

The complaint

Mr H complains that Unum Ltd has turned down 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 set out a summary of what I think are the key events.

Mr H is insured under his employer's group income protection insurance policy. The policy provides cover for Mr H's own occupation and includes a deferred period of 26 weeks.

In October 2022, Mr H was signed-off work, due to suffering with symptoms of work-related stress. As he remained unwell, he continued to be signed-off by his GP. He was prescribed anti-depressant medication and he was referred for psychotherapy. In May 2023, as Mr H remained off of work, his employer made an income protection insurance claim on his behalf.

Unum requested medical evidence from Mr H's GP to allow it to assess the claim. Based on Mr H's medical records, Unum didn't think there was enough evidence to indicate that Mr H had a significant, impairing mental health condition. Instead, it concluded that Mr H was suffering from work-related stress and a stress reaction to bullying at work. Accordingly, it wasn't satisfied that Mr H had met the policy definition of incapacity and it turned down his claim.

Mr H was unhappy with Unum's decision and he appealed. He'd been referred to an occupational health (OH) adviser and so Unum assessed the OH's records.

But Unum noted that the OH reports all referred to Mr H's absence being down to work-related stress and that the reports stated he wouldn't be able to return to work until the employment situation had been resolved. So it maintained its decision to turn down the claim.

Mr H remained unhappy with Unum's position and he asked us to look into his complaint.

Our investigator didn't think Mr H's complaint should be upheld. He assessed the available medical evidence and he didn't think it showed that Mr H had been prevented from work by an illness. He considered the evidence showed that Mr H's absence was down to work-related stress. So he didn't think it had been unfair for Unum to conclude that Mr H hadn't shown that he met the policy definition of incapacity. And therefore, he concluded it'd been fair for Unum to turn down Mr H's claim.

Mr H disagreed and I've summarised his responses to our investigator:

- He didn't think Unum had met its regulatory obligations to handle his claim promptly or fairly. And he didn't think it had given him reasonable guidance to help him make his claim. Specifically, he didn't think Unum had clearly explained what medical

evidence it would require nor that GP fit notes wouldn't generally be sufficient proof of incapacity;

- He felt Unum had failed to thoroughly investigate his claim because it had ignored an open referral for psychotherapy in his medical records and the fact that he'd been receiving cognitive behavioural therapy (CBT) for some months. And he'd referred to a letter from his CBT practitioner in his appeal to Unum which he'd forgotten to attach. He noted that Unum hadn't queried the missing letter;
- Unum hadn't referred to his job description nor explained how he was fit to carry out the material and substantial duties of his own occupation;
- The GP fit notes show that he also suffers from anxiety and depression – which are diagnosed mental health disorders;
- Despite the policy terms stating that Unum may organise an independent medical examination during the claim assessment, it had not done so in Mr H's case;
- He considered there'd been unreasonable delays in Unum's handling of this claim.

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.

First I'd like to reassure Mr H that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent us. I'm very sorry to hear about the circumstances that led to Mr H needing to make a claim and I don't doubt how upsetting and worrying the situation has been for him and his family. Within this decision though, I haven't commented on each and every point he's made and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

As Mr H is aware, the relevant regulator's rules say that insurers must handle claims promptly and fairly and that they mustn't turn down claims unreasonably. The rules also say that insurers must provide consumers with reasonable guidance to help them to make a claim. So, I've considered amongst other things, the terms of the group policy and the available medical evidence, to decide whether I think Unum handled Mr H's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mr H's employer's contract with Unum. Mr H's employer made a claim on his behalf for incapacity benefit, given he wasn't fit for work. So I think it was reasonable and appropriate for Unum to consider whether Mr H's claim met the policy definition of incapacity. I've turned then to look at Unum's definition of 'incapacity'. This says:

'A member is incapacitated if we are satisfied that they are:

- *Unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation, and are;*
- *Not performing any occupation.'*

This means that in order for Unum to pay incapacity benefit, it must be satisfied that Mr H had an illness which prevented him from carrying out the material and substantial duties of his own occupation, for the entirety of the deferred period and afterwards. The policy doesn't cover Mr H being unable to work at a specific workplace or for a specific employer. Unum needs to be satisfied that Mr H would be unable to carry out the material and substantial duties of his own occupation at any workplace or for any employer.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mr H's responsibility to provide Unum with enough evidence to demonstrate that an illness had led to him being unable to carry out the duties of his own occupation for the full 26-week deferred period between October 2022 and April 2023 and afterwards.

I appreciate Mr H feels that Unum didn't explain what evidence it required in order to demonstrate he had a valid claim on the policy. But I can see that it wrote to Mr H's employer – the policyholder – on 23 May 2023 and explained that it needed Mr H's medical records and the types of information those records should include. This information request wasn't limited to GP fit notes and specifically also referred to correspondence from specialists, therapists and clinicians. As such then, I'm satisfied Unum did clearly set out the types of evidence it would need to assess Mr H's claim to the group policyholder.

Unum assessed the evidence Mr H provided in support of his claim (including with clinical members of its staff) and concluded that it didn't indicate that he had a significant, impairing mental health condition or that he met the policy definition of incapacity. Instead, it considered that Mr H was suffering from a stress reaction to a worrying workplace situation. So I've next looked at the available medical and other evidence to assess whether I think this was a fair conclusion for Unum to draw.

I've first considered the claim form Mr H completed. He was asked to describe the nature of his illness or injury, including details of his symptoms. Mr H answered:

'Work-related stress, anxiety and depression as a result of being bullied at work.'

He then went on to describe his symptoms and how they affected him on a day-to-day basis.

Next, I've gone on to consider Mr H's medical records. In October 2022, Mr H saw a GP who recorded that Mr H had *'a huge amount of work stress, feels is being bullied...Feels it is stress-related.'*

A few days later, Mr H's notes state that he'd seen a GP who recorded: *'Sig[nificant] work related stress – feeling overwhelmed with how to deal with things.'* A fit note was issued which signed Mr H off from work with 'work related stress'.

In early November 2022, Mr H's notes show that he reported: *'Work related stress then little issues blow up and he can't cope'*. He was prescribed anti-depressant medication at this point.

Later that month, the GP notes say that Mr H *'reports being bullied by his boss. Looking to raise a formal grievance.'* Mr H was switched to a different anti-depressant. A further fit note was issued stating Mr H was unfit for work due to work related stress and anxiety.

Following this appointment, the GP issued Mr H with an open referral for psychotherapy. The referral letter included the following:

'This gentleman who is currently having to take time off work due to stress induced anxiety

and depression...He has experienced bullying perpetrated by his boss. He is looking to raise this with HR as a formal grievance.'

In early December 2022, the GP noted that Mr H had begun counselling. Again, a fit note was issued citing anxiety and work-related stress. A further fit note was issued to cover the period end of December 2022 until the end of March 2023. This said Mr H was unfit to work due to depression, anxiety and work-related stress. The GP notes stated that Mr H was going on holiday and that his mood was improving. The notes also say that Mr H had submitted a grievance and that *'he will not go back to the same job as long as the person he has a grievance with is there.'*

Subsequently, in February 2023, Mr H was reviewed by another GP, who issued a fit note to cover between 21 February 2023 and 20 April 2023. However, this fit note didn't say Mr H was unfit for work. Instead, the GP stated that Mr H may be fit for work during this period if he was able to refrain from attending meetings. The GP also wrote a letter to Mr H's employer to this effect.

A short time later, Mr H's notes show he spoke with another GP who noted that he was suffering from depression, anxiety and panic attacks. The notes refer to: *'grievance process at work – bullying. Reasonable adjustment not to work with certain person.'*

And in March 2023, a GP recorded that Mr H would be unfit for work between early March and 1 June 2023 with a diagnosis of work related stress, anxiety and depression.'

There aren't any detailed notes in the GP records or in the fit notes which explain the reasons why Mr H's symptoms precluded him from carrying out the material and substantial duties of his own occupation.

Mr H also saw an OH adviser following a referral by his employer and so I've looked carefully at their reports, too. In December 2022, the OH adviser said that Mr H had been absent due to depression, anxiety and work-related stress. They said: *'(Mr H) reports that has absence has been triggered by work and he feels exposed to bullying behaviour from a colleague over a prolonged period of time.'*

In January 2023, the OH adviser noted that Mr H stated that: *'thoughts of work or any work associations continue to be a significant trigger for his anxiety and he experienced panic attacks when preparing his grievance.'* They added:

'I remain unable to advise when (Mr H) is likely to be fit for work as this depends on the progress of the grievance procedure.'

The OH adviser echoed this conclusion in reports dated March 2023 and April 2023.

I've thought very carefully about all of the evidence that's been provided. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the information provided by both medical professionals and other experts to decide what evidence I find most persuasive. It's clear that Mr H was suffering from symptoms which can also be indicative of a significant mental health condition. His GP made reference to Mr H suffering from anxiety and depression, as well as workplace stress and indeed, I'm conscious that Mr H was prescribed an increased dosage of his anti-depressant medication. I'm aware too that he has been undergoing CBT therapy.

But, taking into account the totality of the medical and other evidence considered by Unum, I think it was reasonable for Unum to conclude that the evidence showed that Mr H was suffering from an understandable reaction to the work and external circumstances in which

he found himself. And that the main reason for Mr H's absence during the deferred period was likely the workplace stress he was experiencing as opposed to a mental health condition. It also appears, from the GP's records and the OH reports that Mr H's main triggers were concerns about work. It's clear too that one GP felt Mr H was able to work with adjustments during the deferred period. And so I think this evidence points towards the cause of Mr H's upsetting symptoms between October 2022 and April 2023 being the workplace issues he experienced. I think it indicates too that he was suffering from an understandable reaction to his personal circumstances and a workplace situation with his employer, rather than a functionally impairing mental illness which prevented him from carrying out the material and substantial duties of his role for that or any other employer.

I appreciate Mr H doesn't think Unum carried out a thorough investigation into his claim or his appeal. I'm satisfied that the evidence indicates that Unum did assess the medical evidence with which it was provided, including with clinical members of staff. I'm also satisfied that it acted in line with the policy terms and conditions when it handled Mr H's claim. I accept it didn't indicate that it had assessed the claim against a copy of Mr H's specific job description, but I think his employer's part of the claim form made the parameters of his role clear – such as general working hours and that his job was desk-based etc. And as I've explained, in order for an incapacity claim to be valid, an absence must be caused by an illness. In this case, Unum didn't think Mr H's claim was down to a defined illness – instead, it thought it was caused by a stress reaction.

Unum didn't appoint an independent medical examiner to assess Mr H's condition. But the policy terms don't require Unum to do so. It was satisfied it could make a claims decision based on the available medical evidence. I don't think this was an unreasonable position for Unum to take. And while it might have been helpful if Unum had asked for a copy of the CBT's therapist's letter when it responded to Mr H's appeal, I don't think I could fairly find that its failure to do so means the claim should be met. As Unum hasn't commented on the therapist's letter, it would be inappropriate for me to make a finding on whether or not it would alter Unum's understanding of the claim. Though I would note that the letter appears to request further sessions of CBT for Mr H rather than focus on the ability to perform his role.

Overall, this means I don't find that Unum acted unfairly when it decided that there wasn't enough evidence to show Mr H was suffering from a significant mental health condition, during the deferred period, which prevented him from carrying out the material and substantial duties of his occupation. On this basis then, I don't think it was unfair for Unum to conclude that Mr H's absence wasn't due to incapacity in line with the policy definition. Instead, I think it fairly concluded that Mr H's absence during the deferred period was more likely due to workplace stress and a reaction to his circumstances.

I understand Mr H feels there were unreasonable delays in the handling of this claim. I don't agree. I say that because Unum didn't receive the medical information it needed until August 2023. It issued its first claims decision on 5 September 2023. It followed this with an appeal decline on 3 October 2023 and a final response to Mr H's complaint dated 14 November 2023. In my view, given the nature of Mr H's claim and the detailed submissions, Unum responded promptly and fairly.

If Mr H would like to obtain further medical evidence to support that he was incapacitated in line with the policy terms during the deferred period, it's open to him to accordingly send this on to Unum for review. If he's unhappy with the outcome of any further assessment of any new evidence, he may be able to make a new complaint about that issue alone.

But, overall, despite my natural sympathy with Mr H's position, I don't find it was unfair or unreasonable for Unum to turn down his income protection claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 March 2024.

Lisa Barham
Ombudsman