DRN-4349336

The complaint

Mr Y complains that Unum Ltd has turned down an incapacity claim he made on a group income protection insurance policy.

Mr Y is now represented by a solicitor, but for ease of reading, I'll refer to Mr Y throughout.

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the main events.

Mr Y is insured under his employer's group income protection insurance policy. The policy includes a deferred period of 26 weeks.

In February 2021, unfortunately, Mr Y suffered a heart attack and he was signed-off from work. He returned to work in May 2021, on a phased basis, but in October 2021, he was signed-off again, suffering from stress and anxiety. So Mr Y's employer made a claim on the policy. He was diagnosed with prolonged adjustment disorder, due to work-related stress.

Unum assessed the claim, taking into account the available medical evidence. Ultimately, it didn't think that Mr Y had shown he met the policy definition of incapacity. Instead, it concluded that Mr Y's absence was caused by a reaction to workplace stressors. So it turned down Mr Y's claim.

Mr Y disagreed and he asked us to look into his complaint.

Our investigator didn't think Mr Y's complaint should be upheld. She considered the available evidence and she felt it showed that the main cause of Mr Y's illness was workplace stress. She considered that if Mr Y's workplace environment changed, he might be able to carry out his insured role for another employer. So she didn't think it had been unfair for Unum to find that Mr Y hadn't shown he met the policy definition of incapacity, or that it had been unreasonable for Unum to turn down his claim.

Mr Y disagreed and his solicitor provided us with a detailed response to the investigator's assessment. I've briefly summarised the main points:

- Five treating doctors had stated that Mr Y was eligible for policy benefit and that he'd been incapacitated by his illness. Some had concluded that Mr Y's incapacity was multi-factorial in cause – not simply caused by workplace issues;

- It is Mr Y's psychiatric illness which prevents him from working, in combination with other elements to that illness. In Mr Y's case, he doesn't simply suffer from stress – he has a diagnosed psychiatric condition of prolonged adjustment disorder;

- Unum's final response letter should be disregarded, as its reasoning was unclear. It either ignored the medical evidence or avoided critical analysis of it;

- It wasn't reasonable for Unum to assume that illness-inducing stressors could be removed from Mr Y's occupation. Instead, Unum would need to establish that the stressors arose in an unreasonable or unlawful way, and that they would not exist elsewhere;

- It was unreasonable for the investigator and Unum to assume that Mr Y would be able to carry out his own occupation elsewhere, in the absence of evidence which demonstrated that. It was safe to infer that the same situation would arise at any employer;

- The investigator had referred to the fact that Mr Y's consultant psychiatrist hadn't suggested further review or treatment. But in October 2021, they'd recommended that Mr Y should undergo 30 sessions with a psychologist and to take medication;

- Mr Y hasn't been absent from work because he dislikes the work environment – he's been absent because it makes him ill.

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 Mr Y, I don't think it was unfair for Unum to turn down his claim and I'll explain why.

First I'd like to reassure Mr Y that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent us. I'm very sorry to hear about the circumstances that led to Mr Y needing to make a claim and I don't doubt how upsetting and worrying the situation has been for him. Within this decision though, I haven't commented on each and every point he's made and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues and the key evidence.

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 policy and the available medical and other evidence, to decide whether I think Unum handled Mr Y's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mr Y's employer's contract with Unum. Mr Y's employer made a claim on his behalf for incapacity benefit, given he wasn't fit for work. So I think it was reasonable and appropriate for Unum to consider whether Mr Y's claim met the policy definition of incapacity, which I've set out below:

'Insured occupation cover

A member is incapacitated if they are unable to perform the material and substantial duties of their insured occupation because of illness or injury.'

This means that in order for Unum to pay incapacity benefit, it must be satisfied that a member is suffering from an illness which prevents them from carrying out the material and substantial duties of their own occupation. And that the illness would prevent them from carrying out those material and substantial duties for any other employer or in any other

workplace.

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, Mr Y 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 Mr Y's responsibility to provide Unum with enough medical evidence to demonstrate that an illness had led to him being unable to carry out the duties of his own occupation for the full 26-week deferred period between February and August 2021.

Unum assessed the evidence Mr Y provided in support of his claim, including seeking the opinion of its clinical staff. While it sympathised with Mr Y's position, it concluded that he wasn't incapacitated in line with the policy terms. Instead, it felt the evidence showed that following Mr Y's heart attack, he had been fit to return to work within the deferred period. But it was workplace stressors that had led to Mr Y's subsequent absence in October 2021 and thereafter. It considered that Mr Y was suffering with a reaction to a number of upsetting personal stressors, 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.

It's common ground that in February 2021, Mr Y suffered a heart attack and required surgery. He was understandably signed-off from work. Around three months later, in mid-May 2021, Mr Y saw an occupational health advisor. Their report states:

'In my clinical opinion, Mr Y is fit for work and fit to continue in his current role with recommendations for adjustments'

The advisor recommended a series of workplace adjustments which could be made for Mr Y – including a phased return to work plan. The suggested plan spanned a four week period, aiming for Mr Y to return to full-time work and duties in weeks three-four. This suggests that the advisor felt Mr Y would be fit for the material and substantial duties of his own occupation some weeks before the end of the deferred period.

Mr Y's GP records show that in May 2021, he told the GP: '*Had an OH assessment with employer, suggested phased return to work. He feels well enough to return but says he was advised to start next week.'*

It seems Mr Y suffered an injury to his leg in June 2021, which meant he had to wear a specialist boot for a few months. However, I haven't seen any persuasive medical evidence which shows that this injury would have resulted in Mr Y being incapacitated for the full deferred period and beyond.

Mr Y's GP records show that on 8 October 2021, he had a telephone consultation with a doctor. I've set out the relevant notes below:

'Previous heart attack…Has stress full (sic) *job. Feels he is fit and healthy. Had stressful year last year…In feb took a break had 3 months of* (sic) *work…Is full time now since 6 weeks…In the time he was not working fulltime his work was taken over by others. He is almost sure they are going to make him redundent* (sic). *Has a meeting next week. Has been feeling his chest hursting* (sic) *when on a tel call yesterday…Never gets chest pain when on crosstrainer, biking, weight lifting. No* (sic) *in normal life, just happened 2 times when talking about work or redundency.* (sic)…

Stress does not sound cardial (sic)….*I will do (a sicknote) for him this time, as he really wants to show his work.'*

The GP issued a fit note which showed that Mr Y was off because of *'stress due to work.'*

Subsequently, Mr Y was referred to a consultant psychiatrist for assessment, which took place on 21 October 2021 – over two months after the deferred period ended. The psychiatrist's key findings were as follows:

'(*Mr Y) described having ongoing problems with anxiety and low mood which he was clear were as consequence of work-stress and resultant burnout. He described having chest pain that he had been advised was not cardiac in origin…He was off work at the time of my assessment having found it difficult to manage his levels of irritability and lack of motivation at work.*

(Mr Y) was able to provide a detailed chronological account of the work related capacity pressures that he has been under since a change in senior management…He described a working environment of lack of adequate support, disruptive organizational changes and no response to his persistent documented requests for additional resources for him to manage the excessive workload. He had to have 3 months off and then had a 2-month phased return to work.

He noticed that when back to full time he was short with colleagues, raised his voice and argued a lot with colleagues. His chest pain was initially thought to be angina but is now considered to be stress related. His situation is further compounded by the fact that some of the work he used to do has been assigned to other colleagues and there is the worry that his role might be at risk…

(Mr Y) was very clear in his narration about the link between his work related stress and the ensuing physical health issues he experienced and mental health issues he is experiencing.'

The consultant psychiatrist concluded:

'Given the history and presentation I have formed the view that Mr Y's presentation is consistent with a diagnosis of Prolonged Adjustment Disorder due to work-related stress and is now showing symptoms suggestive of burnout.'

They recommended that Mr Y undergo cognitive behavioural therapy. I understand that Mr Y had 30 sessions between November 2021 and July 2022.

In November 2021, Mr Y saw a consultant cardiologist. I've set out below what I consider to be their key findings:

'(Mr Y) was treated…under our care as an emergency and underwent coronary angiography and primary angioplasty with complex coronary stenting with a good result. With the help of medical therapy and the above procedure his cardiac function is reasonable although he has scar on cardiac MRI scanning and will need medications long term…

Over the ensuing few months he has continued to be placed under intensive work pressure and as a result has been prone to significant anxiety and stress…He frequently reports upper left sided chest pain which is unrelated to his heart as evidenced by negative exercise cardiac stress tests. These symptoms likely relate to this anxiety and the description of his symptoms would very much fit with this…

His health however remains fragile and he has understandably been placed on sick leave

and off work and I would fully support this decision. I am led to believe that his work circumstances continue to be challenging and there are a number of issues going on which are having a major psychological impact on this gentleman's day to day life and this is likely to also have physical consequences.'

Mr Y provided further medical evidence to Unum from his treating specialists once the claim had been declined and a solicitor had been appointed. Unum explained why the evidence didn't change its position. I'll examine this evidence below.

In December 2022, Mr Y's consultant cardiologist said:

'In (Mr Y's) case there were identifiable risk factors which needed to be addressed following the heart attack in February 2021…as well as a work environment where he was exposed to considerable and undue stress and pressures relating to meeting deadlines, staff management and targets. It is very likely that all these factors played a key part in the development of Mr Y's condition and considerable adjustments in his work environment and role would be advisable…

There is no doubt Mr Y sustained an initial serious and severe cardiological and physical insult which prevented from carrying out the duties of his occupation and position for approximately 6-8 weeks. The further setback in March relating to (an allergic reaction) have set him back physically a further 2 months. The anxiety and psychological effect of these events on his ability to carry out his duties and role at work are harder to quantify precisely but the intermittent ongoing symptoms and ongoing concerns regarding his health status will likely have an ongoing impact especially in a role associated with stress and high demands.

I am aware there have been trial periods of return to work which have proved difficult and problematic due to ongoing stresses and pressures of the Job and its associated duties and responsibilities despite some adjustments…

I believe on the balance of probabilities, Mr Y has not been able to perform the material and substantial duties of his role intermittently between February 2021 and now due to his cardiac condition, some ongoing symptoms and further recent cardiac setback, it is very likely that work related stresses have been contributory.'

On 22 December 2021, Mr Y's consultant psychologist issued a psychological assessment. Again, I've set out what I think were the key findings:

'I believe that Mr Y would likely meet the clinical cut off to have the diagnosis of prolonged adjustment disorder…I believe it worth the reader noting that Mr Y appeared to improve, but then when he returned to part time duties as part of a phased return, being reintroduced to that environment and pressure caused him to have significant stress that brought on more chest pain, this in turn impaired his functioning and he relapsed.

Since that point other events could explain the maintenance of his condition during this period such as the ongoing financial difficulties and continuous hospital appointments to investigate and treat multiple physical symptoms he is suffering from. Regardless of diagnostic label Mr Y has an illness that prevents him from working.

The relationship between stress and prolonged adjustment disorder and Mr Y's workplace is that he felt overwhelmed by the level of additional pressure that has been present in his role that continued for a prolonged period…. This continued during his phased return. But now whilst he is off the element of work related stress that contributes to his condition is the aspect of returning to work and his financial difficulties after having exhausted sickness pay and being denied his work absence insurance cover.

In my professional opinion the levels of stress caused by Mr Y's work not only had an impact on his physical health repeatedly deteriorating but meant that he was unable to function day to day including being incapacitated to the level that he was unable to complete his insured occupation. I believe that the diagnosis of prolonged adjustment disorder which can be traced back to events from… February led to this incapacity and that there is little doubt that Mr Y has been so mentally unwell that he has been incapacitated.'

In Jan 2023, a consultant physician provided their comments on Mr Y's condition and concluded:

'I have seen Mr Y on a number of occasions dating back nearly 4 years. I believe on the balance of probability that Mr Y has not been able to perform the material and substantial duties of his job mainly because of the cardiac pathology.'

And also in 2023, Mr Y's consultant psychiatrist provided a further report. They stated:

'(Mr Y) has a psychiatric diagnosis of Prolonged Adjustment Disorder precipitated by work related stress. He continues to have symptoms such as trouble sleeping, feeling overwhelmed, difficulties functioning in daily activities, withdrawing from social supports and difficulty concentrating.

The causes are multi-factorial. He suffered a heart attack in February 2021 and continues to have understandable anxiety about a recurrence which makes him very sensitive to chest pains and any stressful situations. He also has physical health problems… Overall, the combined impact of his mental and physical health problems increase his risk of suffering from major depression.

Often, if not usually. Adjustment Disorders last no longer that 6 months after the end of the stressful event. Sometimes they last longer. In Mr Y's case as the stressor is his work situation, his symptoms have not resolved. Indeed, as is well established that persistence of the stressor results in a recurrence of the emotional struggles associated with disorder. In my view this explains what Mr Y has been experiencing since October 2021.

In my view on the balance of probabilities it is unlikely that any reasonable adjustments undertaken by (employer) will result in Mr Y being able to perform the "material and substantial duties' of his role. He has been affected by his experience in the workplace and remains highly anxious about the risk of having another heart attack, his concentration is not good enough to deal with tasks he would normally be expected to do. He has felt unsupported by his employer. He has experienced difficulties in his work relationships that have reduced his levels of trust and confidence in their willingness or ability to support him hence increasing his levels of stress.

I believe on the balance of probabilities Mr Y has not been able to perform the material and substantial duties of his role since 08/10/21 to date having been incapacitated by a Prolonged Adjustment Disorder.'

Mr Y's GP too felt that a combination of conditions had prevented Mr Y from carrying out the material and substantial duties of his role between February 2021 and 13 July 2023.

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 and parties to decide what evidence I find most persuasive. I'm mindful that medical experts who have been involved in Mr Y's care during the relevant time have indicated that they believe him to have been incapacitated and that they have had reference to his job role.

However, what's also clear is that during the deferred period (between February and August 2021), Mr Y had recovered sufficiently from the heart attack to return to work in May 2021. The evidence shows that the occupational health adviser and indeed, Mr Y himself, believed he was fit to return to work, at least on a phased basis. This was around halfway through the deferred period. And the GP notes suggest that before Mr Y was signed-off in October 2021, he'd been back at work full time. So I don't find it was unfair for Unum to conclude that Mr Y hadn't been incapacitated due to the heart attack or his cardiac recovery for the whole of the deferred period and afterwards.

I'm mindful too that each of the medical experts has made specific reference to the impact of Mr Y's employment on his health. The medical evidence indicates that Mr Y's cardiac recovery had been reasonable – although I accept he was understandably concerned that he might suffer another cardiac event. And while I understand Mr Y had a leg injury which required a boot and crutches, I haven't seen persuasive medical evidence which indicates that he would've been incapacitated from carrying out a sedentary role.

The medical evidence is more suggestive that Mr Y's subsequent absence, beginning on 8 October 2021, was largely caused by work-related stressors – including concern that he might be made redundant. This seems to have manifested in a number of ways, including non-cardiac chest pain and was ultimately found to be prolonged adjustment disorder. Each of the medical specialists involved in Mr Y's care has referred explicitly to the impact of work-related stress on his health, even if only as a contributor. Therefore, I don't think it was unfair for Unum to conclude that work-related stress was the main cause of Mr Y's absence from 8 October 2021 onwards. And I don't think it was unreasonable for Unum to take the view that Mr Y might not face the same issues if he carried out the same role for a different employer. It's possible that he might have – but in my view, at least some of the work-related issues listed in the medical evidence appear to be specific to Mr Y's employer.

As I've explained, I appreciate that medical experts have concluded that Mr Y is incapacitated from carrying out his insured role. However, as the investigator explained, an insurer's role is to assess the claim in line with the policy terms and conditions as a whole.

In the round, 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, Mr Y had sufficiently recovered from the heart attack to begin a phased return to work (and indeed, ultimately, to return to full-time hours). I don't think it unfairly found that Mr Y's leg injury wouldn't have prevented him from carrying out a sedentary role for a prolonged period. And on the available medical evidence, I don't think Unum acted unfairly when it concluded that Mr Y's symptoms of prolonged adjustment disorder - which was diagnosed after the deferred period ended - were largely caused by an understandable reaction to a number of workplace stressors. Or that he won't be in a position to return to work until those workplace stressors have been resolved. On this basis then, I don't think it was unfair for Unum to conclude that Mr Y's absence wasn't due to an incapacity in line with the policy definition.

I'd like to reassure Mr Y that I'm not suggesting that he was fit for work. I appreciate he's been medically signed-off. And I understand he's been through a very difficult time. But I need to decide whether I think he's provided Unum with enough medical evidence to show he met the policy definition of incapacity for the whole of the 26-week deferred period and afterwards. As I've explained, I don't think he has.

It's open to Mr Y to obtain new medical evidence in support of his claim, should he wish to do so. Mr Y would need to send any new medical evidence to Unum for it to consider and to decide whether or not it alters its understanding of his claim. If Mr Y is unhappy with the outcome of any reconsideration of new evidence, he may be able to make a new complaint

to us about that issue alone.

Overall, despite my natural sympathy with Mr Y's position, I find it was fair and reasonable for Unum to turn down his 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 Mr Y to accept or reject my decision before 15 November 2023.

Lisa Barham
Ombudsman