

The complaint

Mr H is unhappy Unum Ltd declined his claim.

What happened

Mr H has a group income protection policy through his employer underwritten by Unum.

He became absent from work in November 2021 due to a problem with his back and returned to work in January 2022. He was then absent again from February 2022 until April 2022 for the same condition.

In August 2022 Mr H became absent again due to symptoms of stress, low mood and poor sleep. He was referred to a psychiatrist in September 2022 and explained he was experiencing difficult workplace issues dating back to June 2020, which involved complaints, grievances and appeals. He was diagnosed with adjustment disorder in response to his stressful workplace situation. And prescribed medication to help him sleep.

Mr H submitted a claim to cover his absence from August 2022 for depression and anxiety. Unum reviewed the available medical evidence which went up to January 2023, and referred the matter to their Chief Medical Officer (CMO) for a medical assessment. The CMO didn't think there was enough evidence to support incapacity under the policy terms, so the claim was declined in March 2023.

In June 2023, Unum receive additional evidence from Mr H's psychiatrist and a letter from his General Practitioner (GP). Both opinions said his adjustment disorder developed into a clinical depressive episode from December 2022. So Unum agreed to reconsider the claim from this point and asked his psychiatrist to provide the rest of his notes for Mr H's treatment from December 2022 onwards.

The deferred period on Mr H's policy is 26 weeks so Unum assessed if Mr H met the definition of incapacity from December 2022 until June 2023. Unum assessed the new medical evidence provided but concluded Mr H had still not met the definition of incapacity because his symptoms were still reported to be triggered by issues with his employer. So, the claim was declined again.

Unhappy with this Mr H complained and then referred the matter to this Service. Our investigator looked at what had happened and thought Unum had declined cover fairly because the evidence from the deferred period supported his barrier to returning to work was an employment issue.

Mr H didn't agree. In summary he said:

- If he wasn't mentally unwell, he would have returned to work and been able to fulfil his duties.
- There were workplace issues which likely contributed in causing his mental illness, but it was the illness itself which rendered him incapacitated.
- Under the policy terms it is his illness that is relevant, not the cause of the condition.

- His symptoms didn't only appear when he attempted to work, they were always present.

He provided an additional report from his treating psychiatrist dated October 2024. Our investigator forwarded this report on to Unum for their consideration.

Unum said whilst it was clear the treating consultant supports Mr H's appeal the new evidence didn't change their position. They noted the report was two years after the deferred period and it largely repeated information that they'd already considered as part of the claim, so they didn't think it added much to their understanding of Mr H during the deferred period.

Our investigator agreed. She didn't think the new report included any new evidence about Mr H's condition during the deferred period.

Unum recently informed us that they've now accepted Mr H's claim for a later deferred period in 2024, for a separate medical issue (unrelated to his mental health).

The case was then passed to me for a decision. I issued a provisional decision explaining that I was intending to partially uphold this complaint. I said:

The policy terms say:

"The member is incapacitated if Unum is satisfied that the member is:

- (a) unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation, and is*
- (b) not performing any occupation..."*

Material and substantial duties defined as:

"...duties that are normally required for the performance of the member's insured occupation".

This means we expect an insurer to consider the generic duties of that occupation, rather than the consumer's specific job. So Unum's assessment was based on Mr H being incapacitated from undertaking the duties of his job for any employer, not just his current one. And the incapacity must have been due to illness or injury, and not for any other reason.

It's not disputed that Mr H's symptoms were triggered by issues within his specific workplace. It's difficult in this particular case to strip out the workplace issues from Mr H's condition because they are so closely entwined. Sadly, his workplace issues have been going on prior to and throughout his absence. And at the time Unum declined his claim I don't think there was enough evidence to support he would still be suffering from his illness if his workplace issues resolved.

Mr H's treating psychiatrist, psychologist and occupational health therapist all said Mr H was unfit to work "until his workplace issues are resolved". The psychiatrist and psychologist both agree his workplace issues were at the centre of his symptoms and absence. Their records are detailed and persuasive in relation to the barriers to Mr H's return to work. So I think it was reasonable for Unum to give significant weight to Mr H's treating medical practitioners opinions that were consistent with one another.

The evidence Unum had at the time they declined cover suggested its most likely Mr H wouldn't have felt the same if the work-issues were resolved, or if he worked in his same role but for a different employer where the issues didn't exist.

I'm also mindful that in April 2023 Mr H attended an occupational health assessment where he said himself he felt he was able to return to work. He compiled a list of reasonable adjustments that would be required by his employer in order to make this happen. These included a change in manager and department, removing the requirement for him to hit goals and objectives, and adjusting his previous year's performance rating so he wasn't disadvantaged due to his disability.

It appears these adjustments weren't taken forward by his employer, and Mr H remains unhappy with how he's been treated by them. But ultimately this is an employment matter, and absence caused by employment issues isn't something that's covered under his income protection policy.

Based on the evidence Unum had at the time of the decline, I'm persuaded it was reasonable for them to conclude it was likely Mr H would be able to perform the duties of his role, if it wasn't for his issues with his employer.

Mr H's medical health during the deferred period

In addition to proving that it is his illness preventing him working, Mr H must also show that his illness was so debilitating he was unable to perform the duties of his role. So I've carefully considered his mental health and the treatment he was receiving during the deferred period from December 2022 to June 2023.

Mr H has been receiving ongoing psychiatric input since September 2022 and psychological support since November 2022. He's been prescribed with a steady stream of increasing and changing medication throughout his absence and received high PHQ – 5 and GAD- 7 scores.

In December 2022 Mr H was initially prescribed a low dose of antidepressants. Then in February 2023 there is a standard gradual initial increase to his dosage. It isn't uncommon for anti-depressant type medication to be prescribed to relieve symptoms of stress. But, I would expect Unum to consider if there had been any increase in medication over time which could suggest the presence of an underlying mental health condition.

In April 2023 his medication was changed to a different type of antidepressant. However, having reviewed the psychiatrist notes, it seems this change was requested by Mr H rather than medically advised. So I don't think the medical intervention Mr H received was enough to support his symptoms had deteriorated into an underlying health condition.

It's also recorded that Mr H requested more frequent appointments with his psychiatrist. The psychiatrist explained he usually sets appointments when they would be clinically useful and if he sees Mr H more frequently it would be more to catch up and provide support. Mr H said he still wanted more frequent appointment, so they continued on a monthly basis. As such I'm less persuaded all his appointments were medically necessary and it wasn't unreasonable for Unum to add less weight to the frequency of these sessions.

It's important to note in April 2023 Mr H confirmed himself that he felt able to return to work if his employer made reasonable adjustments. I think it was fair for Unum to give this evidence significant weight to show Mr H wasn't incapacitated for the duration of the deferred period.

I'm persuaded that the evidence available to Unum at the time they declined cover suggested Mr H's symptoms were due to stress from his difficult circumstances at work. And there wasn't enough medical intervention from December 2022 to June 2023 to support the development of a significant mental health condition, causing incapacity during the deferred

period.

I want to assure Mr H that I've thought carefully about his reported symptoms and how this could have impacted his line of work and cognitive function. But given the lack of medical evidence over the deferred period to support he has a mental health illness severe enough to prevent him from doing his duties, in addition to the presence of his workplace issues before his absence, I'm not persuaded there was enough evidence to show he met the definition of incapacity when Unum declined the claim.

The additional psychiatrist report provided in response to our view

The additional report provided by Mr H's psychiatrist's goes into detail about how Mr H's symptoms impact his cognitive function and ability to work in his role. It also confirms a further increase to his medication and treatment from June 2023, including a combination of high dosage depression and anxiety medication. And a more recent referral for repetitive Transcranial Magnetic Stimulation (rTMS), a brain stimulation treatment for treatment-resistant depression.

Unum has said they're unable to rely on the new report from Mr H's psychiatrist because its two years after the claim. But he was treating Mr H throughout his absence and has continued to treat him, so I think he is best placed to provide a report on the development of Mr H's condition over time. The psychiatrist has confirmed he compiled this report from his own notes from the sessions they had at the time. So I think Unum can fairly rely on the content of the full report.

I think it's reasonable to conclude from this new evidence that Mr H's condition appears to have continued to deteriorate over time and become more debilitating. So I think it's fair for Unum to reassess this claim taking into account the new evidence that shows a deterioration in his health and change in treatment.

The psychiatrist also confirms:

"Given the extended period with which Mr H has now suffered with depressive symptoms and their failure to respond to treatment, it is highly likely that these symptoms are now entrenched and would persist even if his workplace issues were resolved."

Unum should carefully consider this opinion from Mr H's treating psychiatrist that he now believes it's likely Mr H's symptoms would remain even if his workplace issues were resolved.

I explained I intended to partially uphold the complaint and recommended Unum reassessed Mr H's claim with the new evidence provided by his treating psychiatrist, subject to the policy terms.

Responses to my provisional decision

Mr H accepted my recommendation and provided further medical reports for Unum to consider as part of their reassessment of his claim.

Unum disagreed that they should reassess the claim. In summary they said:

- They'd already read and considered the new report from the consultant, but they didn't think it changed anything.
- The report on its own, does not improve their understanding of Mr H's functional or cognitive capacity during the deferred period.

- All the contemporaneous evidence has already been considered and there is no additional contemporaneously available evidence during the deferred periods to definitively support incapacity.
- If they are bound to reassess the claim, then their assessment would be solely reliant on the new report.
- They understand that an individual's mental health can change over time so they provided reassurances that during future reviews of Mr H's current payable claim for a different condition, they would also consider any change in Mr H's mental health.

I must now reach a final decision.

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.

The relevant rules and industry guidelines say Unum has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

I've taken into account the further submissions from Unum, but they've not changed my thoughts about the outcome of this complaint. I'll explain why.

As explained in my provisional decision, I think the report from Mr H's treating psychiatrist dated October 2024 goes into detail about how his symptoms impact his cognitive function and ability to work in his role. And I don't think Unum gave this evidence fair consideration in the circumstances.

When our investigator provided Unum with a copy they said the report was two years after the deferred period and it largely repeated information that they'd already considered as part of the claim, so it didn't change their position. But I disagree that is a fair reflection of the content of the report.

The psychiatrist details a further increase to Mr H's treatment and medication from June 2023. This included a combination of high dosage depression and anxiety medication, which suggests the presence of a fairly severe mental health condition. There is also mention of a more recent referral for repetitive Transcranial Magnetic Stimulation (rTMS), which is a brain stimulation treatment for treatment-resistant depression.

I don't think Unum fairly considered or commented on this significant increase in the treatment Mr H was receiving.

My provisional decision also explained why I don't think it was reasonable for Unum to say they're unable to rely on the new report because it was dated two years after the claim. The psychiatrist has been treating Mr H throughout his absence, so I'm satisfied he is best placed to provide a report on the development and progression of Mr H's mental health condition over time.

The psychiatrist confirmed he compiled this report from a record of the notes he took during the sessions at the actual time they happened. So I think Unum can fairly rely on the content of the report and the psychiatrist's medical opinion on Mr H's condition at the start of and during his absence.

The psychiatrist also confirms:

“Given the extended period with which Mr H has now suffered with depressive symptoms and their failure to respond to treatment, it is highly likely that these symptoms are now entrenched and would persist even if his workplace issues were resolved.”

Unum declined the claim on the basis they believed Mr H's absence was caused by workplace issues rather than an illness. As the psychiatrist now reports it's likely Mr H's symptoms would remain even if his workplace issues were resolved I think Unum needs to fairly consider and comment on this medical opinion that disputes their position on the cause of the absence.

I think it's reasonable to conclude from this new evidence that Mr H's condition appears to have continued to deteriorate over time and become more debilitating. So I think it's fair for Unum to reassess this claim and comment on the deterioration in his health and change in treatment.

I note Unum has said that if they have to reassess the claim, then their assessment would be solely reliant on the new report. But I don't think this is fair. I expect Unum to carry out a full reassessment of Mr H's claim and fairly consider any medical evidence that provides an opinion about his mental health condition throughout his absence. This includes the new medical reports Mr H provided in response to my provisional decision.

I appreciate Unum's reassurance that they will consider any change in Mr H's mental health as part of their reviews for his current payable claim for a different condition. But this doesn't change my opinion that Unum still need to reassess Mr H's claim for his mental condition for his absence from 2022, in light of the new evidence he has provided.

Putting things right

Unum Ltd need to put things right by:

- Reassessing Mr H's claim for mental health, taking account of and commenting on the new evidence provided by his treating medical practitioners, subject to the policy terms.

My final decision

I uphold this complaint in part against Unum Ltd and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 April 2025.

Georgina Gill
Ombudsman