

The complaint

Mrs M is unhappy with Unum Ltd's decision to decline a claim she made under an income protection policy.

What happened

Mrs M had a group income protection policy through her employer.

The policy had a deferred period of 26 weeks. After this point the policy said that it provided Mrs M with 50% of her salary, for a period of two years, followed by a lump sum figure, if she was unable to work because of incapacity. Incapacity being defined as Mrs M being unable to carry out the material and substantial duties of her own occupation due to illness or injury.

Since 2018 Mrs M had various periods of absence from work – as well as attempts to return to work full time, through a phased return. Mrs M was being paid by her employer in full for these periods, even when she wasn't working her full-time hours. But this phased return wasn't successful. And from 31 January 2020, Mrs M has explained she was unable to carry out the activities involved in her occupation, because of her medical situation. So, she was absent from work from 31 January 2020.

And she made a claim under the income protection policy, for her absence since 31 January 2020, recognising that any claim payment would come after the 26-week deferred period.

Mrs M explained to Unum that she was suffering from a number of conditions – which cumulatively meant she was unable to carry out her role. This included, but wasn't limited to, conditions such as Fibromyalgia, Depression, Anxiety and Arthritis. Mrs M provided details of these conditions, including medical information from her GP, and reports from an occupational health doctor from her employer.

Unum considered Mrs M's claim and in November 2020 it declined it. Unum said that Mrs M had been working in her role in a reduced capacity since 2018 – this being reduced hours. And so, it was considering her claim in light of the reduced role she had been working, before becoming absent from work in January 2020.

Unum recognised that Mrs M had a number of long-standing medical conditions. It said Mrs M had reported extreme levels of functional impairment, but this wasn't recorded or borne out in the medical evidence provided to it. So, Unum said it didn't consider there was sufficient evidence that Mrs M met the definition of incapacitated within the policy. And so, the claim wouldn't be paid.

Mrs M didn't consider this decline to be fair. She made further representations to Unum, including further information from her GP, and from an occupational health Doctor from her employer.

Unum considered these further representations. And also looked into Mrs M's absences from 2018-2020. But this didn't alter its decision on the claim. Unum reiterated that in order for it to accept Mrs M's claim, it needed to be satisfied that she was unable to perform the

material and substantial duties of her own occupation. And it didn't consider the medical evidence supported this being the case.

Mrs M remained dissatisfied with the outcome of her claim. And provided various representations about her medical conditions and the impact of these. Because Mrs M remained dissatisfied, she referred her complaint to this service for an independent review.

Our investigator considered this complaint and thought it should be upheld. They considered that Mrs M had provided sufficient evidence that Mrs M was unable to perform the material and substantial duties of her occupation. And therefore, considered the claim should have been accepted.

The investigator recommended that Unum accept Mrs M's claim – paying it from the end of the deferred period to the date Mrs M's employment was terminated, on 31 August 2021. The investigator also recommended 8% simple interest was paid on this settlement amount.

Unum agreed to our investigator's view, in order to resolve the matter. But Mrs M didn't agree. Mrs M raised two key concerns.

Firstly, she said she didn't think the payment of her claim should end on 31 August 2021, when her employment ended. She said that if Unum had been paying her claim, her employment would not have been terminated. And so, she would have been entitled to two full years of claim payments, plus the lump sum element of the policy. So, she wanted the claim to be paid on that basis.

Mrs M also said she considered the payment of her claim should come directly to her – rather than going through her previous employer first. And she said this has been agreed with her previous employer.

Because Mrs M disagreed with the redress recommended, this complaint has been referred to me to decide.

I issued a provisional decision on this complaint. In this I said:

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

As detailed above, Mrs M was unhappy that Unum declined the claim made under her income protection policy. Since this service's involvement, Unum has agreed to accept Mrs M's claim – from the end of the deferred period, until 31 August 2021, which was the date Mrs M's employment ended. As Unum has now accepted this part of Mrs M's claim, I haven't needed to consider it any further. Instead, I've needed to consider any elements of the complaint still in dispute.

Having done so, my intended decision is for Unum to pay Mrs M's claim from the end of the policy deferred period, until the end of her employment on 31 August 2021. This should be based on the salary for Mrs M's full-time role, which was 37 hours a week. Unum should also pay interest on this amount – which I've detailed below.

I appreciate this intended outcome is going to be disappointing for Mrs M. But I'd like to reassure the parties that I've considered all information and evidence from the parties and come to my decision based on this. However, when detailing my intended decision below, I've only referred to that I consider necessary to explain my outcome and reasoning.

As above, Mrs M doesn't consider the payment of her claim should end on 31 August 2021, when her employment ended. She has said that if Unum hadn't declined her claim previously, and accepted it instead, her employment wouldn't have been terminated. And so, she would have been entitled to two full years of claim payments, plus the lump sum element of the policy. So, Mrs M considers that Unum need to pay her the remainder for the remainder of the two-year term, as well as the lump sum.

Unum is satisfied that it doesn't need to pay the claim, for any for the period after 31 August 2021.

I've carefully considered this element of the complaint. And I'm satisfied that Unum doesn't need to pay for any period following 31 August 2021.

The policy terms are clear. They say that Mrs M is no longer covered under the policy, once her employment is terminated. It's accepted that Mrs M's employment ended on 31 August 2021. So, I'm satisfied that on a strict application of the policy terms, Mrs M doesn't have cover under the policy, following 31 August 2021. So, it wouldn't be in line with the policy terms to require Unum to pay Mrs M's claim, following her last day of employment.

Mrs M has said her employment wouldn't have been terminated, if she had been receiving the claim payments from Unum, as she should have. And she has provided an email from someone at her previous employer, noting this to be the case. So, I've thought about whether this means that, on a fair and reasonable basis, Unum should make any payments for time following her employment end date, on 31 August 2021. And, whilst I do sympathise with Mrs M's position, I don't find Unum should do anything further in this respect. The terms of Mrs M's contract with her previous employer, and the terms of the contract between that employer and Unum are entirely separate. And Unum isn't responsible for any decisions made by Mrs M's previous employer – or for any agreements made between the previous employer and Mrs M, in relation to the end of her employment. So, I don't require Unum to pay the claim after Mrs M's employment was terminated.

Should Unum pay Mrs M a final lump sum payment?

The policy terms and conditions say that Mrs M is entitled to a final lump sum benefit if she remains incapacitated for the initial benefit payment period and remains incapacitated.

That means Mrs M would have had to have been receiving benefit for two years from July 2021. As her employment ended in August 2021, as I've outlined above, she doesn't meet the criteria in the policy to receive a lump sum benefit.

As I've outlined above the termination of Mrs M's employment is a matter between Mrs M and her employer. My role is to decide whether it would be fair and reasonable to ask Unum to step outside the policy terms and conditions to pay the lump sum.

I don't think it would be. Unum wasn't party to the discussions between Mrs M and her employer. Based on the documents she has provided she received independent advice before agreeing to the settlement. And I don't think it would be fair to say it should pay a further significant sum of money to Mrs M when her employment came to an end around 12 months before she'd qualify for the benefit.

Should the redress be paid to Mrs M or her former employer?

Unum has said it should pay the funds through Mrs M's previous employer – who will be responsible for making any relevant national insurance and income tax deductions.

Mrs M says she would like the claim payment to come directly to her – rather than through her previous employer. And said her previous employer agreed to this being the case. The information Mrs M has provided doesn't specify how any benefit due under the policy should be paid, it simply says she's the sole beneficiary. I don't think that's the same as saying that the payment should be made directly to Mrs M.

I've thought about whether Unum's proposed way of providing settlement is fair. And I'm satisfied it is.

Mrs M's previous employer are the policyholders, and the terms of the policy do note that the settlement will be paid to the it. It isn't unusual for an insurer such as Unum to pay the relevant settlement in this way. As above, Unum aren't responsible for any separate discussions or agreement Mrs M had with her employer - in relation to how the amount would be paid. So, I'm satisfied that Unum settling the claim through Mrs M's previous employer is fair.

Mrs M has also queried the impact of the settlement on her taxation. I've not seen any persuasive evidence that the settlement of the claim will negatively impact upon her tax payments. As I've outlined above paying the claim via her employer should ensure that the relevant tax deductions are made.

My provisional decision

Given the above, my provisional decision is that Unum Ltd should pay Mrs M's claim from the end of the deferred period to the 31 August 2021 is fair and reasonable. And I also consider it fair and reasonable that Unum pay 8% simple interest per annum on this amount, from the date of the deferred period's end to the date of settlement, less any tax properly deductible.

If HM Revenue & Customs requires Unum to deduct tax from this interest, Unum should give Mrs M a certificate showing how much tax its deducted, if they ask for one."

Both parties responded to my provisional decision. Unum said it didn't have any further evidence or information to add. Mrs M provided a number of submissions.

I haven't detailed all of Mrs M's submissions here. But, in summary, Mrs M provided a large amount of detail about her health conditions, as well as comments on the terms of the income protection policy. In addition to this, Mrs M said she felt Unum deliberately declined her claim, and she felt it should be made to pay what Mrs M would have received if it hadn't declined her claim in the first instance.

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.

Having done so, my final decision remains the same as that noted in my provisional decision, and for the same reasons. So, I'll not repeat these again here.

However, I would like to highlight that I have considered all additional submissions provided to me, by both parties. And done so alongside information we held previously. I haven't responded to each submission in this decision. That isn't necessary. Rather, I have only commented on what I consider relevant to detail my reasoning. This isn't meant as a discourtesy – but is a reflection of the information nature of this service.

As above, Mrs M has provided additional submissions in relation to her health conditions, and on the terms and conditions of the policy. Neither Mrs M's health, nor the terms of the policy are disputed. And, following our involvement, Unum has accepted Mrs M's claim, from the end of the deferred period to 31 August 2021. So, I haven't needed to consider this in detail, but only the issues that remain in dispute.

Mrs M has said that Unum shouldn't have declined her claim initially, and so should pay her what it would have, had it accepted the claim initially. I should explain, this is the reason that Unum are now going to pay Mrs M's claim from the end of the deferred period, until her employment termination, on 31 August 2021. This service considered Mrs M's claim for that period of time should have been accepted, and this is agreed.

And, I awarded Mrs M 8% interest, simple per annum on the above settlement, to recognise that Mrs M has been without those funds. So, I'm satisfied I have considered the delay in paying the claim and made a fair and reasonable award for the time Mrs M has been without those funds.

Mrs M still feels that the claim settlement should be paid further than 31 August 2021, as she has said her employment wouldn't have been terminated, had the claim been accepted earlier. Mrs M feels Unum should be held accountable for this. In my provisional decision, I've explained why I don't consider Unum needs settle the claim further than 31 August 2021. Mrs M hasn't provided any new evidence in respect of this point.

Mrs M has reiterated the email she has provided this service from HR at her previous employer, which said she would not have been terminated if her claim was being paid. But, as detailed in my provisional decision, Unum isn't responsible for any decision made by Mrs M's employer – or any agreements she had with it, in relation to the employment or its end.

Mrs M has confirmed she sought independent advice before agreeing to the settlement and went ahead to agree it. I remain of the opinion that it wouldn't be fair to say Unum should pay a further sum to Mrs M. The policy terms were clear of the impact of termination, and the contract between Mrs M and her previous employer is entirely separate to the contract between her the previous employer and Unum.

My final decision

Given the above, my final decision is that Unum Ltd should pay Mrs M's claim from the end of the deferred period to the 31 August 2021. Unum should pay 8% simple interest per annum on this amount, from the date of the deferred period's end to the date of settlement, less any tax properly deductible.

If HM Revenue & Customs requires Unum to deduct tax from this interest, Unum should give Mrs M a certificate showing how much tax its deducted, if they ask for one. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 12 April 2023.

Rachel Woods
Ombudsman