with the policy terms for the entire deferred period and afterwards. As such then, Mrs C needed to show that she was incapacitated due to illness between February and August 2022.

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 C's responsibility to provide Unum with enough evidence to demonstrate that an illness had led to her being unable to carry out the duties of her own or any gainful occupation for the full 26-week deferred period (between February and August 2022) and afterwards.

Unum assessed the evidence Mrs C provided in support of her claim, including with clinical staff. While it sympathised with Mrs C's position, it concluded that she wasn't suffering from a functionally impairing mental illness which prevented her from carrying out her role.

Instead, it felt that Mrs C was suffering with a reaction to her circumstances which most likely didn't amount to a defined medical problem. So I've next looked at the available medical and other evidence to assess whether I think this was a fair conclusion for Unum to draw.

I've first looked at the claim forms completed by both Mrs C and her employer. In September 2022, Mrs C stated that she had 'anxiety and mixed depression symptoms - continuous'. Mrs C's employer said that Mrs C 'first went absent due to stress from her home life...Her relative was very unwell and (Mrs C) was (their) main carer...This had caused her a lot of stress and impacted her mental health.'

Next, I've considered Mrs C's GP records. On 21 February 2022, the GP noted that Mrs C was suffering from 'stress at home'. Her relative was very ill. The records show that Mrs C was 'stressed, unable to concentrate at work and requests a sick note.'

A fit note was issued stating that Mrs C was unfit to work due to stress at home. Around a week later, the GP recorded that Mrs C had requested a referral to a counsellor. She was 'not coping with home situation'.

In mid-March 2022, the notes say that Mrs C had seen the mental health practitioner. They state that she was still feeling 'very stressed'. And a further fit note was issued stating that Mrs C was unfit for work due to 'stress at home'.

Mrs C spoke with the GP again on 29 April 2022. The GP notes say that Mrs C's relative's illness was 'causing her understandable stress'. Sedative medication was issued at this point to help Mrs C sleep. A fit note was issued which said that Mrs C was unfit for work due to

'severe family illness'.

By 30 May 2022, Mrs C's GP noted that Mrs C had ongoing stress, low mood and anxiety. And they said that Mrs C's counsellor thought Mrs C had anxiety and depression. From that point on, three months into the deferred period, the GP began to issue fit notes which said that Mrs C had mixed anxiety and depressive disorder.

Mrs C also met with OH in June and August 2022. In June 2022, the OH adviser noted that Mrs C 'had been absent from work due to stress. This she reported as being solely related to concerns in her family life... Mrs C tells me that she has been the carer for (relative) for many years...the impact of her relative's illness has caused her stress and low mood which has remained ongoing.'

The OH adviser concluded that Mrs C wasn't fit for work due to the substantial impairments to her daily function which she'd recorded. The OH adviser noted that 'Time-scales for return to work are difficult to predict and ultimately are dependent on the progression of her (relative's) illness and Mrs C's mental resilience to this.' In August 2022, the OH adviser recorded that Mrs C had 'been absent from February 2022 initially with stress at home related to her (relative's) illness...she is currently certificated as unfit due to anxiety and depression until mid-September 2022.'

Again, the OH adviser concluded that Mrs C wasn't fit to work. They referred to longstanding medical conditions Mrs C had and to surgery she'd undergone in July 2022 for an unrelated condition. They stated that Mrs C's absence was related to personal stressors.

I've seen letters which show that Mrs C was offered a counselling appointment in mid-May 2022. And in August 2022, Mrs C was discharged from the counselling service after eight appointments. The notes show that her sessions 'focused on anxiety and depression'. I'm aware too that since Unum declined the claim, Mrs C has been prescribed anti-depressant medication and has been referred back to counselling.

I've thought very carefully about all of the evidence that's been provided. 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's clear that Mrs C was suffering from symptoms which can also be indicative of a significant mental health condition. I'm conscious that Mrs C was ultimately prescribed medication and that she was referred to counselling at the outset.

But, taking into account the totality of the medical and other evidence available to Unum when it assessed Mrs C's claim, I currently think it was reasonable for Unum to conclude that the evidence showed – during the deferred period - that Mrs C was suffering from an understandable reaction to the very difficult situation in which she found herself. And that the main reason for Mrs C's absence was likely the home stress she was experiencing as opposed to a mental health condition. It also appears, from the occupational health adviser's report, that Mrs C's return to work was dependent on the progression of her relative's illness. I think this evidence points towards the cause of Mrs C's symptoms being the personal stressors. And that it indicates too that she was suffering from an understandable reaction to her personal circumstances rather than a functionally impairing mental illness which prevented her from carrying out her role.

This means I don't presently think Unum acted unfairly when it decided that Mrs C wasn't suffering from a significant mental health condition, for the whole of the deferred period, which prevented her from carrying out the material and substantial duties of her own or any gainful occupation. I say that because until May 2022, the medical evidence shows that Mrs C was signed-off due to stress at home. No diagnosis appears to have been given of anxiety

and depression until at least half-way through the deferred period. And even after that point, the OH advisers still appear to have concluded that Mrs C was off due to personal stressors at home, as opposed to an impairing mental illness.

On this basis then, I don't think it was unfair for Unum to conclude that Mrs C's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Mrs C's absence was more likely due to stress at home; personal stressors and a reaction to her circumstances.

I'd like to reassure Mrs C 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 26-week deferred period. As I've explained, I don't currently think she has. It's open to Mrs C to make a new claim on the policy - within a year of Unum's decision to decline her first claim - if she feels she's since met the definition of incapacity. But I must make it clear that any new claim would be for Unum to assess in line with the contract terms and taking into account any medical evidence it required.

Overall, based on all I've seen, I currently find it was fair and reasonable for Unum to turn down Mrs C's claim.'

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

Unum accepted my provisional decision.

Mrs C didn't agree with my provisional findings and I've summarised her response. She said she'd been signed-off for the whole of the deferred period. She agreed that she'd initially been signed-off with 'stress at home', but she didn't see how she could have been diagnosed with a mental illness at the outset. If she'd been aware of Unum's criteria, she would've submitted the claim once her GP had completed a diagnosis of depression and anxiety. She said she'd continued to work with her GP, a mental health nurse and a counsellor, who'd given her a diagnosis of depression and anxiety. Mrs C said that she was on a waiting list for further counselling for ongoing sleeping problems, which greatly impact on her day-to-day functions. She told us her GP has recommended that she continue with medication and that she's under regular review.

Additionally, Mrs C felt both her GP and counsellor have confirmed that she met the definition of incapacity. Mrs C said she hadn't been aware of the policy until she had a meeting with her employer about her sick pay ending. She'd made a claim immediately, although she wasn't aware of Unum's incapacity criteria as she'd never been given a copy of the policy terms and conditions. Mrs C queried why Unum didn't think she'd met the definition of incapacity, but that the investigator had felt she'd provided enough evidence to show she was incapacitated in line with the policy terms. And she queried the reason for the decline of claim. She told us that her condition hasn't improved and that this has been a very stressful situation.

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 C, I still think it was fair for Unum to conclude that there wasn't enough evidence to show she met the contractual definition of incapacity and I'll explain why.

It's important I make it clear that the contract of insurance was between Unum and Mrs C's employer. This means that Unum's responsibility was to provide Mrs C's employer with a copy of the policy terms and conditions – it wasn't obliged to send Mrs C a copy of the terms. And Unum also wasn't responsible for making Mrs C aware that she held income protection insurance cover. That was a matter between Mrs C and her employer. I'd add though that I can see that, after Mrs C's employer made a claim on Mrs C's behalf, Unum clearly set out the definition of incapacity in its communications with the employer and the evidence it had asked for.

As I've explained above, I accept that Mrs C wasn't medically fit for work. I'm sorry to hear she's been through a stressful and worrying time. But it remains the case that in order for Unum to accept and pay an incapacity claim, a policyholder needs to provide enough medical evidence to show, on balance, that they were incapacitated by an illness throughout the whole deferred period and afterwards. In Mrs C's case, the medical evidence from the first three months of the claim states that she was suffering from '*stress at home*'.

I appreciate Mrs C was diagnosed with mixed anxiety and depressive disorder in late May 2022. However, I don't think it was unfair or unreasonable for Unum to have concluded that the evidence dating from after May 2022 didn't demonstrate that Mrs C met the policy definition of incapacity either. Neither do I find that Unum acted unreasonably by concluding that Mrs C was suffering from an understandable reaction to her personal circumstances, as opposed to a functionally impairing mental illness which prevented her from carrying out the material and substantial duties of her own or any gainful occupation. That's because, as I explained in my provisional decision, the June 2022 OH report stated that Mrs C's stress was solely related to family concerns and that her recovery would depend on the progression of her relative's illness. And the August 2022 OH report stated that Mrs C's absence was related to personal stressors.

Mrs C says that if she'd been aware of Unum's incapacity 'criteria', she wouldn't have made a claim until she'd received a diagnosis. However, I find Unum was entitled to use February 2022 as the starting point of Mrs C's deferred period, as that was the point she became absent from work. I also think Unum was also reasonably entitled to rely on contemporaneous medical evidence from February 2022 onwards, which showed the GP's diagnosis at this point in time and afterwards. It seems to me that even if Mrs C had waited until she had a firm diagnosis to make a claim, her medical notes between February and May 2022 would still have recorded a diagnosis of stress at home.

I do sympathise with Mrs C's position and as I explained above, Mrs C is able to make a new incapacity claim - providing new medical evidence - if she feels that she now meets the policy definition of incapacity. Such a claim would need to be made within a year of Unum's decision to decline her first claim. I can't comment on how successful such a claim might be and it would be for Unum to assess any new claim in line with the policy terms and conditions.

Overall though, I still don't think it was unfair for Unum to have concluded that Mrs C hadn't shown she met the policy definition of incapacity throughout the whole of the February to August 2022 deferred period. And so I still find it was fair for Unum to turn down Mrs C's 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 C to accept or

reject my decision before 16 October 2023.

Lisa Barham
Ombudsman