

The complaint

Ms R complains about Unum Ltd's decision to turn down her income protection claim.

What happened

Ms R is covered under her employer's income protection policy. The aim of the policy is to pay benefit if she can't work in her occupation due to illness or injury after a deferred period of 26 weeks. If a claim is accepted, the definition of incapacity changes after two years.

In 2021, Ms R stopped work because of her mental health. She made a claim under the policy, but Unum turned this down as it thought Ms R's absence from work was due to a stress reaction rather than a significant mental health condition. Unhappy with this, Ms R brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. He thought Unum's decision had been reasonable, based on the medical evidence.

I issued a provisional decision on 15 December 2023. Here's what I said:

'For a claim to be payable, Ms R needs to show she meets the following policy definition of incapacity:

'For the deferred period and the first 2 years following the completion of the deferred period, if...Unum is satisfied that the member is unable, by reason of his illness or injury, to perform the material and substantial duties of his insured occupation...'

In the months leading up to the date Ms R stopped work, she started experiencing problems with her mental health. She also had gastroenterological symptoms which required investigation after getting worse. Her GP thought she had mixed anxiety and depression and she was prescribed anti-depressant medication.

Ms R continued to regularly see her GP with her mood being described as variable. Then in November 2021, she said she felt unable to cope, was feeling stressed and panicking. Her GP felt as though something had to give, and so signed her off work. It appears that Ms R's deterioration in mental health at this point was in response to the worsening health of a family member.

Investigations continued into Ms R's physical symptoms. An occupational health doctor thought Ms R's bowel issue was causing her stress, and that her caring responsibilities were impacting her psychologically. He noted she was experiencing panic attacks and thought she was unfit for work.

Ms R was assessed by a psychological wellbeing practitioner in December 2021. She said Ms R's completion of health questionnaires suggested she was experiencing symptoms of moderate to severe depression, and symptoms of severe anxiety. It was agreed that she'd have counselling sessions with a psychological therapist.

Ms R was described as having a significant dip in mood at the end of 2021, and her GP noted she didn't want to be here. By the time the GP saw her in February 2022, they thought she was much more settled. But her antidepressant medication was increased at this point. Meanwhile her gastroenterological symptoms were described by a specialist as being chronic and extremely intrusive.

For the remainder of the deferred period, Ms R continued to report fluctuating mood, and disturbed sleep with panic attacks. She underwent therapy, and her GP and occupational health doctor continued to agree that she was unfit for work.

Following the deferred period, Ms R's consultant gastroenterologist said that life was clearly very difficult, and it was really affecting her ability to work.

Overall, I think the evidence supports that Ms R was medically unfit to work throughout the deferred period. Her mental health appears to have deteriorated in the lead up to her stopping work, and some personal stressors affected her to such an extent that she felt unable to cope any more. I accept that Ms R's physical symptoms alone didn't prevent her from carrying out the main duties of her role throughout the deferred period, but the impact of her physical symptoms affected her mental health too.

Ms R was under the regular care of her GP, and had multiple occupational health assessments with the same doctor. She received medication and was referred for therapy because of her mental health symptoms. Whilst I see she was signed off work by her GP because of stress at home, she had been diagnosed with depression and anxiety. Ms R's GP has recently made the point that Ms R's depression and anxiety is not solely due to stress, and it was noted that Ms R has had a number of stressful situations which could contribute to a diagnosis of reactive depression.

Unum points out that Ms R was able to continue to carry out caring duties for a family member. But that is not the same as being able to work in her occupation every day, which required her to work accurately and effectively under pressure.

I therefore intend to require Unum to accept the claim, in line with the policy terms. I also note that Ms R's mental health was negatively impacted by Unum's claims decision. She's also explained how being without the benefit has affected her, including being reliant upon food banks and struggling to pay her rent and bills. I intend to require Unum to pay her £600 compensation to recognise the impact its claims decision has had on her.'

I asked both parties for any further comments they wished to make.

Ms R didn't have any further comments.

Unum responded with the following main points:

- Ms R continued to carry out caring duties. It thinks that is not suggestive of a globally impairing mental health condition of such severity as to impair her ability to function.
- The recent GP letter I referenced in my provisional decision is dated well over a year following the commencement of the deferred period, and doesn't address how Ms R's symptoms prevented her from working.
- It asked its medical adviser for their comments, as their area of experience is psychiatry. They concluded there was a lack of evidence to support a sustained period of functional impairment. They said there was no risk of concern related to

Ms R's emotional state, and no evidence of self-neglect or other symptoms to support a diagnosis of moderate to severe depressive illness. The medical adviser also pointed out that Ms R maintained an active carer role, and was able to organise a holiday as a break from the stress at home. Finally, the medical adviser said the nature of Ms R's illness isn't collaborated by the treatment regime and there was no further escalation in her treatment.

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 remain of the same view I reached in my provisional decision. I've addressed the points raised by Unum below.

- Unum (and its medical adviser) has made the point that Ms R continued to carry out caring duties. I already addressed this in my provisional decision, and concluded that this was not the same as being able to work in her occupation every day. I remain of this opinion.
- I mentioned the recent GP letter in my provisional decision as Unum had concluded that Ms R's mental health symptoms were caused by a situational stressor, so I thought it was useful to include her GP's perspective on this.
- I've considered Unum's medical adviser's comments. Although Unum says the medical adviser's area of experience is psychiatry, I don't know if their medical adviser is a doctor. In any event, I find that greater weight should be placed on the medical practitioners that assessed Ms R during the deferred period. Ms R was diagnosed with depression, and received treatment for this. Despite engaging with the treatment, she continued to experience mental health symptoms (as well as physical symptoms relating to her bowel condition). The doctors that assessed Ms R during the deferred period concluded that she wasn't fit for work. Whilst I appreciate Ms R did book a holiday, she wasn't well enough to go.
- Unum's medical adviser says the nature of Ms R's illness isn't collaborated by the treatment regime, and that there was no further escalation in her treatment. However, Ms R's GP has explained that anxiety and depression are diagnoses managed within primary care, and the lack of further referral isn't suggestive that Ms R isn't unwell. The GP also makes the point that in this area, only the most acutely at risk of suicide would likely be seen by a psychiatrist. I think the GP makes reasonable points here. Ms R's treatment regime appears to have been appropriate for her diagnosis and is what I'd expect to see for someone experiencing depression and anxiety.
- On balance, I remain satisfied the evidence supports that Ms R was too unwell to carry out her occupation throughout the deferred period, and that Unum should therefore pay the claim.

My final decision

My final decision is that I uphold this complaint. I require Unum Ltd to accept the claim and pay backdated benefit due in line with the policy terms. Interest should be added at the rate of 8% simple per annum from the date each benefit payment was due to the date of settlement*.

I also require Unum Ltd to pay Ms R £600 compensation, and this should be paid to her directly**.

* If Unum considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Ms R how much it's taken off. It should also give Ms R a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

**Unum must pay the compensation within 28 days of the date on which we tell it Ms R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 8 February 2024.

Chantelle Hurn-Ryan
Ombudsman