

The complaint

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

What happened

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

Mr S is insured under his employer's group income protection insurance policy. The policy provides cover for Mr S' own occupation and includes a deferred period of 26 weeks.

In July 2021, Mr S was signed-off work, due to suffering with symptoms of anxiety. He was entitled to sick pay from his employer for a six-month period. In December 2021, Mr S' employer arranged for Mr S to see an occupational health (OH) physician, who concluded that Mr S wasn't fit for work. So Mr S' employer made an incapacity claim on the policy on Mr S' behalf. Mr S noted that he was suffering from *'anxiety/stress overload experienced daily'*.

Unum asked Mr S' GP for medical evidence, in addition to the OH report it already had, to allow it to assess the claim. It also spoke with Mr S. Based on the evidence, Unum didn't think there was evidence to indicate that Mr S had a significant, impairing mental health condition. Instead, it concluded that Mr S was suffering from work-related stress. Accordingly, it wasn't satisfied that Mr S had met the policy definition of incapacity and it turned down his claim.

Mr S was unhappy with Unum's decision and he appealed. But Unum maintained its position, so Mr S asked us to look into his complaint.

Our investigator didn't think Mr S' complaint should be upheld. He assessed the available medical evidence and he didn't think it showed that Mr S had been prevented from work by an illness. He considered the evidence showed that Mr S' absence was down to work-related stress. So he didn't think it had been unfair for Unum to conclude that Mr S hadn't shown that he met the policy definition of incapacity. And therefore, he concluded it'd been fair for Unum to turn down Mr S' claim.

Mr S disagreed and I've summarised his response. He felt he had been diagnosed with an illness which met the policy definition of incapacity. He said that all anxiety needed a trigger – and he believed that much of his anxiety had been driven by the impact of lockdown isolation on his daily life. He felt work had become the centre of everything he did and it had become very stressful. Mr S said he'd found going back into 'normal' life stressful after lockdown ended.

He acknowledged that his GP records referred to 'work-related anxiety' but he felt this was suggestive of wider generalised anxiety disorder. The OH had referred to Mr S' anxiety being caused by a combination of stressors, including those at work and externally. He referred to the OH's experience and that he placed weight on the OH's professional opinion. Mr S

considered that both the claim form and call he had with Unum were too focused on work and hadn't taken into account issues in his home life. He stated that the GP had prescribed him with anti-anxiety medication and had issued fit notes which said he wasn't fit to work. He told us that since June 2022, he'd been undergoing cognitive behavioural therapy (CBT) for anxiety. He felt that Unum had gone against medical opinion when it declined his claim.

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.

First I'd like to reassure Mr S 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 S needing to make a claim and I don't doubt how upsetting and worrying the situation has been for him and his family. 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.

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 the group policy and the available medical evidence, to decide whether I think Unum handled Mr S' claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of his employer's contract with Unum. Mr 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 S' claim met the policy definition of incapacity. I've turned then to look at Unum's definition of 'incapacity'. This says:

'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 it was Mr S' illness which prevented him from carrying out the material and substantial duties of his own occupation, for the entirety of the deferred period and afterwards. The policy doesn't cover Mr S being unable to work at a specific workplace or for a specific employer. Unum needs to be satisfied that Mr S would be unable to carry out the material and substantial duties of his own occupation at any workplace or for any employer.

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 S' responsibility to provide Unum with enough 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 July 2021 and January 2022 and afterwards.

Unum assessed the evidence Mr S provided in support of his claim and concluded that it didn't indicate that he had a significant, impairing mental health condition or that he 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.

I've first considered the GP records for the duration of Mr S' deferred period. I can see that on 7 July 2021, the GP recorded that Mr S had *'been experiencing anxiety symptoms and*

had taken time off...wants to have two more weeks off to sort out his thoughts etc.' The notes show that Mr S was diagnosed with anxiety symptoms.

Further fit notes were issued later in July and August 2021, which stated that Mr S wasn't fit for work due to anxiety symptoms. There aren't any detailed notes which explain the reasons why Mr S' symptoms precluded him from carrying out the material and substantial duties of his own occupation.

On 6 September 2021, Mr S' GP noted that Mr S was: *'making plans to return to work with manager but feels like his progress has stalled in the past 10 day. [sic] Worrying about having to go back to work and the circumstances around this...Feels like if returns wouldn't be able to cope and really doesn't feel ready at this point.'*

Subsequently, on 6 October 2021, the GP noted that Mr S had 'work related anxiety'. They stated that Mr S had normal daily functioning, but *'palpitations when considers work'*. The GP stated that they'd encouraged Mr S to undertake a phased return in the next month or so, as prolonged absence could make it harder to return.

Again, in November 2021, the GP recorded that Mr S wasn't fit for work due to work related anxiety. And on 6 December 2021, the GP noted that Mr S *'has been off sick work related anxiety.'* This entry was followed by a further note a few weeks later which said Mr S: *'feels too much pressure/stress from work.'*

Mr S' employer referred him to an OH physician in December 2021. I've looked carefully at their report. I've set out below what I think are their key findings:

'On this occasion, he described a combination of stressors at work and externally that combined to overwhelm his resilience and led to his current illness. Undoubtedly, pandemic conditions played a role...

Functionally, his symptoms are predominantly anxiety...he gets physical manifestations of anxiety...

This gentleman is unfit for work.'

The OH recommended that Mr S should request CBT and an increase to his existing anti-anxiety medication.

In March 2022, around two months after Mr S' deferred period had ended, Mr S saw the OH physician again. The physician recorded:

'Unfortunately, (Mr S') psychological health has been knocked back after his claim for income protection was denied. He reports low mood at symptoms of panic when thinking about returning to work.'

The OH physician added: *'He does have significant psychological illness with anxiety and loss of confidence.'*

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 Mr S was suffering from symptoms which can also be indicative of a significant mental health condition and indeed, after the deferred period ended, the OH physician noted that Mr S had a significant psychological illness. I'm conscious that Mr S was prescribed an increased dosage of his long-term anti-anxiety

medication, it appears he was also prescribed a further medication and he was recommended to undergo for CBT by the OH physician, who diagnosed him with anxiety.

But, taking into account the totality of the medical and other evidence available to Unum, I think it was reasonable for Unum to conclude that the evidence showed that Mr S was suffering from an understandable reaction to the work and external circumstances in which he found himself. And that the main reason for Mr S' absence during the deferred period was likely the workplace stress he was experiencing as opposed to a mental health condition. It also appears, from the GP's records and the December 2021 OH report, that Mr S' main triggers were concerns about work. And so I think this evidence points towards the cause of Mr S' upsetting symptoms between July 2021 and January 2022 being the workplace issues he experienced. I think it indicates too that he was suffering from an understandable reaction to his personal circumstances and the impact of lockdown, rather than a functionally impairing mental illness which prevented him from carrying out the material and substantial duties of his role.

This means I don't find that Unum acted unfairly when it decided that Mr S wasn't suffering from a significant mental health condition, during the deferred period, which prevented him from carrying out the material and substantial duties of his occupation. On this basis then, I don't think it was unfair for Unum to conclude that Mr S' absence wasn't due to incapacity in line with the policy definition. Instead, I think it fairly concluded that Mr S' absence during the deferred period was more likely due to workplace stress and a reaction to his circumstances.

I appreciate Mr S has referred to CBT therapy, which he underwent in June 2022, and a change in his prescribed medication. The CBT post-dates the deferred period. However, if Mr S would like to obtain further medical evidence to support that he was incapacitated in line with the policy terms during the deferred period, it's open to him to accordingly send this on to Unum for review. If he's unhappy with the outcome of any further assessment of any new evidence, he may be able to make a new complaint about that issue alone. But, overall, despite my natural sympathy for Mr S's position, I find it was fair and reasonable for Unum to turn down his income protection 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 S to accept or reject my decision before 14 August 2023.

Lisa Barham
Ombudsman