DRN-5025566

The complaint

Mr O complains that Zurich Assurance Ltd unfairly delayed the payment of a critical illness claim he made on a decreasing mortgage cover plan.

Mr O's representative brought this complaint on his behalf. But for ease of reading, I've referred mainly to Mr O.

What happened

Mr O held critical illness cover through a decreasing mortgage cover plan. Unfortunately, in August 2019, Mr O suffered a heart attack and was admitted to hospital. So, in December 2019, he made a critical illness claim on the plan.

Zurich asked for medical evidence so it could assess Mr O's claim. It considered the information and it asked its Chief Medical Officer (CMO) for their opinion. Ultimately, it concluded that Mr O's heart attack hadn't met the 'severity' definition set out in the plan terms. That's because it didn't think Mr O's troponin levels had reached the specified level and his ECG hadn't shown any changes. So in April 2020, Zurich turned down the claim.

Subsequently, in October 2022, Mr O's representative complained about Zurich's decision. It explained that another insurer, who I'll call A, had agreed to accept and pay a critical illness claim on its own policy.

Zurich contacted A to ask for more information. A provided Zurich with an additional letter dated March 2022. This letter included the original troponin level reading which Zurich had relied on when assessing the claim, as well as a reduced troponin reading taken five days later. Zurich referred the claim back to its CMO, who concluded that Mr O could have suffered a peak cardiac event in the 10-14 days before he attended hospital. The CMO felt this could have explained Mr O's troponin levels and the lack of ECG changes.

On this basis, in February 2023, Zurich agreed to accept and pay Mr O's claim, backdating the payment to December 2019. It also ultimately added interest to the settlement which it calculated by using Bank of England Base Rate + 1 (BoE+1). And it paid Mr O £500 compensation for his trouble and upset.

Mr O remained unhappy with the settlement Zurich had paid. He considered that it should have calculated the interest award using a rate of 8% simple, rather than BoE+1. So he asked us to look into his complaint.

Our investigator didn't think Mr O's complaint should be upheld. In brief, she didn't think Zurich had had enough information to show Mr O's claim met the policy definition of heart attack until it had received the new evidence from A. So she didn't think it needed to pay additional interest.

Mr O disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 3 September 2024 which explained the reasons why I

didn't think Zurich had treated Mr O unfairly. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the plan terms and the medical evidence, to decide whether I think Zurich has settled this claim fairly.

I've first considered the plan terms and conditions, as these form the basis of the contract between Mr O and Zurich. Mr O made a critical illness claim following a heart attack. So I've looked carefully at Zurich's policy definition of heart attack. This says:

'Heart attack - of specified severity

Death of heart muscle, due to inadequate blood supply, that has resulted in all of the following evidence of acute myocardial infarction:

- *New characteristic electrocardiographic changes*
- *The characteristic rise of cardiac enzymes or Troponins recorded at the following levels or higher;*
    - *Troponin T > 1.0 ng/ml*
    - *AccuTnI > 0.5 ng/ml or equivalent threshold with other Troponin I methods.*

The evidence must show a definite acute myocardial infarction.

For the above definition, the following is not covered:

• Other acute coronary syndromes including but not limited to angina or cardiac arrest.'

In my view, Zurich has clearly set out the evidence it requires in order to pay a critical illness claim for heart attack. In 2020, it didn't consider that the definition had been met. However, based on the evidence it was provided with in 2022, it altered its conclusions. So I've next looked at the available evidence to decide whether I think Zurich fairly assessed Mr O's claim in 2020.

I've looked closely at the available medical evidence from Mr O's treating cardiologist. They stated that Mr O had suffered an 'unequivocal' non ST-elevation myocardial infarction (NSTEMI). And that Mr O's recorded troponin levels had been 181, which the CMO converted to 0.81ng/ml. They stated that Mr O's ECG at the time of admission showed 'no acute changes'. And I can see that when Mr O was seen in cardiology follow-up, he was described as having 'stable angina'.

On balance then, I don't think the contemporaneous medical evidence from the treating doctors indicates that Mr O had suffered a heart attack of specified severity in line with the policy definition. So I don't think Zurich unfairly declined the claim at this point.

I asked Zurich what information A provided to it when it reassessed the claim. It seems the only additional medical evidence provided by A was a letter dated March 2022, from Mr O's cardiologist. This evidence post-dated Zurich's assessment of the claim by around two years. The letter not only referred to Mr O's troponin level of 181 which was set out on the original medical evidence, but also referred to a reduced troponin level reading of 172, which had been taken around five hours later.

This, in and of itself, wouldn't appear to result in a different claim outcome as it seems the severity definition still wasn't met. I say that because there's still no evidence that ECG changes were noted at the time. So I asked Zurich for its CMO's comments from around the time of the appeal. Zurich has asked for these not to be shared and so I won't set out them in out in their entirety. Instead, I'll summarise what I think are the key points:

- *It was possible that Mr O had presented late to hospital and his symptoms of the prior 10-14 days were the start of a cardiac event;*

- *If the cardiac event had started up to two weeks before Mr O attended hospital, it was conceivable that any dynamic ECG changes at the point of infarction would have resolved and it was also possible that Mr O's type of heart attack may have returned to an entirely normal ECG;*

- *This meant the troponin slow downward trend could be viewed as a resolving infarction well past its peak, although this couldn't be proved either way;*

- *Now it had been made clear that symptoms had begun two weeks earlier, the diagnosis of angina had been called into question. If there'd been an NSTEMI at the original point, the troponin levels would be settling at the point they were recorded. It is likely the true result was higher in that case;*

- *The CMO couldn't say whether the troponin threshold had ever been reached, but that would be more consistent with an NSTEMI than angina – and an NSTEMI has the potential to exceed the definition's troponin threshold.*

I'm mindful that Mr O does seem to have originally told Zurich that his symptoms had begun some days before his hospital admission. So potentially, it could have asked for more information about Mr O's troponin levels at that time. But even if it had done so, it isn't at all clear, or indeed, most likely, that the claim would have been paid at that point. I say that because the medical evidence from the time still referred to Mr O having no acute ECG changes and made reference to a diagnosis of stable angina. And so, I'm not persuaded, on balance, that Mr O had provided enough medical evidence, in December 2019 and during the initial claim assessment, to show he had a valid claim on the policy.

Overall, it seems to me that Zurich's CMO interpreted the new medical evidence in a fair, reasonable and generous way, even though they didn't conclude there was definitive medical evidence that the severity definition had been met. So I find Zurich acted fairly and reasonably when it relied on its CMO's conclusions and agreed to accept, backdate and pay this claim. And I think therefore that it also acted fairly and reasonably by adding interest to the settlement amount at a rate of BOE+1. As such, based on the specific facts of this complaint, I don't think it would be fair or reasonable for me to direct Zurich to pay any additional interest on the settlement amount over and above what it's already paid.

The evidence indicates that it took Zurich some months to assess Mr O's appeal, write to A and assess the new evidence. In my view, it didn't reconsider the claim as promptly as it should have done. I don't doubt that this caused Mr O additional trouble and upset. But it seems Zurich has already paid Mr O £500 compensation to reflect the inconvenience and distress its actions caused him. In my view, this is a fair, reasonable and proportionate award which takes into account what I consider to be the likely impact of Zurich's claim handling on Mr O. So I'm not planning to tell Zurich to pay Mr O anything more.'

I asked both parties to provide me with any further evidence or comments they wanted me to consider.

Zurich let me know it accepted my provisional findings.

Mr O's representative didn't respond by the deadline we gave.

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, as neither party has provided any new evidence nor substantive comments, I see no reason to change my provisional findings.

So my final decision is the same as my provisional decision and for the same reasons,

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 17 October 2024.

Lisa Barham
Ombudsman