

The complaint

Mr S complains that HSBC Life (UK) Limited hasn't paid an incapacity claim he made on a group income protection insurance policy.

What happened

Mr S is insured under his employer's group income protection insurance policy. The policy provides cover if Mr S is incapacitated due to illness or injury for more than the contractual deferred period of 26 weeks.

Unfortunately, in April 2022, Mr S was signed-off from work with depression. As he remained signed-off sick, he made an incapacity claim on the policy.

HSBC Life investigated Mr S' claim. Originally, Mr S decided against claiming in August 2022, as it seems he didn't want HSBC Life to access his medical records and also because he planned to return to work. But as Mr S subsequently remained unfit for work, HSBC Life progressed with the claim in November 2022.

Having obtained Mr S' medical records, as well as reports from occupational health (OH), HSBC Life turned down Mr S' claim. It didn't think there was enough medical evidence to show that Mr S had been continuously incapacitated throughout the full deferred period.

Unhappy with HSBC Life's decision, Mr S appealed. HSBC Life went on to review evidence from Mr E, Mr S' treating psychologist, but it wasn't persuaded to change its position. In brief, it didn't think the medical evidence showed that Mr S had had a severe medical condition that had prevented him from working throughout the full deferred period. It noted Mr S had experienced improvements in his symptoms at times during the 26 weeks. It considered the evidence pointed towards workplace stressors being a partial cause of Mr S' symptoms. And it also noted that Mr S had been able to travel abroad, including on multi-centre trips in September and October 2022. HSBC Life concluded that these trips had potentially led to Mr S not returning to work within the deferred period.

Remaining unhappy with HSBC Life's response, Mr S asked us to look into his complaint.

Our investigator didn't think Mr S' complaint should be upheld. He didn't think it had been unfair for HSBC Life to rely on the available medical evidence to conclude that Mr S hadn't shown he had a valid incapacity claim on the policy. So he didn't think HSBC Life had acted unfairly when it turned down Mr S' claim.

Mr S disagreed and I've summarised his response. He felt he'd provided enough medical evidence to demonstrate the severity of his condition and its impact on his ability to carry out his own occupation. He said that the nature of mental health conditions means that symptoms can fluctuate, making it challenging to provide consistent evidence over an extended period. He considered that HSBC Life's reliance on his being able to carry out everyday tasks and travel didn't reflect the nuanced nature of mental health conditions. He said that the OH had been fully aware of and supportive of his travel plans – and the trips had been a proactive effort to manage his mental health. He added that he'd booked annual

leave for the trips, as he'd intended to be back at work, but that his condition had meant this wasn't possible. He acknowledged that workplace stress was a contributing factor to his illness but he felt that overall, it was due to a mix of different stressors, including workplace challenges, health and family circumstances. Therefore, he felt a broader evaluation of the challenges he'd faced should be taken. He stated that due to his condition, he hadn't known about the necessity to collect medical evidence. So he believed a more compassionate and understanding approach to the assessment of evidence should be taken. And he felt the definition of incapacity should be understood within the context of mental health complexities. He questioned the fairness of the policy terms.

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 S, I don't think it was unfair for HSBC Life to decline his claim and I'll explain why.

First, I'd like to say how sorry I was to hear about Mr S' illness and the impact this has had on him. It's clear he's been through a difficult and worrying time. It also appears that Mr S has some concerns about his employer's actions while he was unwell. I must make it clear that HSBC Life isn't responsible for any of Mr S' employer's actions. And we don't have the power to look into employment disputes. So my decision will only focus on whether I think it was fair for HSBC Life to turn down this claim.

I also need to make it clear that it isn't our role to tell insurers what risks they should and shouldn't cover. That's because we're not the industry regulator and we have no power to tell an insurer to change its processes or procedures.

As the investigator said, the relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the policy terms and the available evidence, to decide whether I think HSBC Life treated Mr S fairly.

I've turned to consider the policy terms, as these set out the basis of the insurance contract agreed between Mr S' employer and HSBC Life. As Mr S was signed-off from work, I think it was reasonable for HSBC Life to assess whether Mr S met the policy definition of incapacity. In Mr S' case, the 'own occupation' definition of incapacity applies. This says that incapacity:

'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.'

'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 Policyholder.'

HSBC Life has defined what it means by an illness or injury as follows:

'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'

HSBC Life has also set out a list of things it doesn't consider to be an illness or injury and I've set out below those I think are relevant:

- *'Stress or Workplace stress, or*
- *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, or*
- *Any Life event or lifestyle choice which is deemed by HSBC Life, either directly or indirectly, to be the main factor in affecting the Members ability / desire to be present at work, or to seek and follow appropriate treatment or a rehabilitation plan or is preventing the Member from performing their Occupation in any other way, or*
- *Any non-medical cause responsible either directly or indirectly for the members absence from work, as identified by HSBC Life, including but not limited to disciplinary matters, grievances or other workplace issues including carer status and family bereavement.'*

Therefore, in order for HSBC Life to accept and pay an incapacity claim, it needs to be satisfied that due to an illness or injury, an insured member is prevented from carrying out the material and substantial duties of their own occupation. And that they'd be unable to carry out their own occupation for *any* employer or at any other workplace.

As the investigator explained, it's a general principle of insurance that it's for a policyholder or insured member to provide enough evidence to show they have a valid claim on their policy. So it was Mr S' responsibility to provide HSBC Life with enough medical evidence to show that he was incapacitated in line with the policy definition of incapacity for the full 26-week deferred period and beyond. This means then that Mr S needed to show HSBC Life that he'd been incapacitated between April and October 2022 and beyond. I'd also add that in my experience, most, if not all, income protection insurers require medical evidence to support an incapacity claim.

HSBC Life considered the available medical evidence in line with the policy terms. It didn't think the evidence showed that Mr S had suffered from a severe medical condition which would have prevented him from working throughout the full deferred period. So I've looked carefully at the available evidence to decide whether I think this was a fair conclusion for HSBC Life to draw.

I've first considered Mr S' GP records for the relevant period. It seems Mr S was prescribed anti-depressant medication in January 2022 to treat low mood and anxiety (before the start of his absence) but that he opted not to take it. In April 2022, during a depression review, the GP practice issued Mr S with a fit note which stated that he was unfit for work due to depression. A further fit note was issued in early June 2022.

In late July 2022, Mr S had a more detailed review with his GP. The notes say that *'he has struggled with low mood and anxiety'*. The records outline a number of health concerns Mr S had, as well as bereavements he'd suffered. The notes also explain that Mr S was under the care of a counsellor; that he'd been signposted to other mental health services and that he'd declined to take the anti-depressant medication. He was signed-off for a further 28 days.

Subsequently, in August 2022, Mr S complained about a two week history of abdominal pain. In early September 2022, Mr S returned from abroad with similar abdominal pain, but he reported more severe symptoms. And on 20 September 2022, Mr S was signed-off again for a further 28 days with depression. He was later referred for an ultrasound scan to investigate his abdominal pain.

Next, I've considered the available OH reports. In May 2022, OH reported that they'd discussed Mr S' absence and alleged underperformance at work with him. The report noted that Mr S had been authorised to undergo psychotherapy sessions to treat his symptoms of reported anxiety and depression. And OH noted Mr S acknowledged that he was struggling.

A report dated 17 June 2022 set out Mr S' ongoing symptoms and that he'd told OH his counsellor believed his symptoms were caused by underlying depression. OH noted that Mr S had reported *'he felt a million times better after his counselling'*.

On 8 August 2022, OH noted that Mr S had told it that he'd had quite a few counselling sessions...and *'feels that this is helping him recover from his depressive symptoms.'*...OH recorded that Mr S' fit note had been extended until mid-September 2022, but *'he was hopeful that he will be returning to work thereafter but I have advised him that if he feels able to, he can return to work before this date.'* It seems to me then that OH didn't think Mr S' condition was likely to or should prevent him from returning to work during the deferred period.

Subsequently, on 6 October 2022, OH noted that Mr S hadn't returned to work. He referred to his abdominal symptoms and stated that his GP believed he had IBS. Mr S was still seeing his counsellor at this point.

I've gone on to consider the letter Mr E sent in support of Mr S' claim, dated August 2023. This listed the conditions Mr S had reported to Mr E – including anxiety, stress and depression. Mr E said: *'last year, lethargy, fatigue, low concentration and impaired short-term memory in particular restricted (Mr S') ability to perform work-related tasks.'*

Mr E listed a number of factors which he considered had led to Mr S' condition developing, which included bereavement, issues at home; Mr S' health and issues at work. Mr E also referred to the therapy Mr S had undergone to treat his symptoms.

Additionally, I can see that Mr S' employer told HSBC Life that Mr S had experienced performance-related issues at work prior to his first absence. And the evidence indicates that Mr S travelled abroad on holiday in September 2022 before taking a multi-centre holiday in October 2022.

I've carefully considered all of the evidence that's been provided. I must make it clear that I'm not a medical expert and it's not my role to substitute clinical opinion with my own. Nor would it be appropriate for me to do so. Instead, I must weigh up all of the medical and other expert evidence which has been provided to decide what evidence I find most persuasive.

It's clear that Mr S has suffered symptoms which can indicate a clinically and functionally impairing mental health condition. Mr E's letter refers to Mr S remaining in bed all day when he initially sought treatment. I accept too that Mr S' GP issued regular fit notes which stated that Mr S had depression and it seems that Mr E accepted this reported diagnosis.

On the other hand though, there is limited medical evidence available from the deferred period to show that Mr S was incapacitated in line with the policy terms. While Mr S was signed-off by his GP, there's little recorded evidence as to how and why Mr S' symptoms would've prevented him from working. And there seems to be a gap in the GP records

between late July 2022 and early September 2022 when Mr S doesn't appear to have been reviewed for depression. Indeed, the August and September 2022 records mainly focus on Mr S' abdominal symptoms.

The OH notes focus on Mr S' self-reported symptoms. But importantly, I can see that in June 2022, Mr S had reported a seemingly significant improvement in his symptoms following his therapy sessions and in August 2022, he felt sufficiently better that he planned to return to work. There's little contemporaneous information in the available medical evidence to demonstrate why Mr S didn't return to work in September 2022. And while I appreciate that Mr S was experiencing abdominal symptoms around this time, they weren't severe enough to prevent him from travelling abroad. So I don't find it was unfair for HSBC Life to conclude that Mr S may well have been sufficiently well to work from home or that his travel plans may have delayed his return to work. I've borne in mind too that there are key references in the medical evidence to the impact of Mr S' role on his condition – which is specifically excluded by the policy terms.

In the round, I've thought very carefully about all of the evidence that's been provided. And I don't think HSBC Life acted unreasonably when it concluded that the evidence didn't show that Mr S had been incapacitated in line with the policy terms for the entire deferred period and beyond.

This means I don't find that HSBC Life acted unfairly when it decided that Mr S hadn't provided enough evidence to show that he was suffering from a significant mental health condition - during the *full* deferred period - which prevented him from carrying out the material and substantial duties of his occupation.

I'd like to reassure Mr S that I'm not suggesting he was fit to 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 26-week deferred period. As I've explained, I don't think he has.

Overall, despite my natural sympathy with Mr S' situation, I find it was fair and reasonable for HSBC Life to turn down his income protection 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 S to accept or reject my decision before 18 October 2024.

Lisa Barham
Ombudsman