

The complaint

Mr D complains about the decision by Unum Ltd to turn down his income protection claim.

What happened

Mr D is covered under his employer's group income protection scheme. The policy pays benefit for a maximum of five years in the event Mr D can't work because of illness or injury. The policy has a deferred period of 26 weeks.

On 1 August 2019, Mr D stopped work and attributed this to workplace stress. He submitted a claim to Unum, however, this was turned down as Unum didn't think he met the policy definition of incapacity. Unhappy with this, Mr D brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought Unum's claims decision had been reasonable.

I issued a provisional decision on 14 March 2022. Here's what I said:

"The policy explains that for benefit to be paid, the member must be incapacitated. It says a member is incapacitated if they are:

"Unable, by reason for their illness or injury, to perform the material and substantial duties of the Insured occupation...."

Mr D would need to show this to be the case throughout the 26-week deferred period (from 1 August 2019 to 30 January 2020).

I see that Mr D stopped work because he'd been experiencing headaches for a month and he was feeling more tired than usual. Throughout August 2019, Mr D continued to see his GP regularly and reported muscle aches, as well as some stress and anxiety related symptoms. His GP started him on a low dose of antidepressant medication, and mentioned that Mr D had been experiencing stress at work. The GP also said that Mr D's condition of chronic fatigue syndrome (CFS) had been flaring, and that he had poor concentration.

In September and October 2019, Mr D continued to report feeling anxious and having a low mood, as well as widespread pain and exhaustion. He continued to report poor concentration and his medication was increased. The GP referred Mr D to a talking therapy service, who arranged for Mr D to attend a managing moods workshop.

By November 2019, Mr D found the medication was starting to help, though the thought of returning to work made him anxious. In December 2019 Mr D continued to report fatigue, joint and muscle pain and poor concentration.

Mr D spoke with Unum in December 2019, and explained he still had joint and muscle pain, numerous headaches and wasn't sleeping well. He said he was forgetful, especially

in the short-term. Mr D also advised Unum that he felt his job was more stressful as the years go by, as there was too much demand placed on employees.

Also at the end of 2019, Mr D's GP referred him to a fatigue clinic for his CFS symptoms.

Mr D's GP later wrote a letter to confirm that Mr D had CFS and an anxiety disorder. She explained that Mr D's medication was being used to treat both conditions. She said he had two significant diagnoses which have multi-factorial causes and thought these fully explained his long-term absence from work.

Unum's company medical officer (who is a consultant psychiatrist) didn't think the evidence supported that Mr D's conditions caused a sustained impairment to function throughout the whole deferred period. I would agree with that. It's apparent that Mr D was experiencing some symptoms of CFS and stress and anxiety, though the talking therapies service only arranged for Mr D to attend a managing moods workshop. I think Unum makes a reasonable point that this doesn't suggest a need for high intensity psychological therapy. I don't find the evidence to be particularly compelling in terms of demonstrating that Mr D was so incapacitated by his symptoms that he couldn't work throughout the whole of the deferred period.

Having said that, it does seem that Mr D's symptoms may have worsened towards the end of the deferred period – his medication was increased, and he was referred to secondary care for his CFS symptoms.

Mr D also says his conditions have worsened with increasing symptoms. He's provided information in the year after the deferred period ended – including evidence from a nurse at the fatigue clinic, a manual therapist, and a consultant psychiatrist. Mr D made a successful application for the government's Employment and Support Allowance (ESA) and was accepted into the support group. He was also awarded the government's Personal Independence Payment. Finally, Mr D says his consultant rheumatologist has said that he couldn't work.

The policy says that if Unum declines a claim because the member doesn't meet the definition of incapacity, but the member doesn't return to work, then a new claim can be submitted if their condition worsens. This would need to be within a year of the end of the initial deferred period.

I haven't taken the evidence available after the deferred period into account, as this was outside the relevant period that Unum considered when making its claims decision. I appreciate Unum considered some of this evidence in order to see if it supported that Mr D met the definition of incapacity throughout the deferred period. But given that some of the evidence was quite some time after the end of the deferred period, it seems to me that it would be more appropriate for Unum to look at all the medical evidence in the year 31 January 2020 – 30 January 2021, in order to decide whether Mr D satisfies the policy definition of incapacity throughout a 26-week deferred period in this year."

I asked both parties for any comments they wished to make before I made a final decision.

Unum responded to say it had no further comments.

Mr D responded and made the following main points:

- *He would like me to read his previous letter dated 27 January 2022.*

- He was unaware that he'd have to prove his illness to such detail within the 26-week deferred period. He assumed that by seeing his GP every week and receiving a sick note that this would be satisfactory. He says the information in Unum's policy explains how to file a claim, and doesn't say anywhere that specialised clinical reports are needed.
- Unum kept mentioning that he had workplace and personal issues as if this was a factor in their decision-making. However, there's nothing in the policy terms to say these issues were excluded.
- Unum didn't tell him he should collect professional medical reports to confirm his illness.
- He's commented on evidence provided after the end of the deferred period.
- He says the talking therapy service didn't only arrange the managing moods workshop, and he had one-to-one counselling over the phone by a psychologist.
- He says it's only after two and a half years that he's able to try high intensity therapy, and thinks this would've been premature for the state of his health at the time.

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.

Whilst I haven't addressed all of Mr D's points in response to my provisional decision (this reflects the fact that we're an informal complaint-handling service), I'd like to reassure him that I've carefully considered all his comments. Having done so, I remain of the view expressed in my provisional decision. I'll explain why.

Mr D has asked me to read his letter dated 27 January 2022, as this was drafted by a legal professional on his behalf. I can confirm that I'd read that letter and took into account the points before I made my provisional decision.

The policy lists documents that are needed to allow Unum to assess the claim (such as a consent form, and medical records). However, the policy terms make it clear that Mr D would need to show he meets the policy definition of incapacity throughout the deferred period for a claim to be payable. Whilst I appreciate Mr D was signed off by his GP as unfit to work for this period, in my view, the evidence from the GP isn't enough to confirm that his functional limitations were such that he couldn't have performed the main duties of his role.

Mr D is unhappy that Unum thought his absence was related to workplace and personal issues. I would assume Unum mentioned these issues because for a claim to be payable, Mr D would need to show he was unable to work in his occupation because of illness or injury. Therefore, if it were the case that Mr D couldn't work because of workplace or personal issues, then his claim wouldn't be covered. However, to be clear, I haven't found this to be the case.

Mr D says Unum didn't tell him he should collect professional medical reports. However, this isn't a requirement. Unum will take into account a member's medical records, and opinions provided by treating doctors before making a claims decision.

Mr D has referred to evidence provided after the deferred period had ended, so I won't comment on that here.

I can confirm I was aware that Mr D had received telephone support from the talking therapies service before they decided to refer him for a managing moods workshop.

I'm not medically qualified, so I can't comment on Mr D's view that high intensity therapy would've been premature for the state of his health at the time. Unum's company medical officer thought the support that Mr D had received in the deferred period from the talking therapies service wasn't indicative of a mental health condition that had caused him impairment to function, and I thought that seemed reasonable, based on the available evidence.

Overall, I remain of the view that Unum's decision to turn down Mr D's claim was reasonable. Though I recognise that there's later evidence which would suggest that Mr D's condition may have worsened, and so I remain satisfied that a reasonable way forward would be for Unum to consider this, in line with the terms of the policy.

My final decision

My final decision is that Unum Ltd should consider whether Mr D has a valid claim in the year 31 January 2020 – 30 January 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 April 2022.

Chantelle Hurn-Ryan
Ombudsman