

The complaint

Mr H is unhappy with Unum Ltd (Unum) because it declined his income protection claims.

What happened

Mr H has an income protection policy arranged through his employer. The policy provides cover if Mr H is unable to carry out the duties of his insured occupation and has a deferred period of 13 weeks. Unum is the underwriter of the policy.

Mr H was first absent from work due to illness related to workplace stress and burn-out on 18 April 2023. He submitted an income protection claim. Unum reviewed this in July 2023 and declined it. It said Mr H's medical records didn't show that he met the definition of incapacity as per the terms of the policy. Mr H appealed the claim decline and made a complaint to Unum. It reviewed the medical evidence Mr H provided and the complaint he made about the claim being declined. Unum issued a final response in September 2023 and maintained its decision to decline the claim but said if Mr H had new medical evidence, it would re-assess it at that time.

Mr H submitted a new claim in October 2023 following a diagnosis of depression and anxiety disorder. Unum reviewed the claim and declined it maintaining that there was no clear medical evidence of Mr H's incapacity. A final response was issued in January 2024 following a second complaint Mr H made. Unum said the claim was declined because Mr H didn't meet the definition of incapacity as per the terms of the policy as there was no clear medical evidence to support his absence from work.

Unhappy with Unum's responses, Mr H brought his complaint to this service. Our investigator didn't uphold it. She didn't think the medical evidence showed that Mr H couldn't have continued working in his insured occupation whilst he was being treated for depression and anxiety disorder.

Mr H disagreed and asked for the complaint to be reviewed by an ombudsman. So, it's been passed to me.

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 whilst I've summarised the detailed background to his complaint and his submissions to us, I've carefully considered all he's said and sent us. Within this decision though, I haven't commented on each point he's raised and our rules don't require me to. Instead, I've focused on what I consider to be the key issues.

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 income protection policy and the circumstances of Mr H's claim, to decide whether Unum treated him fairly.

I've first considered the terms and conditions of this policy.

Mr H has income protection cover for his insured occupation when he is unable to work because of illness or injury. In other words, when he is incapacitated.

I've looked at the definition of incapacity for insured occupation cover which is set out on page 44 of the policy. This says:

'Insured occupation cover

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*

[...]

Insured occupation means the trade, profession or general role that the member was actively undertaking for you immediately prior to incapacity...

...material and substantial duties means the duties that are normally required for the performance of the member's insured occupation and which cannot be reasonably omitted or modified. It is those duties required for the performance of the occupation at their, or any other employer.'

So, based on the above, for a claim to be successful, a member must show that they are unable to perform the material and substantial duties of their insured occupation.

A point to note is that generally, in insurance, it's for the consumer to show their claim is valid. In this case, Mr H is required to provide medical evidence to show he is unable to work and cannot perform the material and substantial duties of his insured occupation due to injury or illness.

To decide whether Mr H met the definition of incapacity for the benefit to be paid, I've looked at the evidence provided to me by both parties.

First claim from 18 April 2023 to 18 July 2023

Mr H's first claim related to the period from 18 April 2023 to 18 July 2023. I've reviewed Mr H's medical records for this period. He went to see his GP on 18 April 2023 when he was first signed off work. The notes say, *'director in training, lots of stress and negativity, has started affecting mental health'*. He also noted that he discussed work related stress, time off work, occupational health etc with Mr H. The GP noted Mr H was *'feeling stressed'* and this was the reason he was signed off work.

On 30 May 2023, Mr H was signed off work again and the reason was again that he was feeling stressed. The notes say Mr H was having private weekly Cognitive Behavioural Therapy (CBT) sessions.

When Mr H completed his claim form in June 2023, he stated *'he has workplace burn-out and work-related stress'*. And *'the burden of my role will resume immediately on return to work.'*

Based on the information I've reviewed, I don't think there is sufficient medical evidence to show that Mr H was unable to perform the material and substantial duties of his insured

occupation, by reason of injury or illness. The reasons stated suggest work-related stress was why Mr H was absent from work.

The notes and information consistently point to work-related stress rather than a mental health condition for this period. There's no evidence to show that Mr H's condition impaired his ability to perform the duties of his insured occupation because of injury or illness. I'm not persuaded therefore that the claim was unfairly declined by Unum for this period.

Second claim from 18 July 2023 to 18 October 2023

I can see Unum requested further and up to date medical records from Mr H's GP. This confirmed Mr H continued to be signed off from work due to anxiety from 18 July to January 2024.

In July 2023, Mr H's GP noted his anxiety was ongoing, his mood and energy levels were down, and his sleep was poor.

Mr H had two further telephone consultations. On 3 August 2023, Mr H said he had negative symptoms of anxiety and so he was prescribed medication for this. On 16 August 2023, Mr H said he was continuing to make changes to his life to help alleviate symptoms. He also discontinued the medication, and the notes said no further input was required at this stage.

A letter dated 25 August 2023 from the consultant neurologist shows Mr H attending a clinic for problems with his left foot and the examination stated that best course of action was to monitor his symptoms and if there was any change then this would need to be reviewed. The notes also refer to Mr H being off work due to stress for the last four months.

On 8 September 2023, his mental health practitioner stated Mr H presented with symptoms of low mood and anxiety and was diagnosed with depression and anxiety disorder. And I note that Mr H was referred for CBT sessions. But there isn't anything in the letter that refers to clinical reasons or rationale for this diagnosis. The antidepressant medication was stopped so Mr H could find alternative coping strategies to help with his condition.

On 25 September 2023, a further letter was provided by the GP that Mr H has been suffering from anxiety and feeling panicky. It states his daily functioning has been impacted.

Mr H stated in his second claim form in October 2023 that he'd been diagnosed with depression and anxiety disorder, and he had symptoms of low mood, tiredness, disrupted sleep, anxiety around people, phones and confrontation. Mr H provided the letter from his medical practitioner informing of the diagnosis but there's no further medical or clinical evidence to explain or provide the rationale for this diagnosis.

Whilst I understand that Mr H has experienced low mood and things have been difficult for him mentally, my role is to reach an outcome that's fair and reasonable and based on the information available to me. The starting place is the policy definition of incapacity. In order for the claim to be successful, Mr H has to show his claim is valid under the terms and conditions of the policy. In other words, he has to demonstrate that he cannot perform the material and substantial duties of his employment due to injury or illness.

Having reviewed all the available information, I understand that Mr H has a diagnosis of depression and anxiety disorder. But the medical evidence since 18 July 2023 doesn't show that Mr H is incapacitated to the extent that he cannot perform the material and substantial duties of his insured occupation. I don't doubt that the feelings Mr H has experienced of low mood, sleep disruption, interacting with people have been proving difficult but the clinical and medical evidence doesn't support this.

The letter from Mr H's GP in December 2023 also doesn't provide his clinical and medical opinion on the day-to-day impact of the mental health condition. The GP simply states Mr H's symptoms as he's reported them to the GP.

It's really important clarify here that we would need to see clear medical evidence provided by a medical professional that the illness or injury prevented the member from working. I've carefully considered the medical certificates, the GP letters, the mental health practitioner's letter and all of Mr H's medical records. None of these provide clear clinical reasons for Mr H's condition.

So, I'm not persuaded the second claim was declined unfairly either.

Has the overall claim been declined fairly?

I appreciate Mr H believes his claim should be paid. But, taking everything into account, I'm satisfied that Unum has declined Mr H's claim in line with the policy terms and conditions and has done so fairly and reasonably. I agree there's no clear medical evidence in this case to show Mr H is incapacitated because of illness or injury which prevented him from carrying out his insured occupation.

I'm not persuaded that there is a presence of a medical condition that would impact Mr H to the extent that he is unable to function daily and perform the duties of his insured occupation. Whilst I can see Mr H received a diagnosis for depression and anxiety disorder, I haven't seen any evidence that in the medical records which suggest further treatment and intervention was provided. The symptoms appear to be self-reported rather than a formal clinical diagnosis. And I don't think there is clear and consistent evidence from his medical records to show further actions or steps were taken. It's not enough that the records state Mr H has depression and anxiety. I would have expected some onward clinical referral and further necessary steps taken for this diagnosis.

Overall, despite my natural sympathy with Mr H's position, I don't find there are any reasonable grounds upon which I could direct Unum to pay his claim. I'm sorry to disappoint Mr H, but it follows therefore that I don't require Unum to do anything further.

My final decision

For the reasons given above, I don't uphold Mr H's complaint about Unum Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 November 2024.

Nimisha Radia
Ombudsman