

## **The complaint**

Mr S complains about Unum Ltd's decision to decline his claim for total and permanent disability (TPD) benefit under his critical illness cover.

## **What happened**

The history of this claim is well known to Mr S and Unum. So I'll give just a brief summary here. In 2018, Mr S took out critical illness cover through his then employer. The cover provided £50,000 benefit upon meeting the applicable policy definition.

In October 2020, Mr S was diagnosed with inflammatory myopathy. In May 2022, he made a claim on the policy, and left his employment, which involved lengthy periods of standing and walking about.

To assess the claim, Unum obtained medical evidence from Mr S's GP. It also obtained a further report from Mr S's specialist rheumatologist.

In August 2022, Unum declined the claim, saying the policy definition hadn't been met. Mr S appealed the decision, but Unum maintained its position, issuing a final response in November 2022.

Mr S referred his complaint to the Financial Ombudsman Service. An investigator looked into things for him, but didn't uphold his complaint. Our investigator thought Unum had fairly declined the claim, because the medical evidence didn't confirm Mr S was permanently unable to carry out a suited occupation.

As Mr S remained unhappy, his complaint has come to me for a final decision. Mr S maintains he's no longer able to work at all and his claim should be paid.

## **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'm not going to uphold Mr S's complaint. I appreciate this will be very unwelcome news and I'm sorry about that. To clarify, my role is to decide whether or not Unum treated Mr S fairly in declining his claim of May 2022. So I've looked at the policy terms and evidence used to make that decision. I appreciate Mr S has provided some more recent health information. But I can't take that into account, as it post-dates Unum's claim decline – the subject of this complaint. I've focused particularly on the points and evidence I consider material to the outcome of the complaint. So, if I don't refer to a specific point or piece of evidence, it's not because I haven't read and thought about it. Rather, I don't consider it changes things.

There's no dispute Mr S has a health condition that impacts on his day to day life and wellbeing. But that alone is not sufficient for a claim to be paid. Under the policy, a successful claim for total and permanent disability required the following definition to be met:

*'Total permanent disability – unable to do any suited occupation ever again*

*'Loss of the physical or mental ability through an illness or injury to the extent that the member is unable to do the material and substantial duties of a suited occupation ever again. The material and substantial duties are those that are normally required for, and/or form a significant and integral part of, the performance of a suited occupation that cannot reasonably be omitted or modified.*

*'A suited occupation means any work the member could do for profit or pay taking into account their employment history, knowledge, transferable skills, training, education and experience, and is irrespective of location and availability.*

*'The relevant specialists must reasonably expect that the disability will last throughout life with no prospect of improvement, irrespective of when the cover ends or the member expects to retire.*

*'For the above definition, disabilities for which the relevant specialists cannot give a clear prognosis are not covered.'*

Unum declined Mr S's claim on the basis the medical information indicated his illness was likely to be of a relapsing remitting nature. It acknowledged that Mr S's lower limbs were particularly affected and that he was affected by fatigue. But it noted there appeared to be capacity for Mr S's fatigue symptoms and general fitness to improve whereby he could potentially perform a sedentary job role taking into account his reported limitations at the current time. Significantly, Unum said it had not been medically confirmed that there was no prospect of future improvement in Mr S's condition.

I've reviewed the medical evidence. In January 2022, Mr S saw a consultant neurologist, Dr S, having been referred in connection with some particular symptoms he was experiencing. The letter to Mr S's GP, summarising the consultation, notes that Mr S is a very active person, walking 5km a day. It states he is keen to go back to work and Dr S later comments:

*'I encourage him to go back to work, he prefers to go back to work part-time.'*

Mr S's GP, Dr C, provided a letter to Unum dated July 2022, in which he detailed the history of Mr S's symptoms and diagnosis. He notes:

*'Due to the ongoing pain and weakness, [Mr S] feels he is unable to work. We had signed him off sick for the duration of 2021, he did return to work in early 2022, but as the pain is worsening once again, we have now signed him off sick again. He will continue to have ongoing rheumatology assessment and management of his symptoms.'*

The report from Mr S's specialist registrar, Dr H, dated August 2022, notes that the most recent clinic appointment was in June 2022. In commenting on the nature and severity of any problems, Dr H says:

*'Currently he suffers from weakness, fatigue, muscle and joint pain, difficulty with fine motor movements in his hands, and episodic hot calves with dilated veins, and paraesthesia of his arms and forearms. I would describe his symptoms as moderate severity.'*

In commenting on any changes in problems from diagnosis to date, Dr H says that from the reported history by Mr S and the referring rheumatologist, she knows Mr S was profoundly weak in October 2020. She further states:

*'Despite an excellent response to methylprednisolone and introduction of immunosuppressant (methotrexate) he has not returned to his baseline strength and is troubled by ongoing symptoms.'*

And in response to being asked about her understanding of any impairment of day-to-day activities, Dr H says:

*'[Mr S] particularly struggles with anything involving leg muscles. He uses a cane when walking outside the house. He is also significantly troubled by fatigue and needs to have frequent naps. His partner has to help him with ordinary household activities.'*

*'His CK has now normalised and recent MRI scans have not supported ongoing active inflammation. I therefore conclude that his current symptoms are related to damage encountered during the period of inflammation. While things may slowly and gradually improve with exercise, changing his immunosuppressant or any other drug treatments are not likely to help. I will expect, given he has not fully recovered by this stage, there will always remain residual symptoms.'*

*'Idiopathic inflammatory myopathies are chronic autoimmune diseases which usually show a relapsing/remitting pattern. Despite his disease currently being under control, I will expect him to have periods in the future when things may flare up again. Additionally despite it being under control currently, I do not think he is fit to return to work. His muscle strength in his legs is objectively reduced which would make walking or standing difficult. He also has pain and fatigue which would make concentrating on any mental tasks difficult. His fatigue is too profound to be able to complete a full day's work. Returning to his current job would be impossible and I struggle to think of a suitable alternative profession that he would be able to effectively work in.'*

If Mr S's policy had required assessment of his claim for TPD on the basis of his ability to do his own occupation, I think it likely the claims decision would have been different. But the terms Mr S needed to meet for a claim to be successful were considerably more onerous.

Mr S needed to be unable to do any suited occupation **ever again**. A suited occupation means **any work** the member could do for profit or pay etc. And the relevant specialists must reasonably expect that the disability will last throughout life with **no prospect of improvement**. [My emphases.]

I accept Dr H's opinion regarding Mr S's inability to return to his own occupation. But whilst I note she struggled to think of a suitable alternative profession in which Mr S could effectively work, I don't think Unum has acted unfairly in considering that her report doesn't give a clear prognosis in terms of Mr S's ability to do any suited occupation ever again. Dr H notes the relapsing/remitting nature of his condition and the potential for slow and gradual improvement with exercise. Unum wasn't satisfied that Mr W wouldn't, at some point in the future, be able to undertake some suited employment, for example, a customer-facing, sedentary role. On the basis of the medical evidence, and noting the particular definition for TPD Mr S needed to meet, I don't think Unum's decision to decline Mr S's claim was unreasonable. In view of this, I won't be asking Unum to do anything more regarding this complaint.

**My final decision**

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 February 2024.

Jo Chilvers  
**Ombudsman**