DRN-5563108

The complaint

Mr A complains that Unum Ltd declined a claim under an income protection policy.

What happened

Mr A is covered by a group income protection policy which is provided by his employer. The insurer is Unum. The policy pays a monthly benefit if Mr A is incapacitated as per the policy terms, and it includes insured occupation cover with a 26-week deferred period.

Mr A was off work since 5 May 2023 due to burnout, depression and anxiety. He made a claim under the policy for an income benefit. However, Unum declined the claim. In short, it said the evidence didn't support a functional impairment or limitation associated with Mr A's mental health difficulties. Unum said the difficulties Mr A had reported related to perceived work-related stress and difficulties with a colleague.

Mr A disagreed with Unum's interpretation of the evidence. In short, he said his mental health impacted his work more than the other way around. Overall, he didn't think Unum had fairly assessed his claim. So, he brought a complaint to this Service.

One of our investigators looked into what had happened. Having done so, he didn't think Unum had acted unfairly or unreasonably when it declined Mr A's claim, for the reasons it did.

Mr A didn't agree with our investigator's findings, and he sent further evidence in support of his complaint. This included fit notes from his psychiatrist, who had signed him off sick due to depression and anxiety. He also sent a new letter from his psychiatrist commenting on his ability to work.

Our investigator sent this to Unum for comments, and it said this didn't change its position. Ultimately, Unum said Mr A maintained a good level of functional capacity outside of work, suggesting his condition wasn't globally impairing. Unum didn't think Mr A had provided any new information as to how he was incapacitated as a result of a mental health condition of such severity that prevented him from performing his insured occupation.

As no agreement was reached, the complaint was passed to me to decide. I Issued my provisional decision on 2 May 2025 – here's what I said:

"Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr A's complaint.

Policy terms

It's for Mr A to show that he has a valid claim under the policy. To do so, he needs to provide evidence to show he was incapacitated, as per the policy terms, for the duration of the deferred period – between 5 May and 3 November 2023 – and beyond.

The policy provides cover for "insured occupation", and the terms include the following definitions:

> *"**Insured occupation cover***
>
> *A member is incapacitated if they are unable to perform the material and substantial duties of their insured occupation because of illness or injury."*
>
> *"Insured occupation means the trade, profession or general role that the member was actively undertaking for you immediately prior to incapacity.*
> *[…]*
> *For the insured occupation cover definition of incapacity, material and substantial duties means 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. The insured occupation does not include:*
> *[…]*
> - *Any trade, profession or general role undertaken by the member other than for the employer."*

Based on the above, I think Mr A's policy included cover for his own occupation, with his employer. So, for a valid claim, Mr A needs to show he was unable to perform the material and substantial duties of his occupation with his employer because of an illness or injury.

Neither party has provided a copy of Mr A's job description. But Mr A has explained that his role required high-level cognitive function, effective communication with senior leaders, and the capacity to meet demanding deadlines. Considering his job title and employer, I see no reason to doubt what Mr A has said.

<u>Medical evidence</u>

Firstly, Mr A has provided fit notes from 28 July 2023 onwards. These were largely for depression and anxiety, and they were signed by his psychiatrist. Mr A says the fit notes prior to this were provided by a GP.

- *GP notes*

Mr A had appointments with a GP on 22 May, 6 June and 19 June 2023. In the first one, Mr A reported feeling stressed, anxious, low in mood or depressed, tearful, irritated, overwhelmed and suffering from panic attacks. He also reported having issues with sleep, difficulty concentrating, loss of energy and lack of motivation.

The GP noted Mr A had met with a counsellor at work who had suggested he took some time off as he was having burnout symptoms. Mr A had experienced burnout previously due to issues in his personal life. The GP gave a suspected diagnosis as anxiety and burnout and issued a fit note.

In the next appointment the GP noted Mr A was experiencing similar symptoms again and increasing anxiety levels. Mr A had completed 3 out of 4 cognitive behavioural therapy ("CBT") sessions with his counsellor. Mr A felt very irritable and burned out. The GP noted Mr A said he had a high-pressured job and felt that he would not be able to be rational at work because he lost his temper very easily. Mr A said he was going to the gym and walking the dog, and his sleep varied. But he reported feeling in "fight or flight" with a short fuse and tearful. The GP issued a fit note for stress.

In the last GP appointment on 19 June 2023 Mr A had noted some improvement but still felt he was snappy and anxious. The GP noted a suspected diagnosis of a generalised anxiety disorder.

- *Occupational health reports*

An Occupational Health Advisor carried out a review of Mr A's fitness for work on 3 July 2023. Mr A reported a history of recurrent symptoms of stress and anxiety, and he said his therapist felt he may have advanced burnout. Mr A thought workplace issues had been contributory, and he said his cognitive function was impacted and he was struggling at work.

Mr A reported feeling anxious, his mood patterns reduced, he lacked motivation, his appetite was impacted and sleeping patterns disrupted. The advisor thought Mr A wasn't fit for work. They also said a resolution of workplace issues was likely to help improve the symptoms.

Another occupational health review was carried out on 8 August 2023, this time by a doctor. They noted that Mr A's mood was impacted by his sleep patterns, he had ongoing feelings of irritability, and his concentration was impaired. Mr A had also recently seen a psychiatrist, who referred him to a clinical psychologist. The doctor didn't think Mr A was fit for work.

The same doctor reviewed Mr A again on 26 September 2023. They noted that Mr A had been engaging in talking therapies weekly with a psychologist, and also had a review with the psychiatrist. Mr A reported his stress levels as being high, his motivation low and concentration affected. The doctor didn't think Mr A was fit for work.

The next review was on 8 December 2023. The doctor noted Mr A had increased the frequency of his sessions with the psychologist due to a deterioration in his symptoms. The doctor referred to the psychiatrist's reported dated 1 December 2023, and noted that Mr A's mood was low, he lacked energy and concentration, his short-term memory was reduced and he wasn't able to undertake all the activities of daily living.

The doctor said there were ongoing significant symptoms in relation to low mood, and Mr A's sleep patterns had been affected. They said Mr A didn't seem to be able to maintain a regular daily routine, and he had been tearful most days in the last week. The doctor didn't think Mr A was fit for work.

The next review was on 23 January 2024. Mr A described ongoing low mood symptoms, disrupted sleep patterns and impaired concentration. He hadn't been able to manage adhering to routine/schedule in his day-to-day life. So, the doctor didn't think Mr A was fit for work.

The next review was on 19 March 2024. Mr A described ongoing low mood symptoms, disrupted sleep patterns and he was experiencing nightmares. Mr A said his levels of motivation to engage in activities and initiating tasks was reduced, and his ability to focus on tasks seemed to be affected at times. The doctor didn't think Mr A was fit for work.

- *Psychiatrist reports*

Mr A had an appointment with a psychiatrist on 28 July 2023. They noted Mr A's current relationship had been put under pressure mainly due to his behaviour. The psychiatrist noted Mr A's job role and where he worked, and that he had had some difficulties with people at work and operated on a "fight or flight" mode. They said that when they saw Mr A, his mood was low, he was snappy, his energy and concentration were reduced, he lacked motivation, he was tearful, he had difficulty with sleep, and he had lost some weight.

The psychiatrist noted Mr A carried out some normal activities like walking the dog, gardening and going to the gym when it was quiet. But they noted Mr A's self-care wasn't as good as normal, and he didn't socialise as much. Mr A used to have a hobby with his partner, but he was too anxious to do this at the time.

The psychiatrist diagnosed Mr A with mixed anxiety and depressive disorder and referred him to a clinical psychologist. Medication was discussed, but as Mr A had some bad experience with this previously, the psychiatrist suggested holding off and review this once Mr A had started therapy.

The psychiatrist reviewed Mr A again on 8 September 2023. They noted he had started seeing the psychologist, and this had been helpful. However, Mr A was still snappy and overreactive. The psychiatrist said Mr A was able to undertake some of the activities of daily living, including going to the gym, walking the dog and doing some gardening, and his self-care was reasonable. But Mr A was not socialising much, and whilst he had done one hour of the hobby with his partner, he found it exhausting and difficult to concentrate.

The psychiatrist said that Mr A's appetite fluctuated, he was tearful, his concentration and energy levels were perhaps a little better but not back to normal, he lacked a degree of motivation, his mood was slightly low but he was more anxious, and he was having difficulty with sleep. The psychiatrist noted Mr A was still keen to hold off medication due to a negative past experience. They were pleased there had been some progress.

Mr A had an appointment with his psychiatrist on 20 October 2023. Overall, they concluded Mr A's anxiety and depression had improved – Mr A rated this as 5 out of 10 based on the starting point of 2-3 out of 10. Mr A was able to take on most of the activities of daily living and his self-care was good, his sleep was a little better and appetite reasonable. Mr A was occasionally tearful, his concentration and energy levels were not as good as normal, he could be snappy and irritable, and he felt more zoned out than depressed. The psychiatrist talked again about the need for medication, but Mr A wanted to focus on therapy. They signed him off until the next appointment in early December 2023.

Mr A sent a further letter from his psychiatrist, dated 29 January 2025. In their view, Mr A had suffered from a major recurrent depressive illness, he was slowly recovering from it and towards the end of 2024 he was well enough to start looking at going back to work on a phased return. The psychiatrist noted that working with an employer such as Mr A's, this was a stressful environment and unless one was feeling significantly "on top of their game", it would be difficult to cope. So, the psychiatrist didn't think Mr A was well enough to work before he returned.

- *Letter from a psychologist*

Mr A provided a letter from his clinical psychologist from January 2024. They said they had been working with Mr A since August 2023, and had met for 24 sessions to date. They said Mr A had suffered for years with chronic stress, stemming from past issues in his personal life and associated consequences, and this has led to reduced resilience to everyday stressors.

The clinical psychologist said that when they started working with Mr A in August 2023, it was clear that he was suffering with his mental health even while not in the workplace and around those colleagues. They said there were some predisposing factors stemming from Mr A's mental health that made him vulnerable to interactions in the workplace. The psychologist didn't think Mr A's problems were only work-based, and they agreed with the diagnosis of mixed anxiety and depressive disorder, as diagnosed by his psychiatrist. The clinical psychologist said Mr A's treatment involved using CBT and Eye Movement Desensitisation and Reprocessing ("EMDR").

- *Unum's findings on the medical evidence*

Unum says that when Mr A first went absent, he reported a stress reaction to his GP. In a follow up with the GP, Mr A said he was attending the gym as well as carrying out with the activities of daily living. And after over a month of absence, Mr A noted some improvements and that being at home was helping his mental health.

Unum says that in August 2023, Mr A's mental health was reviewed by a consultant, and they noted difficulties within work. Mr A was diagnosed with a mental health condition but was noted to be active by his own reporting. And in a follow up with a consultant in September 2023, Mr A was noted to be able to undertake activities of daily living and attended a new social event. By October 2023, Mr A remained active with his daily activities and exercise, with the treating consultant documenting his mental health as having improved.

Unum declined the claim in December 2023. It said Mr A first became absent following adverse life events and stress at work. And both a GP and Occupational Health suggested that resolution of workplace issues would be key for him returning to work. Unum noted Mr A had seen a consultant psychiatrist but said there were no significant concerns noted and his function appeared reasonable, especially nearer the end of the deferred period.

Overall, Unum concluded that the main reason for Mr A's absence appeared to be perceived workplace issues following a change in job in September 2022 and the people he was working with. And there was documented improvement during the deferred period. Unum said there was no objective mental state examination or information to support a functional impairment or limitation associated with Mr A's reported mental health difficulties. So, Unum said the evidence didn't support that Mr A had been functionally impaired by a medical condition for the duration of the deferred period, and it declined the claim.

<u>Did Unum act fairly and reasonably when it declined Mr A's claim?</u>

Mr A was formally diagnosed with mixed anxiety and depressive disorder by his psychiatrist on 28 July 2023. The GP had also suspected a mental health condition already on 19 June 2023. So, it's clear that Mr A had an underlying mental health condition diagnosed during the deferred period.

Unum says Mr A's absence was due to perceived work-place issues. I don't think this is supported by the medical evidence. None of the medical professionals have said Mr A's absence was due to work-place issues. The first occupational health advisor said a resolution of the workplace issues is likely to help improve his symptoms, but this doesn't confirm the absence was due to these issues. And in any event, I find the subsequent occupational health reports more persuasive, as they were carried out by a doctor, rather than an advisor.

Unum also said there was no objective mental state examination or information to support a functional impairment or limitation associated with Mr A's reported mental health difficulties. I accept a lot of Mr A's symptoms in the medical reports would have been self-reported. But I'm also mindful that Mr A was assessed by an occupational health doctor, a clinical psychologist and a psychiatrist. All of whom considered Mr A to be unfit to work based on their professional opinion.

In contrast, Unum has relied on Mr A being able to carry out the activities of daily living as evidence that his function wasn't sufficiently impaired. But this suggests that Unum was applying a higher bar than what the policy terms set. Mr A didn't need to show he couldn't carry out the activities for daily living to show he had a valid claim.

I think it's more likely than not that the above medical professionals were reasonably aware of Mr A's job role, and what was required of him to be able to perform it. The occupational health doctor would have been specifically asked to review Mr A's fitness for work based on his role. And Mr A's psychiatrist has specifically referred to his role with his employer.

Mr A's symptoms included low mood, energy and concentration, irritability and overwhelm. He also reported being tearful, his sleep was impacted, and he often struggled with some of the activities of daily living. In contrast, Mr A's role required high-level cognitive function, effective communication with senior leaders, and the capacity to meet demanding deadlines. Overall, I'm persuaded that the medical professionals concluding that Mr A wasn't fit for work in his role with his employer means that he was unable to carry out the material and substantial duties of his insured occupation.

Considering Mr A was diagnosed with a mental health condition by a psychiatrist, following a review of his symptoms that continued throughout the deferred period, I think the medical evidence supports that Mr A's absence was due to an illness.

So, that means that I currently think it's more likely than not that Mr A met the policy definition of incapacity. Whilst he didn't receive a formal diagnosis until 28 July 2023, I think the GP evidence prior to this shows that Mr A's symptoms at the start of the deferred period were consistent with the symptoms he had when he received the diagnosis.

Unum noted that Mr A's symptoms improved towards the end of the deferred period. And I agree this is supported by the medical evidence. However, I don't think the evidence supports Mr A's symptoms had improved to a degree that he wasn't incapacitated anymore as per the policy terms. And in fact, in the first review after the deferred period in December 2023 it was noted that there had been a deterioration in Mr A's mental health.

Overall, I currently think it's more likely than not that Mr A met the definition of incapacity for the duration of the deferred period, and beyond. I think the further evidence Mr A has sent shows that he continued to meet the definition of incapacity. So, I think Unum should accept and pay Mr A's claim, along with interest.

I also think Unum's decision to decline Mr A's claim unfairly has had a significant impact on him, causing unnecessary distress and inconvenience. Firstly, it's clear that the financial worry of not receiving an income benefit was distressing. But Mr A has also explained that he wasn't able to meet his parental financial obligations when he was without an income. This led to issues with his previous partner, having a negative impact on a relationship that was already challenging, as well as having an impact on his children. So, I think the impact on Mr A was more significant than another policyholder in a similar situation, with him having to navigate through the challenging situation. I currently think Unum should pay him £750 in compensation for the distress and inconvenience caused."

Unum responded to say it agreed with the proposed decision. Mr A also accepted my provisional decision. However, he remained unhappy with Unum's handling of his claim, and the impact this had on him. Mr A is concerned about the impact such handling could have on other policyholders with mental health issues.

As both parties have had the opportunity to review and respond to my provisional decision, I'm now issuing my 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.

I appreciate Mr A's concern about Unum's overall claim-handling, and the impact this could have on other policyholders. But I only have the power to consider what happened in the circumstances of this complaint.

As neither party has given me any new information to consider, I see no reason to depart from the findings I reached in my provisional decision. So, I've reached the same conclusions, and for the same reasons.

Overall, I think it's more likely than not that Mr A met the definition of incapacity for the duration of the deferred period, and beyond. So, Unum should accept and pay Mr A's claim, along with interest. It should also pay him compensation for the unnecessary distress and inconvenience caused.

My final decision

My final decision is that I uphold Mr A's complaint, and direct Unum Ltd to take the following action:

- pay Mr A's claim in line with the remaining terms and conditions of the policy,
- pay interest at 8% simple per annum from the date each benefit payment should have been made until date of settlement*, and
- pay Mr A £750 for the distress and inconvenience caused**.

*If Unum considers that it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr A how much it's taken off. It should also give Mr A a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**Unum must pay the compensation within 28 days of the date on which we tell it Mr A accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 June 2025.

Renja Anderson
Ombudsman