

The complaint

Mrs L is unhappy that Zurich Assurance Ltd declined to make full payment of a claim she made on her late husband's life insurance policy.

What happened

Mr and Mrs L took out joint life and critical illness cover in 2017. They later amended the cover to remove the critical illness cover.

Mr L sadly died, and Mrs L claimed on the policy. Zurich said they wouldn't make full payment of the claim as Mr L hadn't accurately declared information about his mental health when the policy was taken out. Mrs L complained but Zurich maintained their position that a partial settlement was fair. Mrs L made a complaint to the Financial Ombudsman Service.

Our investigator looked into what had happened and upheld Mrs L's complaint. He thought the question Mr L was asked wasn't clear. And, he didn't think Zurich had enough medical evidence to decline the claim because he didn't think the evidence clearly suggested Mr L had received in-patient hospital treatment for mental health difficulties. He said Zurich should continue to assess the claim, as they'd prematurely declined it, and pay Mrs L £200 compensation for the distress and inconvenience caused.

Zurich didn't agree. They didn't think the question Mr L had been asked was ambiguous and said that, based on their experience, the available medical evidence suggested there had been a referral to a hospital, mental health clinic and specialist intervention. The further comments from Zurich didn't change the investigator's thoughts about the outcome of the complaint. So, the case has been referred to me to make a decision.

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 Zurich have a responsibility to handle claims promptly and fairly.

Zurich says that Mr L didn't answer the questions on the application correctly. This means the law set out in the Consumer Insurance (Disclosures and Representations) Act 2012 ("CIDRA") are relevant and I think it's fair and reasonable to apply these principles to the circumstances of this case. CIDRA is designed to make sure consumers and insurers get an appropriate remedy if a policyholder makes what is called a 'qualifying misrepresentation' under the Act. I've also considered the relevant Code of Practice issued by the Association of British Insurers.

A qualifying misrepresentation is when a consumer fails to take reasonable care not to misrepresent facts which an insurer has asked about. The insurer also needs to demonstrate that if the consumer had taken reasonable care it would have made a difference to the terms offered. The standard of care required is that of a reasonable consumer. One of the factors

to be considered when deciding whether a consumer has taken reasonable care is how clear and specific the questions asked by the insurer were.

Mr L was asked:

“Have you ever had: Schizophrenia, bi-polar disorder, manic depression, attempted suicide, episode of self-harm, an eating disorder, or any other mental illness that has required a stay in hospital or referral to a psychiatrist?”

He answered ‘no’ to that question. Zurich says that Mr L should have answered ‘yes’ because information on his medical records suggested that he’d had mental health issues which ought to have been disclosed in response to the question.

I’m satisfied this could have been a qualifying misrepresentation because Zurich has shown that had the question been answered ‘yes’ it would have offered different terms. It would have applied a mortality loading to Mr L’s policy. As it considers that the misrepresentation was careless, rather than deliberate or reckless, it is on that basis that Zurich has settled the claim.

However, I agree with our investigator that Zurich reached this conclusion prematurely. I say that because I don’t think the question is clear and unambiguous as I think it could be interpreted in different ways. For example, it’s unclear whether or not the applicant is being asked to disclose any hospital stay or referral to a psychiatrist referral for the listed conditions or whether the applicant was being asked to disclose a hospital stay or psychiatrist referral only if they had experienced ‘any other mental illness’. Where the question is unclear it’s interpreted in the way that’s most favourable to the consumer.

Mrs L said Mr L understood the question to be asking if he’d ever had to stay in hospital or received a psychiatrist’s referral for one of the listed conditions. I’ve taken into account whether it was reasonable for Zurich to conclude that the answer to that question ought to have been ‘yes’. I don’t think it was for the reasons I’ll go on to explain.

Mr L’s medical records don’t clearly indicate that he had a hospital stay or psychiatric referral for one of the listed conditions. Whilst there’s reference to Mr L having been detained under Section 136 of the Mental Health Act there’s no confirmation that Mr L stayed in hospital or was referred to a psychiatrist. I think it would have been reasonable for Zurich to attempt to obtain more information about the circumstances before deciding to settle the claim proportionately. Zurich has said they’d now like to obtain this information. This is unfortunate because they could have taken the opportunity to do so at a much earlier point in the claim journey.

Taking all of the above into account I’m not persuaded that it was reasonable for Zurich to conclude Mr L made a qualifying misrepresentation based on the medical information they had. I don’t think the question was clear and I don’t think they’ve currently demonstrated Mr L failed to take reasonable care when answering the question.

Zurich need to pay Mrs L £200 compensation for the distress and inconvenience caused by prematurely deciding that a misrepresentation had taken place. This happened at a time when she was dealing with the loss of her husband in distressing circumstances. I think the decision to settle the claim proportionately, without all of the relevant information, has caused her worry and upset, at an already difficult time.

Putting things right

I’m upholding this complaint and direct Zurich to put things right by:

- Considering the claim again to determine whether any further benefit is payable
- Paying Mrs L £200 compensation for the distress and inconvenience caused.

For the avoidance of doubt Mrs L may be entitled to make a further complaint to our service depending on the outcome of the reassessment of the claim.

My final decision

I'm upholding Mrs L's complaint and direct Zurich Assurance Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 23 August 2023.

Anna Wilshaw
Ombudsman