

The complaint

Miss R is unhappy HSBC Life (UK) Limited continued to decline her claim following additional medical evidence.

What happened

Miss R has a history of illness. She became absent from work in July 2020 due to anxiety and stress and made a claim on her income protection policy.

HSBC declined cover because they didn't think the evidence was enough to show Miss R was incapacitated. Unhappy with this decision, Miss R referred a complaint to our service. Our investigator said HSBC had been fair to decline cover based on the available medical evidence. And he thought it was reasonable for HSBC to conduct a report from an independent medical examination (IME).

The IME concluded Miss R still didn't meet the definition of incapacity so the claim remained declined. Miss R was unhappy with the IME report and appealed the decision to decline her claim. She provided additional supporting evidence from her GP to show her inability to perform in her role during the relevant period.

HSBC said Miss R still didn't meet the definition of incapacity. So she referred another complaint to our service. Our investigator concluded the additional evidence from her treating doctors provided more detail on Miss R's symptoms and how they impacted her ability to work. So he upheld the complaint and asked HSBC to pay the claim. HSBC didn't agree and maintained there wasn't enough medical evidence to support incapacity.

So the case was 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.

The relevant rules and industry guidelines say HSBC has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably. The policy terms and conditions define incapacity as:

"The Life Insured is unable to carry out the Material and Substantial Duties of [her] Occupation because of illness or injury".

I've thought carefully about the medical evidence presented in this claim. To be clear, we've already dealt with a separate complaint about HSBC's first decision to decline cover. So I'm only commenting on if HSBC fairly considered the new evidence provided by Miss R to support her appeal to the claim decision.

HSBC may be correct that Miss R's initial stress and anxiety began due to workplace issues. But I'm persuaded the additional evidence from the GP (who had treated Miss R for over 10 years), was detailed and persuasive enough to support there had been a relapse in her underlying medical condition - and she'd begun suffering symptoms that rendered her unable to work in 2020.

I don't think HSBC treated this additional medical evidence fairly or gave it enough weight. I'll explain why:

- I've given careful consideration to the detailed IME report and opinion from the consultant occupational physician. However, I'm mindful this was based on Miss R's medical records and one appointment in 2022. I'm more persuaded by the additional medical evidence provided by the GP because Miss R's relevant medical conditions date back over 10 years and her GP has been in regular contact with her throughout the development and attempted treatments of these conditions. So I find their detailed opinion on her change in symptoms from 2022 and underlying medical condition more persuasive and reliable in the circumstances.
- The additional evidence from the GP is much more detailed in regard to how Miss R's symptoms directly impacted her ability to perform in her role. The letter explains the severity of Miss R's brain fog and cognitive dysfunction meant she was unable to perform in her high profile and demanding role. It said Miss R struggled with thinking clearly and was unable to make links, follow simple patterns or speak coherently. The GP confirmed she had been bed bound for a significant time over the relevant period and any attempt to work would've further exasperated her symptoms. I found this detailed evidence to be relevant and persuasive in the circumstances. So I think HSBC should've given it more weight than it did.
- I think it's reasonable to conclude Miss R's role requires a high degree of concentration. She works alongside senior stakeholders in a fast paced role and needs to be articulate and think strategically. Her treating GP said she was unable to work because the symptoms of her illnesses meant her decision-making abilities were severely impacted, as well as her concentration levels. So given Miss R's profession and the level of responsibilities required of her as a senior professional, the GP thought it was too much for Miss R to be able to meet those demands because of her underlying medical conditions.
- The medical evidence from the time shows the GP had repeatedly issued fit notes to say Miss R was unable to work. I note HSBC's comments that this original evidence from the GP didn't refer to the specific symptoms that are now being reported. But it's not uncommon for fit notes to lack detail. I'm satisfied Miss R's medical records from the time do make reference to her being tired and fatigued. So although initially this wasn't enough information to meet the definition of incapacity, it's not unreasonable the GP was then able to expand on the fit notes and provide a more detailed breakdown of how her tiredness affected her ability to work. It's not unusual for a claimant to come back with more detailed evidence during an appeal.

I appreciate this detail has been added two years after the event, but the IME was also only carried out in 2022. And, as explained above, due to his knowledge and ongoing treatment of Miss R over a number of years, I find the updated GP opinion more reliable than the report from the IME.

- It's clear from the evidence that Miss R's health has been up and down. Some periods she has felt better and more active than others and at times she has caused

delay to the progression of her claim. But I think it's unreasonable to expect a linear journey with Miss R's kind of illness.

In summary, whilst I acknowledge the IME report and why HSBC relied upon it to decline the claim, I'm more persuaded by the additional evidence from the GP. They'd been treating Miss R for so long in the past that in this specific case, I think the GP was best placed to determine her ability to return to work. And I'm satisfied the GP provided enough persuasive medical evidence for HSBC to fairly conclude Miss R's anxiety triggered a relapse of her underlying medical conditions and caused symptoms that prevented her from working from 2020.

Putting things right

HSBC Life (UK) Limited need to put things right by:

- Settling Miss R's claim from the end of the deferred period until Miss R's return to work - subject to Miss R consenting to HSBC being able to check for any potential shared liability under any other policies.
- Pay 8% interest on the sum above, from the date HSBC maintained the claim decline (following receipt of the IME and additional GP evidence) up until the date of settlement.

My final decision

I uphold this complaint and direct HSBC Life (UK) Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 26 January 2024.

Georgina Gill
Ombudsman