

## **The complaint**

Mr and Mrs S have complained that Zurich Insurance Company Limited declined a claim they made on a travel insurance policy.

## **What happened**

Mr and Mrs S were due to go on holiday abroad on 12 October 2023. However, shortly beforehand, Mr S was admitted to hospital as an emergency. He was unable to recover from his illness in time and they therefore cancelled the trip and made a claim on the policy.

Zurich declined the claim on the basis that Mr S hadn't disclosed a pre-existing medical condition when purchasing the policy in May 2023.

I wrote a provisional decision earlier this month in which I explained why I was thinking of upholding the complaint. Zurich responded to say that it had reviewed the case and was now in agreement that it would settle the claim on a proportionate basis, with interest.

## **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.

I've carefully considered the obligations placed on Zurich by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for Zurich to handle claims promptly and fairly, and to not unreasonably decline a claim.

As I explained in my provisional decision, I understood the policy excludes claims resulting from pre-existing medical conditions and that Zurich has relied on this exclusion to reject the claim. However, I didn't think that resulted in a fair and reasonable outcome in this case.

I concluded in my provisional decision that Mr S had made a misrepresentation when taking out the policy and that he should have declared the pre-existing medical condition in question. He hadn't intended to mislead Zurich, but he hadn't taken enough care when answering the application questions. Zurich now agrees that this was a careless misrepresentation and that it should therefore apply the relevant remedy available to insurers when a claim is made, as set out under Schedule 1 of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

The remedy is based on what Zurich would have done had Mr S taken reasonable care not to make the misrepresentation. Having run an initial retro-screen based on the information currently available, it looks likely that cover would still have been offered, albeit at a higher premium and that Mr and Mrs S only paid 48.16% of the premium they would have paid if the pre-existing medical condition had been declared. That figure might change once Zurich re-assesses the claim with fuller information to accurately calculate what the premium would have been. Nevertheless, Zurich has given an undertaking to now settle the claim on a proportionate basis.

As neither party has disagreed, I see no reason to depart from the conclusions reached in my provisional decision. It follows that I uphold the complaint.

### **My final decision**

My final decision is that I uphold the complaint and require Zurich Insurance Company Ltd to re-assess the cancellation claim, applying the principles of CIDRA. Having done so, if a proportionate payment is due, it should also add 8% interest from the date of the claim until the date of settlement.†

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 27 September 2024.

† HM Revenue & Customs requires Zurich to take off tax from this interest. Zurich must give Mr and Mrs S a certificate showing how much tax it's taken off if they ask for one.

Carole Clark

**Ombudsman**