

The complaint

Mr L complains that Unum Ltd hasn't agreed to fully settle an incapacity 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 simply set out a summary of what I think are the key events.

Mr L was insured under his employer's group income protection insurance policy. The policy provided cover if Mr L was incapacitated from carrying out his own occupation due to accident or sickness. And the contract included a 13-week deferred period.

On 1 May 2023, due to a very upsetting family situation, Mr L was signed-off from work with 'family stress'. As Mr L remained unfit for work, his employer went on to make an incapacity claim on the policy.

Unum requested medical evidence to allow it to assess the claim. It calculated that Mr L's deferred period would end on 31 July 2023 and so it determined that Mr L needed to show he'd been incapacitated due to illness for the whole of the deferred period. Having considered the evidence, it didn't think there was enough medical evidence to show that Mr L was functionally incapacitated from performing his own occupation. And it considered that Mr L's absence was caused by an understandable reaction to his family situation. So it didn't think Mr L had met the policy definition of incapacity and it turned down his claim.

Mr L was unhappy with Unum's decision and he appealed. He provided evidence from a mental health practitioner (MHP), dated September 2023, which stated that Mr L had been diagnosed with severe anxiety and depressive symptoms. He also provided follow-up fit notes which said that he was unfit for work due to mixed anxiety and depressive disorder. And the MHP issued Mr L with backdated fit notes which said that Mr L had been unfit for work due to stress and anxiety from 1 May 2023 until late August 2023 and with mixed anxiety and depressive disorder from late August until mid-October 2023.

Unum reconsidered Mr L's claim but maintained its decision to decline it. So Mr L asked us to look into his complaint.

Our investigator thought Mr L's complaint should be upheld in part. He didn't think there was enough medical evidence to show that Mr L had been incapacitated from 1 May 2023 onwards and during the original deferred period. So he didn't think Unum needed to accept or pay Mr L's claim from that point on.

But he felt the MHP's letter of 23 September 2023 was sufficient evidence to show that Mr L had met the definition of incapacity from that point and so he thought Unum should begin a new 13-week deferred period from that date on. He recommended that Unum should begin paying benefit from 15 December 2023, following the end of the new deferred period, for as long as Mr L's claim remained eligible.

Ultimately, Unum agreed to accept and pay Mr L's claim in full from 15 December 2023 until 29 February 2024, together with interest of 8% simple. Unum said Mr L had returned to work on a phased basis in February 2024 but had left his employment in March 2024. It considered that paying full benefit up until 29 February 2024 was a pragmatic approach to settling the claim, rather than paying Mr L proportionate benefit, which it was entitled to do under the policy terms.

The investigator put Unum's offer to Mr L. He explained that Unum had offered to pay Mr L more than he was entitled to under the policy terms.

However, Mr L didn't accept the offer. In summary, he maintained that his incapacity had begun on 1 May 2023. He told us that he'd complained to his GP about the way it had handled his requests for fit notes and it had made changes as a result. And he pointed to the MHP's amended fit notes as evidence of his incapacity from 1 May 2023 onwards. The MHP provided new evidence dated June 2024 in support of Mr L's 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.

Having done so, whilst I'm very sorry to disappoint Mr L, I think Unum has now made a fair offer to settle this complaint and I'll explain why.

First, I'd like to reassure Mr L that while I've summarised the background to this complaint and his submissions to us, I've carefully considered all he's said and sent. I was sorry to hear about the circumstances that led to Mr L's illness and the impact it's had on him and his family.

I must also make it clear that I can only consider medical evidence which was available to Unum when it issued its final response to Mr L's complaint and which it's had a chance to comment on. I appreciate Mr L has provided a new letter from his MHP in support of his claim. But it doesn't appear that Unum has had a chance to see or comment on this evidence. And so it wouldn't be appropriate for me to take that evidence into account as part of this decision.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, together with other relevant considerations, such as industry principles and guidance, the policy terms and the medical evidence, to decide whether I think Unum treated Mr L fairly.

Following the investigator's assessment, Unum agreed to start a new deferred period from 23 September 2023 onwards (the date of the MHP's first letter). And it's offered to pay benefit for the full period between 15 December 2023 (after the end of the 13-week deferred period) until 29 February 2024, together with interest. Strictly, as Mr L returned to work on a phased basis in February 2024, Unum is entitled to calculate proportionate benefit for that period rather than paying Mr L the full monthly benefit. So it's offered to pay Mr L more than he was entitled to under the policy terms and conditions. Given Unum's offer, I don't think I need to make any further finding on whether I think Unum was reasonably entitled to decline the claim after 23 September 2023. That's because it's now agreed to pay benefit over and above the policy terms. So in my view, Unum's offer here is very fair.

Instead, in my view, the key issue I need to decide is whether it was fair for Unum to conclude that Mr L hadn't shown he met the policy definition of incapacity between 1 May and 31 July 2023 and then up until 23 September 2023. And I think it was, for reasons I'll go on to explain.

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

'A member is incapacitated if they are unable to perform the material and substantial duties of their insured occupation because of illness or injury.'

This means that in order for Unum to pay Mr L incapacity benefit, it must be satisfied that he had an illness or injury which prevented him from carrying out the material and substantial duties of his own occupation.

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, Mr L needed to have been incapacitated in line with the policy terms for the entire 13-week 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 Mr L's responsibility to provide Unum with enough medical evidence to demonstrate that an illness had led to him being unable to carry out the duties of his own occupation for the full 13-week deferred period between 1 May and 31 July 2023.

Unum assessed the evidence Mr L provided in support of his claim, including seeking the opinion of its clinical staff. While it sympathised with Mr L's position, it concluded that he wasn't suffering from a functionally impairing illness which prevented him from carrying out his role. Instead, it felt that Mr L was suffering with a stress reaction to his family situation, which didn't amount to a defined medical problem. 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 Mr L completed. In brief, this stated that Mr L had been signed-off with family stress due to his family situation. Mr L described the impact his symptoms had on him and his perceived ability to work, as well as explaining his typical day. Based on the information Mr L set out, Unum didn't think there was evidence of functional impairment. Given the tasks Mr L told Unum he undertook each day, I don't think this was an unreasonable view to Unum to take.

Next, I've considered the contemporaneous medical evidence from the deferred period and afterwards. Mr L's medical records contain little detail. It's clear that up until October 2023, Mr L's GP issued him with fit notes which stated that he was unfit to work due to family stress. There's no suggestion that Mr L was given a formal diagnosis of a mental illness and nor is there any information about how his symptoms affected his functional capacity. And Mr L wasn't referred for secondary psychiatric care at this point or prescribed medication. On that basis, I don't find it was unfair for Unum to conclude that Mr L hadn't shown he was incapacitated in line with the policy terms and conditions.

It's clear that Mr L felt unsupported by his GP and he complained. I've seen the response from the practice. It's clear too that the MHP later concluded it was appropriate to reissue Mr L's fit notes, citing diagnoses of 'stress and anxiety' up until 28 August 2023 and 'mixed anxiety and depressive disorder' thereafter. I've considered this carefully. But the first amended fit note doesn't indicate that Mr L's symptoms were of a mixed anxiety and

depressive disorder – the diagnosis given was stress, as well as anxiety. And the MHP's letter of 23 September 2023 doesn't indicate exactly how long Mr L had been suffering from symptoms of severe anxiety and depressive symptoms which required medication and intervention. Nor do I think the MHP's evidence is enough to show, on balance, that Mr L was incapacitated in line with the policy terms any earlier than 23 September 2023. I'd add too that I don't think there was persuasive evidence which demonstrated that even if Mr L *had* been seen by a GP or an MHP earlier than he was, he'd have been diagnosed with a functionally impairing mental illness.

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 Mr L'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 - and it would be inappropriate for me to do so.

It's clear that Mr L was suffering from symptoms which can also be indicative of both a significant mental health condition – and it's clear he went on to receive such a diagnosis. 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 Mr L's complaint. For the majority of the full deferred period, Mr L's GP noted that Mr L was suffering from family stress. And even in October 2023, the diagnosis given for the period up until late August 2023 still referred to stress. Nor do I think there was enough medical evidence available, between 1 May and 23 September 2023 to explain how and why Mr L was incapacitated from carrying out the material and substantial duties of his role as a result of his illness.

As such, taking into account the totality of the medical and other evidence available to Unum when it assessed this claim, I don't think it was unreasonable for Unum to conclude that the evidence showed that during the deferred period and up until 23 September 2023, Mr L was suffering from an understandable reaction to the very difficult situation in which he found himself. And that the main reason for Mr L's absence during the deferred period and up until 23 September 2023 was likely a reaction to the stress he was experiencing as opposed to a mental or physical health condition.

On this basis then, I don't think it was unfair for Unum to conclude that Mr L's absence between 1 May and 23 September 2023 wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Mr L's absence was more likely due to a reaction to his circumstances.

I'd like to reassure Mr L that I'm not suggesting that he was fit for work. I appreciate he was medically signed-off. And I understand he's been through a very difficult time. But I need to decide whether I think he's shown he met the policy definition of incapacity for the whole of the 13-week deferred period and beyond. As I've explained, I don't think he has.

Overall, despite my natural sympathy with Mr L's position, I don't find it was unfair or unreasonable for Unum to decline to pay benefit before the end of the new deferred period in December 2023.

Putting things right

Unum has now offered to pay Mr L full benefit for the period 15 December 2023 until 29 February 2024, together with interest of 8% simple. I've explained above why I think this offer is fair. So Unum must now:

- Pay Mr L full policy benefit, in line with the policy terms and conditions, from 15 December 2023 until 29 February 2024; and
- Add interest of 8% simple per annum to each benefit payment from the date each payment became due until the date of settlement.

My final decision

For the reasons I've given above, I find that Unum has made a fair offer to settle this complaint. I now direct Unum Ltd to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 November 2024.

Lisa Barham
Ombudsman