

The complaint

Mr O complains that Unum Ltd hasn't accepted his income protection insurance claim.

What happened

Mr O was previously insured under his employer's group income protection policy with Unum. The policy paid benefit in the event Mr O couldn't work in his own occupation due to illness or injury, and had a deferred period of 28 weeks.

In February 2022, Mr O stopped work and made a claim under the policy. In August 2022 Unum turned down the claim as it didn't think Mr O had shown he met the policy definition of incapacity throughout the deferred period. Mr O asked us to look into his complaint.

My ombudsman colleague issued a final decision on 10 May 2023. She concluded that Unum's decision to turn down the claim had been reasonable. Though she noted that Mr O had obtained further medical evidence in March 2023, and suggested he send this to Unum to consider. She advised Mr O that if he was unhappy with the outcome of any further assessment of new medical evidence by Unum, he may be able to make a complaint about this.

Mr O asked Unum to consider the evidence from March 2023. Unum did so, but still didn't accept Mr O's claim. Mr O complained about this, and Unum issued a final response on the complaint on 30 August 2023. It noted his psychiatrist had explained that Mr O presented with symptoms of a mental illness episode in September 2022. Unum said the policy had ended on 1 September 2022, and so it couldn't consider whether a claim was payable from that point. Unhappy with this, Mr O brought a new complaint to us. He thought Unum should consider that there had been a deterioration to his condition, and this had been the case before September 2022.

Our investigator didn't recommend the complaint be upheld. She said the new evidence provided by Mr O didn't show that he met the policy definition of incapacity throughout the deferred period.

I issued a provisional decision on 15 February 2024. Here's what I said:

'A final decision by my ombudsman colleague has previously been issued. That was in response to a complaint about Unum's decision that Mr O hadn't met the policy definition of incapacity throughout the deferred period 7 February 2022 to 22 August 2022. That represented our final position on that complaint, and so I can't comment on that. In this decision, I'll therefore only consider Mr O's argument that his condition deteriorated after Unum turned down his initial claim.'

The policy says:

'Further claims if the member does not return to work

If we decline or stop paying a claim because the member does not meet the definition of incapacity, but the member does not return to work, you can submit a

new claim if their condition worsens, or they suffer a new condition within a year from our decision.'

Dr P (consultant psychiatrist) met with Mr O on 2 September 2022. Dr P had previously seen Mr O in 2017 where he treated him for mixed anxiety and depressive symptoms. Dr P said Mr O had told him he was then completely well following this until the beginning of 2020. Dr P described how Mr O told him things had got worse in January/February 2022, and how he felt unable to work. And that things had deteriorated further in the previous two months. Dr P set out Mr O's current symptoms, and said he thought Mr O had all the features of a severe depressive episode with generalised anxiety disorder. Dr P made some changes to Mr O's medication and agreed to review him a few weeks later.

In March 2023, Dr P provided further clarification. He said that Mr O presented in September 2022 with features of a severe depressive episode, and that his anxiety symptoms were particularly pronounced, which justified an additional diagnosis of generalised anxiety disorder. He said that, taken together, these were of sufficient severity to make it impossible for Mr O to function at work. He explained he had recommended a period of sick leave to facilitate Mr O's recovery. Dr P said that Mr O had undergone several trials of different antidepressant medications since September 2022, and had made a partial response to the most recent combination. Finally, Mr P stated that he didn't think Mr O would have been able to go back to work in the six months since his initial assessment.

Unum accepts that Dr P's evidence suggests Mr O's medical status may have changed, and there may have been grounds for a later claim. However, it says the policy with Mr O's employer ended on 1 September 2022, and that Mr O would have needed to be covered under the policy when the symptoms were evidenced to have presented in order for a claim to be considered. I note that if this were the case then benefit can be paid after the deferred period, even if a policy has ended.

I can appreciate Unum's point here. However, Mr O saw Dr P one day after the policy had ended. Mr O had described a worsening of his symptoms over the previous two months to Dr P, and his symptoms at that time led Dr P to diagnose him with two mental health conditions. Whilst I acknowledge there's no evidence to support the exact date that Mr O's symptoms deteriorated, it seems highly unlikely that this would have happened overnight. So I think it's reasonable to say that the deterioration in Mr O's symptoms had likely started whilst the policy was in force.

Having said that, I'm not requiring Unum to pay the claim at this stage. I would assume the deferred period would need to begin from the date Mr O's symptoms began deteriorating (Unum can correct me in response to this provisional decision if that's not correct). As we don't know the exact date this happened (Mr O's reference to two months was likely approximate), I think it'd be reasonable to estimate this as a month before Mr O met with Dr P, so 2 August 2022.

Unum has only been provided with limited medical information between August 2022 and February 2023 (a 28-week period). Although Unum has Dr P's comments from March 2023, I think it should be given the opportunity to obtain Mr O's medical records and any other relevant medical evidence from this period before making a new claims decision.

So I intend to require Unum to reconsider the claim, based on a deferred period starting 2 August 2022.'

I asked both parties for any further comments they wanted to make before I made a final decision.

Unum responded to say it would be happy to consider the claim further, in line with what I had suggested in my provisional decision. However, it said it didn't think it would be appropriate to fix the start of the deferred period to 2 August 2022. It said a review of the medical evidence may reveal a deterioration in Mr O's mental health before or after this date, so it thinks the medical evidence should lead the selection of when the deferred period starts. It clarified that by agreeing to reconsider the claim, that does not mean that it will accept liability, though it is happy to explore the possibility of this.

Mr O provided me with some medical information from 2022, and a new letter from his psychiatrist.

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.

Unum agreed with my provisional findings, but thought the medical evidence should lead the selection of when the deferred period should start. We put this to Mr O and he's in agreement with this. As both parties have agreed on this, I won't require the deferred period to begin on 2 August 2022.

Mr O has provided me with some new medical information that I understand Unum hasn't seen before. As both parties have agreed for Unum to reconsider the claim, it would be appropriate for Mr O to provide any new information to Unum so it can take this into account when it reconsiders the claim.

My final decision

My final decision is that I uphold this complaint in part. I require Unum Ltd to reconsider the claim and begin the deferred period when the evidence supports that Mr O's symptoms began to deteriorate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 April 2024.

Chantelle Hurn-Ryan
Ombudsman