DRN-5353682

The complaint

Mrs A and Mr G complain that Zurich Insurance Company Ltd has turned down a medical expenses claim they made on a travel insurance policy.

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.

Mrs A and Mr G took out a single trip travel insurance policy online through a broker in early April 2024. At the point of sale, Mr G declared that he suffered from three medical conditions, which Zurich agreed to cover. Mrs A and Mr G travelled abroad later that month.

Unfortunately, Mr G became very unwell and was admitted to hospital for treatment. Mrs A and Mr G got in touch with Zurich's emergency medical assistance company to make a claim on the policy.

Mr G needed to remain in hospital beyond his planned return date, although it seems Mrs A travelled back to the UK. Zurich's medical team appointed a local agent to work with the hospital and obtain necessary medical information, but it had some difficulty in doing so. There was also a delay in Zurich asking Mr G's GP for a copy of his medical records, to allow it to confirm cover.

On 8 May 2024, the treating hospital discharged Mr G but didn't let Zurich know. This meant Mr G had to arrange his own accommodation, as he still wasn't fit to fly home. Once Zurich learned about Mr G's discharge, it offered to arrange outpatient appointments on his behalf and arrange extensions to his accommodation. But as it hadn't yet confirmed cover for Mr G's claim, it said he'd need to fill out a disclaimer.

Mrs A and Mr G were unhappy with the support Zurich's emergency medical assistance company had offered Mr G and they made a complaint about the service it had provided.

Once Zurich received Mr G's medical records, it concluded that he'd failed to declare all of his relevant medical conditions. It considered Mr G should have declared other medical conditions, including acute kidney injury (AKI) and angina. It said that if it'd known about Mr G's full medical history, it wouldn't have offered him a travel insurance policy. So it concluded he'd made a qualifying deliberate misrepresentation under relevant law. Therefore, it turned down his claim and cancelled the policy from the start.

But Zurich acknowledged that it hadn't handled Mr G's medical assistance claim as well as it should have done. It felt it could have been more proactive in offering Mr G support following his discharge from the hospital and it concluded it could have requested the disclaimer in a more sensitive way. So it offered Mr G £750 compensation to reflect the upset it had caused him.

Mrs A and Mr G remained unhappy with the service they'd received from Zurich and with its decision to turn down their claim. They asked us to look into their complaint.

Our investigator considered the available evidence. Ultimately, he felt the medical evidence indicated that Mr G hadn't made a full medical declaration when he took out the policy. And he was satisfied that had Mr G made a full disclosure, Zurich wouldn't have offered him the cover. So he thought that Mr G had made a qualifying misrepresentation under relevant law. But he didn't think Zurich had shown that Mr G's misrepresentation was deliberate or reckless. Instead, he thought Mr G's misrepresentation should be categorised as careless. And he considered that Zurich should apply the relevant remedy available to it under the law – in this case, the decline of the claim, cancellation of the policy and a refund of the premiums Mr G had paid for the cover, plus interest.

The investigator also considered the way Zurich had handled the claim. While he felt it had made clear mistakes which had caused Mr G some trouble and upset, overall, he was satisfied that £750 compensation was a fair award to put things right.

Neither Zurich nor Mrs A and Mr G agreed with the investigator's view and so the complaint was 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, whilst I'm sorry to disappoint Mrs A and Mr G, I agree with the conclusions our investigator reached and I'll explain why.

First, I'd like to reassure both parties that while I've summarised their submissions to this service, I've carefully considered all that's been said and sent. I appreciate Mr G became very ill abroad and I don't doubt what a worrying and stressful time this was for him and for Mrs A. I do hope Mr G has made a good recovery. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

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, the law and the available evidence, to decide whether I think Zurich treated Mrs A and Mr G fairly.

Did Mr G make a misrepresentation when he applied for the policy?

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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.

When Mrs A and Mr G took out the policy online through a broker, they were asked information about themselves and any medical conditions they'd had in the last two years.

Zurich used this information to decide whether or not to insure Mrs A and Mr G and on what terms. Zurich says that Mr G didn't correctly answer the questions he was asked during the online sales process. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mrs A and Mr G's claim.

Zurich thinks Mr G failed to take reasonable care not to make a misrepresentation when he took out the policy online. So I've considered whether I think this was a fair conclusion for Zurich to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. Zurich says that during the sales process, Mr G and Mrs A were asked:

'*In the last 2 years, has anyone to be insured on this policy:*

- *Taken any prescribed medication, or*
- *Received any medical treatment or advice at hospital, clinic, GP surgery or via a remote consultation?'*

In my view, this question was asked in a clear and understandable way and ought to have prompted a reasonable consumer to realise what information Zurich wanted to know. Mr G answered 'yes' and declared that he suffered from peripheral vascular disease, DISH and diverticulitis. Zurich agreed to offer cover on that basis.

But Zurich thinks Mr G failed to tell it about other medical conditions he had and about medications he was prescribed. So I've looked carefully at Mr G's medical records which show his active conditions in the two years before the policy was taken out. That's so that I can decide whether I think it was fair for Zurich to decide he hadn't answered its question accurately and that he didn't take reasonable care to do so.

Mr G's medical records set out a list of Mr G's active medical problems. In addition to the conditions he declared, I can see that stage three AKI was listed as an active problem in February 2023, a skin condition was noted in September 2022 (for which treatment appears to have been prescribed), Mr A had had a myocardial infarction in 1992, which was still listed as an active problem and it seems he was diagnosed with angina at that time, too. It also appears Mr G was diagnosed with osteoarthritis in 2008, which remained listed as an active problem. Mr G's records also show that he was prescribed 10 different medications on repeat, which appear to include a strong painkiller and a medication which appears to be intended to prevent the risk of heart attacks and which treats angina, together with aspirin.

On balance then, I don't think it was unfair for Zurich to conclude that Mr G hadn't answered its question accurately. Mrs A and Mr G feel that the GP provided too much evidence, which it hadn't been fair for Zurich to rely on. But I don't agree. I think Zurich obtained this evidence in a legitimate way and was entitled to rely on the medical information it was given by the GP. While some of Mr G's diagnoses date back to 1992, they are still listed as active issues by his doctor and it appears he remains undergoing treatment for those conditions. I appreciate Mr G says he considers some of the conditions to be stable, well-controlled and irrelevant, but I do think it was fair for Zurich to have concluded that he didn't take reasonable care to answer its question correctly. On that basis, I don't think it was unreasonable for Zurich to have concluded that Mr G made a misrepresentation when he applied for the policy.

I next need to consider whether Zurich has shown that Mr G made a qualifying misrepresentation under CIDRA. Zurich has provided us with business-sensitive, confidential

underwriting evidence, which shows that if Mr G had told it about his medical conditions and medications, it wouldn't have offered him a travel insurance policy. So I think Zurich has demonstrated that Mr G did make a qualifying misrepresentation under the law. Therefore, I think Zurich is entitled to apply the relevant remedy available to it under the Act.

Zurich has classed Mr G's misrepresentation as deliberate or reckless. CIDRA says that a misrepresentation is deliberate or reckless if a consumer:

'(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b)knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.'

CIDRA also says that it's for an insurer to show that a misrepresentation is deliberate or reckless.

Zurich believes that Mr G knew the conditions he'd failed to declare were serious, life affecting decisions. Given the seriousness of those conditions, it thinks this points to Mr G's misrepresentation being deliberate.

I've considered this carefully and I've considered what Mrs A and Mr G have told us. On balance, I don't think Zurich has shown that Mr G deliberately misrepresented his health to it. I find it plausible that Mr G believed his conditions to be well-controlled and therefore, considered they were irrelevant. While, as I've said, I think it was reasonable for Zurich to have concluded that Mr G should have told it about these conditions, I think, overall, Mr G's misrepresentation was most likely a careless oversight.

That means that I agree with our investigator that it would be fair and reasonable for Zurich to categorise Mr G's misrepresentation as careless and to apply the applicable remedy available under CIDRA. CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. If it wouldn't have offered the policy, it may cancel the policy from the outset and refund the premium. As Zurich has shown it wouldn't have offered Mr G the contract, I think the fair and reasonable outcome here is for Zurich to turn down his claim, cancel the policy and refund the premium he paid for cover, together with interest of 8% simple.

So while I sympathise with Mrs A and Mr G's position, I'm not telling Zurich to pay their claim.

Zurich's handling of the claim

It's clear that Zurich didn't handle Mr G's medical expenses claim as well as it should have done. Mrs A and Mr G have consistently told us that they felt let-down by Zurich and that it didn't offer them adequate support at a difficult time.

I've looked carefully at Zurich's claim notes, setting out what happened and when, as well as taking into account Mrs A and Mr G's testimony. I appreciate there was little to no contact between Mr G and Zurich's medical assistance team while Mr G was in hospital and that this may have caused him some worry. I can see that Zurich was working to obtain medical information from the treating hospital so it could obtain a clear picture of Mr G's health, including appointing a local agent to try and get the information it needed. I think it was reasonable for Zurich to ask for medical reports so it could ensure it provided Mr G with safe and clinically appropriate assistance. Some of the delays in getting that information were down to local holidays and difficulties in getting responses back from the hospital. But it

would have been helpful and appropriate if Zurich had kept in touch with Mr G too.

The treating hospital provided an update on 6 May 2024 to say that Mr G was still in hospital. I can see that the local agent tried to get an update on 7 May 2024, but the hospital didn't reply. Nor did the hospital tell Zurich or its agent that Mr G would be being discharged on 8 May 2024.

Nonetheless, if Zurich had kept in touch regularly with Mr G, I think it may have had a clearer understanding of when he was likely to be discharged and could therefore have provided him with support in pre-arranging accommodation for post discharge and transport to it. Instead, Mr G, who'd undergone serious surgery, was left to arrange his own transport and accommodation. I don't doubt this was upsetting for Mr G.

Additionally, Zurich accepts it could have handled the request for Mr G to complete a disclaimer form more sensitively. I don't think it was unreasonable for Zurich to ask Mr G to fill out a disclaimer - given it hadn't confirmed cover - to ensure any costs it paid out would be reimbursed if Mr G's claim was later declined. But given Mr G's situation and vulnerabilities, I think Zurich could have done more to explain why it was needed.

And I note that there was a delay in Zurich requesting Mr G's medical records from his GP. I'd reasonably expect Zurich to ask for medical evidence promptly after a claim is made so that a claim can be assessed in good time. In this case, it seems a request wasn't made until some days into Mr G's admission. Had Zurich asked for this information as quickly as it should have done, then I think it would have been in a position to assess and decide Mr G's claim far sooner than it did and therefore, have been able to manage Mr G's expectations about its likely and ultimate cover decision.

Taking all of Zurich's mistakes into account and bearing in mind that Mr G had been seriously unwell, I do think its actions caused him and Mrs A unnecessary trouble and upset at an already very worrying time. So I need to consider how Zurich should put things right.

Zurich has offered Mrs A and Mr G £750 compensation to apologise for its mistakes. Our awards aren't intended to fine or punish the businesses we cover – instead, they're designed to reflect the likely impact we think a business' mistakes have had on a particular consumer. In this case, I think £750 compensation is a fair, reasonable and proportionate award to take into account Zurich's failures to keep Mr G updated, which meant it wasn't prepared for his discharge, its delay in requesting medical evidence and its handling of the disclaimer request. And so I'm not telling Zurich to increase this award.

It isn't clear whether or not Zurich has paid that compensation to Mr G and Mrs A. But if it hasn't, it must now do so.

Putting things right

I direct Zurich Insurance Company Ltd to:

- Treat Mr G's misrepresentation as careless under CIDRA and to therefore refund the premiums which were paid for the policy to Mrs A and Mr G, together with interest on the refund calculated at a rate of 8% simple per year from one month after the claim was made until the date of settlement*; and
- Pay Mrs A and Mr G £750 compensation if it hasn't already done so.

Zurich Insurance Company Ltd must pay the compensation within 28 days of the date on which we tell it Mrs A and Mr G accept 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% simple a year.

*If Zurich considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs A and Mr G how much it's taken off. It should also give Mrs A and Mr G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've given above, my final decision is that I partly uphold this complaint and I direct Zurich Insurance Company Ltd to put things right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr G to accept or reject my decision before 26 May 2025.

Lisa Barham
Ombudsman