

## **The complaint**

Mrs S has complained that UNUM Limited ('Unum') unfairly declined her claim.

## **What happened**

Mrs S has a group income protection insurance policy via her employer, underwritten by Unum. This would pay a benefit after a deferred (waiting) period of 26 weeks if Mrs S was unable to carry out her main duties due to illness or injury.

Mrs S made a claim after she became absent from work due to illness. Unum rejected the claim and said Mrs S didn't meet the definition of incapacity during the deferred period as she was suffering from work related stress rather than an injury or illness.

Mrs S complained and unhappy with Unum's response, referred her complaint to the Financial Ombudsman Service.

Our investigator looked into the complaint and didn't think Unum had unfairly rejected the claim. But he said it should move the deferred period to when Mrs S received a diagnosis from her specialist and re-assess the claim.

Mrs S said she had been incapacitated from the start of her absence.

Unum said the terms didn't allow for the deferred period to be moved and so it couldn't re-assess the claim with a new deferred period.

As an agreement couldn't be reached, 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.

Having done so, I agree that the claim should be re-assessed with a new deferred period. I'll explain why.

- The relevant rules and industry regulations say an insurer should handle claims promptly and fairly. And shouldn't unreasonably reject a claim.
- The policy defines 'deferred period' as *"...the period of time from the date that a member becomes incapacitated until the date that benefit becomes payable..."*
- Incapacity is defined as follows: *"the member is unable, by reason of his illness or injury, to perform the material and substantial duties of his insured occupation..."*
- Actively working or actively at work is defined as: *"means an individual has not received medical advice to refrain from work and is actively following their insured occupation, and; is working the normal number of hours required by their contract..."*

- In order to be eligible for payment of benefit, Mrs S needs to show, through medical evidence, that she is unable to carry out the main duties of her job due to illness or injury.
- The medical evidence and GP notes show Mrs S was initially absent due to 'work related stress'. Stress isn't an illness and so this wouldn't meet the definition of incapacity. Mrs S says she was suffering from anxiety and depression which caused her work-related stress but as already set out in some detail by the investigator in his opinion, the medical evidence consistently refers to work related issues. And her treating professional suggested she would improve if her workplace issues resolved. Based on this, I don't think Unum unfairly concluded that Mrs S' initial absence was related to workplace issues and not an illness.
- Mrs S provided Unum with further evidence and a letter from her psychiatrist who confirmed, in November 2021, that her depression was now an illness in its own right. In his opinion, Mrs S was not well enough to work.
- Mrs S says her scores on assessments show that she was severely depressed. But these assessments are based on self-reporting and the surrounding evidence showed that Mrs S was affected by work related issues which were causing her symptoms. So I'm still persuaded that her initial absence was due to work related stress.
- Our investigator said Unum should move the deferred period. He said that even though Mrs S wasn't actively at work at the time her incapacity began, her initial absence is linked to her current absence from work and this is supported by medical professionals. Unum said it wasn't able to move the deferred period as the policyholder had chosen a non-reviewable policy and so the later version of the policy, which would allow the deferred period to be moved, doesn't apply.
- I can step outside the policy terms and conditions if I think it is fair and reasonable to do so. In this case, Mrs S has been absent due to the same symptoms which started out as work related stress and then developed into an illness. Her symptoms worsened and she deteriorated to the point that her specialist has confirmed that she is suffering from depression and isn't able to carry out activities of daily living. So I don't think it's fair for Unum to rely on the 'actively at work' clause in this case as Mrs S was at work prior to her absence, even though this started off as work-related stress and she didn't meet the definition of incapacity until later.
- I think the fair and reasonable thing to do is for Unum to reassess the claim with the deferred period starting on 2 November 2021.

### **My final decision**

For the reasons set out above, I uphold this complaint and direct UNUM Limited to re-assess the claim with a new deferred period, starting from November 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 November 2023.

Shamaila Hussain  
**Ombudsman**