

The complaint

Mr B is unhappy that Unum Ltd has stopped his benefit payments under his income protection policy.

What happened

Mr B has a group income protection policy with his employer. The policy provides a benefit in certain circumstances after a deferred period of 13 weeks on an own occupation basis. Unum is the underwriter.

Mr B's been absent from work from July 2021 due to having a fall at home and sustaining an injury to his shoulder. He was signed off work by his GP who provided fit notes. Mr B had surgery in August 2021. In March 2022, he had a further traumatic injury to his shoulder.

Mr B received income protection benefits from Unum which started in January 2022. Unum reviewed his claim along with the medical information and decided to terminate it from December 2022. It said Mr B was no longer eligible for the benefits to continue to be paid under the policy.

Unum wrote to Mr B in December 2022. It said Mr B no longer met the definition of incapacity as set out in the policy terms and conditions. It carried out a Functional Capability Assessment (FCA) in relation to Mr B's insured occupation and obtained an occupational details questionnaire and a detailed job description. The information confirmed that Mr B was deemed fit to return to work. Unum confirmed the claim would be terminated from December 2022 with a benefit payment. It also said a transitional goodwill payment would be made to Mr B representing two months benefit to support any return to work.

Unhappy, Mr B made a complaint to Unum in July 2023. Unum issued a final response in October 2023 maintaining its position to terminate the claim.

Mr B brought his complaint to this service. Our investigator didn't uphold the complaint. She didn't think Unum had terminated the claim unfairly.

Mr B disagreed with the investigator's findings and asked for the complaint to be passed to an ombudsman. So, it's been passed to me.

What I've decided – and why

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At the outset, I wanted to acknowledge that the whole situation has been very difficult for Mr B. So, whilst I understand that Mr B has experienced difficulties with the injury he sustained and the further complications he's had with the surgery and recovery, my role is to

reach an independent and impartial outcome that's fair and reasonable, based on the information available to me. I don't doubt that Mr B is unwell, but this doesn't automatically mean that Unum must continue to pay his claim.

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 B's claim, to decide whether I think Unum treated him fairly.

It's important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr B. Rather it reflects the informal nature of our service, its remit and my role in it.

I've first considered the terms and conditions of this policy, as it forms the basis of the contract between Mr B's employer and Unum.

Page 44 of the policy document provides a definition of incapacity:

'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*

If the member is required by the terms the employment relationship to hold a licence or certificate which is issued only when the member meets required medical standards, we must also be satisfied that they are unable, by reason of their illness or injury, to perform the material and substantial duties of any gainful occupation with any employer for which they are reasonably fitted by reason of training, education or experience.

The term licence does not include a licence to drive ordinary cars, vans or motorcycles.'

Material and substantial duties is defined as:

'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.'

And insured occupation means:

'the trade, profession or general role that the member was actively undertaking immediately prior to incapacity.'

Unum has said Mr B is capable of performing the material and substantial duties of his employed job and it has evidenced this in the form of medical records, a FCA that was carried out and information provided by Mr B's employer about the duties of his role.

In a situation like this, where an insurer has accepted a claim and subsequently terminates that claim, it's for the insurer to show that the claimant no longer meets the definition of incapacity.

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Mr B's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed up the available medical evidence to decide whether I think Unum acted fairly and reasonably in terminating Mr B's claim.

I've been provided with detailed medical evidence relating to Mr B's diagnoses and symptoms from July 2021 onwards. It's not in dispute that Mr B met the policy definition of incapacity until the claim was terminated. Unum was paying the claim during this time. The issue for me to determine is whether I think the medical evidence supports Unum's decision that Mr B no longer meets the policy definition of incapacity. Unum said Mr B was awaiting a further procedure in May 2023, but there was no evidence of his condition that would have prevented him from carrying out the requirements of his role while he awaited this.

In July 2022, a FCA was carried out which I've considered. Further information was provided to Unum following the FCA by Mr B's employer about his job role. This was carried out by a trained healthcare professional to assess the functional capabilities of Mr B against his duties he was required to carry out in his employed role. The assessment is clear in that Mr B's shoulder pain and discomfort was noted, and the assessor confirmed based on their understating of the role, more time was needed for Mr B to heal and return to work. His functional capability was limited in terms of reaching and lifting. And the role may have involved some kind of physical altercation. So, Unum didn't cease the payments until it further assessed the information against the specific requirements of his job role. But with further information from the employer which confirmed the nature of Mr B's role in the context of the work required by it and the employer adjustments that were possible, Unum had evidence which supported a return to work tailored to Mr B's needs. I can see the evidence shows there was an improvement in Mr B's condition.

I've also considered the information provided by Mr B's employer about his specific job role rather than a generic similar role. The employer described the requirements of Mr B in his role and in particular the physical element of the role. And I've taken into account the report from the physiotherapist in October 2022 showing improvements in his movement.

I've also noted that Mr B was awaiting further surgery in May 2023 but at the time the claim was terminated the date was unknown. The FCA provided a clear understanding of Mr B's physical abilities which his employer confirmed, and which supported a return to work with workplace adjustments tailored to Ms B's needs.

Having taken into account the level of detail and specific conclusions contained in the FCA as well as Unum's assessment of the claim, I'm satisfied that, on balance, the evidence shows it's likely that Mr B no longer met the policy definition of incapacity when Unum terminated the claim in December 2022.

The test here is whether Mr B continues to meet the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I don't think it's likely he does. There isn't sufficient evidence to say that Mr B was incapable to carry out the material and substantial duties of his own occupation. I appreciate the claim was terminated in December 2022 and Mr B has had further surgery. But this doesn't form part of this complaint as it only relates to the point until the claim was terminated.

And since the complaint has been with our service, further medical information has been provided by Mr B. However, I can only look at the complaint up to the point the final response was issued by Unum. If Mr B has further medical evidence since the claim was terminated in December 2022, he will need to send this directly to Unum for consideration.

I also note that there is a dispute about this being a linked claim. Mr B said his condition

worsened and he had further surgery around May 2023. On page 39 of the policy, it says if a claim has been declined due to not meeting the definition of incapacity, but the member then doesn't return to work, a new claim can be submitted if the member's condition gets worse, or if they suffer a new condition within a year from Unum's decision. And the date of the decision is defined within the policy as the day after the end of the deferred period for claims which are declined.

In Mr B's case, the deferred period of Mr B's original claim ended on 24 October 2021. He deteriorated in May 2023 when he had surgery again and it's been more than one year from 24 October 2021. So, a new claim can't be considered as a linked claim. It would have to be made as a new and separate claim.

I have every sympathy for Mr B and that he's experiencing a difficult time with painful symptoms. And I'm sorry to disappoint him but this doesn't automatically mean that Unum must pay his claim.

Overall, I've taken everything into account, and I don't think on balance, the medical evidence demonstrates that Mr B met the definition of incapacity as per the terms and conditions of the policy when it was terminated. I don't think the claim has been terminated unfairly in the circumstances. I therefore don't find that there are any reasonable grounds upon which I could direct Unum to reinstate his claim. It follows that I don't require Unum to do anything further.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 January 2025.

Nimisha Radia
Ombudsman