DRN-5189008

The complaint

Mr R complains that Zurich Assurance Ltd has turned down a critical illness claim he made on a Personal Protection insurance policy and cancelled the contract from the start.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In January 2023, Mr R applied for a life and critical illness insurance policy through a broker. Zurich accepted Mr R's application and policy documentation was sent to Mr R in February 2023. Cover under the policy began on 1 May 2023.

Unfortunately, in June 2023, Mr R was hospitalised after he suffered a seizure. And following further investigations, Mr R was diagnosed with a brain tumour. So in November 2023, he made a critical illness claim on the policy.

Zurich asked for medical evidence to allow it to assess Mr R's claim. It noted from Mr R's GP records that in early May 2023, he'd visited a doctor after he'd had episodes of light-headedness/dizziness. The notes also said that Mr R had had dizzy spells intermittently for one to two months.

On that basis, while Zurich considered that Mr R had likely answered its medical questions at application correctly, he'd failed to meet his ongoing duty to disclose changes in his health. That's because Zurich said that Mr R had been sent a personal details confirmation (PDC) form which set out the answers to the medical questions he'd given at application. The PDC stated that a policyholder needed to tell Zurich about any changes in health or if any of the previous answers to medical questions were incorrect. It concluded that as Mr R had been experiencing symptoms of dizziness before the policy began on 1 May 2023, he ought to have advised it of his change in health.

Zurich said that if it had known about Mr R's intermittent symptoms, it would have postponed offering him cover. Therefore, it considered Mr R had made a qualifying, deliberate misrepresentation under relevant law. So it turned down Mr R's claim, cancelled his policy from the start and refunded the premiums he'd paid.

Mr R was very unhappy with Zurich's decision and he asked us to look into his complaint.

Our investigator felt Mr R's complaint should be upheld. In brief, he didn't think Mr R had made a qualifying misrepresentation under the law. That's because he didn't think that the brief episodes of dizziness Mr R appeared to have experienced between applying for the cover and the policy start date would have led Mr R to consider that he needed to tell Zurich about a change in his health. Neither did he think Mr R would have considered his symptoms of dizziness to be a symptom of ill-health, nor that this ought to reasonably have prompted him understand that some of the information he'd given Zurich at application was now incorrect.

Therefore, the investigator felt that Zurich should reinstate Mr R's policy and reconsider his claim, in line with the policy terms and conditions. He also recommended that Zurich should pay Mr R £500 compensation to reflect the trouble and upset he'd experienced.

Zurich disagreed. It maintained that Mr R was under a clear obligation to disclose changes in his health between the application date and policy start date. It considered the policy documentation it had sent Mr R made this requirement clear. It stated too that dizziness was a symptom of several serious health conditions which were included under the critical illness section of the policy. As such, it concluded dizziness was a symptom of ill-health. And it felt Mr R had likely experienced symptoms of loss of balance or co-ordination during his dizzy spells which were things it had specifically asked about. It stated Mr R had effectively prevented it from adequately assessing the full medical risk he presented.

The complaint's been passed to me to decide.

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 don't think Zurich has treated Mr R fairly and I'll explain why.

First, I'd like to say how sorry I was to hear about Mr R's diagnosis. I don't doubt what a worrying and distressing time this has been for Mr R and his family. I do hope his treatment is progressing well.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, guidance, the law and the available evidence, to decide whether I think Zurich has handled Mr R's claim fairly.

The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. A failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of the legislation. So I think it's fair and reasonable to apply the principles set out in CIDRA to the circumstances of this complaint.

The standard of care set out under CIDRA is that of a reasonable consumer.

And if a consumer fails to take reasonable care not to make a misrepresentation, 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.

It seems that Zurich accepts that Mr R answered its medical questions correctly when he initially applied for the policy in January 2023. And it doesn't appear to dispute that at the point the policy was issued, on 6 February 2023, the answers Mr R had given at application remained accurate. Instead, Zurich considers that Mr R had an ongoing duty to disclose any changes in his health between the policy application date and the date the policy began – on

1 May 2023. It's referred to the policy paperwork - including the policy terms and the key features document - which state that a policyholder must tell Zurich if anything they've told it is wrong or has changed before the policy start date. And it's placed particular weight on the PDC which was sent to Mr R on 6 February 2023 and included details of the medical information he'd provided. A blue box says:

'If there are no changes and all details are correct
If all of the details in the Personal Details Confirmation are correct, you don't need to do anything.

If anything has changed or is incorrect – what to do next
If any of the details in the Personal Details Confirmation are incorrect, or have changed up to 01 May 2023, you need to tell us by 07 April 2023…'

Immediately underneath, the PDC says:

'If anything has changed and you don't tell us
If you don't tell us about something that's incorrect we may have to cancel your policy or be unable to pay a claim.'

Zurich maintains that Mr R had a duty to let it know if the answers he'd given to the following questions I've set out below had changed after application. Mr R had answered 'no' to each of the questions I've listed.

'In the last 3 months, have you had any symptoms of ill health, such as unexplained bleeding, weight loss, change of bowel habit, any lump or growth, changes affecting either breast or either testicle, breathing problems or shortness of breath, or a cough that's lasted for 4 weeks or more? (Question 1)

Are you aware of any other symptoms that you are planning to seek medical advice for? (Question 2)

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 tremor, numbness, loss of feeling or tingling in the limbs or face, blurred or double vision, loss of balance or co-ordination, epilepsy, seizure, or loss of muscle power?'* (Question 3).

Based on the available medical evidence, Zurich concluded that Mr R had failed to tell it about a change in his health. And so it considered that he'd made a qualifying deliberate misrepresentation under CIDRA. So I've next looked at the available medical records and evidence to decide whether I think this was a reasonable conclusion for Zurich to draw.

Zurich's position seems to be largely based on an entry in Mr R's GP records following a consultation he had on 9 May 2023. This appointment post-dated the application by around four months; the issuing of the policy by around three months and it post-dated the start date of the policy, too. The GP notes refer to an episode Mr R had suffered on or around 5 May 2023 and say:

'Dizzy spells – intermittently for roughly 1-2 months…Was at work…and felt lightheaded for a few seconds…apparently he just mumbled a response (to a person who asked if he was ok) and his eyes looked funny. Also has happened when he was out with (a relative) and he was standing, felt dizzy, nothing funny noticed, but he felt nauseous. Has happened on occasion with no witnesses.'

The records say that Mr R had no limb weakness, loss of consciousness or jerking movements. He was referred for blood tests, which the GP later confirmed were normal. The GP therefore said no further action was taken at that time. And the GP said Mr R didn't have any signs suggestive of a brain tumour at that point. The GP said Mr R '*reported the odd dizzy spells [sic] which only lasted a few seconds with no seizure activity.'* It wasn't until he'd been admitted with a seizure in June 2023 that the tumour was found and ultimately diagnosed. So I'll go on to look at each of the questions in turn to decide whether I think Mr R ought reasonably to have been prompted to contact Zurich before 1 May 2023 and let it know that his previous answers were no longer correct.

Question 1

Zurich believes that Mr R's dizzy spells were symptoms of 'ill-health'. In my view, ill-health is a very broad and non-specific term. It isn't defined in the policy. Instead, I think it's reasonable to refer to a dictionary definition of 'ill-health', which says that ill-health is: *'illness or a health condition that affects you for a long time.'* In my view, a reasonable person is unlikely to consider intermittent dizzy spells which last only a few seconds over a one-two month period to be symptoms of 'ill-health', given their brief and non-specific duration. And based on the GP's comments, there seems to have been nothing to suggest that Mr R was or ought to have been aware that his symptoms prior to 1 May 2023 could indicate something more serious.

Question 2

Mr R didn't seek medical advice for his dizzy spells until a few days *after* the policy began. And it appears that this consultation was prompted by the episode Mr R had suffered at work – which also took place after the policy began - during which his speech and eyes had been affected. The symptoms Mr R experienced after the policy began seem to have been different to the earlier dizzy spells he'd suffered. There's nothing in the medical evidence to suggest that Mr R knew or ought to have known that he'd need to seek medical advice for his intermittent dizziness between 6 February and 1 May 2023. So I don't think he ought reasonably have been prompted to tell Zurich that his earlier answer to this question was now incorrect.

Question 3

This question refers to particular symptoms Zurich wanted to know about – in this case, Zurich considers the symptoms of loss of balance or co-ordination to be relevant. It's possible that Mr R's dizzy spells did cause some loss of balance or co-ordination. But there's nothing in his medical records which suggests this was the case prior to the policy starting. While I accept what Zurich has said about the potential significance of dizziness to a number of conditions covered as a critical illness, this question doesn't ask clearly and specifically whether Mr R has suffered any *dizziness.* On that basis then, I don't think a reasonable consumer would understand that this question was asking them to tell Zurich about brief periods of dizziness lasting for a few seconds which they'd experienced between the policy issue date and the policy starting.

Taking those considerations together, I don't think Zurich has shown that Mr R has made a qualifying misrepresentation or that he unreasonably failed to tell it about a change in his health. I don't find that a reasonable consumer would have understood that Zurich would want to know about the symptoms Mr R had experienced. Nor do I find that Mr R deliberately sought to mislead Zurich as to the risk he posed.

As such then, I don't think Zurich can fairly or reasonably apply the legal remedy for a deliberate qualifying misrepresentation which is set out in CIDRA. I'm not satisfied that it was

fair for Zurich to turn down this claim or to cancel Mr R's policy. Instead, I find that it must now reinstate Mr R's policy and assess the claim in line with the policy terms and conditions.

It's clear from all Mr R has said that Zurich's decision has made a very difficult time for him even harder and that it's caused him significant trouble and upset. I think this matter has been unfairly and unnecessarily prolonged over a number of months and that Mr R's situation has been made more difficult as a result of Zurich's actions. Therefore, I agree with our investigator that Zurich must pay Mr R £500 compensation for the distress and inconvenience he experienced as a result of what I think were Zurich's unfair and unreasonable actions in this case.

Mr R has told us about another life policy he holds jointly which he says has also been cancelled by Zurich. However, that policy wasn't the subject of this complaint and it isn't clear if Mr R and the joint policyholder have complained about that issue to Zurich. So it wouldn't be appropriate for me to comment on that particular decision here. With that said, I'd remind Zurich of its obligations to act in line with regulatory rules and principles when it considers any other policies Mr R holds.

Putting things right

Zurich must:

- Reinstate Mr R's policy and assess his critical illness claim, in line with the remaining terms and conditions of the policy (which may include Zurich requiring Mr R to return the premiums it's refunded for the cover); and
- Pay Mr R £500 compensation.*

*Zurich Assurance Ltd must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint and I direct Zurich Assurance Ltd to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 30 January 2025.

Lisa Barham
Ombudsman