

## **The complaint**

Mr R is unhappy that Unum Limited stopped paying the monthly benefit following a successful claim made on a group income protection insurance policy.

## **What happened**

Mr R had the benefit of a group income protection insurance policy ('the policy').

Subject to the remaining terms of the policy, it can pay out a monthly benefit if he is unable to work due to illness (or injury) after the deferred period.

A successful claim was made on the policy in respect of Mr R's inability to work because he'd been diagnosed with a very rare form of cancer and was having invasive treatment, including multiple operations. Unum kept the claim under review but continued to pay the monthly benefit until 2023, when it took the decision to terminate the claim and paid Mr R two month's benefit, taking payment to the end of May 2023. Unum concluded that the evidence no longer supported that Mr R met the policy definition of incapacity.

Mr R appealed that decision and Unum issued its final response letter in June 2023 maintaining its decision to stop paying the monthly benefit.

Mr R then brought his complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold his complaint. Mr R disagreed so his complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision earlier in September 2024, explaining why I intended to uphold this complaint. An extract of my provisional decision is set out below.

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At the outset I acknowledge that I've summarised this complaint in far less detail than Mr R has, and in my own words. And I won't respond to every single point made by the parties. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to fulfil my statutory remit.

The relevant terms and conditions of the policy

Subject to the remaining terms and conditions of the policy, Unum will pay the monthly benefit due under the policy if the member is incapacitated.

Under the policy, a member is 'incapacitated' if they are:

- unable to perform the material and substantial duties of the insured occupation because of illness or injury, and are
- not performing any occupation.

'Insured occupation' is defined as:

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

The term 'material and substantial duties' is defined as:

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 other employer.

Was it fair and reasonable for Unum to terminate the claim?

Mr R has said that Unum has discriminated against him in breach of the Equality Act 2010. We do not have the power to determine whether the Equality Act 2010 has been breached; only a Court can do that. However, when considering what's fair and reasonable I'm required to take into account a number of things including relevant law. As the Equality Act 2010 is a relevant consideration here, I've taken it into account when deciding what's fair and reasonable.

Unum has an obligation to handle insurance claims promptly and fairly - and it shouldn't unreasonably decline a claim.

Importantly in this case, as Mr R's claim was terminated by Unum, it's for Unum to establish on the balance of probabilities that he no longer met the policy definition of incapacity. It's not for Mr R to show that he continued to do so.

For the reasons set out below, I'm not currently satisfied that Unum acted fairly and reasonably when terminating Mr R's claim when it did. I'll explain why.

- From what I've seen, I'm satisfied that Mr R's claim was accepted by Unum because it concluded that due to his cancer diagnosis, resulting in urgent extensive surgery and subsequent treatment, he was unable to perform the material and substantial duties of the insured occupation throughout the deferred period and in the months subsequently.
- I'm satisfied that Unum has fairly and reasonably concluded based on the totality of the available medical evidence that as of March 2023, Mr R had made a good recovery from cancer and treatment and was physically active.
- The medical evidence reflects that Mr R met with his consultant oncologist in October 2022, one year after completion of postoperative chemoradiotherapy. The report says he was "generally doing very well" and "he goes swimming and walking on a regular basis". Further, a letter from Mr R's restorative dentistry consultant dated November 2022 reflects that he made some improvement in respect of another condition he'd experienced.
- When terminating the claim, Unum also concluded that the overall medical evidence doesn't support the presence of significant functionally impairing mental illness

preventing Mr R from carrying out the material and substantial duties of the insured occupation. But I'm not persuaded that it's fairly and reasonably established that based on the available medical evidence.

- At the time of terminating the claim, there's medical evidence to support that Mr R was experiencing low mood and anxiety, was having counselling and been prescribed and was taking anti-depressant medication. A report from Mr R's GP surgery dated February 2023, reflects that he'd had two consultations in January, one with his GP and one with a mental health nurse. The report says that "on both occasions he was struggling with low mood which seemed linked with his previous cancer. He was very anxious over Christmas, irritable and short tempered...has had some counselling". And although Mr R had been prescribed anti-depressant medication which he felt was helping, he was still struggling with low mood and anxiety. The report concludes: "obviously if he is depressed and anxious it will make it difficult for him to return to work". It also said that he'd be next reviewed in August 2023.
- In the circumstances of this particular case, as I'm persuaded Mr R's anxiety and low mood are intrinsically linked to being diagnosed with cancer and the subsequent significant and invasive treatment (which the medical evidence supports was life changing), I'm satisfied that it would be fair and reasonable for Unum to treat the mental health issues Mr R experienced as a result to be part of the overall illness he was initially signed off from work for.
- I'm satisfied the medical evidence supports that his mental health had deteriorated during his treatment. For example, a letter from a health psychologist dated February 2022 reflects that he's had some psychological support and Mr R had considered the impact of his cancer on many areas of his life including his appearance. And although it was noted at that time that he'd shown a high level of psychological flexibility in his adjustment to life event of cancer and was discharged, the report from his GP dated February 2023 supports that his mental health subsequently deteriorated again in June 2022 and further psychological input was required.
- I'm satisfied that's also supported by an earlier report from his oral and maxillofacial specialist dated July 2022 makes reference to Mr R continuing to receive "psychological input for anxieties related to his diagnosis and the potential for recurrence". And a report from his GP dated August 2022 in support a health and disability assessment sets out a summary of Mr R's cancer treatment, which also says "uncertainty remains with resultant psychological impact – ongoing psychotherapy".
- Before terminating the claim, Unum's claims notes reflect that Unum had taken into account that Mr R had recently commenced anti-depressant medication and although it's reflected that the dose wasn't stated, Unum was free to clarify that with the GP but didn't. The notes go on to say that the GP report dated February 2023 doesn't indicate Mr R presented with signs of significant functionally impairing mental illness and was physically active enjoying his free time.
- Although Mr R's insured occupation was sedentary, from what he's said and from considering his job description, I'm satisfied it required significant cognitive function. Mr R says that due to a deterioration in his mental health, he has difficulty concentrating, multi-taking and prioritising tasks – key aspects of the role he was doing before he was incapacitated. I accept that's not mentioned in the GP report dated February 2023. However, given that Mr R had been receiving counselling and

psychological support, when considering whether he remained incapacitated due to his mental health conditions, I think it would've been reasonable for Unum to have done more to establish whether Mr R continued to meet the policy definition of incapacity. It didn't seek a report directly from those providing psychological support for him, which I think it ought to have reasonably done before deciding to terminate the claim in the circumstances of this complaint. I think it's likely that those directly involved in providing psychological support to Mr R would've been well placed to provide an opinion on his mental functionality.

- I don't think it's fair and reasonable for Unum to conclude that because Mr R was able to take his dog for a walk and go swimming, his mental health wasn't impacting his day-to-day function, that he no longer met the policy definition of incapacity, and he was able to do the material and substantial duties of the insured occupation. Those activities aren't similar to the insured occupation.

#### Distress and inconvenience

- I'm persuaded that ending the monthly benefit has had more than just a financial impact on Mr R. I'm satisfied that he's been put to the inconvenience of contesting the decision to terminate the claim, at an already difficult time for him. I'm also satisfied that being unfairly deprived of the monthly benefit under the policy because it was unfairly terminated by Unum would've caused him unnecessary and significant worry and upset.
- I'm satisfied that Unum should pay him £500 compensation for distress and inconvenience to reflect this.

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I invited both parties to provide any further information in response to my provisional decision. Both parties responded saying they had nothing further to add.

#### **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.

As neither party has objected to my provisional decision, I find no compelling reason to depart from my provisional findings. So, for this reason, and for reasons set out in my provisional decision (an extract of which is set out above and forms part of this final decision), I uphold Mr R's complaint.

#### **Putting things right**

I direct Unum to:

- reinstate Mr R's monthly benefit, backdating the monthly payments that would've been paid if the claim hadn't been terminated.
- add simple interest at a rate of 8% per year to each monthly benefit that ought to have been paid since the claim was terminated, from the date each benefit should've been paid until the date they're actually paid\*.
- pay £500 compensation to Mr R for the distress and inconvenience he experienced because Unum unfairly terminated the claim.

\* If Unum considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mr R how much it's taken off. It should also give him a certificate showing this if he asks for one. That way Mr R can reclaim the tax from HM Revenue & Customs, if appropriate.

### **My final decision**

I uphold M R's complaint and direct Unum Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 October 2024.

David Curtis-Johnson  
**Ombudsman**