

The complaint

Ms H complains Quilter Wealth Ltd made an error when it sold her an income protection policy, and says this caused her claim to be declined.

What happened

Ms H held an income protection policy which she originally took out in 2016, on the advice of Quilter. In 2022, Ms H contacted her insurer to make a claim, as she was due to undergo knee surgery and would require time off work for a substantial recovery period.

The insurer turned down Ms H's claim. It said she wasn't eligible for the policy because she hadn't been resident in the UK for three years at the point of inception. And she hadn't disclosed a previous right knee surgery, which it said would have caused it to add an exclusion to the policy for claims related to that knee. Ms H said she told Quilter about the previous surgery, and believes it failed to pass the information on to the insurer. And she thought the residency issue had no relevance to her claim.

Ms H complained to Quilter. It said its employee had failed to disclose Ms H's knee surgery to the insurer. However, it said the insurer had sent Ms H a copy of her policy application form when the policy was inception. This showed no disclosure of knee surgery, and Quilter said Ms H had a responsibility to check the information was correct.

Quilter said the insurer had since cancelled the policy and refunded the premiums Ms H had paid. It noted the insurer had cited an additional reason for cancelling the policy, related to Ms H's residency prior to taking out the cover, which it said it wasn't responsible for, as the insurer had not asked it to obtain that information. It offered to pay her interest at 8% on the premium refund the insurer had issued. Plus £150 in recognition of the trouble and upset it had caused.

Unhappy with Quilter's response, Ms H brought her complaint to this service. She said the reason she had taken out the policy was to provide cover for future issues with her knees. And said Quilter's employee had confirmed to her that there would be no exclusion in relation to knee conditions.

An investigator here looked into what had happened. They said they thought Quilter had done enough to put Ms H back in the position she would have been in, had it not made an error with her application. And said they thought it was likely Ms H would have been unable to find an income protection policy elsewhere, which would have provided the cover she wanted.

Quilter made no comment on the investigator's view. However Ms H disagreed. In summary she said she didn't think her knee issues were 'long term' at the time she took the policy out. And said had she been told her right knee would be excluded from cover due to an operation in the previous five years, she would have chosen not to take the policy, and would have waited another two years and then obtained cover. And she said at that point two years later, there also wouldn't have been any residency issues.

Ms H asked for a decision from an ombudsman, so the case has 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.

And I've looked at the relevant rules and industry guidelines, which say as Quilter provided advice, it had a responsibility to ensure that the policy was suitable for Ms H when it sold it to her.

Having done so, I think Quilter made an error when it sold the policy, but has done enough to put things right. And I'll explain why.

Firstly, I should clarify that in this complaint, I'm reviewing the actions of Quilter, and not the insurer who provided Ms H's income protection policy. So I've not considered the points Ms H has made about her residency prior to taking out the policy. As the investigator has said, the insurer found Ms H was ineligible for the policy due to having not resided in the UK for the full three years prior to taking the cover. And the insurer didn't ask Quilter to supply or check that information. So, if Ms H would like to pursue a complaint about her eligibility for the policy in relation to her past residency, she would need to complain directly to the insurer.

I'm aware Ms H has concerns around Quilter having not provided call recordings of her conversations regarding her application for the policy. However, Quilter has said it no longer has the recordings. It has provided its notes from the fact find and has accepted Ms H disclosed the relevant information about her past knee problems. As Quilter is not disputing that Ms H provided accurate information about her health and has agreed it made an error, I've gone on to consider what happened as a consequence, and how things should be put right.

The insurer has said it would not have offered cover for Ms H's right knee, had it been told of her medical history. Ms H had previously undergone a knee operation and physio treatment to her right knee, which Quilter's fact find document shows she disclosed. So had Quilter passed this information on to the insurer as it should have done, the insurer has said it would have offered the policy but with an exclusion for the knee.

So, it would have been for Ms H to decide whether she wanted to go ahead with the policy with the exclusion, or to seek cover elsewhere. It's common for insurers providing income protection policies to impose exclusions in circumstances similar to these. And I note she did just that for other conditions Ms H had including asthma. And I think it's unlikely Ms H would have been able to obtain the cover she wanted for her knee with another insurer at the time.

I've noted Ms H has since said, had she been correctly advised by Quilter that the insurer couldn't offer cover for her knee, that she would have waited for two years, and then sought cover again. And she has said the sole reason for taking the policy, was to ensure cover for future knee problems. Whilst I accept this was a possible course of action, I think Ms H is exercising some benefit of hindsight here. At the time in 2016, Ms H wouldn't have known whether or not she would be trouble-free from any knee issues over the next two years. And it seems clear from the fact find documentation, that Ms H wanted to take out a policy in 2016 and that this was intended to provide cover for accidents and sickness in general, and not just for knee issues.

I've not been sufficiently persuaded that had it not been for Quilter's error, Ms H would have taken out a policy two years later in 2018, and would have been able to make a successful claim when she needed surgery in 2022. So I don't think it would be fair or reasonable for me to direct Quilter to pay an amount equivalent to that which Ms H could potentially have received. Instead, Ms H should be put back in the position she would have been in, had Quilter passed on the medical disclosure about the knee to the insurer, and she had decided not to take the policy.

The insurer has refunded Ms H the premiums paid. And Quilter has offered to pay interest at 8% on the premiums. I'm satisfied this sufficiently puts Ms H back in the same position financially, as if she'd not taken the policy out.

Quilter has also offered £150 in compensation for the distress and inconvenience its error has caused Ms H. And in the particular circumstances of this case, I think the compensation fairly reflects the impact Quilter's mistake has had. Although Quilter made the error, I do think Ms H had an opportunity to notice this and to raise it, as she was sent a copy of the application by the insurer. And, whilst I've noted Ms H's comments around her distress due to the insurer declining her claim, I don't think a larger award is appropriate here. Firstly because I've not been persuaded Ms H would have had a policy in place which would have paid out, regardless of Quilter's error. And secondly, because there was another reason the insurer cited for voiding the policy - an issue with Ms H's residency leading up to inception of the policy – which was unrelated to Quilter's mistake.

My final decision

For the reasons I've given, I think Quilter Wealth Ltd's offer is fair and reasonable in all the circumstances. So my final decision is that I direct Quilter Wealth Ltd to pay Ms H the following, if it hasn't already done so:

- £150 in compensation for the overall distress and inconvenience caused; and
- interest at 8% simple from the date the premiums were originally paid to the insurer, to the date they were refunded.

Quilter Wealth Ltd must pay the compensation within 28 days of the date on which we tell it the consumer accepts my final decision. If it pays later than this, it must also pay interest on the compensation, from the date of my final decision to the date of payment, at 8% simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 6 March 2023.

Gemma Warner
Ombudsman