

The complaint

Mr K has complained that Unum Ltd has declined a claim he made under his employer's group income protection policy.

What happened

Mr K's policy provides cover for Mr K's own occupation. Benefit will be paid after a deferred period of 104 weeks if the policy definition of incapacity is met.

In June 2021 Mr K went off work due to ill health. He reported that he suffered from severe depression, generalised anxiety disorder, panic disorder as well as neuropathy, multi-level degenerative disc disease, migraine, fatigue, short- and long-term memory, poor concentration, insomnia, back pain, nerve pain, drowsiness and dizziness. Mr K said all these conditions had deteriorated to a point that he was no longer able to perform his insured occupation.

During the absence period Mr K was referred for various occupational health (OH) assessments by his employer. These assessments confirmed that he was unfit for work so his employer made an incapacity claim on its income protection insurance policy. Unassessed the available medical evidence. It didn't conclude there was sufficient medical evidence to show Mr K had met the policy definition of incapacity.

Unhappy Mr K referred his complaint to our service. The investigator didn't recommend that it be upheld. He didn't conclude that the medical evidence showed Mr K's conditions had deteriorated to the extent that he met the policy definition of incapacity.

Mr K appealed. I issued a provisional decision saying as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've summarised the background to this complaint and some sensitive details, no discourtesy is intended by this. Instead, I'll focus on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.

The relevant regulator's rules say that insurers mustn't turn down claims unreasonably. I've taken the rules into account, together with other relevant considerations, such as industry principles and guidance, the policy terms and the available evidence, to decide whether I think Unum treated Mr K fairly.

It is not for me, or this service, to make a medical decision, we are not medically qualified to do so. But I have considered all the evidence and submissions in order to determine whether Unum has fairly assessed Mr K's claim. I won't repeat the evidence here – it has been seen by the parties. But having done so I am not presently persuaded that Mr K has been treated fairly. I'll explain why:

- *There is no dispute that Mr K has several challenging health conditions, but it is for him to show that he meets the policy definition of incapacity. This means that he needed to show that he was incapacitated during the 104-week deferred period and beyond. The period ran from June 2021 to June 2023. The occupational health reports (July 2021, December 2021, May 2022, October 2022 and February 2023) are good evidence that Mr K was incapacitated for the most part of that period. The February 2023 report found that Mr K was unfit for work and that this was unlikely to change for the foreseeable future. Although it seems unlikely that Mr K experienced a significant upturn in his health following the February 2023 report, I am not minded to require Unum to admit his claim at this stage as there is limited independent medical evidence of Mr K's ongoing incapacity during the last months of the deferred period. I do find though that Mr K's own testimony is evidence of his ongoing difficulties.*
- *I haven't disregarded the cognitive assessment Mr K had in February 2023 had reassuring results. But this was one assessment and in the same month that the occupational health physician found Mr K unfit for work. I note too that a full neuropsychology evaluation was recommended, although if it took place it seems that this was post Unum's decline of Mr K's claim. I also find little relevance in the fact that Mr K is able to carry out daily tasks, that is not the test of incapacity for benefit to be paid.*
- *However this is a complicated claim, firstly because Mr K suffers with several medical conditions. Unum has considered, to some degree, each of those conditions. But the only physician who considered Mr K's claim holistically was the occupational health doctor. They considered the overall effect of his conditions and the medications he takes for them on his capacity to carry out his insured role. In particular the effect of the medication on his memory and cognition. There is some evidence from Mr K's treating physicians abroad, but Unum hasn't specifically asked or had answers, about the impact of his conditions/medications on his ability to perform his role. A second complicating factor is that during the deferred period Mr K moved from one city to another, and it seems he didn't therefore have continuity of care.*
- *In order to gain a complete picture of the impact his conditions and medications have on Mr K's ability to carry out his insured occupation I presently find it would be fair and reasonable for Unum to commission an independent medical report. Unum should then reassess Mr K's claim in the light of those findings. I should say I am satisfied from the evidence I have seen that Mr K suffered from significant ill health, particularly mental ill health, during the deferred period. But independent evidence as to whether Mr K met the policy definition of incapacity for the last few months and beyond is missing.*

My provisional decision was that I upheld the complaint and was minded to require Unum to commission an independent medical report and to reassess Mr K's claim in the light of that report.

I invited both parties to respond. I will summarise the responses.

Unum agreed in principle but said it wanted to ensure it was clear on what was being asked. It noted that the report would be dated long after the deferred period so wouldn't offer any contemporaneous evidence. Unum highlighted that the deferred period was 29 June 2021 – 27 June 2023 and so it said that it was unsure how arranging such a report would resolve the complaint and welcomed my comments as it wanted to ensure that its actions were productive and did not inconvenience Mr K unnecessarily.

Unum said that throughout the claim investigation the medical evidence was reviewed by

two separate medical advisors who commented on Mr K's cognitive ability. Additionally it pointed out that the burden of proof to evidence the claim is on Mr K, it was not for Unum to obtain potentially supportive evidence.

It noted too that given the time that had elapsed it was unable to consider a later claim under the policy's relapsing or deteriorating conditions.

Mr K also accepted my provisional decision. He was concerned that the report was prepared by someone that had knowledge of what his role was and of the actual and possible consequences that could result from a single instance of impaired performance. For this reason, he believed that the most relevant information in his record came from the occupational health doctor with whom he met multiple times. He felt that this doctor and his reports were the most relevant because of the holistic nature of his assessments made in light of an understanding of his role. Mr K was concerned that Unum hadn't assessed his claim with an understanding of his role. He felt with such an understanding it wouldn't have specifically noted that he was able to perform daily tasks. He was concerned that Unum may again apply inappropriate and or irrelevant standards.

Mr K commented that he did not think Unum had a current and accurate list of his medications. He felt too that any answers given to a neurologist now with regard to questions of memory and cognition would be completely different to the answers given in the 2023 assessment. Mr K gave examples of issues he now experiences.

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.

I'm grateful to the parties for their responses. As both parties agree in principle, I see no reason to change my provisional findings, which I adopt here.

Unum has pointed out that the deferred period came to an end in June 2023 – it is not in dispute that it is the 24 months before this that are relevant in order to determine whether Mr K had a valid claim. I also agree that it is for Mr K to prove his claim – not the other way round. As I indicated there is a good deal of evidence that does support Mr K – but I found some independent evidence for the last few months was needed. Of course it is not for Unum to obtain potentially supportive evidence, but if it does so whilst assessing a claim then that would give weight to a claim's validity and may well result in a claim being accepted.

I appreciate that the deferred period has long passed so the assessor will be looking at historic reports. To this end I am sorry if I misled Mr K in the final bullet point of my provisional decision where I said: *In order to gain a complete picture of the impact his conditions and medications **have** on Mr K's ability to carry out his insured occupation I presently find it would be fair and reasonable for Unum to commission an independent medical report Unum should then reassess Mr K's claim in the light of those findings. (my emphasis).* '**Have**' should have been '**had**' because what is of relevance is the medications that Mr K was taking during the deferred period, a current list will not necessarily be relevant for that period. Likewise, and although I was sorry to note Mr K's recent cognitive issues, what the assessor will be considering is evidence of incapacity during the deferral period.

I do appreciate that Unum wants to be clear on what is being asked and wants to ensure its actions are productive. However it is very experienced in assessing medical claims of this nature. I trust that, with reference to why I felt a reassessment was necessary, it will do so fairly ensuring the assessor is fully aware of Mr K's insured role and what it entailed, and by

asking an appropriately qualified physician to report taking all Mr K's conditions and medication at the relevant time into account.

My final decision

My final decision is that I uphold this complaint. I require Unum to commission an independent medical report and to reassess Mr K's claim in the light of that report.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 20 February 2025.

Lindsey Woloski
Ombudsman