DRN-4556796

## The complaint

Mr J complains that HSBC Life (UK) Limited has turned down an incapacity claim he made on his personal income protection insurance policy

## What happened

The background to this complaint is well-known to both parties. So I haven't set it out in detail here. Instead, I've set out a summary of what I think are the main events.

Mr J holds a personal income protection policy. The policy provides cover in the event that Mr J is unable to work in his insured occupation, as a result of illness or injury. The deferred period is 8 weeks.

In September 2022, Mr J was signed-off from work, suffering from stress and anxiety. As he remained unfit for work, he made an incapacity claim on the policy.

HSBC requested medical evidence to allow it to assess the claim. It calculated that Mr J's deferred period would end in November 2022 and so it determined that he needed to show he'd been incapacitated due to an illness for the whole of the deferred period and beyond. Having considered all of the medical evidence from Mr J's GP, it appointed an independent medical examiner (IME) - a consultant occupational physician- to assess Mr J. Based on the IME's report and the GP records, HSBC didn't think there was enough evidence to show that Mr J had met the policy definition of incapacity throughout the deferred period. Instead, it thought he was suffering from an understandable stress reaction to his personal circumstances and role as a carer. Therefore, HSBC turned down the claim.

Mr J was unhappy with HSBC's decision and he complained. He felt that the IME had already determined the outcome of their visit beforehand, having reviewed Mr J's GP records. He didn't think some of the GP notes were accurate. And he didn't think HSBC had fairly assessed the available information.

But HSBC maintained its stance and so Mr J asked us to look into his complaint.

Our investigator didn't think HSBC had treated Mr J unfairly. Briefly, she thought it had been reasonable for HSBC to rely on Mr J's medical records and the IME's findings to conclude that he hadn't met the policy definition of incapacity. So she felt it had been fair for HSBC to decline Mr J's claim.

Mr J disagreed and I've summarised his response. He questioned whether the investigator had considered all of the evidence he'd provided. He didn't feel HSBC had handled the claim promptly or fairly. He referred to the fact that illness hadn't been defined in the policy – and he maintained that the stress and anxiety he'd been suffering from was an illness. He reiterated that he didn't think the IME had been independent and he felt their report had been flawed. He said HSBC hadn't asked for any further medical evidence and he'd have expected it to do so, given the information he'd provided to it. He explained that he'd like HSBC to review his current medical position and also the impact on cover if he returned to

work part-time in the future. He also said he'd like a review as to whether the IME had been impartial.

The complaint's been passed to me to decide.

**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, whilst I'm very sorry to disappoint Mr J and I know how upsetting my findings will be to him, I don't think it was unfair for HSBC to turn down his claim. I'll explain why.

First, I'd like to reassure Mr J that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all that's been said and sent. I'm very sorry to hear about the circumstances that led to Mr J needing to make a claim and I don't doubt what a worrying and upsetting time this has been for him. In this decision though, I haven't commented on each point he's made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this policy and the available medical evidence, to decide whether I think HSBC handled Mr J's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mr J's contract with HSBC. Mr J made a claim for incapacity benefit, given he wasn't fit for work. So I think it was reasonable and appropriate for HSBC to consider whether Mr J's claim met the policy definition of incapacity. This says:

'*The Life Insured is unable to carry out the Material and Substantial Duties of his Occupation because of illness or injury.'*

This means that in order for HSBC to pay Mr J incapacity benefit, it must be satisfied that he had an illness or injury which prevented him from carrying out the material and substantial duties of his insured occupation.

The policy says that HSBC will begin to pay incapacity benefit after the end of the deferred period. This means that in order for benefit to be paid, Mr J needed to have been incapacitated in line with the policy terms for the entire deferred period and afterwards.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mr J's responsibility to provide HSBC with enough medical evidence to demonstrate that an illness had led to him being unable to carry out the duties of his insured occupation for the full 8 week deferred period between September and November 2022 and beyond.

HSBC assessed the evidence Mr J provided in support of his claim. It noted that Mr J's wife had been diagnosed with a serious, degenerative medical condition some years earlier. It felt his absence had begun as the result of a serious deterioration in his wife's health and the resulting stress this had placed on Mr J, as a result of his acting as his wife's main carer. While it sympathised with Mr J's position, it concluded that he wasn't suffering from a mental illness which was preventing him from carrying out the material and substantial duties of his role. Instead, it felt that he was suffering with an understandable stress reaction to his

circumstances. So I've next looked at the available medical and other evidence to decide whether I think this was a fair conclusion for HSBC to draw.

I've first considered the claim form Mr J sent to HSBC. Mr J said that he had become unable to work due to anxiety and stress. He stated that this was triggered by his wife's deteriorating illness and caring needs. He said that his symptoms included impaired concentration, lack of sleep and being unable to eat properly.

Mr J's employer also completed claim documentation. It was asked whether ill-health was the sole cause of Mr J's absence. The employer answered 'no' and added the following:

*'(Mr J) has been off work since 9th September based on the situation, he has at home with his wife's illness.*

*After numerous conversations with (Mr J) and receiving the Doctors fit notes it is apparent that (Mr J) is unable to leave his wife unattended due to her illness.*

*(Mr J's) job is such that he needs to be either on site or in the office which he is currently unable to do which is causing him stress and anxiety.'*

HSBC requested copies of Mr J's medical records. It sent a targeted questionnaire to Mr J's GP which asked questions including about Mr J's fitness to work, barriers to work and his symptoms. A GP at Mr J's practice had completed the questionnaire and their response was dated 9 January 2023 and sent to HSBC together with Mr J's GP records. I've first set out what I think are the key notes in the GP records and I've then detailed what I think are the main conclusions in the GP's letter:

In June 2022, Mr J's medical records say: '*Stress-related problem – Struggling with stress chronically, as wife diagnosed with (illness), having to care for her…as well as work. Doesn't feel able to manage things long term, has anxiety.'*

Subsequently, in August 2022, a GP recorded: '*Under a lot of stress…he is (wife's carer) and doesn't trust anybody else to do this. It's all too much…and so he's looking how to ease the stress/pressure on himself while continuing to care for wife. Has few months he can take sick pay and then has income protection policy that would pay out for 2 years. Wonders if we would approve sick note for him.'*

In early September 2022, the records state: '*Stress at home – 'Health of wife is putting so much stress on him…and also making him very anxious…Wants to know if can have Med3 for some time while taking wife for investigations…worried about wife making him unable to concentrate at work. affecting mental health.'*

And later that month, a GP noted: '*Main carer for wife…Says he is the main carer and work is aware. Discussed last time future plans, says he intends to stop working so he can be a full time carer as combining work with taking care of wife has been very difficult.'* Mr J was diagnosed with stress at home.

In late October 2022, Mr J was issued with a fit note saying he was unfit to work due to stress at home. The corresponding GP notes say: '*Main carer for wife…plan is to be full time carer – needed to be off work for at least eight weeks*'

And in November 2022, one GP entry states: *Significant carer stress as noted'*. A couple of weeks later, a GP noted: '*he has put in letter for be full time carer for wife now…not in obvious distress.'*

The GP's letter of January 2023 stated:

*'I do feel that the symptoms are significantly affecting Mr J's functioning. They are adversely affecting his decision making ability, sleep and mood. He is feeling very tired and fatigued much of the time. He describes feeling drained as well. He has also lost his appetite and is suffering from symptoms of nausea and body aches. He also feels isolated and has a short temper….*

*He has the symptoms of a genuine medical mental health condition as detailed above. This is underlined by the fact he is currently being treated by antidepressant medication…*

*His ongoing problems with the above symptoms from stress and anxiety would affect his ability to perform his role.'*

The GP stated that they weren't able to comment on some of HSBC's questions because they weren't a qualified occupational health doctor.

HSBC considered the totality of the GP's evidence. Given there was reference both to Mr J's primary diagnosis being stress at home and his functioning being affected by a genuine medical condition, I think it was fair and appropriate for it to appoint a specialist IME to assess Mr J and report on his condition.

The IME assessed Mr J in April 2023 and provided their report in the same month. Again, I've set out what I think were the IME's key conclusions below:

'*Mr J has symptoms of depression, and his GP has diagnosed personal stress. He has a typical adjustment disorder to very difficult circumstances. Stress is not a disease; it is a normal reaction to excessive pressure. The reaction can be substantial, particularly when the pressure is considerable and enduring. In Mr J's case he cannot see a solution or an end to his current predicament; this represents a failure to adjust, hence his adjustment disorder.*

*He feels that his symptoms are substantial and disabling. While they are reportedly having a significant impact on his ability to work, he is still able to function in the home, he can manage the shopping, housework and he can look after his wife* (and family). *His motivation is reduced, but he still enjoys watching sport on the TV, His symptoms would be considered mild to moderate rather than severe…*

*I cannot give any timeline for an expected recovery as this will depend on accessing talking therapy, how well he engages with the therapist, his ability to rationalise his circumstances and make plans for the family, and the short and long-term decline in his wife's health. It is possible that he will adjust and start to engage with recovery within weeks, or it could take months. It would be unrealistic for him to attempt to return to his current role, partially because of his caring responsibilities and partly because he was already planning to stop and change roles…*

*In my opinion Mr J is fit to engage with any formal or informal process regarding his employment, and there is no evidence of any organic cognitive dysfunction. Stress can affect the ability to function, but this would be regarded as a normal reaction to circumstances. Stress is not a disease. His difficulties should settle completely as he adjusts to his circumstances.'*

I've thought very carefully about all of the evidence that's been provided and which was available to HSBC when it made its final decision on Mr J's complaint. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the

evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive. It isn't my role to interpret medical evidence to reach a clinical finding – or to substitute expert medical opinion with my own.

It's clear that Mr J was suffering from symptoms which can be indicative of a significant mental health condition. And I appreciate that Mr J's GP concluded that he was medically unfit for work.

But, I have to bear in mind the contemporaneous medical evidence which was available to HSBC when it assessed the claim and when it issued its final response to Mr J's complaint. During the deferred period, Mr J's GP listed the personal stressors Mr J was experiencing as the cause of his symptoms and a diagnosis of stress at home had been given on more than one occasion. I appreciate Mr J was prescribed medication for his symptoms. However, I haven't seen persuasive evidence that he was referred to secondary care – such as a psychologist or psychiatrist - for treatment during the deferred period. I accept the GP's letter of 9 January 2023 suggests Mr J was suffering from an illness which affected his ability to function and would impact on his ability to perform his role. But I don't think the contemporaneous GP notes from prior to and during the deferred period indicate how or Mr J was prevented, by an illness, from carrying out the material and substantial duties of his insured role.

And I've also borne in mind that while Mr J has concerns about the IME's report, the IME is a consultant occupational physician and an expert in their field. I don't think it's unusual for an IME to have reviewed existing medical evidence ahead of an assessment. Not have I seen any persuasive evidence that the IME didn't act impartially – their report specifically referred to their independence. Given the IME's expertise, I don't find HSBC acted unfairly when it placed significant weight on their findings.

As such, taking into account the totality of the medical and other evidence available to HSBC when it assessed this claim, I think it was reasonable for it to conclude, on balance, that during the deferred period, Mr J was suffering from an understandable reaction to the very difficult situation in which he found himself. And that Mr J's absence was likely caused by a stress reaction to the caring responsibilities he was carrying out as opposed to a functionally impairing mental health condition. I'd add too that while I appreciate Mr J has referred to the lack of a policy definition of stress, the NHS says stress itself isn't an illness – although it can lead to more serious medical problems. And in my experience, most income protection insurance policies don't cover claims for absence caused by stress.

It's clear that Mr J feels that HSBC didn't fairly take into account his comments about the GP's evidence or the IME's report. I'm satisfied, based on what I've seen, that HSBC did consider Mr J's further submissions. As I've said, I think it was fair for HSBC to rely on the 'real-time' GP records setting out details of Mr J's appointments at his surgery. If Mr J feels that his GP notes aren't an accurate reflection of his discussions with his doctors, it's open to him to ask the GP to amend their records and to send the amended notes on to HSBC.

In the circumstances though, I don't think it was unfair for HSBC to place more weight on the contemporaneous GP records and the IME's findings when it considered whether Mr J's response to its claims decision altered its position.

On this basis then, I don't think it was unfair for HSBC to conclude that Mr J's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Mr J's absence was more likely due to a stress reaction to his circumstances. I'd add that I'm satisfied HSBC handled Mr J's claim in line with the regulator's rules and I don't think it caused unreasonable delays in its assessment of it.

I'd like to reassure Mr J that I'm not suggesting that he was fit for work. I appreciate he was medically signed-off. And I understand he's been through a very difficult time. But I need to decide whether I think he's shown he met the policy definition of incapacity for the whole of the 8 week deferred period. As I've explained, I don't think he has.

Mr J is also unhappy because HSBC didn't request further evidence from his GP. I've set out above that it's Mr J's responsibility to show he has a valid claim on the policy. And I don't think HSBC acted unreasonably when it concluded that Mr J hadn't shown he'd met the policy definition of incapacity throughout the deferred period and at the point he was assessed by the IME. If Mr J would like HSBC to consider further medical evidence about his present health, he would need to obtain such evidence from his treating doctor(s) and send it to HSBC for it to consider and to decide whether or not it alters its understanding of his claim. If Mr J does return to work on a part-time basis, it's then open to him to make a proportionate benefit claim on the policy, although it would be for HSBC to decide, at that point, if such a claim was covered, If Mr J is unhappy with HSBC's consideration of any new evidence he submits, or any new claim he may make, he may be able to make a new complaint to us about those issues alone.

But, overall, despite my natural sympathy with Mr J's position, I don't find it was unfair or unreasonable for HSBC to turn down his claim.

**My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 February 2024.

Lisa Barham
**Ombudsman**