

The complaint

Mr B complains about the way Zurich Assurance Ltd has handled a claim he made on a group income protection insurance policy.

Mr B is represented by Ms M.

What happened

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

Mr B was insured under his employer's group income protection insurance policy. In May 2021, Mr B was unfortunately signed-off work unwell. As his employer's sick pay was due to run out in November 2021, the employer made an incapacity claim on the policy.

Zurich turned down Mr B's claim. It requested medical evidence from Mr B's treating doctors, which it assessed in line with the policy terms. It didn't think the evidence showed Mr B had met the policy definition of incapacity. Mr B engaged a solicitor to appeal on his behalf, but Zurich maintained its decision.

Ms M asked us to look into Mr B's complaint. A copy of a report from one of Mr B's treating doctors, dated September 2021, was included in the evidence Mr B and Ms M sent us. In August 2023, Zurich reviewed the report, which it said it hadn't seen previously. Zurich considered this evidence showed that Mr B *had* met the policy definition of incapacity during the deferred period and afterwards. So it agreed to pay Mr B's claim, backdated to November 2021.

However, Ms M didn't agree that Zurich's agreement to settle the claim went far enough. In brief, she said she and Mr B had had to borrow a significant amount of money via mortgages at an interest cost of around £42,000 and she'd had to incur substantial credit card costs. She felt Mr B had had no choice but to use a solicitor to appeal Zurich's original decision and therefore, she felt the legal fees should be refunded. She considered interest should be paid on the backdated settlement. She raised concerns about the backdated settlement incurring an additional tax liability on Mr B. And she considered that compensation should be awarded at the highest possible rate to reflect the impact of Zurich's claims decision on Mr B.

Our investigator noted that Mr B had given Zurich a list of his treating doctors during the deferred period and that Zurich had indicated it would contact those specialists. One of the doctors was the treating doctor who'd drafted the report which had led to the acceptance of the claim. However, Zurich hadn't received a response from the doctor. The investigator thought Zurich should have chased-up the specialist and reviewed any medical evidence they sent before it made a claims decision. She felt if it had done so, Mr B's claim would have been accepted far sooner. So she recommended that Zurich should pay interest on the backdated claim at an annual rate of 8% simple.

And the investigator also considered Zurich had put Mr B to significant trouble and upset which warranted a substantial award. So she recommended that Zurich should pay Mr B

£1500 compensation.

However, the investigator wasn't persuaded that Mr B and Ms M had had to borrow the amount of money they'd actually borrowed as a result of Zurich's actions. Instead, she thought it was more likely that they'd borrowed at least some of the money to protect their family during Mr B's period of illness. So she didn't think it needed to pay them any sum to reflect the cost of borrowing. Nor did she think Mr B had needed to engage a solicitor to appeal against Zurich's decision. And she wasn't persuaded that Mr B had shown he'd incurred any tax liability as a result of Zurich's delay in accepting and paying his claim.

Ms M strongly disagreed and so 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 B, I find the fair outcome to this complaint is for Zurich to pay interest of 8% simple on the backdated settlement, together with £1500 compensation. I'll explain why.

First, I'd like to reassure Mr B and Ms M that while I've summarised the background to this complaint and the detailed submissions they've made to us, I've carefully considered all that's been said and sent. I was sorry to hear about the impact Mr B's illness and this situation have had on both him and his family over a number of years. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

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 things, when deciding whether I think Zurich has treated Mr B fairly.

In August 2023, Zurich agreed to accept and pay Mr B's claim, backdated to November 2021. It's now also accepted our investigator's recommendations to add interest of 8% simple to the settlement and to pay Mr B £1500 compensation. On that basis, it seems Zurich has already accepted that it didn't handle the claim fairly. And so I don't think I need to make any further finding on whether it was reasonable for Zurich to have originally turned down the claim. Instead, I think there are three main issues for me to decide – should Zurich cover the costs of the additional borrowing; should Zurich pay Mr B's legal fees and any potential tax liability; and what I consider fair compensation for Mr B's trouble and upset should be. I'll deal with each issue in turn.

Should Zurich cover the interest and other costs associated with the additional borrowing?

It's clear how strongly Ms M feels that but for Zurich's decision to decline the claim, Mr B's family wouldn't have needed to take out additional borrowing in the form of two five-year fixed mortgages on rental properties they owned and credit card lending. She said that while the policy benefit wouldn't have covered the full amount of Mr B's usual monthly salary, it could have been supplemented with income from their rental properties. I've thought about this very carefully and I've looked closely at the evidence Ms M has provided.

As I set out above, Zurich has agreed to pay interest of 8% simple on the backdated settlement. In my view, this should be calculated by adding 8% simple per annum to each backdated payment from the date it was due until the date of settlement. Interest awards are designed to compensate consumers for loss of use of money and loss of use of amenity.

They're also intended, in part, to reflect a consumer's potential consequential losses. This might sometimes, in certain circumstances, include losses incurred as a consequence of borrowing to bridge a financial gap while a claim has been wrongly declined.

For me to make a higher award to reflect the costs of borrowing and interest on a consumer, I'd need to be persuaded, on balance, that but for an error by a financial business, they wouldn't have taken out a specific loan or borrowed a specific amount. This means I'd need to be satisfied that the financial business' error was directly responsible for the borrowing.

In this case, by Ms M's account, the family chose to remortgage (in Ms M's name) for a five-year fixed term in part due to concerns about the potential for interest rates to rise, economic uncertainty and to give Mr B breathing space during his treatment and recovery. And Ms M accepts that it isn't clear whether the family needed to borrow as much as they did and for as long as they did.

I accept it's likely Mr B's family did likely need to take out some additional borrowing while the claim wasn't being paid. But, on balance, I'm not persuaded I've seen enough to show me that the interest award Zurich has already agreed to pay doesn't fairly compensate them for the additional borrowing they likely needed to draw down. I'm not persuaded, on the evidence before me, that I could fairly find that but for Zurich's claims decision, Mr B's family wouldn't have opted to remortgage their properties. I say that because irrespective of whether the claim was accepted at the outset, Ms M accepts that the family wanted certainty over interest rates and money to protect them while Mr B recovered. And so I think it's most likely that Mr B's family would still have taken significant borrowing even if the claim had been accepted. I'd add too that when Mr B himself contacted us in May 2023, he made no reference to additional borrowing or to any lending costs in his detailed letter. Instead, he simply requested interest on the settlement; payment of his legal fees and compensation.

Overall then, I think Zurich's agreement to pay interest on the settlement is a fair way to compensate Mr B for the financial losses I think he likely incurred as a result of the delay in its acceptance of the claim.

Should Zurich pay Mr B's legal fees and compensation for any tax liability?

Ms M considers that Mr B needed to engage a solicitor to bring his appeal to Zurich, given his illness. So she feels Zurich ought to reimburse Mr B for those costs. I'm sorry to say that I don't agree, I don't think there's enough evidence to show Mr B needed to pay a solicitor to appeal to Zurich against its claims decision. It isn't clear why Ms M couldn't have represented him at that time. And it was open to Mr B to contact the Financial Ombudsman Service or raise a complaint with Zurich, free of charge. As such, I don't find it would be fair for me to direct Zurich to pay Mr B's legal costs.

Mr B is concerned that the backdated settlement will incur a significant additional tax liability. Zurich says it believes that no liability will arise. As no additional tax liability has yet crystallised, I don't think I could fairly make an award for a potential loss. I would add though that if Mr B does incur a tax loss he wouldn't otherwise have done, but for the delay in accepting and settling his claim, he should make a new complaint to Zurich specifically about that loss.

Fair compensation for Mr B's trouble and upset

Zurich has agreed to pay Mr B £1500 compensation for its delay in accepting and settling his claim. I appreciate how strongly Ms M feels this doesn't go far enough and that an award of £5000 or more would be appropriate.

I must make clear that our compensation awards for distress and inconvenience aren't intended to fine or punish the financial businesses we cover. Instead, we think about the trouble and upset a financial business' error has likely caused a consumer. Here, it's clear that Mr B's illness and this situation has had a real effect on him and his family. But unfortunately, it's the nature of symptoms of long-term illness that often a policyholder's home life is negatively impacted. Given Mr B's upsetting symptoms, I think he'd likely always have found things very distressing, even if his claim had been accepted at the start. And in my view, £1500 is an award which reflects that Zurich's mistake has caused substantial distress, upset and worry over a sustained period, with the impact felt over around 22 months. On balance, I'm satisfied it's a fair, reasonable and proportionate award to reflect the distress and inconvenience which I think can be fairly attributed to Zurich's actions. So I'm not telling it to pay a higher award.

My final decision

For the reasons I've given above, my final decision is that Zurich Assurance Limited didn't handle Mr B's claim fairly. I direct Zurich Assurance Limited to:

- Accept and settle Mr B's claim in line with the policy terms and conditions;
- Pay interest on the backdated settlement, at an annual rate of 8% simple, from the date each benefit payment was due until the date of settlement; and*
- Pay Mr B £1500 compensation.

*If Zurich considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 May 2024.

Lisa Barham
Ombudsman