

## **The complaint**

Mr and Mrs M complained that Zurich Assurance Ltd declined a claim on their life and critical illness policy.

Throughout the claim and complaint process, Mr and Mrs M have had a representative helping them. In this decision, any reference to Mr and Mrs M includes the actions and comments of their representative.

## **What happened**

Mr and Mrs M took out a life and critical illness policy with Zurich in June 2021. I'm sorry to hear that Mr M was unwell and was admitted to hospital in October 2023. As a result, Mr and Mrs M raised a claim on their policy. Zurich reviewed their claim but declined it. They said Mr and Mrs M misrepresented on their application when taking out the policy. As a result, Zurich declined the claim and avoided the policy but refunded the premiums paid. Mr and Mrs M were unhappy and so raised a complaint with Zurich.

Zurich didn't uphold Mr and Mrs M's complaint. They didn't agree they'd done anything wrong and the claim decline stood. Mr and Mrs M didn't agree and so brought the complaint to this service. They felt Zurich were trying to re-underwrite the policy at the point of a claim. They also said they'd provided the correct information to their broker.

Our investigator didn't uphold the complaint. They said Zurich hadn't done anything wrong and their actions were in line with legislation. Mr and Mrs M appealed. They felt the outcome wasn't reasonable as the only impact was an increased premium and so cover would still have been offered. They also said they'd provided evidence which showed the broker had said the options Zurich had said were available, weren't on their system. 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.

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 Mr and Mrs M's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to Mr and Mrs M, I've reached the same outcome as our investigator.

At the outset I acknowledge that I've summarised their complaint in far less detail than Mr and Mrs M have, 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.

I'm very sorry to hear about Mr M's health. I wish him all the best with his recovery.

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 Mr M failed to take reasonable care when he answered the following question:

*"Tobacco or nicotine usage"*

There was additional information provided to help the broker complete the application:

*"Please provide accurate information about your client's use of cigarette's including roll ups, capes and e-cigarettes containing nicotine, cigars, pipes or any other tobacco or nicotine products including patches and gum."*

*"This is an important factor in our assessment and payment of claims. We carry out tests to confirm use."*

*"If the life assured is a previous smoker, the final premium could be higher than any initial quote previously provided through a comparison website."*

The question provided a drop down with the potential answers which were:

- *Regular, occasional or social use*
- *Completely stopped within 12 months*
- *Completely stopped between 1 and 3 years*
- *Completely stopped between 3 and 5 years*
- *Completely stopped more than 5 years ago*
- *Never used*

The question was answered *"Never used"* by Mr and Mrs M's broker.

Zurich has provided me with Mr M's medical records. These show the following:

- August 2016 – Mr M recorded as a smoker

- March 2017 – Mr M recorded as a smoker

Based on the questions asked, the answers given and the medical information, I do agree that Mr and Mrs M misrepresented during their application. I think the question is clear in what it wants to know.

Mr and Mrs M have argued they informed their broker that Mr M stopped smoking in 2017. They also provided some messages where their broker had informed them that their application system didn't have all the above answer options.

Our investigator has spoken to Mr and Mrs M's broker. They've advised us that Mr M told her that he was a non-smoker and had never smoked. She also said he'd answered the question the same way on previous applications she'd completed for him. Mr and Mrs M haven't provided any evidence other than the messages to confirm that the broker didn't have the full choice of options available. Zurich has provided a screenshot to show the options available. The broker was acting on behalf of Mr and Mrs M. Whilst I wasn't party to the conversation, I've not got any evidence that Mr M did tell his broker that he was an ex-smoker and not a non-smoker. Neither is there any evidence the broker didn't have the full choice of options as set out by Zurich above. As such, I don't think Mr and Mrs M took reasonable care when answering the questions.

Zurich have provided me with a statement from an underwriter around the misrepresentation. They've confirmed that whilst cover would have been offered, it would have been done so at a higher premium. So, Mr and Mrs M's misrepresentation would be a qualifying misrepresentation under CIDRA.

Zurich has categorised the misrepresentation as deliberate or reckless. Mr and Mrs M don't think this is fair.

CIDRA sets out that a qualifying misrepresentation is deliberate or reckless if the 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."*

The Association of British Insurers also provides additional guidance for insurers around the categorisation of misrepresentations for life and critical illness policies. The guidance sets out the following:

#### **"7.4.4**

***Lifestyle information*** – *since lifestyle information is usually more familiar and easier for customers to understand, it follows that customers should give a particularly credible and convincing explanation for clearly evidenced misrepresentation not to be classified as deliberate or reckless."*

Having considered the circumstances and the guidance for misrepresentation categorisation, I don't think it was unreasonable for Zurich to categorise the misrepresentation as deliberate or reckless.

Zurich has declined the claim and avoided the policy. This is in line with the remedy set out in CIDRA for a deliberate or reckless misrepresentation. However, Zurich has offered to refund the premiums which isn't something they need to do under CIDRA, so, Zurich has

offered a better remedy for Mr and Mrs M than they needed to in line with CIDRA.

Mr and Mrs M have argued that as Zurich would have offered them cover, even with the correct information disclosed, it's unfair to decline the claim. As I've set out above, Zurich has followed the remedy set out by CIDRA. So, I can't say Zurich has acted unfairly or direct them to do anything further.

I'm very sorry that my decision doesn't bring Mr and Mrs M more welcome news at what I can see is a very difficult time for them. But in all the circumstances I don't find that Zurich has treated Mr and Mrs M 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 Mr M and Mrs M to accept or reject my decision before 18 April 2025.

Anthony Mullins  
**Ombudsman**