DRN-5491232

The complaint

Mr W & Ms W on behalf of the estate (The Estate) of Mr W (Mr W) complained that Zurich Assurance Plc declined a claim and then avoided Mr W's life and critical illness policy.

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

What happened

Mr W applied for a life and critical illness policy with Zurich in December 2019. The policy later started in February 2020. I was sorry to hear that Mr W passed away in May 2023. As a result, The Estate raised a claim. Zurich eventually declined the claim and avoided the policy. They said Mr W had misrepresented during his application. The Estate were unhappy and raised a complaint. Zurich didn't change their outcome, so, the complaint was brought to this service.

Our investigator didn't uphold the complaint. They didn't think Zurich had acted incorrectly or unfairly when declining the claim or avoiding the policy. The Estate Appealed. They maintained that Mr W hadn't answered any questions incorrectly. They said the medical evidence didn't show that Mr W had suffered any symptoms or discussed the condition with a medical professional in line with the question. 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 The Estate's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to The Estate, 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 The Estate has, 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'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.

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

"*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 seen a doctor, nurse, or other health professional for:*

- *Raised blood pressure or raised cholesterol?*"

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

- February 2014 – Mr W diagnosed with essential hypertension
- Early March 2014 – Mr W had a review for his hypertension. Confirmed he hadn't been taking medication.
- Late March 2014 – Mr W had a review for his hypertension. Confirmed he hadn't been taking medication.
- April/May 2014 – invited for a further review for his hypertension. Mr W didn't attend
- Late December 2014 – invited for a further review for his hypertension. Mr W didn't attend
- November 2023 – Mr W passed away. Hypertension listed as a cause of death.

As a starting point, I accept The Estate's argument that Mr W didn't have any recorded symptoms or medical appointments specifically for his hypertension in the five years prior to his application. However, this doesn't mean that Mr W didn't have hypertension during this period. Mr W was officially diagnosed with hypertension within six years of his application. Mr W was under review for this condition. This includes a review request letter that was sent in late December 2014, so within five years of his application. This letter states the following:

"*In order that the practice can continue to provide you with up to date treatment for your blood pressure and to prescribe appropriate medication it is important that your BP is reviewed.*"

It's not possible to know why Mr W answered the question the way that he did. However, Mr W was diagnosed with hypertension not long before the five year period the question asks about. He was also sent a review letter from his GP which sets out that they believe that he still has hypertension within the five year period the question asks about. Without any evidence to support that Mr W was no longer suffering from hypertension, I don't think it's unreasonable for Zurich to come to the conclusion that Mr W answered the question incorrectly.

I think the question is clear in what it wants to know and so I don't think Mr W took reasonable care when answering the question. The Estate has said they think it's unreasonable to say Mr W didn't take reasonable care based on a letter he was sent almost

five years earlier. However, I think Mr W would have been aware of his previous diagnosis of hypertension and he hadn't been informed since that he no longer had hypertension.

Zurich have provided me with a statement from an underwriter and the relevant parts of their underwriting manual. Based on what I've seen, Zurich wouldn't have offered Mr W a policy. As a result, I think Mr W's misrepresentation would be a qualifying misrepresentation under CIDRA.

Zurich have avoided the policy and refunded the premiums. This is in line with a careless misrepresentation under CIDRA. This is the lowest level of misrepresentation. Based on the reasons above, I don't think the actions taken by Zurich are unfair or unreasonable in the circumstances.

I'm very sorry that my decision doesn't bring The Estate more welcome news at what will be a difficult time for them. But in all the circumstances I don't find that Zurich has treated The Estate unfairly, unreasonably, or contrary to law in declining the claim and avoiding the policy.

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 Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 31 July 2025.

Anthony Mullins
Ombudsman