

The complaint

Mrs L has complained that Unum Ltd ('Unum') unfairly terminated her claim.

What happened

Mrs L has an income protection insurance policy underwritten by Unum. She became absent in 2017 due to illness.

Unum reviewed the claim in October 2022 and said it would terminate it from January 2023 on the basis of an independent medical examination (IME) which said Mrs L may be able to do some telephone work from home.

Mrs L complained to Unum but it didn't uphold her complaint so she referred her complaint to this Service.

Our investigator looked into the complaint but didn't think Unum had terminated the claim unfairly.

Mrs L disagreed and in summary, made the following comments:

- She doesn't believe Unum has treated her fairly as the IME expert stated a significant amount of information had been withheld from him.
- Her GP surgery had only opened its doors for face-to-face appointments from February this year and Unum had only provided 12 months of GP notes to the IME expert when Covid-19 was rampant and the world had shut down.
- She is now on stronger medication than when the claim was originally accepted pre-Covid. She was disconnected from mental health services through no fault of her own.
- She has been forced by Unum and her employer to engage in a number of medical appointments and each one has said that she is not fit to return to work in her insured role.
- The IME said Mrs L may be able to undertake some work from home should her sedative medication be reduced but this does not negate the fact that the IME concludes Mrs L is not suitable for her insured role.
- Mrs L says nowhere does it state that in order to qualify for the insurance to kick in, she has to prove how her disability affects her.
- Mrs L has had her medication increased and the evidence shows she is very much incapacitated by her disability.
- Her condition or medication hasn't changed.

And so the case has been passed to me for a final 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.

I issued a provisional decision on 20 July 2023 which I have copied below:

"Once a claim has been accepted, the onus is on Unum to show that the definition of incapacity is no longer being met.

The policy definition of incapacity is as follows:

"The member is incapacitated if Unum is satisfied that the member is:

- (a) Unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation and is*
- (b) Not performing any occupation, except as provided under paragraph 5.3 ("proportionate benefit")."*

Mrs L said she has been unable to see her GP as it was difficult to get an appointment and that is why there was a lack of contact. In addition, she was seeing a mental health service practitioner regularly but got lost in their system and they did not contact her until she made contact herself and received an emergency appointment.

Unum arranged an IME in August 2022 which was carried out remotely by a consultant psychiatrist. This concluded Mrs L was able to manage reasonably well and said she wouldn't be able to return to her usual workplace but would be able to function reasonably well at home and may be able to undertake some telephone work at home. In summary, the IME concluded:

- Mrs L reported long standing symptoms.
- The consultant had been provided with less than a year's GP records.
- A summary of medical history had been provided.
- Mrs L had said she had experienced some degree of amelioration of her symptoms with medication but she was taking a combination of very sedative medications. Mrs L hadn't taken her medication in the hours before the examination and so the medication may well inhibit her function day to day.
- If Mrs L's account of symptoms was accurate, she would not be able to return to her role in her usual workplace.
- Mrs L does function reasonably well at home and aside from the issue of sedative medication, it appears that she may be able to undertake some telephone work from home.
- A review of medication was due and it may be worth considering less sedative alternatives.
- The consultant said the report was limited in scope as he had been given limited

access to information.

Further medical evidence

May 2021 – Mrs L's GP surgery provided notes from October 2020 to date. These were provided to the IME expert.

6 December 2022 – Mrs L saw a psychiatrist about her worsening symptoms who concluded this was in relation to ongoing and increased social stressors. They discussed increasing medication to help sleep and calm intrusive thoughts. They did not feel Mrs L needed secondary care follow up and would be followed up by her primary care team to work around mood management and coping skills.

Mrs L provided Occupational Health (OH) reports and a letter from her mental health practitioner. In summary, this shows:

- Mrs L had a telephone consultation in January 2023 with an OH doctor about her potential return to work. The report concludes Mrs L is not fit to work in an office environment but could undertake some work from home. She is not fit for a customer telephony role but could undertake some non-customer facing remote work. Her return to work would need to be phased.
- A further report was written in February 2023 by the same doctor as Mrs L's employer asked whether Mrs L met the 'medical criteria for formal redeployment'. The doctor confirmed that in her opinion, Mrs L was permanently or long term medically not fit for her role as a customer consultant telephony. The report concluded Mrs L was not fit to work in an office environment but could undertake some non-customer facing work.
- A letter dated 12 May 2023 from her mental health practitioner said Mrs L suffered daily with intrusive thoughts, fluctuating mood and panic attacks. She said these symptoms affect her life on a daily basis leaving her unable to sustain work.

Having considered all of the above, I don't think Unum acted fairly when it terminated the claim following the IME. The IME was done by a consultant psychiatrist who concluded that Mrs L *may* (my emphasis) be able to do some telephone work from home. But he specifically said this was "*aside from the issue of sedative medication.*" So I don't think the effects of her medication were fully taken into account when considering Mrs L's job role.

The IME expert commented that Mrs L was due a review of her medication and this could consider less sedative options but doesn't specify what those options might be. Based on this, I think Unum should have gone back to the IME expert and asked further questions about the effect of the sedative medication on Mrs L's specific role and whether she would be able to do her insured role from home whilst she was taking her medication.

I don't think Unum has adequately shown that Mrs L is longer incapacitated based on the IME report alone. In addition, the expert referred to further evidence he wanted to see such as past medical records and this could have been provided by Unum. The onus is on Unum to prove Mrs L no longer meets the definition of incapacity and I don't think the IME report is persuasive enough to rely on without addressing the outstanding points outlined by the expert, particularly the issue of medication.

Unum also told Mrs L that it would review any further medical evidence Mrs L provided.

Following Unum's termination of the claim, Mrs L saw a psychiatrist and also spoke to an OH

doctor. The psychiatrist Mrs L saw in December 2022 did not comment on Mrs L's ability to work and didn't think referral to secondary care services was required. However, Mrs L's medication was increased so I think this further demonstrates that the effect of medication as a result of the illness should have prompted Unum to ask the IME expert further questions about Mrs L's function when taking medication. It isn't something which should be overlooked before deciding she is no longer incapacitated.

Following this, Mrs L met an OH doctor who found that Mrs L could work from home but not in a customer facing role. Mrs L's insured role is that of customer facing telephone adviser. So I think there is a question over whether Mrs L can perform her insured role which needs further probing before terminating her claim.

Finally, Mrs L has provided a letter from her mental health practitioner who concludes that she is unable to sustain work. This suggests she can't work in any capacity and contradicts what the OH doctor and the consultant psychiatrist who did the IME say – both doctors felt Mrs L would be able to work from home using the telephone in some capacity. So I haven't placed any weight on this evidence as I don't find it persuasive.

Mrs L says the IME expert concluded she can't do her insured role. But that isn't what he said. The IME expert said she wouldn't be able to do her insured role in an office environment. This isn't what is insured. Her role is insured, not the location. But as I said above, I don't think the expert has sufficiently clarified the effects of the sedative medication and this is something Unum should have explored further before terminating the claim.

Mrs L also says her sedative medication was increased. As I don't think Unum fairly terminated the claim following the IME due to the outstanding questions about her sedative medication, this is something Unum should also have referred back to the IME expert to get a fuller and more accurate picture about how Mrs L's illness and medication affects her ability to do her insured role.

Overall, I'm not satisfied that Unum has shown that Mrs L is no longer incapacitated. It was entitled to refer to the lack of medical evidence suggesting that Mrs L wasn't being seen by primary services but she was still taking the same medication as she had always done. So it's not enough to say she is no longer incapacitated as a result. Additionally, Mrs L has provided evidence to show that she was under the care of a mental health service and was lost in their system. This explains why she didn't see her GP about her mental health but continued to take medication for her illness throughout. In addition, I think Unum should have asked further questions of the IME expert to get a better understanding of her function as set out above. So it would need to clarify the effect of her now increased medication on her insured role before concluding she is no longer incapacitated.

Unum is entitled to review the claim. But needs to show that Mrs L is no longer incapacitated for her insured role before terminating her claim. It's not for Mrs L to demonstrate that her function is limited. It's for Unum to show that her function is no longer limited. And I don't think it has sufficiently done that."

I thank both sides for responding to my provisional decision.

Mrs L has agreed to my provisional conclusions and has made the following comments, in summary:

- Her latest sick note from her GP and latest prescription shows the increase in medication and that her situation has been made worse.
- She would like my direction for Unum to be clear due to problems with her previous

complaint and experience.

As Mrs L has a group income protection policy, the policyholder is the employer and so any benefit would be paid to her employer to pass on to Mrs L. I am putting Mrs L back in the position she would have been in had the claim not been terminated. The claim should be reinstated, and backdated payments should be paid to her employer from the date the claim was terminated.

I note Mrs L's increased medication. This is something Unum will need to take into account in any further review of her claim.

Unum has asked me to reconsider my decision and has made the following comments, in summary:

- Mrs L was seen by the mental health service but this wouldn't give Unum information about any restrictions and limitations. Mrs L did not report exacerbation of her symptoms. Had her symptoms increased to such a degree that her ability to function was impacted, it is expected this would be reported to the GP or a healthcare professional.

Mrs L does not need to show that her condition continues to deteriorate once a claim is accepted as she has already proven that she is incapacitated. It is for Unum to prove, through persuasive medical evidence, that Mrs L is no longer incapacitated. Mrs L has explained why she had been unable to see her GP or healthcare professional but in the absence of any such reporting, I don't think it's fair to conclude that she is no longer incapacitated where there is insufficient evidence that her function has improved, taking all the relevant factors into consideration.

- Being prescribed medication isn't valid grounds for a claim, the claim is to be paid if the definition of incapacity has been met and in the absence of contemporaneous evidence as well as the recommendation by the independent examiner and OH that Mrs L can work, it was fair to cease the claim.

This is not a new claim which needs to be proven by Mrs L again so being prescribed the same or stronger medication suggests she continues to suffer the same level of illness that she did when her claim was accepted. The claim cannot be terminated without Unum proving Mrs L is no longer incapacitated. I have already explained why I don't think the IME report is persuasive enough to terminate the claim and as Unum has pointed out the OH reports were based on self-reporting, it is for Unum to gather more robust medical evidence to prove that Mrs L is no longer incapacitated.

Having considered both sides responses, I don't see any reason to depart from my provisional findings which I adopt as my final decision.

My final decision

For the reasons set out above, I uphold this complaint and direct Unum Ltd to:

- Reinstatement the claim and pay backdated benefit from the date it ceased the claim.
- Pay 8% simple interest per annum on each backdated payment from the date it would have been due had the claim not been terminated, to the date of payment. This amount should be paid directly to Mrs L. If Unum considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs L how much it's taken off. It should also give Mrs L a tax deduction certificate if she

asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

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

Shamaila Hussain
Ombudsman