

## **The complaint**

Ms H complains that Unum Ltd has turned down an incapacity claim she made on her employer's group income protection insurance policy.

## **What happened**

The background to this complaint is well-known to both parties. So I haven't set it out in detail here. Instead, I've set out a summary of what I think are the key events.

Ms H is insured under her employer's group income protection policy. The policy provides cover in the event that Ms H is unable to work in her own occupation, as a result of illness or injury. The deferred period is 26 weeks.

In June 2022, Ms H was signed-off from work by her GP suffering from a 'stress and anxiety at work.' In September 2022, as Ms H remained unable to return to work, her employer made an incapacity claim on Ms H's behalf.

Unum requested medical evidence to allow it to assess the claim. It calculated that Ms H's deferred period would end in December 2022 and so it determined that Ms H needed to show she'd been incapacitated due to illness for the whole of the deferred period. Having considered the medical evidence, including reports from Ms H's psychotherapist and GP practice; it didn't think there was enough medical evidence to show that Ms H was clinically limited or functionally restricted from performing her own occupation. Instead it considered that Ms H's absence was down to situational stressors, which were largely linked to her workplace. So it didn't think Ms H had met the policy definition of incapacity and it turned down her claim. But it acknowledged that Ms H had paid for her own reports and while it didn't usually cover these costs as standard, it agreed to do so in this case if Ms H provided invoices and proof of payment.

Ms H was unhappy with Unum's decision and she asked us to look into her complaint.

Our investigator didn't think Ms H's complaint should be upheld. While he acknowledged Ms H did have a history of anxiety and depression, he didn't think it had been unfair for Unum to conclude that the reason for Ms H's absence was due to workplace issues. And so he didn't think it had been unreasonable for Unum to decide that Ms H hadn't shown she met the policy definition of incapacity. He felt it had been reasonable for Unum to step outside of the policy terms and offer to cover the cost of Ms H's reports subject to proof of payment.

Ms H disagreed. In summary, she said she did have a history of mental illness but that this had been under control and she'd made real improvements in managing her condition. She said she had loved her job but that her role was safety critical. She said that in April 2022, due to events at work, she was unable to carry out her role safely and was therefore signed-off a few weeks later. She felt she was unfit for work due to mental health injury caused by her employer. And she reiterated that it was her employer's actions that had been the reason she could no longer safely carry out her occupation. Her medical reports stated that she was off work due to anxiety and stress caused by her employer and this continued while she remained signed-off. She felt that mental health conditions were as relevant and important

as physical injuries in the eyes of the law.

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.

Having done so, whilst I'm very sorry to disappoint Ms H, and I know how upsetting my findings will be to her, I don't think it was unfair for Unum to turn down her claim and I'll explain why.

First, I'd like to reassure Ms H that while I've summarised the background to her complaint and her detailed submissions to us, I've carefully considered all that's been said and sent. I'm very sorry to hear about the circumstances that led to Ms H needing to make a claim and I don't doubt what a worrying and upsetting time this has been for her

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this policy and the available medical evidence, to decide whether Unum handled Ms H's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Ms H's employer's contract with Unum. Ms H's employer made a claim on her behalf for incapacity benefit, given she wasn't fit for work. So I think it was reasonable and appropriate for Unum to consider whether Ms H's claim met the policy 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*
- *Not performing any occupation'*

This means that in order for Unum to pay Ms H incapacity benefit, it must be satisfied that she had an illness or injury which prevented her from carrying out the material and substantial duties of her own occupation. And that the illness or injury would have prevented Ms H from carrying out the duties of her own occupation for *any* employer – not just her current employer.

The policy says that Unum will begin to pay incapacity benefit after the end of the deferred period. This means that in order for benefit to be paid, Ms H needed to have been incapacitated in line with the policy terms for the entire deferred period and afterwards.

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 Ms H's responsibility to provide Unum with enough medical evidence to demonstrate that an illness had led to her being unable to carry out the duties of her own occupation for the full 26-week deferred period between June and December 2022.

Unum assessed the evidence Ms H provided in support of her claim, including seeking the opinion of its clinical staff. While it sympathised with Ms H's position, it concluded that she wasn't suffering from a functionally impairing illness which prevented her from carrying out her insured role. Instead, it felt that Ms H was suffering with a reaction to workplace issues.

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 looked at the claim form Ms H completed when the claim was made. Ms H was asked to describe her illness. She stated:

*'anxiety stress and depression, attributed to problems faced at work. Ongoing still. Problems caused/experienced on a daily basis.'*

Ms H went on to describe her symptoms, which included lack of concentration, poor sleep and fatigue. She added that she was *'unable to cope with bullying behaviour towards (her) when at work.'*

The form then asked Ms H what assistance she would need in order to return to work. She answered:

*'Awaiting outcome of a grievance...once outcome is known, then a plan can hopefully be put in place to assist my return.'*

Next, I've considered Ms H's GP medical records. It's clear that Ms H has suffered from symptoms of anxiety and depression for a number of years and that she'd been on anti-depressant medication for some time. However, as Ms H says, it appears her symptoms had been stable and well-controlled and that Ms H wasn't prevented from working as a result of her illness.

The GP notes show that on 6 June 2022, Ms H sought medical advice because she'd had problems at work for around five weeks and her management were causing her anxiety. The following day, the GP surgery noted that Ms H had a five week decline in her mental health. The notes say that Ms H had had problems at work and with a relative. She was signed-off with stress and anxiety at work.

On 1 July 2022, the GP's notes say that Ms H was finding work a 'nightmare'. The notes say that Ms H's stress seemed *'very situational – various sources of stress.'* Later that month, the notes recorded that Ms H was continuing to suffer from anxiety and stress *'mainly due to issues...at work.'* Ms H told the clinician that she had raised a grievance at work and that she hoped the case would be heard soon in order to try and find some way for her to return to work. A couple of days later, Ms H told the practice that she'd been told her employer would likely take the whole of the next month to settle this and that she wasn't able to work at all.

In September 2022, Ms H told the practice that she had ongoing issues with work, that no progress had been made and that there was a grievance procedure due to bullying at work. The notes state that Ms H's *'anxiety builds up with work-related discussions'*.

The next month, Ms H asked for a further fit note extension due to anxiety and depression caused by work. A GP noted that Ms H's mental health appeared to be declining and that Ms H felt her *'confidence had plummeted with issues at work'*.

Based on the evidence available to Unum which showed the picture of Ms H's health and symptoms during the deferred period, I don't think it was unreasonable for it to conclude that Ms H's absence from work was caused by workplace issues rather than a functionally impairing mental illness. I say that because, by Ms H's account and the GP's records, Ms H's symptoms seem to have been well-controlled until issues arose at work and in Ms H's personal life in around May 2022. And it appears that Ms H's consultations with the GP

around her fitness to work largely centred on the workplace issues rather than a deterioration in her mental health.

Following the end of the deferred period, Ms H provided Unum with further medical evidence in support of her claim. Ms H's GP practice provided a letter which set out the background of Ms H's symptoms since 2014 and the treatment she'd received up until January 2023. This letter refers to the decline in Ms H's symptoms being attributed to her ongoing issues at work and the resultant impact on her health.

In April 2023, Ms H saw occupational health (OH) and I've considered the resulting OH report. The 'OH opinion' section included the following:

*'The history disclosed is of a Depressive illness exacerbated by stress both personal and work related. Her barrier to returning to work at this time is due psychological barrier [sic], the unresolved work issues and how this is affecting her outlook.'*

And the report also included a section called 'Management advice'. I've set out what I think are the key points below:

*'(Ms H) is unfit for work and a return-to-work date is unforeseeable as the work stressors she perceives remain a barrier to her returning to work. My recommendations are: As there appear to be workplace stressors I recommend that a conversation takes place with (Ms H) to understand the impact of this. (Ms H) is fit to attend a meeting with management. Please note that further OH intervention is unlikely to be helpful until any real or perceived employee workplace stressors are addressed.'*

Ms H's psychotherapist wrote a detailed report, too. They set out a background of Ms H's symptoms; likely causes and the treatment Ms H had undergone since July 2020. In brief, the psychotherapist said that Ms H had been making good progress until an upsetting personal situation arose, along with the workplace issues. The psychotherapist said they hadn't been able to make further progress yet on Ms H's core issues because of Ms H's *'perceived treatment (in a personal situation) and by her employer'*. They went on, in brief, to explain the impact of the workplace situation on Ms H's mental health and how it had affected her. They said that if Ms H's employer had asked for a report from them some months earlier, *'it would have greatly improved the likelihood that (Ms H) would have been able to return to work by now and that she would be significantly more settled and happy in herself as a result.'*

I've thought very carefully about all of the evidence that's been provided and which was available to Unum when it made its final decision on Ms H's complaint. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive. It isn't my role to interpret medical evidence to reach a clinical finding – or to substitute expert medical opinion with my own.

It's clear that Ms H was suffering from symptoms which can also be indicative of a significant mental health condition. I'm conscious that Ms H had previously been diagnosed with anxiety and depressive symptoms some years earlier and that she has been under psychological therapy and on medication for some time too.

But, I have to bear in mind the contemporaneous medical evidence which was available to Unum when it assessed the claim and when it issued its final response to Ms H's complaint. For the majority of the full deferred period, Mr W's GP noted that Ms H was absent because of symptoms caused by workplace issues. And both the OH and psychotherapist indicated that the reason for Ms H's symptoms and inability to return to work was the workplace

situation she was experiencing. I'd add too that neither the GP practice, OH or psychotherapist explained why Ms H would be incapacitated from carrying out the material and substantial duties of her role as a result of her illness.

As such, taking into account the totality of the medical and other evidence available to Unum when it assessed this claim, I think it was reasonable for Unum to conclude the evidence showed that during the deferred period, Ms H was suffering from an understandable reaction to the very difficult situation in which she found herself, personal stressors and the workplace issues. And that the main reason for Ms H's absence during the deferred period was likely a reaction to the workplace situation she was experiencing as opposed to a significant deterioration in her mental health condition which led to incapacity in line with the policy terms. And I don't think the evidence indicates that Ms H would have been incapacitated from carrying out the substantial duties of her role for *any* employer. Instead, the evidence indicates it was difficulties with Ms H's specific employer which posed the main barrier to her return to work.

On this basis then, I don't find it was unfair for Unum to conclude that Ms H's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Ms H's absence was more likely due to her workplace situation.

I'd like to reassure Ms H that I'm not suggesting that she was fit for work. I appreciate she was medically signed-off. And I understand she's been through a very difficult time. But I need to decide whether I think she's shown she met the policy definition of incapacity for the whole of the 26-week deferred period. As I've explained, I don't think she has. So while I sympathise with Ms H's position, I don't find Unum acted unfairly when it turned down her claim.

In its final response, Unum offered to reimburse Ms H for the cost of her GP practice and psychotherapist's reports, although these aren't costs which would generally be covered. It's open to Ms H to send Unum invoices and proof of payment for those reports if she'd like to take up its offer of reimbursement, which I find to be very fair in these circumstances.

### **.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 Ms H to accept or reject my decision before 27 May 2024.

Lisa Barham  
**Ombudsman**