DRN-4315872

The complaint

Mrs L complains that HSBC Life (UK) Limited has turned down an incapacity claim she made on a group income protection insurance policy.

What happened

The background to this complaint is well-known to both parties, so I've set out a summary of what I think are the key events.

Mrs L was insured under her employer's group income protection insurance policy. The policy includes a deferred period of 26 weeks.

In September 2021, Mrs L was signed-off work. She said she'd been from suffering from symptoms since November 2020, which at that point a GP had considered to be work-related stress. Mrs L said she'd therefore described her symptoms as work-related stress when she asked for a sick note, which was accordingly issued. Mrs L continued to be signed-off work, with work-related stress, alongside anxiety and depression. She also underwent treatment with Ms D, a psychologist, who felt Mrs L had generalised anxiety disorder and depression. So subsequent fit notes signed Mrs L off with anxiety and depression. Mrs L's employer made an incapacity claim on the policy.

HSBC Life assessed Mr L's claim. It reviewed evidence from Mrs L's GP, along with evidence from Ms D. It went on to appoint an independent medical examiner who I'll call Mr W. Mr W is a consultant occupational health physician. Mr W concluded that Mrs L was suffering from work-related stress. So HSBC Life didn't think there was sufficient medical evidence to show that Mrs L was suffering from a mental illness which was significantly affecting her level of function. Therefore, HSBC Life concluded that Mrs L hadn't met the policy definition of incapacity for the whole of the deferred period and so it turned down the claim.

Mrs L was unhappy with HSBC Life's decision and so she asked us to look into her complaint. She felt Mr W had misrepresented her medical situation and she told us that HSBC Life hadn't provided her with a copy of the policy terms.

Our investigator didn't think Mrs L's complaint should be upheld. She explained that the contract of insurance was between Mrs L's employer and HSBC Life. There was no direct contract between the insurer and Mrs L. So she didn't think HSBC Life had needed to provide Mrs L with a copy of the policy terms and conditions. She explained that HSBC Life wasn't responsible for any dispute between Mrs L and her employer.

The investigator found Mr W's report persuasive medical evidence as to the cause of Mrs L's absence. And she thought the medical evidence indicated that Mrs L's symptoms during the deferred period were mainly due to work-related stress. She felt the evidence showed that it wasn't an illness which was preventing Mrs L from returning to work, it was her work situation. She didn't think it had been unfair for HSBC Life to turn down Mrs L's claim.

Mrs L disagreed and I've summarised her responses to our investigator. She said the

diagnosis she'd originally been given by her GP was wrong and that this had been corrected on her medical records. She'd relied on the wrong diagnosis of work-related stress when self-reporting her symptoms to the GP in September 2021. She questioned whether Mr W was sufficiently qualified in mental health to comment on her diagnosis – and indeed, she felt later events showed his findings had been wrong. Therefore, she felt HSBC Life couldn't rely on his findings. Mrs L has since been awarded employment support allowance (ESA) and has been placed in a category which means she is unable to work or be able to return to work in the future. She maintained that HSBC Life was working with her employer and that they should therefore be treated as one entity. She felt HSBC Life had rejected her claim for erroneous reasons. And she provided evidence which she felt showed HSBC Life had questioned whether or not her claim was down to work-related stress. She felt the evidence showed HSBC Life hadn't acted in good faith.

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 Mrs L, I don't think it was unfair for HSBC Life to turn down this claim and I'll explain why.

First I'd like to reassure Mrs L that while I've summarised the background to her complaint and her detailed submissions to us, I've carefully considered all she's said and sent us. I'm very sorry to hear about the circumstances that led to Mrs L needing to make a claim and I don't doubt how upsetting and worrying the situation has been for her. Within this decision though, I haven't commented on each and every point she's made and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

At the outset, I must make clear the parameters of this decision. I appreciate Mrs L doesn't consider that her employer should be distinguishable from HSBC Life. However, as the investigator explained, the insurance contract is between HSBC Life and Mrs L's employer. These are two distinct legal entities and the distinction is an important one. HSBC Life had no obligation to provide Mrs L with a copy of the policy terms – as her employer was the cover holder. Nor was HSBC Life responsible for the relationship between Mrs L and her employer. Mrs L has referred to correspondence between her employer and HSBC Life during the life of her claim. But in my experience, there will generally be communication between an employer (as the insurance contract policyholder) and an income protection insurer during the course of a claim. This isn't unusual. As such then, I won't be considering any concerns Mrs L has about her employer as part of this decision – and I have no power to consider employment disputes in any event.

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 the policy and the available medical and other evidence, to decide whether I think HSBC Life handled Mrs L's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mrs L's employer's contract with HSBC Life. Mrs L made a claim for incapacity benefit, given she wasn't fit for work. So I think it was reasonable and appropriate for HSBC Life to consider whether Mrs L's claim met the policy definition of incapacity. HSBC Life provided cover for Mrs L's own occupation. I've turned then to look the policy definition of 'incapacity'. This says 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.'

This means that in order for HSBC Life to pay incapacity benefit, it must be satisfied that a member is suffering from an illness which prevents them from carrying out the material and substantial duties of their own occupation. And that the illness would prevent them from carrying out those material and substantial duties for any other employer or in any other workplace – it doesn't mean that a member can't carry out their substantive role for their current employer only.

The policy says that HSBC Life will pay incapacity benefit once a member has been continuously incapacitated for the full deferred period and afterwards. In this case, it means that Mrs L needed to be continuously incapacitated for the full 26-week period and afterwards in order for benefit to be paid.

It's a general principle of insurance that it's for an insured member to show they have a valid claim on their policy. This means it was Mrs L's responsibility to provide HSBC Life with enough evidence to demonstrate that her illness had led to her being unable to carry out the duties of her own occupation for the full 26-week deferred period and afterwards.

HSBC Life assessed the evidence Mrs L provided in support of her claim. It concluded that she wasn't suffering from a defined, impairing mental illness which had met the definition of incapacity throughout the entire deferred period. Instead, it felt that Mrs L was suffering with a reaction to her workplace circumstances that most likely didn't amount to a defined medical problem. And the policy terms specifically state that HSBC Life doesn't consider stress or workplace stress to be an illness or injury. On that basis, it turned down the claim. So I've thought about whether it was fair for HSBC Life to conclude that the claim wasn't covered.

I've carefully considered the available medical evidence. It's agreed that Mrs L initially self-reported her condition to her GP as work-related stress, although once Ms D had suggested that Mrs L's symptoms were down to anxiety and depression, later fit notes only referred to depression and anxiety. However, the fit notes issued by Mrs L's GP in September, October and November 2021 (the first three months of the deferred period) clearly stated that Mrs L's cause of absence included work-related stress. I appreciate that Mrs L says that her records have now been amended, as she'd been given the wrong diagnosis by a GP around 10 months before she was signed-off. But I don't think it was unreasonable for HSBC Life to rely on the contemporaneous medical records available at the time.

Mrs L underwent talking therapies and in July 2021, began treatment with Ms D, a clinical psychologist. It appears that HSBC Life asked Ms D for information about Mrs L's condition, which I consider to have been a fair and appropriate action. I've looked carefully at Ms D's letter, dated 24 January 2022. This says:

'(Mrs L) reports symptoms consistent with diagnoses of Generalised Anxiety Disorder and Depression. She has low mood with periods of tearfulness, poor concentration, impaired sleep, intrusive ruminations and anhedonia…

Mrs L reports that these symptoms were precipitated by a difficult period at work. In…2020, (Mrs L) was moved to another manager without her team and with no notice. This created an increase in work load with reduced support. In addition, Mrs L found her new manager to be difficult and unresponsive. The situation escalated such that Mrs L sought help from her GP in November 2020. The GP diagnosed work related stress and suggested she take 2 weeks leave… I believe that lack of support, inconsistent management and unrelenting work levels both triggered and maintained Mrs L's anxiety and depression.

I understand that (Mrs L) does intend to return to (her employer) once she is recovered and with adequate support, consistent, responsive management and an appropriate workload, I don't see that as being problematic. It seems apparent that increased staffing, new management and a period without systemic change would help facilitate this.'

It's clear that Ms D felt Mrs L reported symptoms which were consistent with generalised anxiety and depression. I don't doubt how upsetting this must have been for Mrs L. But I don't think this letter indicates a definitive diagnosis of an illness and neither do I think that Ms D specifically stated that Mrs L wasn't fit to work as a result of an illness. Instead, I think the evidence indicates that Ms D felt Mrs L's symptoms were caused and maintained by work-related concerns – and that a return to work wouldn't be problematic if work-place adjustments were made.

Nonetheless, following HSBC Life's original decision to decline the claim and Mrs L's initial complaint, HSBC Life considered it didn't have enough medical evidence to show that Mrs L's condition was caused by work-related stress. And so it decided to appoint Mr W, a consultant in occupational medicine, to carry out an independent assessment of Mrs L's condition. I appreciate Mrs L has concerns about HSBC Life's handling of her claim during the claim process. But I think it was entirely fair and reasonable for HSBC Life to obtain an independent opinion on Mrs L's condition in order to determine whether the claim fell within the scope of the policy terms.

Mr W's report is dated 18 August 2022 and I've set out below what I consider to be his key findings:

'The main issue for her is workplace stress. It was clear from her history and from her emotions during the consultation that it is the workplace issues that are prominent in her mental health difficulties. Her GP has clearly identified work stress as the main factor. Her psychologist has stated that this is not the diagnosis, instead she has generalised anxiety disorder and depression.

In Mrs L's case her affective symptoms of anxiety and depression are entirely due to her workplace issues. Waiting for her to become better so she can return to work is not only futile, but unless her workplace circumstances change substantially, any expectation that she will return only increases her stress and anxiety. The solution all along has only been to change her workplace circumstances to a point where she can adjust and return to normal working again. The fact that she can engage in all other normal daily activities without

significant difficulty indicates that not only are her symptoms entirely work-related, but they are mild to moderate at most.

Mrs L has now reached the point where the duration of conflict, and lack of any apparent attempt to resolve the issues, has led to such a loss of confidence in her employer that any return to employment is not just unlikely but may well provoke additional symptoms of anxiety. The only realistic solution is to allow her to leave and move on. Once she has left this employment, I would expect a swift and complete recovery.'

I appreciate that Mrs L states that she was unable to return to work and has now been awarded ESA. So she feels that Mr W's conclusions have been shown to be wrong and that HSBC Life can't reasonably rely upon them. However, I don't think it was unreasonable for HSBC Life to rely on the findings of a consultant physician and expert in the field of occupational medicine. It's also provided evidence that it put some of Mrs L's concerns about the report to Mr W for his comments – so I think it's shown it took reasonable steps to ensure that Mrs L's concerns could be addressed.

I've thought very carefully about all of the evidence that's been provided. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the information provided by medical professionals to decide what evidence I find most persuasive. It's clear that Mrs L was suffering from symptoms which can also be indicative of a significant mental health condition and it's also clear that she has a long-standing history of other medical conditions. I'm conscious that Mrs L underwent treatment with Ms D and I'm aware she's also been awarded ESA.

But, taking into account the totality of the medical and other evidence available to HSBC Life, I think it was reasonable for it to conclude that the evidence showed Mrs L was suffering from an understandable reaction to the workplace situation in which she found herself. And that the main reason for Mrs L's absence during the deferred period (and afterwards) was likely the workplace stress she was under. I've seen an occupational health report too which says: *'As (Mrs L) finds work to be one of the main triggers for her current symptoms, I would suggest…a manager meet with her…to discuss her work-related concerns in more detail so that these do not become a barrier to her return to work'*. I think this evidence points towards the main cause of Mrs L's absence being workplace issues and that she suffered from an understandable reaction to her personal circumstances - rather than a functionally impairing mental illness.

This means I don't find that HSBC Life acted unfairly when it decided that Mrs L wasn't suffering from a significant mental health condition or other functionally impairing illness, during the deferred period, which prevented her from carrying out the material and substantial duties of her occupation.

Overall, I don't think it was unfair for HSBC life to conclude that Mrs L's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that the main cause of Mrs L's absence was more likely due to workplace stress and a reaction to her circumstances. So despite my natural sympathy with Mrs L's position, I find it was fair and reasonable for HSBC Life to turn down her 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 Mrs L to accept or reject my decision before 9 October 2023.

Lisa Barham
Ombudsman