

## The complaint

Miss L complains that Unum Ltd turned down her income protection claim.

## What happened

Miss L holds income protection cover through her employer. The aim of the policy is to pay benefit in the event she can't work because of illness or injury. The policy has a deferred period of 26 weeks.

In April 2021 Miss L stopped work due to endometriosis. She made a claim under the policy, but Unum turned it down as it didn't think she met the policy definition of incapacity. Unhappy with this, Miss L brought a complaint to this service.

Initially, our investigator thought Unum's claims decision had been reasonable, based on the available evidence.

Miss L then obtained further comments from her treating specialist, and provided this to Unum. However, Unum maintained its initial decision to decline the claim. Miss L therefore brought a new complaint back to this service. Meanwhile, she returned to work in April 2022.

Our investigator recommended the complaint be upheld. She thought the new evidence Miss L had obtained supported that she couldn't work due to her symptoms during the deferred period. She therefore recommended that Unum pay the claim, as well as £300 compensation for the impact to Miss L caused by its decision to turn down the claim.

Unum didn't agree with our investigator's recommendations, and so the matter has been passed to me for a decision.

## 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.

The policy pays benefit if Miss L meets the following definition of incapacity:

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

I've considered the medical evidence throughout the deferred period (April 2021 to October 2021), and beyond.

Miss L has been treated by Mr W (consultant gynaecologist) since 2019. He's explained that he saw her in April 2021 when she was referred back to him by her GP with severe pain that almost required hospitalisation. He said that she needed to take time off work due to the extreme pain she was experiencing. After examining her, he found she had two large endometriomas and extensive endometriosis which was causing her high levels of pain and discomfort.

Mr W drained the endometriomas in May 2021, hoping this would ease Miss L's discomfort. However, the cysts then refilled soon after.

In June 2021, Mr W said that Miss L was unable to sleep due to the pain she was in, and was heavily dependent on painkillers to ease her discomfort. He said the side effect of this was that Miss L was sleep deprived, depressed, and unable to concentrate. He said that, due to the pain and lack of sleep, Miss L had been unable to undertake any of her normal activities, including sitting for any length of time. He said he'd explained to Miss L that having surgery that she needed before her next fertility round could greatly compromise her fertility.

In June and September 2021, Miss L was reviewed by occupational health. On both occasions, they concluded that she wasn't fit for work due to fatigue, reduced concentration, and severe pain.

Mr W then saw Miss L again in October 2021, after she'd undergone fertility treatment. He said she described to him that she had been in agony since her treatment. He noted that her endometriomas had increased and said she was unable to work or manage her daily activity. Mr W started her on treatment to try and reduce her symptoms whilst she awaited surgery, and said that whilst her symptoms eased in late 2021, she was still suffering from the side effects of the medical treatment. And that this was only relieved by surgery carried out in April 2022.

Miss L spoke with her GP throughout the deferred period on several occasions. I see she reported a number of times how painful her condition was (which was impacting her sleep), and that she was off work because of this.

Miss L's surgery in April 2022 was carried out by Mr P (consultant obstetrician and gynaecologist). He described her endometriosis as being very extensive and said all her pelvic organs were fused. He commented that with endometriosis that extensive, he thought this would make it difficult to cope with day-to-day life.

Later, Mr P said that Miss L had been referred to him in March 2022 as she had been experiencing significant pain for the previous 12 months. He said this was also impacting her sleep which in turn impacted her cognitive function. He explained she was in so much pain she was unable to go out or exercise, and had no social life. Mr P also said it was understandable that Miss L felt she could not do her role because of her tiredness and problems with cognition. Finally, he said Miss L's quality of life and ability to function was extremely limited, which is why she was off work. And that since having her surgery, she had returned to a normal life.

In September 2022, Mr W provided further explanation about Miss L's decision to delay her surgery. He said that Miss L had very significant endometriosis that was extremely symptomatic causing her incredible pain. However, due to her desire to have a family, fertility treatment had to be commenced before she had the surgery, which exacerbated her problem and led to significant issues with regards to her normal activities, living and work.

Unum is of the view that Mr W's evidence does not provide clear objective evidence of Miss L's functional capability during the deferred period. However, I find his evidence to be persuasive. Mr W treated Miss L during the deferred period, and has explained that her condition was causing her a significant amount of pain, and that this (together with the impact on her sleep) prevented her from carrying out her normal activities and work.

Mr W's opinion that Miss L couldn't work was supported by occupational health. Also, Mr P has explained how extensive Miss L's endometriosis was at the time of her surgery, and he thought this would make it difficult to cope with day-to-day life, which further supports Mr W's view.

On balance, I'm satisfied the evidence supports that Miss L's symptoms prevented her from working throughout the deferred period. I therefore find that Unum should pay the claim.

Miss L has explained how she has been impacted financially by Unum's decision to turn down her claim. I find that Unum should pay Miss L £300 compensation to recognise the worry and upset its claims decision caused her. I'm also requiring Unum to pay interest on the backdated benefit, to reflect that Miss L was deprived of that money previously.

### **My final decision**

My final decision is that I uphold this complaint. I require Unum Ltd to accept the claim and pay the backdated benefit due in line with the remaining policy terms and conditions.

\*Interest should be added at the rate of 8% simple per annum, from the date each benefit payment was due to the date of settlement.

\*If Unum considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss L how much it's taken off. It should also give Miss L a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I also require Unum to pay Miss L £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 1 May 2023.

Chantelle Hurn-Ryan  
**Ombudsman**