

## **The complaint**

Mr C complains about the decision by Unum Ltd to terminate his income protection claim.

Mr C is represented in this complaint, but for ease, I'll refer to all submissions as if they were his own.

## **What happened**

Mr C is covered under his employer's group income protection policy. The aim of this is to pay benefit in the event he can't work in his own occupation.

Mr C stopped work due to symptoms he was experiencing, and was later diagnosed with multiple sclerosis ('MS'). He submitted a claim to Unum, and this was accepted in 2012. Mr C was also later diagnosed with Lyme disease, as well as other conditions.

In 2013, whilst reviewing Mr C's claim, Unum wanted him to undergo psychometric testing. Mr C didn't agree to do so. Unum terminated the claim in January 2016 because of this.

Mr C appealed against Unum's decision. Unum arranged for a neuropsychology assessment to take place in January 2018. It also arranged for an independent medical examination (IME) to take place. Following this, Unum remained of the view that Mr C no longer met the policy definition of incapacity and so refused to reinstate the claim. However, it did make Mr C a final settlement offer of £100,000.

Mr C refused Unum's offer, and brought a complaint to this service about Unum's claims decision. He was also unhappy about the way Unum had handled his claim.

Our investigator recommended the complaint be upheld. She thought it hadn't been fair for Unum to terminate the claim because Mr C had refused to undergo psychometric testing. She didn't think the results of the testing would have provided Unum with sufficient evidence to make a decision on whether Mr C continued to meet the policy definition of incapacity.

The investigator also thought the later IME report wasn't enough to say that Mr C no longer met the policy definition of incapacity. So she recommended that Unum reinstate the claim, and pay backdated benefit. She also recommended that Unum pay Mr C £1,000 compensation for the distress and inconvenience its claims decision had caused him. Finally, our investigator concluded that Unum didn't need to pay Mr C's professional adviser costs.

Unum said it intended to make an offer to Mr C, via his employer. However, Mr C asked for the matter to be referred to an ombudsman, as he disagreed with our investigator's conclusions in respect of professional costs, and also wanted an ombudsman to consider some other matters.

## **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.

Mr C has raised a significant number of points in relation to his dispute with Unum. I don't intend to address every point, and have instead considered the main issues. This reflects the informal nature of this service. Though I would like to reassure both parties that I considered all the evidence before making my decision.

### Claims decision

The policy pays benefit in the event of incapacity. This means:

*"...the member is unable, by reason of his illness or injury, to perform the material and substantial duties of his insured occupation..."*

The policy says a member may be required to undergo a medical examination by such medical practitioners or consultants at such times and places as Unum or the practitioners or consultants may require. If a member fails to attend an examination, the claim may be declined for that member.

Unum terminated the claim in January 2016 because Mr C had refused to attend psychometric testing. Without this testing, Unum didn't think there was sufficient evidence to support that Mr C remained incapacitated. It concluded Mr C was in breach of the above clause.

Mr C's treating doctors thought the psychometric testing proposed by Unum was not appropriate, and may negatively impact his health. In 2015, Unum's company medical officer (CMO) said he didn't see any contraindication on a medical basis to cognitive testing, but recognised that Mr C's variable fatigue could be a potential issue.

I think it was unreasonable for Unum to terminate the claim for technical reasons in January 2016. Mr C was acting on medical advice when he told Unum he wasn't willing to participate in the psychometric testing. Also, due to Mr C's variable fatigue (as identified by Unum's CMO as a potential issue), it seems unlikely that the results of the testing would have given Unum conclusive evidence of Mr C's ability to work.

Following the termination of his claim Mr C continued to report debilitating symptoms, as confirmed by his GP and treating specialist outside the UK (Dr N). In March 2016, Dr N confirmed he had been treating Mr C since 2013. He said that Mr C was suffering from extreme fatigue and experienced regular pain, as well as numbness and tingling, and visual problems.

In June 2017, Dr N provided an update on Mr C's condition. He said that since his previous report in 2016, Mr C's health had deteriorated, and he had had a severe MS relapse which had started in August 2016.

Unum later arranged for an IME to take place in March 2018 with Dr G (a consultant neurologist). Dr G said that Mr C's main complaint was severe fatigue, followed by cognitive dysfunction. Though Mr C confirmed he also had visual disturbances, pain, tingling, buzzing and numbness in his body (amongst other symptoms).

Dr G commented on the neuropsychology assessment that had been carried out in January 2018. Mr C was found to have difficulty with his memory for non-verbal information, and completing tasks took a little longer than would be expected. He was also found to have difficulty with tests assessing complex higher-level thinking skills.

Dr G said that if Mr C only had a diagnosis of MS, then he was doing very well. However, added to this was Mr C's other conditions. Based on the limited evidence, Dr G thought Mr C would be functioning at a higher level than he said, but also accepted it was difficult to undermine what an individual says unless there is objective evidence to show otherwise. Dr G said that Mr C had become profoundly impaired by virtue of his illness that started in 2011 and then the range of other diagnoses that have followed.

Whilst Dr G thought there were significant psychological components to how Mr C presented, he concluded that it was difficult to see how Mr C could possibly undertake his role.

In February 2019, Dr N also provided his opinion on the matter and said that Mr C could not undertake his role.

I disagree with Unum's conclusions that the evidence supported that Mr C could return to work. I think it's apparent that Mr C remained incapacitated due to his various conditions. His role involves complex work, and the neuropsychology assessment found that he had difficulty with tests assessing complex higher-level thinking skills. Whilst I appreciate Dr G thought Mr C had become invested in his chronic ill health (and was of the view that this was, to some extent, self-perpetuating), it's still the case that he thought Mr C could not carry out his role. As our investigator has said, there was no suggestion by Dr G that Mr C's reporting of his symptoms were untrue.

I therefore find that Unum should reinstate the claim, and pay any backdated benefit due to Mr C in line with the policy terms.

After our investigator issued her findings, we became aware that Mr C's employer had continued to pay him an income after Unum terminated his claim. Mr C says this figure is none of Unum's concern as he thinks it would not be classed as deductible income, and has asked me to make a ruling that Unum is not entitled to deduct these payments from the settlement figure.

If an insured continues to receive payments from their employer, these would usually be deducted from benefit under an income protection policy. This is so that the insured does not receive more than the insured benefit. As I've said above, I would expect Unum to pay benefit in line with the policy terms (though I cannot require it to pay more than our award limit). As Unum hasn't made a payment yet, nor calculated any deduction it may wish to make, it wouldn't be appropriate for me to make a finding on this here.

If Mr C is unhappy with the settlement received from Unum once this has been paid, he should raise his concerns with Unum in the first instance.

### Costs

Mr C says he had to rely on legal and accountancy services, and has spent over £12,000 on legal advice. His representative (who is a family member) also says he will be providing an invoice of £892,500 (plus VAT) for the hours he has spent assisting Mr C with his complaint. Though the representative also says that he would then gift this payment after tax to Mr C.

I am able to make an award to cover costs reasonably incurred by a consumer in respect of their complaint. The guidance on this rule is set out in the Financial Conduct Authority (FCA) Handbook under DISP 3.7.10 and also states:

*In most cases complainants should not need to have professional advisers to bring complaints to the Financial Ombudsman Service, so awards of costs are unlikely to be*

*common.*

We apply the same approach when considering any costs involved with appointing professional advisers to make a complaint to a financial business. Whilst I recognise my decision will disappoint Mr C, I don't consider it was necessary for him to use professional advisers to bring his complaint to Unum, or this service. I don't agree with his representative that to bring a complaint to this service, Mr C needed to understand how this service considers medical evidence, surveillance, or the percentage of complaints upheld against Unum.

I recognise that Mr C's representative has provided extensive submissions on his behalf, and has likely spent a great deal of time on the complaint. Though as our investigator has pointed out, we can't make an award to Mr C's representative, only Mr C. This service does not generally compensate complainants for their time spent on making a complaint. I therefore don't require Unum to make any payment for this.

Mr C's representative says that because of his occupation, his fees would be considered professional fees. I've already concluded that Mr C did not need to use professional advisers in making his complaint. Though even if I had found otherwise, Mr C did not engage his representative's services on a professional basis and has not incurred any costs.

#### Handling of the claim

Mr C's treating doctors have explained that Unum's decision to terminate the claim caused Mr C considerable stress, which is a known trigger for MS. It was thought this contributed to a worsening of Mr C's symptoms and may have caused his relapse in 2016.

I agree with our investigator that a compensation payment of £1,000 would be appropriate here. This reflects that Mr C was caused significant and unnecessary worry and upset by Unum's claims decision, which also may have impacted his health.

Mr C is also unhappy with Unum's handling of the claim, particularly with regards to the length of time the matter has been ongoing since the claim was initially terminated.

After Unum terminated the claim in January 2016, Mr C's appeal was not submitted until March 2017. After this, Unum decided to arrange an IME, which I think was appropriate. However, before doing so, it decided to obtain up-to-date medical records for Mr C. That was reasonable given the length of time that had passed since the claim had been terminated.

There was a delay in arranging the IME appointment, though I see this was because Mr C wanted to have the IME in his home. When the specialist attended Mr C's home for the appointment in January 2018, Mr C wanted to record the appointment and the specialist decided not to go ahead. It was then rearranged for March 2018. I don't find that Unum was responsible for the delays.

Mr C has raised other issues with Unum's handling of the claim, and whilst it seems there were some minor errors made by Unum, I don't find that such errors were made as to warrant further action or compensation.

Although Mr C wants this service to refer Unum's handling of the claim to the FCA, I do not have sufficient concerns about Unum's handling of the claim that would lead me to do so. I therefore will not be referring this matter to the FCA. Though if Mr C considers the FCA should be notified, he can contact it directly.

#### Compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation is more than £160,000, I may recommend that the business pays the balance.

**Determination and award:** I uphold this complaint. I require Unum Ltd to do the following:

- Reinstate the claim from the date it was terminated, and pay any backdated benefit due to the policyholder in accordance with the policy terms and conditions.
- Interest should be added to the above at the rate of 8% simple per annum from the date each payment was due to the date of settlement.
- If the backdated benefit being paid in a lump sum means that Mr C is taxed at a higher rate than he would have been if the claim hadn't been terminated and the payments made each month, then Unum should put Mr C in the position he would have been if the benefit payments were paid when they ought to have been. In other words, Unum should compensate Mr C directly for any additional tax that needs to be paid.
- pay Mr C £1,000 compensation. As this does not form part of the contract of insurance, it should be paid directly to Mr C.

With the exception of the interest payment, Unum is only required to pay up to the maximum of £160,000.

**Recommendation:** If the above payments (excluding the interest) exceed £160,000, I recommend Unum Ltd pays the balance plus any interest on that amount as set out above.

This recommendation is not part of my determination or award. Unum doesn't have to do what I recommend. It's unlikely that Mr C can accept my decision and go to court for the balance. Mr C may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 October 2022.

Chantelle Hurn-Ryan  
**Ombudsman**