DRN-5038319

The complaint

Miss B complained that Zurich Assurance Ltd avoided her policy and refused to pay a claim on her life assurance and critical illness policy.

What happened

Miss B took out a life assurance and critical illness policy with Zurich in April 2021. Miss B raised a claim with Zurich in 2023. After reviewing the claim, Zurich declined the claim and avoided the policy. This was because they believed Miss B misrepresented when she took out the policy. As a result, Miss B raised a complaint with Zurich. Zurich didn't think they'd done anything wrong, so Miss B brought her complaint to this service.

Our investigator agreed with Zurich and didn't think they'd done anything wrong. They felt Miss B had misrepresented, and Zurich had acted in line with the law in avoiding the policy and declining the claim. Miss B appealed. She felt Zurich would have still offered a policy with the disclosures, especially if they'd requested her medical records as no follow-up was needed. As no agreement could be reached, the complaint has been passed to me to make a final 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.

I'm very sorry to hear about Miss B's diagnosis.

At the outset I acknowledge that I've summarised her complaint in far less detail than Miss B has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether Zurich acted in line with these requirements when it declined to settle Miss B's claim.

The relevant law in this case is 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 (a policy). 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 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.

Zurich thinks Miss B failed to take reasonable care not to make a misrepresentation when she answered the following questions on her application:

> *"In the last 5 years, unless you have already told us earlier in this application, have you had any of the following, or have you consulted a doctor, nurse or other health professional for:*
>
> - *any disease or disorder of the eyes or ears such as visual impairment in one or both eyes, ringing in one or both ears, tinnitus, labyrinthitis or Meniere's disease?*
>
> - *any tremor, numbness, loss of feeling or tingling in the limbs or face, blurred or double visions, loss of balance or co-ordination, epilepsy, seizure, or loss of muscle power?*

Zurich has sent us Miss B's medical records. These show the following:

- Mid-January 2017 – Attended A&E with blurred vision in right eye
    - Had worsened over three days
    - Referred to Ophthalmology
- Late January 2017 – Unusual sensation when moving head from one side to another for a year or more
- March 2017 – Possible episode of eye condition

Based on the questions asked and Miss B's medical history, I do think she answered the questions incorrectly. I think the questions are clear. So, I don't think Miss B took reasonable care in how she answered them.

Under CIDRA, I have to see whether the misrepresentation was a qualifying one.
This means, would it have made a difference to Zurich had the correct information been provided.

Zurich has provided their relevant underwriting manual from the time of the application. They've also provided the comments of one of their underwriters. Based on what I've seen, had the questions been answered correctly, Zurich wouldn't have offered Miss B a policy. This means it was a qualifying misrepresentation. Insurers need to follow the remedies as set out in CIDRA when dealing with a qualifying misrepresentation.

Zurich has avoided the policy, declined the claim and refunded all premiums paid. In the circumstances this is in line with a careless misrepresentation in CIDRA. This is the lowest category of misrepresentation in CIDRA. As such, I think Zurich has acted fairly in the remedy they've applied.

In her response to our investigator's outcome, Miss B has said that she still believes that

Zurich would have offered her cover. She believes this might have been with a reduced sum assured, or increased premium. This is especially if Zurich had checked her medical records and seen no follow up was needed. Zurich's claim outcome is based on Miss B's medical records and I've seen the underwriting evidence which confirms Zurich wouldn't have offered Miss B a policy. I'm not able to share this with Miss B as it's commercially sensitive.

I'm very sorry that my decision doesn't bring Miss B more welcome news at what I can see is a very difficult time for her. But in all the circumstances I don't find that Zurich has treated Miss B unfairly, unreasonably, or contrary to law in declining the claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.
I don't require Zurich Assurance Ltd to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 2 January 2025.

Anthony Mullins
Ombudsman