

The complaint

Mrs W complains that HSBC Life (UK) unfairly stopped her group income protection benefit.

What happened

Mrs W benefits from a group income protection policy, underwritten by HSBC Life and provided by her employer. She became absent from work in January 2022 following a cancer diagnosis. And after undergoing related surgery in February 2022 a group income protection claim was made for her in April 2022.

HSBC Life accepted Mrs W was incapacitated by her cancer diagnosis and surgery. But it only agreed to pay her claim until the end of September 2022. And it said the available medical evidence indicated she should have been in a position to return to work by then.

Mrs W complained about that decision and said she was still unfit for work. She explained she was suffering from a number of symptoms post-operatively (abdominal, bowel, liver, and joint problems for example). She said she'd been referred to specialists for further investigations too, and both her GP and Occupational Health advisor had confirmed she wasn't fit for work.

HSBC Life acknowledged Mrs W had reported problems following surgery. But it didn't think they alone should have impacted her ability to make a gradual, supportive, return. So it maintained its position and Mrs W brought her complaint to this service.

Our investigator didn't think HSBC Life had done enough to demonstrate that Mrs W was no longer incapacitated in line with the policy terms. They upheld her complaint and recommended; HSBC Life reinstated the claim, paid backdated benefit with interest, and paid £200 for distress and inconvenience too.

Mrs W agreed with that recommendation, but HSBC Life did not. It reiterated its position regarding ongoing incapacity not being demonstrated, and so as no agreement between the parties was reached Mrs W's complaint was passed to me.

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.

Mrs W needed to satisfy an 'own occupation' definition of incapacity. Looking at the relevant policy documentation I can see that meant an employee being, "*...unable, by reason of illness or injury, to perform the "material and substantial" duties of your occupation.*" I can also see that 'material and substantial' duties were cited as those, "*...normally required for, or form a significant and integral part of your occupation which cannot be reasonably omitted or modified by you or your employer*".

HSBC Life had a responsibility to handle Mrs W's claim both promptly and fairly and to not reject it unreasonably. Given it had accepted the claim it was also for it to show (through

available medical evidence) that Mrs W no longer met the relevant policy terms. However, I'm not persuaded HSBC Life did that on this occasion and as such have reached the same outcome as the investigator before me. I'll now explain why.

Without listing every piece of medical evidence made available I note:

- In April 2022 Mrs W's GP records showed she had steatosis of liver, her liver function tests were improving, and there'd been no sign of metastases on both her ultrasound and MRI. They also showed she was awaiting a podiatry review regarding heel pain.
- In June 2022 a letter from Mrs W's Consultant in Obstetrics and Gynaecology confirmed she'd made a good recovery from her surgery. The consultant noted Mrs W's liver functions tests had been a bit deranged and she was complaining of some alteration to her bowel habits. But they didn't think that could be ascribed to their surgery, they noted their examination was unremarkable, and they confirmed they'd see Mrs W in six months.
- In June 2022 Mr W's GP records showed they'd continue to observe her reported joint aches for now until her abdominal symptoms were further investigated.
- In July 2022 Mrs W's GP also wrote a letter to confirm they'd last reviewed her in June 2022. They noted Mrs W was suffering from abdominal bloating and discomfort, altered bowel habits, raised liver enzymes and steatosis of liver. They said the liver and bowel symptoms were affecting her functioning, and confirmed she was awaiting a gastroenterology appointment to investigate the liver tests and bowel symptoms.
- In July 2022 HSBC Life's CMO said Mrs W had undergone a pelvic MRI which showed no evidence of any abnormality. They said her liver function tests had been stable on serial testing, her gastrointestinal symptoms didn't seem to be frequent, and her heel discomfort was typically felt while sleeping. The CMO said Mrs W had some joint aches but without limitation on mobility or sleep, and her symptoms in the situation shouldn't prevent her from returning to work.
- In September 2022 HSBC Life's CMO said given it had been so long since her surgery, Mrs W's lingering symptoms were probably not related to it. They said her symptoms could be a functional issue rather than an origin of organic alteration. But they also said HSBC Life would greatly benefit from a gastroenterologist's examination for differential diagnosis. They said they were still not certain that her symptoms should keep her from returning to work, they acknowledged they may be a little painful or uncomfortable, and they also said it was possible that Mrs W lacked the drive and willingness to return to work.

HSBC Life chose not to wait for further specialist input before ceasing benefit. That was despite Mrs W having already been referred for it, and its own CMO commenting on such input being of great benefit too. HSBC Life says it didn't think it necessary to wait for the above, given the medical evidence contained limited detail of impact on ability to work and its CMO wasn't certain Mrs W's symptoms should prevent a return either. But the onus here was on it to demonstrate that the relevant policy terms were no longer satisfied.

I can appreciate the position HSBC Life decided to take here, but I am also mindful that Mrs W was still awaiting further specialist input. Her consultant had said her reported symptoms were unlikely related to her surgery too. Her GP had said they were unable to add anything else without that specialist input. And, HSBC Life's own CMO had said they'd greatly benefit from such input too. So, in all the circumstances I think the decision to cease benefit was a little premature on this occasion.

I can't fairly conclude that HSBC Life demonstrated that Mrs W no longer satisfied the relevant policy terms because of that. As such I agree that the claim should be reinstated. I would however like to reassure HSBC Life that this complaint was somewhat finely balanced, and Mrs W should of course remain aware that HSBC Life will be entitled to review her claim again.

The nature of needing to make an income protection claim means that the circumstances surrounding it are likely to have caused the individual some amount of distress and inconvenience. It would not be right of me to award compensation for that of course. But here, I do think HSBC Life's actions had an additional impact on Mrs W (additional worry about finances when her claim was ceased, and upset caused by its premature decline for example) during what was an already difficult time for her. £200 represents a fair and proportionate reflection of that impact, so I agree that should be paid too.

Putting things right

For all of the reasons given above HSBC Life should put things right by:

- Reinstating the claim and paying any backdated benefit due. Interest at a simple rate of 8% per annum should be calculated and added to these backdated benefit payments, from the date they were originally due to the date of settlement.
- Paying £200 compensation

My final decision

My final decision is that I uphold this complaint. HSBC Life (UK) should put things right in the way I have set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 7 June 2023.

Jade Alexander
Ombudsman