

The complaint

The estate of Mrs P complain that Zurich Assurance Ltd has unfairly declined a claim made on the late Mrs P's life insurance policy.

What happened

In June 2013 Mrs P took out a life insurance policy. During the application she was asked questions about her health, including whether she was a smoker. Mrs P answered 'no' to a question which asked about tobacco and smoking. Mrs P sadly died in 2023, and her estate claimed on the policy.

Zurich declined the claim as they said Mrs P hadn't answered the question about smoking correctly when the policy was renewed in 2013. They said that had she done so she'd have been charged a different premium. Zurich said they were declining the claim, cancelling the policy and returning the premiums. The estate complained to Zurich, but they maintained their decision was fair and in line with the policy terms. Unhappy, the estate complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. She thought that Zurich had acted fairly based on the medical evidence and in line with the relevant legislation. The estate didn't agree and asked an ombudsman to review the complaint. In summary, they raised concerns that the medical records were inaccurate and that key evidence from people who knew Mrs P had been ignored. So, the complaint was referred to me to make 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.

I'm sorry to read of the circumstances which have given rise to this complaint. I'd like to offer my condolences to the estate of Mrs P as I'm very sorry for their loss. I also want to be clear that my findings are not intended to suggest that Mrs P was acting dishonestly or that she lacked integrity.

Having considered all the arguments and evidence submitted by both parties and the relevant law, which in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) I'm not upholding this complaint. In reaching my decision I've taken into I've also considered good industry practice about managing claims for misrepresentation and treating customers fairly (namely, the Code of Practice set out by the Association of British Insurers ('ABI')), as well as what I think is fair and reasonable in all the circumstances.

I'm not upholding this complaint. I say that because:

- When Mrs P took out the policy in 2013 she was asked if she smoked or used any nicotine replacement products in the last 12 months. She answered 'no'. I'm satisfied

the question was clear.

- I'm also satisfied that Zurich has demonstrated that there has been a misrepresentation. On balance I think Mrs P failed to take reasonable care and she ought to have answered 'yes' to that question.
- I think that medical evidence indicates, on the balance of probabilities, that is most likely she hadn't stopped smoking in the previous 12 months. I've carefully considered the medical evidence that's available. Mrs P's GP confirmed that she stopped smoking in March 2014. There are further references to cessation advice being given in May and October 2012. I think that indicates that it was most likely Mrs P had told her GP that she was smoking. That means, based on the available evidence, it's most likely that she was still smoking within the 12 months prior to taking the policy out.
- I've considered the evidence from Mrs P's pharmacist. But, that hasn't persuaded me the conclusions Zurich drew from Mrs P's medical records were unfair. I appreciate the pharmacist was surprised as they considered Mrs P to be a successful quitter from 2011. But that's not consistent with the other more detailed medical records which indicate Mrs P didn't give up until later.
- I've also considered the evidence from the practice manager which stated that it was possible the March 2014 date may be the date of 'input', and that cessation advice is normal practice for ex-smokers. I think it's reasonable to place less weight on that evidence than the contemporary notes. The practice manager wasn't party to the conversations between Mrs P and the medical practitioner on the relevant dates I've outlined above and has put forward only a possible explanation for the 2014 entry. And, based on the contemporary entries, it seems reasonable to conclude that Mrs P was still smoking in the 12 months before taking out the policy. So, this hasn't changed my thoughts about the outcome of the complaint.
- If Mrs P had answered 'yes' to that question Zurich would have charged an additional premium. So, I'm satisfied the misrepresentation was a 'qualifying' misrepresentation as it would have made a difference to the policy offered.
- Zurich have classified the misrepresentation as, what CIDRA describes as, reckless. I think that's reasonable in the circumstances. Given that Mrs P had been having ongoing discussions about her smoking for some time I think this is likely to have been something that would have been on her mind at the time of applying for the policy. If the estate of Mrs P has concerns about the information recorded on the application forms that's something they'll need to address with the seller of the policy.
- In circumstances where a deliberate or reckless misrepresentation is made CIDRA says that Zurich can decline the claim, cancel the policy and retain the premiums. In this case Zurich has agreed to refund the premiums. That goes beyond what is required by CIDRA and I think that's fair and reasonable in all the circumstances.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs P to accept or reject my decision before 14 August 2025.

Anna Wilshaw
Ombudsman