

## **The complaint**

Mr K and Mrs O are unhappy with the way Zurich Assurance Limited handled a claim Mrs O made on their life and critical illness policy ('the policy') including not paying the claim in full.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

That includes the relevant ABI code of practice for managing claims for individual and group, life, critical illness and income protection insurance products.

I've also considered The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is, what CIDRA describes as, a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer (in this case, Zurich) has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

## **Has Zurich acted fairly by proportionately settling the claim?**

Zurich has proportionately settled the claim Mrs O made for the critical illness benefit under the policy.

It says she didn't accurately declare her weight when applying for the policy and had she'd done so, she would've been charged a higher premium. That's because her body mass index (BMI) score would've been higher, and it's provided underwriting guidance that if someone's BMI score is above a certain number it would increase the premium by a stipulated percentage. Zurich concluded that Mrs O acted carelessly when declaring her weight and has paid the claim in proportion to the (lower) premium she and Mr K paid for the policy.

For the reasons set out below, I'm not persuaded that Zurich has acted fairly and reasonably.

- The application form completed by Mrs O asked a number of questions about her lifestyle, health and medical history. That included asking her 'what is your weight?' and 'what is your height?' Mrs O answered 78kg and 1.6 m.
- Zurich says the weight question was answered incorrectly because around two months after the date of applying for the policy (and before the policy started), there's a suspected cancer referral form completed by Mrs O's GP which reflects her BMI score to be 33.91. Using Mrs O's height of 1.6m, I'm satisfied that Zurich has fairly concluded that Mrs O's weight at the time of the GP referral would've been noted to be in the region of 86.7kg.
- Zurich has acknowledged that when being weighed by her GP, this may have been up to 3kg higher than Mrs O's true weight due to the clothes and shoes she was wearing when being weighed. However, even so, it says towards the end of May 2019, her weight would've been around 83.7kg. That's between 5 and 6kg heavier than she declared around two months earlier when completing the application form. So, it says she'd answered the question incorrectly and misrepresented her weight.
- Mrs O says that, historically, her weight tended to fluctuate within a short period of time. She thinks this is because of a thyroid issue (more recently diagnosed). She said fluctuations of around 5kg in short periods of time were quite normal. Although I've been provided with limited medical evidence in support of weight fluctuations before applying for the policy, Mrs O has been consistent in what she says and, in the absence of anything to the contrary, I find what she says to be plausible in the circumstances of this case and accept her submissions on this point. And in its email to the Financial Ombudsman Service dated July 2024, Zurich doesn't dispute that Mrs O's weight was prone to fluctuation.
- What Mrs O says is also supported by a letter from a clinical nurse specialist dated July 2024 which says: "It is known that individuals with a history of thyroid and hormonal imbalances often experience weight fluctuations. As a result, it is feasible for someone to gain over 5kg within a span of 2 months". I've seen no further medical evidence which contradicts that to be the case.
- So, on the balance of probabilities, I'm satisfied that Mrs O's weight when applying for the policy was around 78kg and she didn't answer the question incorrectly.
- It follows that I don't think CIDRA is a relevant consideration in this case because it's only relevant if Mrs O answered the question asked of her about her weight incorrectly and made a misrepresentation. So, I think it would be fair and reasonable for the claim to be paid in full.
- I've also considered Zurich's point that the answers Mrs O gave when applying for the policy were sent to her and she was asked to confirm they were correct. Zurich also says that the policy wasn't accepted until June 2019, after the date of the GP suspected cancer referral form which recorded her BMI score as 33.91. The personal details form which contained the answers to the questions Mrs O gave contained an updated declaration which says: "if anything has changed, please read the following declaration carefully and then sign and date in the space provided". The declaration confirms that Mrs O checked the answers and provided amended details where necessary and had completed the information on the form honestly and accurately.
- I accept that Mrs O didn't change her weight on the form. However, although Mrs O's BMI is recorded on the GP suspected cancer referral form, her weight isn't separately

logged. And it doesn't look like Mrs O saw this form at the time or ought to have reasonably been aware that her weight had increased since applying for the policy. And I've seen nothing else which persuades me that Mrs O was aware that her weight had increased by up to 6kg in May 2019. So, I don't think it's reasonable to have expected Mrs O to have amended the information about her weight before the policy started in the circumstances of this case.

- Further and in the alternative, I don't think Mrs O has acted carelessly by failing to disclose an increase of up to 6kg in her weight after applying for the policy but before it started. In the particular circumstances of this complaint, despite the personal information form asking Mrs O to check that the information was accurate (and could be amended if not), I don't think Mrs O would have thought she needed to disclose the increase in weight after the application had been made, particularly because it was common for her weight to fluctuate during short periods of time.
- So, in the specific circumstances of this case, even if Mrs O was aware of her weight increase and didn't disclose that increase in weight before the policy started, I don't think she acted carelessly by not doing so.
- Overall, I don't think it's fair and reasonable for Zurich to proportionately settle the claim by the same percentage of the premium she and Mr K paid for the policy (compared to what it would've cost if Zurich had known that her weight, and so BMI score had increased).

### **Handling of the claim**

Zurich has an obligation to handle insurance claims fairly and promptly.

Zurich accepts that there were unnecessary delays when handling Mrs O's claim and providing an outcome. It's apologised and offered total compensation in the sum of £200 to reflect the impact of those delays on her. I'm satisfied that the delays would've been upsetting and frustrating for Mrs O (particularly at a time when she'd recently received a cancer diagnosis) and it would've caused her some inconvenience requesting updates. However, I think £200 compensation fairly reflects the distress and inconvenience she experienced.

### **Putting things right**

I direct Zurich to pay:

- A. the critical illness benefit in full less the amount its already paid by way of proportionate settlement.
- B. interest on the outstanding balance set out at A above at a rate of 8% per year\*, calculated from a month after the claim was made under the policy to the date of settlement.
- C. £200 compensation for distress and inconvenience (if it hasn't already done so).

\*If Zurich considers it's required by HM Revenue & Customs to take off income tax from any interest paid on this amount, it should tell Mr K and Mrs O how much it's taken off. It should also give them a certificate showing this if they ask for one. That way Mr K and Mrs O can reclaim the tax from HM Revenue & Customs, if appropriate.

**My final decision**

I uphold Mr K and Mrs O's complaint and direct Zurich Assurance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Ms O to accept or reject my decision before 30 October 2024.

David Curtis-Johnson  
**Ombudsman**