

The complaint

Mr O has complained that Unum Ltd declined his claim for income protection benefit made under his group income protection policy.

What happened

Mr O made a claim, after he was absent from work in February 2022 due to insomnia, low mood, listlessness and concentration issues. His policy has a 28-week deferred period.

Unum had already considered a claim for an initial deferred period from February to August 2022, that it declined. A complaint was then referred to our Service, which wasn't upheld as the ombudsman felt Unum had fairly assessed the claim.

Unum then assessed further evidence Mr O had to support that he'd had a deterioration in his health. However, Unum said that any deterioration occurred after his employer left Unum's scheme in September 2022, so it wasn't a valid claim.

Another complaint was referred to our Service about this, and a final decision was issued. The ombudsman said that Unum should reconsider the claim and begin the deferred period when the evidence supported that Mr O's symptoms began to deteriorate.

Unum considered the medical evidence available for a new claim period prior to the policy ending in September 2022. However, it didn't conclude that there was a later period that medically supported a valid claim prior to the policy terminating.

Unhappy, Mr O returned to this Service. Our investigator didn't recommend that his complaint be upheld. Mr O appealed.

I issued a provisional decision saying as follows:

Although I've summarised the background to this complaint no discourtesy is intended by this. Instead, I've focused 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.

I've considered all the available evidence and arguments including Mr O's response to the investigator's view, to decide what's fair and reasonable in the circumstances of this complaint. Having done so I'm minded to uphold it, I'll explain why:

- *Mr O's policy provides:*

Further claims if the member does not return to work

If we decline or stop paying a claim because the member does not meet the definition of incapacity, but the member does not return to work, you can submit a new claim if their condition worsens, or if they suffer a new condition within a year from our policy decision.

- *There is no dispute that Mr O suffered from conditions including fibromyalgia and depression in 2022, but it has already been concluded that it wasn't unfair for Unum to find that these conditions didn't evidence that Mr O wasn't able to work in his insured occupation during the deferred period ending in August 2022. But Mr O didn't return to work so in accordance with the decision of a second colleague, I've looked carefully at the medical evidence in order to see if it was fair for Unum to conclude that this evidence didn't indicate a deterioration prior to September 2022.*
- *I won't detail the medical evidence in full here, as it has been seen by the parties. There is evidence from a psychiatrist, whom I'll refer to as Dr A, dated August 2022 and February 2023. But these reports don't mention a deterioration in symptoms.*
- *Following an Emotional Wellbeing Assessment, a report dated 25 August 2022 was issued. The conclusion was that Mr O was suffering from symptoms commonly associated with moderate anxiety and moderately severe depression resulting in a severe impairment in functioning. It said that Mr O's reported experiencing his difficulties for the past 2.5 years. The main reported problem was low mood and sleep difficulties. Although there is nothing in this report which specifically points to a deterioration in Mr O's symptoms prior to the date the report was written, the assessor did decide to make a referral for cognitive behavioural therapy (CBT) and noted that Mr O had found previous therapy was helpful for mood-related difficulties.*
- *However I've seen the reports from another psychiatrist, I'll refer to as Dr P. In a report dated 2 September 2022 he does write that Mr O reported a deterioration in the two months prior to seeing him. He said that Mr O had all the features of a severe depressive episode and an additional diagnosis of generalised anxiety disorder. Dr P changed the medication he was taking and wanted to review him in three weeks.*
- *I've considered the evidence with care and having done so I don't find it was fair for Unum to conclude that there was no evidence of deterioration prior to September 2022. I say this as Dr P notes that Mr O reports a two-month deterioration and on this basis he changed Mr O's prescription. It seems to me that he could have taken a 'wait and see' approach – particularly as he was aware that Mr O was about to embark on a course of CBT. But instead it seems he felt that the seriousness of Mr O's condition warranted a change at that time. I do appreciate that by this date the policy had come to an end. But as the treating psychiatrist accepted Mr O's reporting of deterioration within the period of cover, I am persuaded that Unum should have too. And having seen the earlier medical evidence, the diagnosis in this report does indicate a mental health decline.*
- *Overall therefore I'm persuaded that there is evidence of deterioration in Mr O's condition during the deferred period before the policy came to an end. This alone doesn't demonstrate that the policy definition of incapacity has been met, but I'm satisfied that Unum should now reconsider the claim with the deferred period commencing from the deterioration in Mr O's health. It is difficult to pinpoint precisely when that deterioration commenced, but it wouldn't seem unreasonable to deem it to be 2 August 2022.*
- *I'm sorry that this matter has gone back and forth, and this decision still doesn't mark the end of the claim process. Unum already has some medical evidence for the period beyond August 2022 but any additional diagnoses or medical evidence Mr O has can be shared with Unum in order for it to assess Mr O's claim.*

I invited the parties to respond to my provisional decision, but said that unless the information changed my mind, my final decision was likely to be along the same lines.

Both parties responded. In summary Mr O said that the previous ombudsman had already requested that Unum review the deferred period, but it didn't do so.

Unum on the other hand said that as required by the previous decision, it had considered the evidence and tried to establish whether a deferred period could begin prior to 1 September 2022 when the policy terminated. It felt that my provisional decision also somewhat contradicted the first decision in this matter, which didn't uphold the complaint. So it felt that to require it to do this again, with no materially new evidence available since its most recent response of August 2024, would unnecessarily protract the process further.

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 I'm not persuaded to change my provisional decision and I adopt the reasoning here.

I accept that as required by my colleague in the previous decision in this matter Unum *did* reassess the claim in order to determine whether or not there had been a deterioration in Mr O's health *prior* to the policy terminating. My provisional decision was that I didn't agree with the conclusion Unum had reached. I was satisfied that the evidence did support a deterioration prior to 1 September 2022 and I identified that evidence. I thought it was not unreasonable to take the date to be 2 August 2022.

I don't see this as a duplication, as Unum previously considered no deterioration prior to the policy end this meant that it wasn't obliged to consider the evidence after this date. I now require it to do so.

It may be Mr O wishes to submit further evidence for consideration. In response to my provisional decision, he asked whether it would be helpful for Dr P and Dr A to clarify his inability to work in 2022 to provide additional context. He also queried whether this service would take into consideration additional reports by medical professional/expert medico-legal agencies. It is open to him to send in any material new additional evidence in support of his claim to Unum.

I acknowledge this has been a rather protracted claim, and I'm sorry that this is so. But I remain of the opinion that this represents a fair and reasonable outcome in the circumstances.

My final decision

My final decision is that I uphold this complaint and require Unum to assess Mr O's claim taking the deferred period to commence on 2 August 2022.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 March 2025.

Lindsey Woloski
Ombudsman