

The complaint

Ms S complains that Unum Ltd has turned down an incapacity claim she made on her employer's 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.

Ms S was insured under her employer's group income protection policy. The policy provided cover in the event that Ms S was unable to work in her own occupation, as a result of illness or injury. The deferred period was 26 weeks.

Unfortunately, in early 2022, Ms S was signed-off work for a brief time. However, in late May 2022, she was signed-off work again and so her employer made an incapacity claim on the policy,

Unum requested medical evidence to allow it to assess the claim. It calculated that Ms S' deferred period would end in November 2022 and so it determined that Ms S needed to show she'd been incapacitated by an illness in line with the policy terms for the whole of the deferred period.

Having considered the medical evidence, it considered that Ms S' absence was down to work-related stressors and a grief reaction, rather than a clinically or functionally impairing mental illness. So it didn't think Ms S had met the policy definition of incapacity and it turned down her claim.

Ms S was very unhappy with Unum's decision and she asked us to look into her complaint.

Our investigator didn't think Unum had treated Ms S unfairly. She acknowledged that Ms S had been through a very difficult time. But she didn't think it had been unreasonable for Unum to decide that Ms S hadn't shown she met the policy definition of incapacity.

Ms S disagreed. In brief, she said she didn't know what further evidence she could have provided. And she questioned why Unum hadn't organised further assessments if more medical evidence had been necessary.

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 Ms S, I don't think it was unfair for Unum to turn down her claim and I'll explain why.

First, I'd like to say how sorry I was to hear about the very difficult time Ms S has gone

through and the upsetting circumstances of her claim.

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, amongst other relevant considerations, such as regulatory principles, the policy terms and the available medical evidence, to decide whether I think Unum handled Ms S' claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Ms S' employer's contract with Unum. As Ms S made an incapacity claim, I think it was reasonable and appropriate for Unum to consider whether her claim met the policy definition of incapacity. This says:

'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 their insured occupation.'

This means that in order for Unum to pay Ms S incapacity benefit, it must be satisfied that she had an illness or injury which prevented her from carrying out the material and substantial duties of her own occupation. And the policy also requires Ms S to have been incapacitated in line with the policy terms for the entire 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 Ms S' responsibility to provide Unum with enough medical evidence to demonstrate that an illness had led to her being unable to carry out the duties of her own occupation for the full 26-week deferred period between May and November 2022.

Unum assessed the evidence Ms S provided in support of her claim, including seeking the opinion of its clinical staff. While it sympathised with Ms S' position, it concluded that she wasn't suffering from a functionally impairing illness which prevented her from carrying out her role. Instead, it felt that Ms S was suffering with a reaction to work-related and personal, upsetting stressors. 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 completed by both Ms S and her employer. Ms S said she was off sick due to *'work related stress and anxiety caused by a lack of a role at work, lack of sleep and appetite'*. And Ms S referred to a bereavement.

Next, I've considered the GP records which were sent to Unum. Sadly, in April 2022, Ms S suffered a bereavement and she took a brief period of time off work before returning to her job. But in late May 2022, she was signed-off work again. The GP noted that following Ms S' bereavement, she'd been suffering from a worsening low mood and lack of purpose. They issued a fit note stating that Ms S was unfit to work due to 'low mood'.

In June 2022, Ms S was issued with a further fit note which said she was unfit to work due to low mood. The GP records say that during the appointment, Ms S and her GP discussed an entirely separate medical condition Ms S already had.

Ms S requested a fit note extension in July 2022, which was granted. She had a further appointment with a GP in September 2022, The GP's notes refer to Ms S having a *'stress-related problem'*. The notes refer to Ms S' earlier bereavement, state that she was undergoing therapy and that her mood had been *'up and down'*. A fit note was issued which said that Ms S was unfit to work due to a stress-related problem/low mood.

Subsequently, in early October 2022, Ms S spoke with the GP again and another fit note

was issued which stated that Ms S was signed-off with low mood. Sadly, around this time, Ms S suffered a further personal bereavement. And further fit notes were issued in late October and November 2022, which also said Ms S had been signed-off with low mood.

The GP notes don't suggest that Ms S had been prescribed with medication; that she'd been referred for secondary care or that she'd been formally diagnosed with depression during the deferred period. The notes do show that during the deferred period, Ms S had consultations with her GP about other conditions and her personal situation.

Ms S' GP provided a further letter, dated 1 March 2023, in support of her claim. They said:

'I can confirm Miss S has been suffering from severe reactive depression since April 2022. She has been attending regularly private psychotherapy and she was offered medications Her PHQ is 24 (see attached) confirming severe depression, she has been referred to continue psychotherapy via NHS. At present she declined medications but she will review and consider this if no improvement, she is on regular primary care follow-up and secondary care involvement is not necessary at present.'

And Ms S also provided copies of her notes from her therapist. I've summarised below the notes I think are most relevant:

In June 2022, the therapist noted that Ms S had spoken about her work and how'd she been signed-off. The notes also refer to allowing Ms S' natural grief prior to deciding if she felt she really was depressed and needed medical support.

Subsequently, it seems the therapist spoke with Ms S on a number of occasions, and that they discussed Ms S' low self-esteem; grief, lack of motivation and having time to heal. In November 2022, the therapist noted that Ms S' mood was low due to work-related concerns and that they'd explored sadness and disappointment about work-related issues.

Ms S was also assessed by occupational health (OH) and I've carefully considered the relevant reports. In October 2022, the OH doctor stated:

'(Ms S) has been experiencing some psychological strain in response to reported work related issues. She has also experienced some bereavement type reactions. She is currently unfit for work.'

The OH doctor added: *'She is receiving appropriate input but ideally does need a resolution to the current work situation as soon as possible for her to be able to move on and recover more fully.'*

And in December 2022, the OH doctor reported: *'(Ms S) continues to remain unfit be in work whilst managing difficulties with her mental health.... she is being appropriately supported outside of work but ideally does need a resolution to the reported work issues for her to be able to move forwards.'*

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 this 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 Ms S was suffering from symptoms which can be indicative of a significant

mental health condition. And I'm mindful that Ms S' GP has now said that she was suffering from severe depression from April 2022 onwards.

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 Ms S' complaint. For the majority of the full deferred period, Ms S' GPs noted that she was suffering from low mood. They didn't conclude in either the fit notes or their records that Ms S had depression or anxiety during that period. The GP instead listed the personal stressors Ms S was experiencing. The OH report specifically refers to Ms S' work-related problems being her main barrier to work. And I don't think her therapist has suggested that Ms S is suffering from a diagnosed mental health condition either. Nor do I think the medical evidence explains why Ms S would be incapacitated from carrying out the material and substantial duties of her role as a result of her illness.

As such, taking into account the totality of the medical and other evidence available to Unum when it assessed this claim, I think it was reasonable for it to conclude that the evidence showed that during the deferred period, Ms S was suffering from an understandable reaction to the very difficult work situation in which she found herself and the grief reaction she'd experienced. And that the main reason for Ms S' absence during the deferred period was likely a reaction to her personal situation as opposed to a mental or physical health condition.

I note that Ms S is unhappy that Unum didn't organise a health assessment for her, if it didn't feel she'd provided enough medical evidence to support her claim. In some circumstances, an insurer might organise a form of independent assessment or examination for a policyholder to help it to consider a claim. But there's no requirement for it to do so. And in this case, I don't think Unum acted unreasonably when it concluded that it already had enough evidence to make a claims decision.

On this basis then, I don't think it was unfair for Unum to conclude that Ms S' absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that her absence was more likely due to work stress and a grief reaction to her situation.

I'd like to reassure Ms S that I'm not suggesting that she was fit for work. I appreciate she was medically signed-off. And I understand she's been through a very difficult time. But I need to decide whether I think she's shown she met the policy definition of incapacity for the whole of the 26-week deferred period. As I've explained, I don't think she has.

Overall, despite my natural sympathy with Ms S' position and while I'm sorry to cause her further upset, I don't find it was unfair or unreasonable for Unum to turn down her claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 30 December 2024.

Lisa Barham
Ombudsman