

## The complaint

Mr M complains about the decision by HSBC Life (UK) Limited to terminate his income protection claim.

## What happened

Mr M held income protection cover through his employer. Benefit was payable if Mr M couldn't work in his own occupation, or an occupation to which he was suited.

In 2016, Mr M stopped work due to mental health conditions. A claim was made, and this was accepted by HSBC. Then in 2022, HSBC reviewed the claim and arranged for Mr M to have an independent medical examination (IME). It then terminated the claim in December 2022 based on the IME doctor's opinion that Mr M had chosen his lifestyle, and with appropriate support he could go back to work. Though it paid Mr M 12 months' of benefit. Unhappy with HSBC's claims decision, Mr M brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. He thought it had been reasonable for HSBC to rely on the IME and terminate the claim.

I issued a provisional decision on 24 October 2023. Here's what I said:

*'The policy explains that incapacitated means:*

*'Unable, by reason of Illness or Injury, to perform the Material and Substantial duties of his or her Own Occupation, and unable by reason of Illness or Injury to perform the Material and Substantial duties of each and every Occupation for which they are suited by way of training, education and experience, and not following any other Occupation.'*

*As our investigator has explained, in terminating the claim, the onus is on HSBC to demonstrate that Mr M no longer met the policy definition of incapacity in December 2022.*

*HSBC's decision to terminate the claim was based on the IME report by Dr W (consultant occupational physician). Dr W's main conclusions were:*

- *Mr M had become stuck in a dysfunctional position that had been well articulated by several clinical practitioners already. Dr W agreed with their opinions.*
- *Mr M did portray symptoms of depression and anxiety, but Dr W thought this was more a function of his circumstances than an enduring mental illness.*
- *He thought Mr M could have a form of complex post-traumatic stress disorder (PTSD), but this would only have relevance in relation to potential therapy. And it was clear Mr M had no intention of engaging with further therapy.*
- *He thought it was also clear that no therapist or medication was going to solve Mr M's problems, and that he would remain stuck in the 'status quo' unless he decided that any change was worthy of engagement.*
- *He thought Mr M's income protection benefit was a barrier to his recovery.*

- *With appropriate support, he thought there was no reason why Mr M could not make a full recovery and re-engage with normal social activities, including work. Dr W thought this was only likely to happen on Mr M's terms.*
- *Until now, Mr M's situation had been medicalised and labelled as a mental illness. Dr W thought Mr M either required therapeutic input in order to recover, or he could not recover because it was a permanent illness. Dr W thought it was a lifestyle of Mr M's choosing. Dr W said Mr M undoubtedly had significant mental health issues initially, but he thought the symptoms had largely settled and that Mr M was functioning well within the limits he had set.*

*Dr W later said Mr M's situation had been over-medicalised, and that he refused to engage with treatment. And so arguably, Mr M should not continue to be seen as 'sick' but to have chosen his current lifestyle.*

*I think that occupational health opinions can be very useful, particularly when assessing work-related issues and helping people return to work after an illness. Though I do have to take into account here, that whilst Dr W is an expert in occupational health, he is not a mental health specialist.*

*Dr W said Mr M's situation had been labelled as a mental illness, but he thought it was a lifestyle choice, and that arguably Mr M should not be seen as sick. In Dr W's view, no therapist or medication would solve Mr M's problems. However, Mr M had previously been diagnosed with a depressive disorder by a consultant psychiatrist (Dr B) in 2018. Dr B thought a return to work was outside Mr M's psychological reach and would remain so without specialist treatment (he recommended that Mr M receive occupational therapy in mental health, and then be considered for psychotherapy).*

*Mr M received treatment by an occupational therapist in mental health (Ms G) in 2019, who thought Mr M was stuck in a depressed state. Like Dr B, she also concluded that work was beyond Mr M's psychological reach. She recommended that Mr M undergo a psychiatric assessment and remain for a while under the care of a psychiatrist.*

*Although I understand Mr M was referred for counselling by his GP, this was interrupted by the Covid-19 pandemic, and he didn't receive any treatment from a psychiatrist as Ms G had recommended.*

*HSBC says it decided to obtain Dr W's opinion because there was limited medical evidence from the previous few years. It says that Dr W was qualified to assess and comment on Mr M's medical status and how that related to his ability to undertake an occupation. It thinks this is more so than a specialist doctor who can comment on the specifics of a medical condition and how this can be treated, and not necessarily how this relates to an ability to work.*

*I appreciate there was limited evidence about Mr M's mental health between the date of Ms G's report and the assessment by Dr W. But Mr M had previously been diagnosed with a mental health condition and was found that he couldn't work because of this. Therefore, I don't think it was reasonable for HSBC to rely solely on Dr W's opinion that Mr M no longer had an enduring mental illness without also obtaining an up-to-date opinion from a consultant psychiatrist.*

*If HSBC had obtained a mental health specialist's opinion on how Mr M's mental health impacted him (as it did when it reviewed the claim in 2018), then I agree that an occupational health physician's opinion could be very useful to see how that related to Mr M's ability to undertake an occupation. Particularly as the policy has a suited occupation definition of incapacity. Though I note that Dr W didn't go into detail about Mr M's ability to work. He only*

said "With appropriate support there is no absolute reason why he [Mr M] cannot make a full recovery and re-engage with normal social activities including work. This is only likely to happen on his terms..."

So it seems Dr W wasn't saying that Mr M had made a full recovery by that point and was capable of returning to work. When HSBC later asked Dr W what support he had been referring to, Dr W said it was difficult to articulate, though advice from a vocational adviser may well be helpful, but that much of the support would come from Mr M's friends and family, or his GP. It seems to me this was very broad, and without arranging for Mr M to be assessed after he'd received this support, HSBC wouldn't know if he was able to go back to work at that time or not.

I see Mr M was assessed by another consultant occupational physician (Dr E), when his eligibility was considered for ill health early retirement. This took place only five months after his assessment with Dr W. Mr M was assessed to see if exceptional circumstances of ill-health meant that he was incapable of carrying out any occupation due to ill-health. I appreciate that this was a different requirement to the definition of incapacity under the HSBC policy (which was only to consider whether Mr M could do any suited occupation). However, given that Dr E was equally qualified to Dr W and that there were only a few months between their assessments, I think it's reasonable to consider his findings.

Dr E found that Mr M was incapable, due to chronically impaired resilience, psychomotor retardation and lifestyle choices, to render reliable service and attendance to an employer. Dr E therefore concluded that Mr M met the criteria for ill health early retirement. I note that Mr M says Dr E had access to his medical records and reports before reaching that conclusion.

I accept HSBC's point that impaired resilience and lifestyle choices aren't clinical reasons that would prevent Mr M from working. Though my understanding is that psychomotor retardation is a feature of a depressive disorder, which would suggest Dr E thought Mr M was still impacted by his mental health.

Overall, I'm not persuaded that HSBC has shown that Mr M was able to return to a suited occupation in December 2022, and so I intend to require HSBC to reinstate the claim. As HSBC paid Mr M 12 months' worth of benefit in December 2022, there is no backdated benefit to be paid, as the next benefit payment will be due in December 2023/January 2024.

I note that Mr M says he would be willing to accept a lump sum payment from HSBC to give the parties a clean break. However, it will be up to HSBC if it wants to offer Mr M a lump sum to end the claim.

HSBC has referred to a policy term which says it can decline a claim if the member does not make every reasonable effort to attend any rehabilitation assessments where rehabilitation plans/treatment are offered to achieve a return to work.

When HSBC terminated the claim, it offered Mr M vocational rehabilitation. HSBC says it is evident that Mr M didn't intend to take up this offer as he appealed against HSBC's decision and complained about it. However, Mr M was entitled to appeal and complain about HSBC's claims decision. I don't think that necessarily means he was refusing the further support, as HSBC hadn't said that the support was available to him, regardless of whether or not he accepted its claims decision.'

I asked both parties for any comments they wished to make before I made a final decision.

Mr M accepted my provisional decision. He said that in addition to his mental health condition, he is suffering from chronic exhaustion and brain fog, and is under the care of the fatigue management team. He is concerned that HSBC may want him to undergo another IME. He also asked me to make an award of compensation to him.

HSBC responded to confirm it didn't wish to challenge my provisional 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.

Mr M is concerned that HSBC may ask him to attend another IME. However, it is up to HSBC if it carries out another review of his claim. I can't tell HSBC how it should manage the claim in the future, and HSBC is entitled to carry out reviews of a claim.

Mr M says he feels incredibly angry about what has happened, and has asked me to make an award of compensation to him. Our awards are not intended to be punitive, and I wouldn't normally award compensation because someone has brought a complaint to this Service. Mr M hasn't been without any claim payments, and so he didn't experience any financial worries or concerns as a result of HSBC terminating his claim. I therefore don't require HSBC to pay Mr M compensation.

As both parties have accepted my provisional findings in respect of the reinstatement of the claim, I remain satisfied that this would be appropriate, and for the same reasons as set out in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint. I require HSBC Life (UK) Limited to reinstate the claim, subject to the remaining policy terms. I don't require HSBC to pay any backdated benefit as it has already paid benefit up to December 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 December 2023.

Chantelle Hurn-Ryan  
**Ombudsman**