DRN-5043656

The complaint

The estate of Mr K complains that Zurich Assurance Ltd avoided Mr K's life insurance policy and refused to pay a claim. The estate also complains about delays and consequential losses.

The estate is represented by a relative, Ms K.

What happened

The background to this complaint is well known to the parties, so I won't repeat all the details here. In brief summary, in October 2017, Mr K took out life insurance with Zurich. I understand Mr K took out his policy online, via a comparison website.

Very sadly, in September 2022, Mr K died. His estate subsequently made a claim on his policy.

In July 2023, Ms K made a complaint about delays in handling the claim. Zurich acknowledged there'd been customer service failings regarding the de-instruction of solicitors and delays in chasing for information. In recognition of the trouble and upset its delays and actions caused, it offered £500 compensation, which was accepted without prejudice and paid in November 2023.

In October 2023, Zurich declined the claim, saying Mr K hadn't given full and accurate information about his smoking history. Zurich considered this to be a qualifying misrepresentation. It said that, had Mr K answered correctly, there would've been a different underwriting outcome.

Zurich refused to pay the claim, saying Mr K had deliberately or recklessly misrepresented his circumstances on application. It cancelled the policy from the outset, but refunded the premiums paid.

Ms K appealed, saying Mr K was not a smoker, but Zurich maintained its stance. In its final response letter of December 2023, it said that from the medical evidence received, it was clear Mr K had smoked within the 12 months prior to taking out his policy.

Ms K brought the matter to the Financial Ombudsman Service. Our investigator focused on the claim decline but didn't uphold that complaint. So Ms K asked for an ombudsman to review all of her complaint points and issue a 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.

Having done so, I'm not upholding this complaint. I know this will be very disappointing and difficult news for Mr K's family and I'm sorry about that. I'll explain my reasons, focusing on the points and evidence I think is material to the outcome of the complaint. So if I don't mention something specifically, it's not because I haven't read and thought about it. Rather, I don't consider it changes things.

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.

By way of information, matters referred to the Financial Ombudsman Service are decided to the civil standard of proof – that is, on balance of probability. So Zurich has to show it's more likely than not that Mr K deliberately or recklessly misrepresented his circumstances when applying for the policy. This is the standard I have to hold Zurich to.

When applying for the policy, Zurich says that Mr K failed to take reasonable care not to make a misrepresentation when he answered no to the following question:

> *'Have you smoked or used any form of tobacco or nicotine products within the last 12 months?'*

When asked about previous smoking, Mr K confirmed that he'd given up smoking 1-3 years ago.

In its decline letter of October 2023, Zurich said it had obtained a medical report from Mr K's GP which showed:

> *'6 March 2017 – light smoker 1-9 cigarettes per day, smoking cessation advice.'*

Zurich considered the misrepresentation to be deliberate or reckless, saying that on balance, Mr K knew, or must have known, that the information given was both incorrect and relevant to Zurich, or acted without any care as to whether it was either correct or relevant to Zurich.

I've reviewed the medical evidence provided and noted the records of March 2017, referring to Mr K's level of smoking and the provision of cessation advice. I've also noted an established pattern of light smoking, dating back to 2004, as well as previous entries relating to smoking cessation advice.

I'm satisfied the smoking questions asked were clear and unambiguous. And based on the medical evidence, I think Zurich's conclusion that Mr K didn't provide full and accurate information on application was a reasonable one to draw.

Zurich has said that, had Mr K answered accurately, it would've applied a smoker rating, meaning Mr K would've had to pay more for his policy. This shows that full disclosure would've made a difference to Zurich's underwriting decision, so I'm satisfied Mr K's misrepresentation was a qualifying one.

Zurich considered Mr K's misrepresentation to be deliberate or reckless. Having reviewed everything, I think there's sufficient evidence of deliberate or reckless misrepresentation. Taking note of the Association of British Insurers Code of Practice: Managing Claims Involving Misrepresentation, I'm mindful that lifestyle information, such as smoking or drinking habits, does not require any particular medical knowledge and is usually more familiar and easier for customers to understand. I therefore think Zurich's categorisation was reasonable.

CIDRA sets out the actions an insurer can take in cases of misrepresentation. In the circumstances of Mr K's misrepresentation, Zurich was entitled to cancel the policy and keep the premiums. However, I understand it refunded the premiums paid. The action Zurich's taken is more than is required under CIDRA, so I think it's acted fairly here.

Zurich has accepted there were customer service failings in its handling of the claim and paid £500 compensation for the trouble and upset caused. I'm pleased to see this acknowledgement from Zurich. However, our rules allow us to award compensation for distress and inconvenience only to the eligible complainant themselves – that's Mr K in this case. The events complained of all happened after Mr K died, so didn't affect him personally.

We can't make awards to representatives of the estate. So that means I can't consider the impact of Zurich's actions on Mr K's family. I appreciate Ms K may find this unsatisfactory. I do, nevertheless, accept that Zurich's dealings with Ms K caused upset, distress and inconvenience at a very challenging time.

Finally, Ms K says delay in paying the claim has caused financial loss to the estate in respect of interest on outstanding mortgages and the payment of inheritance tax. I appreciate the situation has been extremely difficult for Ms K and Mr K's family. However, as I'm not upholding the substantive complaint about the declined claim, I'm afraid it follows I also don't uphold the complaint about consequential losses.

So to conclude, I'm satisfied Zurich acted fairly with regard to the claim decision made and note that it's paid compensation which acknowledges its poor service. I'm therefore not asking Zurich to do anything more in respect of this complaint. Once again, I'm sorry to send unwelcome news to Mr K's family.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr K to accept or reject my decision before 13 February 2025.

Jo Chilvers
Ombudsman