

## **The complaint**

Ms X is unhappy that Unum Limited declined a claim under a group income protection insurance policy and with the service she received when considering that claim.

## **What happened**

Ms X was signed off work by her GP in May 2022 with high blood pressure and work-related stress. She returned to work in June 2022 but after a few days was again signed off sick with work related stress. The reason for her absence changed at the end of July 2022 to depression.

Ms X had the benefit of a group income protection policy ('the policy') through her employer which, subject to the remaining terms of the policy, can pay out a portion of her income after she'd been off work for 13 weeks due to illness ('the deferred period').

The deferred period ended at the beginning of August 2022, and thereafter a claim was made on the policy which Unum declined in January 2023. It concluded that Ms X's absence largely related to work-related issues which contributed to her stress and high blood pressure. It said that there hadn't been a significant escalation in her treatment during the deferred period. It didn't think she'd established that she met the policy definition of incapacity for the benefit to be paid.

Ms X didn't think that was fair, so she appealed Unum's decision. Unum maintained its decision to decline the claim. In its final response letter, it said that the medical evidence supported that the source of her stress was work related. And:

It is evident, due to the challenging situation [at work], which has caused her considerable stress, she did not feel able to work at her current employer. However, I cannot conclude an illness has directly prevented her performing the material and substantial duties of the same role for any employer (where her perception of the working relationship may be different).

Ms X brought a complaint to the Financial Ombudsman Service.

Our investigator partially upheld the complaint to the extent that she recommended Unum reassess the claim from the date on which depression was mentioned in her medical records rather than when she was first signed off work with work-related stress, initially in May 2022. She also recommended Unum pay Ms X £150 compensation for distress and inconvenience for times when she felt it should've provided better customer service.

Unum disagreed and raised further points in reply. It said it had Ms X medical records until the end of 2022 as well as a GP report from May 2023. That information had already been reviewed and it had concluded that there wasn't cause for a later claim.

Unum also said if it considered a claim from the end of July 2022 (when the conditions of anxiety and depression were detailed as the reasons for her absence) the medical evidence supports that it was work related factors which were significantly impacting her absence. It

doesn't pay a claim based on suggested diagnosis alone. It isn't considering a claim based on her ability to perform her role for the policyholder but also any other employer in the industry. Unum also disagreed with the investigator's view that it should've provided better customer service.

In response to the further points raised, our investigator changed her recommendation. She didn't think Unum had to pay compensation to Ms X for distress and inconvenience.

However, she said Unum should reassess the claim in line with her earlier recommendation. Unum asked for an Ombudsman's decision. So, Ms X's complaint was passed to me to look at everything afresh to decide.

I issued my provisional decision in September 2024 explaining why I wasn't intending to uphold Ms X's complaint. An extract of my provisional decision is set out below.

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I'd like to assure Ms X that my decision is in no way intended to be dismissive of the health issues she's experienced. I can see that she's been through a very difficult and worrying time. But for reasons I'll go onto explain, I'm currently satisfied that Unum has fairly and reasonably declined her claim.

The relevant policy terms

The policy pays out a proportion of a member's income if they become incapacitated and are unable to work. Under the policy:

- a member is incapacitated if he/she is "unable, by reason of their illness... to perform the material and substantial duties of the insured occupation and are not performing any occupation".
- Insured occupation means: "the trade, profession or general role that the member was actively undertaking for (the policyholder) immediately prior to incapacity".
- Material and substantial duties mean: "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, the focus is very much on whether Ms X was unable to perform the role she was doing because of illness. I'm not a medical expert so I've relied on the evidence available to me when considering whether Unum has unfairly declined the claim.

I've also taken into account that it's for Ms X, when making a claim, to establish that she met the definition of incapacity as defined by the policy terms.

The decision to decline the claim

Unum has a duty to handle insurance claims promptly and fairly – and it mustn't unreasonably decline a claim.

Ms X's claim form (completed by her in October 2022 – so after the end of the deferred period) asked how she felt her condition and its symptoms impacted her ability to do her job. She answered:

I have had difficult experiences at work which led me to feeling misled, bullied and this combined with carrying out a dual role was very stressful. These past incidents and conversations are interrupting my thoughts and I am constantly questioning and berating myself. My anxiety is so bad that I feel that I can't set foot into the environment that has done me harm until I am less vulnerable and well enough to do things.

And when answering the question about what she would need to return to work, she says:

Because of my anxiety I feel I can't be in work as I feel that it has been the cause of my ill health and the stress will make it worse...

The medical evidence during the deferred period (and beyond) refers to Ms X's stress, depression and anxiety being caused by work related issues.

- The GP entry dated 9 May 2022 (when she was first signed off sick by her GP) reflects Ms X was "struggling with work, extremely stressful situation at work, hostile acquisition, prolonged uncertainty...people leaving., stressful targets, feels unsupported...thinks heightened state of anxiety".
- The GP entry dated 27 May 2022 reflects that Ms X was currently experiencing a lot of stress, mostly work related, has been ongoing for too long now, doesn't feel she is depressed, it is just her work...
- A GP entry dated 8 June 2022 (before Ms X returned to work for a few days) reflects Ms X was "still feeling stressed related work BP [blood pressure] is coming down...."
- A GP entry dated 22 June 2022 reflects: "had meeting with work today, went very badly. Feels like head all over the place, unsure what to do. Work are restructuring and she is being demoted..."
- A GP entry dated 30 June 2022 refers to the meeting with her employer the week before and that she is being demoted and there's no support.
- When contacting her GP for an appointment at the end of July 2022 Ms X says: "I do not feel able to return to work due to ongoing workplace stress and depression".
- A GP entry dated 21 July 2022 reflects that Ms X was "struggling trying to get a place of mind. Feels in shock – follows change in work structure/owner..."
- A GP entry dated 22 August 2022 – a couple of weeks after the end of the deferred period reflects: "still struggling with work. Raised a grievance...severely depressed..."

Also, during the deferred period, there's mention in her GP notes of Ms X seeking legal advice about her work situation.

I also think a vocational assessment dated January 2023 (although a few months after the end of the deferred period) is relevant in this case. Ms X explains that she has been diagnosed with depression and anxiety and the physical and cognitive impact this has on her. Ms X's perceived barriers to returning to work are listed as: "unable to face work or environment. Difficult experiences at work which have led to feeling misled and bullied alongside the high-pressure nature of the role" and that she was "working through

challenges around work with [Cognitive Behavioural Therapy] CBT”.

I also think it's relevant to consider the following documents which although dated after the deferred period provide an insight into the reasons why she was not working:

- An emotional wellbeing assessment report dated March 2023 reflects that Ms X presented with severe anxiety and severe depression. And goes into detail about work-related stressors.
- The cognitive behavioural therapist's reports dated April and May 2023 which also details the reason for Ms X being too unwell to work was due to workplace issues.
- A GP report dated May 2023 which reflects: “in my opinion she has severe mental distress due to her work circumstances and did require her certified time off sick”.

Given the totality of the evidence available to me, I'm persuaded that Unum has fairly concluded that it was the issues Ms X says she was having at work which were causing her to feel the way she was, including symptoms which are consistent with being depressed and anxious (for which she was prescribed anti-depressants and subsequently underwent counselling and CBT for).

Taking all of the evidence into account I'm satisfied that, during the deferred period, the main barrier to Ms X's return to work was the work-related issues she's described. And although work-related stress may have developed into a diagnosed illness towards the end of the deferred period, I'm satisfied that Unum has fairly concluded that it was still the work-related issues which were the cause of this.

There are GP certificates signing Ms X off work throughout the deferred period and beyond. But there's a specific term that needs to be met under the policy terms for incapacity to be established. I'm satisfied there isn't persuasive evidence that Ms X met this definition or that she was unable to work for another employer if the same work-related issues hadn't been present.

So, I'm satisfied Unum has fairly concluded that she could've worked elsewhere – as the underlying issues she says she was experiencing with her employer are unlikely to have existed if she was doing the same role at a different employer. And I'm satisfied Unum has reasonably concluded that Ms X hasn't established that she's 'incapacitated' throughout the deferred period.

If Ms X can provide Unum with further medical evidence from an appropriate medical specialist relevant to, or after the end of, the deferred period to support that it was because of illness she couldn't carry out the job she was doing for any employer (explaining why, and from what date), then Unum should reconsider the claim in light of this.

The way the claim was handled

Overall, I think Unum has handled the claim made on the policy fairly and reasonably.

I'm satisfied that it promptly progressed the claim and provided its decision to decline the claim within a reasonable timeframe. I'm also satisfied that it reasonably promptly addressed the appeal against the decision to decline the claim.

I also think Unum acted fairly by corresponding with the policyholder about the claim, rather than Ms X directly. That isn't unusual when a claim is made under a group policy, where the employer is the policyholder. Although Ms X was a member (and so, a potential

beneficiary) of the policy, the contract of insurance is between Unum and the policyholder.

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I invited both parties to provide any further information in response to my provisional decision for me to consider. Unum said it had nothing further to add. Ms X provided a detailed response to my provisional decision along with some documents.

In summary Ms X said:

- She had a history of depression to varying levels and had been on a downward spiral for at least three years with various contributors and triggers leading to an ultimate diagnosis. Unum didn't accurately consider her medical history or mental illness when making their decision.
- The medical evidence supports that she wasn't in a condition to undertake her role at the time (or look for another role).
- Her role wasn't sedentary. It required high cognitive demand and was high pressured. Ms X has provided her account of how her symptoms prevented her from doing the role and the impact of depression and anxiety. That includes low mood and motivation, social withdrawal, loss of purpose, rumination, avoidance and loss of trust in others.
- The argument that she could perform a similar role with a different employer doesn't consider the specific nature of her health conditions.
- Her diagnosis was confirmed by multiple GPs at her medical practice and supported by other medical professionals including a psychotherapist. At no point did Unum refer Ms X to a specialist for a thorough assessment of her capacity to work or request she attend an occupational health meeting.
- Long term exposure to workplace stress can lead to serious mental health issues. And Ms X's medical notes provide strong evidence that she's experienced severe depression, which had progressively worsened over time.
- At the time of completing the claim form she was emotive regarding things which were happening at the time.
- It's irrelevant to the decision to decline the claim that Ms X sought legal advice against her employer. She chose not to proceed with a legal claim or a formal grievance.
- During the vocational assessment dated January 2023 she didn't say that she was unable to "face work or environment" and has provided a transcript of the call she had at the time.
- The Equality Act 2010 is relevant to this complaint. If she had a physical injury or illness, it's highly unlikely that anyone would suggest that she should find another job to alleviate her symptoms. Expecting her to do so is unfair.
- Whilst she understands that Unum may not have been obligated to pay her whilst initially signed off sick with stress and hypertension, she requests that a claim be considered from a later date beyond the deferred period.

## **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.

At the outset, I'd like to thank Ms X for the detailed response she's provided to my provisional decision. I appreciate that this would've taken her a long time to complete. I acknowledge I've only summarised some of the points she's made – and in my own words.

I'm also not going to respond to each point. I hope she understands that 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 point to be able to fulfil my statutory remit.

It may also help to confirm that my decision focuses on whether Unum has fairly and reasonably concluded that Ms X didn't meet the incapacity definition contained in the policy terms during the deferred period which started in May 2022.

I know Ms X will be very disappointed but for reasons I'll go on to explain, the further points she's raised (some of which I had considered previously), haven't changed my mind. So, I don't uphold her complaint.

- It's clear from around the time Ms X was first signed off sick by her GP in 2022 (and beyond) that she wasn't well. However, I remain satisfied that the overall evidence supports that the underlying cause of her being off work were work-related issues she says she was experiencing, and these were also the main barrier for her returning to work at the time. Whilst she was subsequently diagnosed with depression and anxiety, from the medical evidence it was work-related issues which is said to have been the cause of this, or at least exacerbated her conditions at the time to the point that she wasn't at work.
- So, if Ms X had been employed in the insured occupation for a different employer at the time (without those same issues she'd been reporting at the time), I'm satisfied that it's more likely than not, that she would've been able to have carried out the material and substantial duties of the insured occupation. I'm therefore satisfied that Unum has fairly and reasonably concluded that she wasn't incapacitated throughout the entirety of the deferred period as defined by the policy terms.
- I'd like to assure Ms X that the reference to her seeking legal advice was only referred to as I think it's relevant in the context of whether it was work-related issues which were the barrier to her returning to work. However, even without this, and if I disregarded the specific conclusion with which Ms X disagrees in the vocational assessment report dated January 2023, I'm satisfied that the overall evidence supports that it was the work-related issues which were the cause of her being signed off sick from work and the main barrier to her returning to work. I think that is supported overall by the transcript of the call Ms X has provided from January 2023.
- I think that's also supported by what Ms X says in her response to my provisional decision: "Just as I was seeking a sense of stability, I was confronted with yet another major disruption at work. The condescending and dismissive behaviour exhibited by my new manager during the meeting, couple with the unreasonable

demand to make a life altering decision within a mere few hours, left me feeling trapped, unsupported, and bullied". And it was shortly after that meeting in July 2022 when she was diagnosed with depression and anxiety as confirmed in her medical records and the summary of her GP notes set out in my provisional decision (an extract of which appears above).

- Ms X has also referred to the Equality Act 2010 ('the Act'). It's not the role of the Financial Ombudsman Service to find whether a business has acted unlawfully or not (such as whether Unum has breached the Act) – that's a matter for the Courts.
- Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that I've taken a number of things into account including relevant law. For the purpose of this decision (and although I make no finding on this point), I've assumed that Ms X does meet the definition of disability set out in the Act. I've therefore taken the Act into account amongst other things when deciding what's fair and reasonable in the circumstances of the complaint as Ms X says she's experienced disability discrimination.
- For all the reasons set out above (including those contained in the extract of my provisional decision which forms part of this final decision), I'm satisfied that Unum has acted fairly and reasonably here in the way in which it's handled the claim (including its decision to decline the claim).
- So that everyone is clear, and to reassure Ms X, I've seen nothing to suggest that Unum has concluded that she should find another job to alleviate her symptoms. And I am in no way suggesting that either. I have a lot of empathy for the situation she finds herself in and I don't doubt that she's been through a very difficult time. However, there's a specific definition of incapacity that needs to be established under the policy terms. And I'm satisfied Unum has acted fairly by concluding this hasn't been established during the entirety of the deferred period in this case. That's based on all the evidence, and I've got no reason to doubt that this same approach wouldn't have been taken if Ms X was off work with a physical illness or injury.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms X to accept or reject my decision before 26 November 2024.

David Curtis-Johnson  
**Ombudsman**