

The complaint

Mr B complains that Unum Ltd has terminated a claim he made on a group income protection insurance policy.

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mr B was insured under his employer's group income protection insurance policy. Mr B's employer had taken out the policy on 'limited benefit cover' terms. This meant that the policy would provide cover for benefits to be payable for a maximum period of five years.

In July 2017, unfortunately, Mr B became very unwell and needed emergency surgery. He was unable to work and therefore, his employer made an incapacity claim on the policy. Mr B's policy deferred period ended in January 2018 and Unum accepted the claim from that point. It paid Mr B's one monthly benefit payment.

However, Mr B had returned to work on a full-time basis and was being paid his usual salary, although he wasn't performing all of his usual duties. So Unum requested a refund of the benefit payment it had paid from the employer and it marked Mr B's claim value as 'nil'.

Mr B continued to work full-time hours for his employer until October 2019, at which point he took redundancy. Unum agreed with Mr B's employer that it would make benefit payments to Mr B directly. Mr B was signed-off work again and it appears that Unum began paying him monthly incapacity benefit directly.

But in January 2023, Unum let Mr B know that its liability under the claim had ended. It said that his claim had reached the maximum benefit period of five years.

Mr B was unhappy with Unum's decision and so he asked us to look into his complaint. He told us that his employer had informed him that Unum would pay benefit until he reached state retirement age.

Unum told us that the limited benefit term runs from the date following the end of a policyholder's deferred period and doesn't change, even if no benefit is being paid. So even though it hadn't paid benefit for Mr B between January 2018 and the ending of Mr B's employment, it considered his claim had reached the end of the limited benefit period.

Our investigator didn't think Unum had treated Mr B fairly. Briefly, he didn't think Unum's position was reasonable. He considered the policy terms and he felt they indicated that if Mr B had returned to active work, then the limited benefit provisions wouldn't apply to the circumstances of the claim. Mr B had returned to full-time work between January 2018 and October 2019, on a full-salary. So the investigator thought it would be fair for Unum to treat Mr B as if he'd been actively working during that period. He didn't think it was reasonable for Unum to impose a benefit limit on Mr B, when it hadn't been paying any benefit for over a year of the five-year period. On that basis, he recommended that Unum should reinstate Mr

B's claim, backdated to the point the claim had been terminated and to pay each monthly benefit, together with interest.

And the investigator also felt that Unum's handling of the claim had caused Mr B some distress and inconvenience. So he recommended that Unum should also pay Mr B £200 compensation.

Unum disagreed. It maintained that the five-year limited period ran from the date the deferred period ended, regardless of whether any benefit had been paid. While there was a period of zero pay, the claim had remained payable, in anticipation of the fact that Mr B could become absent again. Mr B had been paid for the full five-year period, whether by his employer or by Unum.

And it didn't agree to consider Mr B as having been 'actively at work', despite him having returned to an adjusted role. That's because it said he wasn't carrying out the full material and substantial duties of his role, so it considered he didn't meet the relevant policy definition. It said it couldn't ignore the policy terms and conditions or make an exception.

The complaint's been passed to me to decide.

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, I don't think Unum has treated Mr B fairly and I'll explain why.

First, I must make clear that this decision won't consider any information Mr B may have been given by his employer. Having done so, I don't think Unum has treated Mr B fairly and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the policy terms and the circumstances of Mr B's claim, to decide whether I think Unum has handled this claim fairly.

Mr B's employer's policy schedule shows that it opted to take out 'limited benefit cover' with Unum. This means that under the terms of the insurance contract, Unum was only bound to pay benefit for a maximum period of five years. I appreciate Mr B says his employer told him that Unum would pay benefit until state retirement age, but I can't fairly hold Unum responsible for any information his employer gave him during the course of his employment or during redundancy negotiations.

It's common ground that Mr B became unfit for work in July 2017 and that Unum admitted an incapacity claim in January 2018, following the end of the deferred period. Had Unum paid incapacity benefit for the five-year period between January 2018 and January 2023, it seems it would've paid the claim in line with the policy terms.

However, I've looked carefully at the terms and conditions of the policy, which form the basis of Mr B's employer's contract with Unum. Section 5.5. sets out limited benefit cover and says:

'If a member becomes incapacitated and completes the deferred period, benefit will be subject to the selected limited benefit cover (if any).'

The schedule specifies whether limited benefit cover applies.

However, should such a member return to being actively at work with the employer before the limited benefit cover period ends and they then suffer a further period of incapacity, the following provisions shall apply in these circumstances.

Where the member had been actively working for a period of;

(a) Less than 4 weeks, then the linked benefit claims provisions will apply but the resumed payment of benefit will be limited so that the total period over which benefit is paid will not exceed the limited benefit cover period, or

(b) Between 4 weeks and 52 weeks, then the linked benefit claims provisions will apply and for the purposes of the resumed payment of benefit the previous period under which benefit was paid will be ignored and the entire limited benefit cover period will restate from the commencement of the further period of incapacity

(c) 52 weeks or more, the linked benefit claims provisions will not apply' (my emphasis added).

The policy defines what Unum means by 'actively working' as follows:

(The member) '(a) has not received medical advice to refrain from work and is actively undertaking the material and substantial duties of the insured occupation, and

(b) is working the normal number of hours required by the employer, either at their normal place at work, or at a location for which they required to travel for business.'

In Mr B's case, the evidence from Mr B's employer shows that he returned to work on a full-time basis in January 2018 and continued to work on a full-time basis until he left employment in October 2019. It's clear then that Mr B returned to work for more than 52 weeks. It was following the end of Mr B's employment that Unum began to pay incapacity benefit. Prior to his redundancy, as Mr B was receiving his full salary, no benefit was payable under the policy terms.

Both the employer's evidence and Mr B's account demonstrate that his work duties necessarily had to change when he returned to work. He wasn't able to carry things and some adjustments had to be made. Accordingly, it's possible that Mr B wasn't undertaking the material and substantial duties of his insured role. I think Mr B likely was carrying out the material and substantial duties of his insured role. But if I'm wrong on that point and Mr B didn't meet Unum's policy definition of actively at work, I accept on a strict and narrow interpretation of the policy terms, its liability would have ended in January 2023.

But I can depart from a strict interpretation of the contract terms, if I feel their application produces an unfair result. That's the case here, as I'll go on to explore.

Mr B was working full-time. He says he undertook different duties and was sometimes paid overtime. While he may have had some reasonable adjustments made to enable him to return to work, he was entitled to and receiving his full salary from his employer. I don't think it makes any difference to Unum whether Mr B was carrying out his full pre-incapacity duties, or whether he was carrying out slightly amended ones. That's because I think the impact on Unum was the same – Mr B was working in full-time employment and therefore, it wasn't paying any benefit. As such, I find it would be fair and reasonable to consider Mr B's claim as if he was actively working. This means I don't think that the limited benefit provisions would apply to the circumstances of his claim between January 2018 and October 2019.

In any event, I don't think it's fair or reasonable for Unum to have relied on the five-year limited benefit period to terminate Mr B's claim in January 2023, given it wasn't paying benefit for around 19 months of the five-year period. I appreciate that the claim remained open and that if Mr B had become unfit to work during that time, Unum would most likely have paid benefit. But as it wasn't paying benefit for a substantial proportion of the five-year period, I don't find it's fair for Unum to conclude that Mr B's benefit period ended in January 2023.

On that basis, I agree with the investigator that the fair and reasonable outcome to this complaint is for Unum to reinstate Mr B's claim, backdated to the date it was terminated and to pay monthly benefit in line with the remaining terms and conditions of the policy. It must also add interest to each monthly benefit payment at an annual rate of 8% simple, from the date each benefit payment would have been due to the date of settlement.

And I agree too that Mr B is likely to have been caused some trouble and upset as a result of Unum's handling of his claim. I think he was likely to have been caused real worry when he learned that the claim had been terminated, especially as he was given very little notice of the termination. This meant he had little opportunity to consider his financial situation and to potentially make other arrangements. So I also find that Unum must pay Mr B £200 compensation to reflect the impact its handling of the claim had on him.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct Unum Ltd to reinstate Mr B's claim, backdated to the date it was terminated and to pay monthly benefit in line with the remaining terms and conditions of the policy. It must also add interest to each monthly benefit payment at an annual rate of 8% simple, from the date each benefit payment would have been due to the date of settlement.*

I also direct Unum Ltd to pay Mr B £200 compensation.

* If Unum considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 August 2023.

Lisa Barham
Ombudsman