

## The complaint

Mr H has complained that Unum Limited declined the claim he made under his employer's group income protection policy.

## What happened

The facts of this complaint are well known to the parties so I won't repeat them in detail here. In summary Mr H became absent from work in January 2021 and was signed off by a GP and referred to occupational health and a consultant psychiatrist. He reported struggling with his mental health.

Unum didn't accept Mr H's claim. It concluded that Mr H had a stress related disorder and that he didn't meet the policy definition of incapacity.

Our investigator agreed. Mr H appealed. He provided further comments from his psychiatrist which were shared with Unum, however it didn't change its previous conclusion.

As no agreement has been reached the matter was passed to me to decide. I issued a provisional decision on 23 December 2022. I said as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I've set out the background in less detail than the parties and haven't responded to every point made – although I have taken everything into account. I've focused on what I find is the key issue here, our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.*

*Unum has an obligation to handle claims fairly and promptly. And it mustn't unreasonably decline a claim.*

*In this case the financial benefit under the policy will be paid if a member is incapacitated throughout the 26 week deferred period.*

*Under the policy a member is incapacitated if they are unable to perform the material and substantial duties of their insured occupation because of illness or injury.*

*When making a claim, it's for Mr H to demonstrate that he met the definition of incapacity as defined by the policy terms. I've carefully considered all the medical evidence and representations in this case in order to see whether he did so and in turn whether, in my opinion, Unum fairly and reasonably declined Mr H's claim.*

*It isn't disputed that Mr H was signed off by a GP as being unfit to work during the deferred period. There isn't any detail given as to the reason he was signed off, but nevertheless he was and by a qualified doctor. From the evidence I've seen this appears to be until March 2021. This alone wouldn't demonstrate he met the policy definition but he was also referred to occupational health and to a consultant psychiatrist I'll refer to as Dr D.*

*The occupational health physician had three appointments with Mr H. These were in February, March and April 2021. She consistently found Mr H unfit for work due to his medical status.*

*Dr D commenced Mr H on medication and referred him for cognitive behavioural therapy. His medication was subsequently changed, and he had eleven sessions of therapy. He then had several consultations with a second consultant psychiatrist – Dr C.*

*Dr C concluded that Mr H had had a stress induced episode of a major depressive disorder which had some response to the prescribed medication, but the side effects led him to coming off it. Dr C commented that a trial of this drug had been associated with profound side effects. He made further clinical and therapeutic suggestions but said that Mr H's environmental situation was likely to be the most significant factor in his current situation. He suspected that when Mr H found employment in a more convivial setting it would go a long way to treating and maintaining any improvement.*

*By the end of the deferred period, July 2021, Mr H was still under the care of Dr C, with a plan to remain on medication and have CB therapy.*

*In September 2021 Dr C clarified his earlier report, if clarification was needed. He said that it was the symptoms of depression that meant Mr H was unable to work – either for his employer or elsewhere. Unum's Company Medical Officer, who has a background in psychiatry, then reviewed the file as well as the updated report from Dr C but didn't find the content altered its understanding of Mr H's restrictions and limitations during the deferred period.*

*This has not been a straightforward case to determine – there are persuasive arguments from both parties. Unum feels that Mr H's level of activity including training for a masters degree does not show that his ability to function was impaired by way of a mental health condition.*

*However the medical evidence does clearly show that Mr H was diagnosed with a mental health condition and because of his condition he was deemed unfit to work. So I find that Mr H has provided sufficient medical evidence to show he met the policy definition of incapacity.*

*That Mr H was able to attend the gym, code or study for a masters doesn't persuade me that he was able to perform the material and substantial duties of his insured occupation. Mr H's evidence is that his work involved long hours and substantial pressure. I accept that his workplace impacted Mr H's mental health. But the medical evidence demonstrates that this resulted in mental illness, rather than work related stress. It follows that I'm minded to conclude this illness prevented Mr H from working through and beyond the deferred period. In all the circumstances I don't currently find it was reasonable of Unum to decline Mr H's claim.*

*I explained that I was minded to uphold the complaint and require Unum to accept the claim. I invited both parties to make further comments or submit evidence. Mr H had nothing to add.*

*Unum responded. It didn't agree with my provisional decision. In summary it said that whether a diagnosis of a condition is made or not, this wouldn't qualify as a payable claim under the terms of the policy. It said that Mr H's reported level of activity didn't support that his cognitive function had been impaired.*

*Unum's Company Medical Office did not find that Dr C offered any substantial evidence of the details of functional impairment associated with mental illness, and the current evidence*

showed that he was able to engage in various activities during the deferred period.

Unum noted too that according to the medical notes Mr H's mental state improved without medication or on a low dose of medication. It didn't think that the evidence from the deferred period supported an impairment of global functioning.

### **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.

I've re-visited all the medical evidence and Unum's submissions. Having done so I'm not persuaded to change my provisional findings. I acknowledged in my provisional findings that Mr H was able to function at some cognitive level, but that alone isn't sufficient to demonstrate that he was able to perform his insured occupation.

His treating psychiatrist was clear in his professional opinion that Mr H was not fit to work because of his illness during the relevant period. This opinion was corroborated by that of the occupational health physician (reports February/March/April 2021) a private physician (reports January/February 2021) and Dr D.

I haven't disregarded the comments of Unum's Company Medical Officer and I'm grateful for the further review. But the weight of the medical evidence before me continues to persuade me that Mr H was incapacitated by his depressive illness and unable to perform his insured occupation during the deferred period and beyond.

### **My final decision**

For the reasons given above and in my provisional findings, which I adopt here, I uphold this complaint.

I require UNUM Limited to accept Mr H's claim and pay benefit in accordance with the remaining policy terms. Unum should add interest to the benefit payments at the simple yearly rate of 8% per calculated from the date each payment was due until settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 February 2023.

Lindsey Woloski  
**Ombudsman**