

## **The complaint**

Miss A is unhappy that HSBC Life (UK) Limited declined a claim made on a group income protection insurance policy.

## **What happened**

Miss A has the benefit of a group income protection insurance policy ('the policy'). Subject to the remaining terms, the policy can pay out a monthly benefit if she is unable to work due to incapacity after the deferred period of 26 weeks.

Miss A was signed off work by her GP in November 2022 for stress and anxiety. The reason was subsequently changed to mixed depression and anxiety disorder in December 2022. She was also diagnosed with complex post-traumatic stress disorder by her consultant psychiatrist.

Miss A continued to be signed off sick from work and a claim was made on the policy. HSBC declined the claim. It concluded that Miss A didn't meet the policy definition of 'incapacity' because the policy set out certain situations leading to absence which won't be considered to be an 'illness or injury'. One of these included:

Capability issues rendering the Member unable to meet the requirement and demands of their Occupation, which were either present at the time of initial employment or were identified at any later date.

Miss A appealed the decision and subsequently brought a complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and upheld the complaint. She didn't think HSBC had fairly declined the claim. She recommended HSBC accept the claim and add simple interest at a rate of 8% per year to the benefit payments Miss A should've received from the date they should've been paid until settlement.

HSBC didn't agree and raised further points in reply. These didn't change our investigator's opinion. So, this complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision in May 2024, explaining why I was also intending to uphold this complaint and as well as accepting her claim, I provisionally directed HSBC to pay £500 compensation to Miss A. An extract of my provisional decision is set out below.

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The insurance industry regulator, the Financial Conduct Authority ('FCA'), sets out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS'). ICOBS says insurers should act honestly, fairly and professionally in accordance with the best interests of its customers. It also says insurers should handle claims promptly and fairly – and shouldn't unreasonably reject a claim.

The relevant terms of the policy

The policy terms and conditions say:

When the Member has completed the 26 weeks Deferred Period, the Policy Benefit will be paid to the Policyholder from the Claim Commencement date for a maximum of 24 months where the Member continues to meet the Own Occupation definition of Incapacity.

And:

Throughout the Deferred Period and for 24 months of Policy Benefit payment, the claim in respect of the Member shall be assessed against the "Own Occupation" definition of Incapacity. For this period, the Member must satisfy the Own Occupation definition of Incapacity in order for any Policy Benefit to be paid to the Policyholder.

Incapacity/incapacitated means:

The Member is unable, by reason of illness or injury, to perform the Material and Substantial duties of his or her generic Own Occupation and is not following any other Occupation.

Own Occupation is defined as:

The generic Occupation is that performed on the Date First Absent on an initial or subsequent claim.

The Occupation consisting of Material and Substantial duties that is performed in return for remuneration or has / is of remunerative value...

Material and Substantial duties mean:

Material and Substantial duties are those that are normally required for and/or form a significant and integral part of the performance of the Occupation and which cannot be reasonably omitted or modified by the Member or eh [sic] Policyholder.

Illness or Injury is defined as:

A set of medically verified symptoms or a verified medical condition which the Member is experiencing and is recognised by HSBC Life, where HSBC Life takes into account medical opinion, evidence, diagnostic procedures and medical best practice at the time of the claim.

The Illness or Injury must be objectively demonstrated through appropriate medical evidence gathered at the time of the claim and throughout the duration of the claim and payment period.

It goes on to say:

For the purposes of this Policy, the following are not considered to be an Illness or Injury:

...Capability issues rendering the Member unable to meet the requirements and demands of their Occupation, which were either present at the time of initial employment or were identified at any later date...

When making a claim, it's for Miss A to establish that she was incapacitated.

Did HSBC act fairly and reasonably by declining the claim?

I'm not a medical expert. So, I've relied on all the evidence available to me when considering whether HSBC has reasonably declined the claim.

Having done so, I don't think it has fairly and reasonably declined the claim. I'll explain why.

- I'm not persuaded that HSBC has fairly and reasonably concluded that Miss A's absence from work wasn't due to illness, relying on the term that under the policy illness doesn't include capability issues rendering the Member unable to meet the requirements and demands of their occupation.
- When considering the absence which started in November 2022, Miss A's Own Occupation is the generic Occupation performed on the Date First Absent. And under the policy, 'Date First Absent' is defined as "the date on which the Member was first absent from work and was unable to perform their occupation due to Illness or Injury". So, I'm satisfied that the relevant consideration is whether Miss A was capable of undertaking the duties she was at the time she started her sick leave, as opposed to all the duties she might reasonably expected to do in accordance with her grade.
- Further and in the alternative, even if I'm wrong on that point, I don't think the totality of the medical evidence supports that it was capability issues which ultimately resulted in Miss A being off work sick from November 2022, or were the cause of anxiety, depression and post-traumatic stress disorder.
- HSBC says that Miss A returned to work in early 2022 after an earlier period of absence from work and as a result, during 2022, her employer had made some adjustments to assist her. That included doing duties that were related to the grade below her one. It also says that when the employer started reintroducing duties relating to her grade and in line with her job description, she struggled. And had Miss A not been off sick, her performance would've been more formally managed through a performance improvement plan. It's produced more recent evidence from her manager stating this. I've also seen evidence from Miss A's manager dated August 2023 reflecting that if Miss A had been fully assessed against her grade in her 2022 appraisal, she would've received an 'inconsistent' grading.
- However, I don't think that's supported by the contemporaneous evidence from time.
- Miss A's appraisal for 2022 reflects a performance rating of "good performer" and a behavior rating of "good". As the year progressed, it also reflects that Miss A started "picking up some of the Governance side of the role" and no concerns were mentioned about the quality of her work. It concludes Miss A "has had a good year and I'm looking forward to working with her in 2023 to support her with her career goals and aspirations".
- Further the work occupational health referral dated December 2022, so a few weeks after she was absent from work, only refers to Miss A struggling "over the last month or so" and "she is struggling with her deliverables". So, I'm not persuaded that this supports HSBC's position that from June 2022, when duties more usually suited to her grade were introduced, Miss A started to struggle at work, that there were quality concerns and she required extensive support and supervision. I also think it's

reasonable to assume that if there were such concerns about Miss A's performance, these would've been mentioned in the appraisal document and they're not.

- I accept that the entry in Miss A's GP records, first signing her off work sick in November 2022, reflects that she was "stressed at work" but it also reflects that she wasn't coping with anxiety. Further, there is reference in her consultant psychiatrist's report dated December 2022 that she "has been much more emotional, stressed and easily overwhelmed at work due to heavy workload which was causing her to work long hours so that she was very tired and was making mistakes". And that "she may raise a grievance or look for another job".
- HSBC has also referred to issues regarding her performance in the higher-grade role she'd been promoted to, and this resulted in her becoming stressed at work and being signed off sick in 2021. Her appraisal rating in 2021 was considered to 'inconsistent' as a result.
- However, I don't think it's fair for HSBC to rely on this evidence to support its position that there were incapability concerns which led to Miss A being signed off sick in November 2022 in the circumstances of this case. Because ultimately, she received a 'good rating' following conversations with HR and internally at her workplace. She wasn't doing the full range of her duties at the time as part of her longer phased return to work but of the duties she was doing, her appraisal doesn't reflect there being any concerns.
- I'm satisfied from the available evidence that Miss A was struggling due to her overall mental health at the time, rather than because she wasn't performing to the level expected of her in the role she was doing at the time. And although work may have contributed to her anxiety and depression, Miss A had a history of living with mental health issues and was on medication and had been receiving therapy for a long time before this.
- Although the evidence reflects that there were some work-related issues in the few weeks leading up to Miss A's absence from work in November 2022, Miss A's consultant psychiatrist says in the July 2023 letter that Miss A's symptoms have been "precipitated by traumatic early life events...Prior to going on sick leave in Nov 2022, her symptoms have been exacerbated by severe anxiety related to difficulties at work and significant marital disharmony".
- Around six weeks after being signed off work sick in November 2022 – and early into the deferred period – Miss A was admitted to a psychiatric hospital for around a month. The hospital's letter dated July 2023 (prepared by her consultant psychiatrist) reflects that this was the result of a "history of multiple traumatic events in Miss A's life, also a family history of mental illness and more recently with marital difficulties and work-related anxiety, Miss A has experienced low mood and anxiety resulting her wanting to end her life". So, although work-related anxiety may have contributed to how she was feeling, I'm satisfied that there were other factors which led her mental health to deteriorate to the extent that she was signed off work sick.
- In its letter dated July 2023, declining the claim, HSBC accepts that Miss A has experienced significant psychiatric symptoms that will impact her ability to function and ability to carry out everyday activities. However, it's position is that the symptoms have been worsened by struggles she was having performing at work.
- As I've concluded that it's not fair and reasonable to conclude that Miss A's absence

from work related to performance issues at work, based on what HSBC has said, I think it's fair and reasonable to conclude that leaving aside any work capability issues, HSBC accepts that she would meet the remaining requirements of being incapacitated. I think that's also supported by the other medical evidence available to me.

- After Miss A was discharged from hospital in 2023, she continued to be prescribed medication for her anxiety and underwent regular therapy. The letter from her consultant psychiatrist dated July 2023 (so shortly after the end of deferred period) sets out that Miss A should be able to return to work in six to nine months (so at that stage – around the beginning of 2024).

Overall, I'm satisfied that Miss A met the policy definition of incapacity.

I'm intending to find that HSBC should pay the claim from the Claim Commencement Date as defined by the policy and continue to do so until the claim is terminated.

HSBC can continue to review the claim going forwards in light of any further evidence.  
Distress and inconvenience

I'm persuaded that declining the claim has had more than just a financial impact on Miss A. I'm satisfied that she's been put to the inconvenience of contesting the decision to decline the claim, at an already difficult time for her. I'm also satisfied that being unfairly deprived of the monthly benefit under the policy would've caused her unnecessary and significant worry and upset.

I'm intending to direct HSBC to pay Miss A £500 compensation for distress and inconvenience to reflect this.

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I invited both parties to provide any further information in response to my provisional decision.

Miss A said she had nothing to add. HSBC disagreed with my provisional decision. In summary it said:

- The own occupation term relates to the material and substantial duties required to undertake the generic job role in the general economy. These are the full duties required to undertake a role of Miss A's similar grade, but Miss A has never undertaken her full role, or demonstrated capability to undertake her full role.
- Her occupation is not based on the duties she was doing when she became absent from work which was a hybrid role which included "lower grade work".
- The only reason Miss A wasn't given an inconsistent rating in 2022 was to protect her mental health. Her performance was actually inconsistent.
- There were concerns about the quality of Miss A's work. She required extensive support and supervision since she returned to work from sick leave at the start of 2022.
- Evidence received on the claim suggests that the change in role and Miss A's inability to perform the role effectively was the trigger to her absence commencing in November 2022, the capability policy exclusion applies, and the claim shouldn't be paid.

- Even when Miss A gets medically better, her inability to undertake the role will remain a barrier to return to work as she hasn't the capability to undertake the duties required for the role.

### **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.

That includes the points raised by HSBC in response to my provisional decision, but they don't change my mind. I'll explain why.

- For reasons set out in my provisional decision, I'm still not persuaded that HSBC has fairly and reasonably concluded that Miss A's absence from work wasn't due to illness, relying on the term that under the policy illness doesn't include capability issues rendering the Member unable to meet the requirements and demands of their occupation.
- When considering the absence which started in November 2022, Miss A's Own Occupation is the generic Occupation performed on the Date First Absent. And under the policy, 'Date First Absent' is defined as "the date on which the Member was first absent from work and was unable to perform their occupation due to Illness or Injury". So, I'm satisfied that the relevant consideration is whether Miss A was capable of undertaking the duties she was at the time she started her sick leave, as opposed to all the duties she might reasonably expected to do in accordance with her grade.
- However, even if I'm wrong on that point, I remain satisfied that in the circumstances of this individual case, it isn't fair and reasonable for HSBC to conclude that it wasn't illness which led Miss A being signed off work sick and unable to do her role - and to rely on the policy term that illness doesn't include capability issues.
- Although the medical evidence does support that work stress contributed to Miss A being signed off sick from work in 2022, I'm satisfied the totality of the medical evidence also supports that the main issues which resulted in a deterioration in Miss A's mental health were unrelated to work or concerns around her capability to do the role. Based on all the evidence, I'm not satisfied that it was Miss A's inability to perform her role effectively which was the trigger causing her absence starting in November 2022 as HSBC says.
- HSBC has provided evidence from her employer dated August 2023 – around nine months after being signed off work sick. I'd considered this evidence when provisionally deciding this case. Whilst the evidence does support that there were concerns around the quality of Miss A's work and her ability to do the role after she returned from sick leave in early 2022, it's also reflected that "she has done what we asked her to do whilst also considering her health issues".
- Further, the concerns raised in 2023 are not reflected in the appraisal document from the relevant time, summarising Miss A's performance for that year. I've taken on board the reasons why Miss A's employer says Miss A was given a 'good' performance rating rather than inconsistent rating at that appraisal. However, as the purpose of an appraisal is to provide an overall summary of performance for that year, I think it's reasonable to have expected the appraisal to have mentioned any concerns about her performance which it didn't. So, I've placed less weight on what a manager has said subsequently, and which Miss A didn't have an opportunity to challenge at the time of her appraisal.

- Further, the occupational health referral from the end of December 2022 only reflects that Miss A was struggling to meet her deliverables in the month leading up to her being off work in November 2022. And it makes reference to Miss A experiencing “a number of personal issues...which came to light around September” (so in the weeks leading up to her being signed off work). It goes on to say that Miss A had been “really open and honest about how matters are affecting her mental health”. So, I think that also supports that there were other more causative factors unrelated to work which led to a deterioration in Miss A’s mental health at the time.

For reasons set out above, and in my provisional decision (an extract of which is set out above and forms part of this final decision), I uphold Miss A’s complaint.

### **Putting things right**

I direct HSBC to:

- accept the claim from the Claim Commencement Date and pay the monthly benefit, backdating the monthly payments that would’ve been paid if the claim had been accepted.
- add simple interest at a rate of 8% per year\* to each monthly benefit that ought to have been paid since the Claim Commencement Date, from the date each benefit should’ve been paid until the date they’re actually paid.
- pay £500 compensation to Miss A for the distress and inconvenience she experienced because HSBC unfairly declining the claim.

\* If HSBC considers it’s required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Miss A how much it’s taken off. It should also give her a certificate showing this if she asks for one. That way Miss A can reclaim the tax from HM Revenue & Customs, if appropriate.

### **My final decision**

I uphold Miss A’s complaint and direct HSBC Life (UK) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss A to accept or reject my decision before 23 July 2024.

David Curtis-Johnson  
**Ombudsman**