DRN-5574174

The complaint

Mr M complains that Zurich Assurance Ltd declined a claim he made on an income protection policy.

Mr M is represented but I'll refer to all submissions as being made by him.

What happened

Mr M claimed on his income protection policy as he's experiencing significant mental health symptoms. Zurich declined the claim because they said Mr M hadn't disclosed information about his medical history during the application process.

Mr M complained to Zurich, but they maintained their decision was fair. They offered Mr M the option to retain the policy with a mental health exclusion or to cancel it. The policy was ultimately cancelled. Mr M complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. She was satisfied that Mr M hadn't accurately disclosed his medical history, and that Zurich were entitled to decline the claim and cancel the policy. Mr M made further representations, but they didn't change our investigator's thoughts about the overall outcome of the complaint.

Mr M asked an ombudsman to review the complaint. In summary he said he had taken reasonable care when answering the questions and that recent medical evidence had cleared up some misunderstandings about his medical history. He said that a previous mental health incident in July 2020 was a one-off episode and didn't relate to any enduring medical illness. So, the complaint was referred 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.

I'm very sorry to hear of the circumstances which have caused Mr M to make a claim on the policy. It's clearly been a very difficult time for Mr M and his family. I have a lot of empathy with their personal and financial situation. I appreciate that it must have been a very upsetting and difficult period for everyone concerned.

The relevant rules and industry guidelines say that Zurich has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

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. I appreciate that Mr M strongly feels that the word 'misrepresentation' shouldn't be used. However, that's the wording of the relevant legislation.

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 says Mr M failed to take reasonable care when answering the questions relating to his medical history. He was asked:

> "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:
>
> • raised blood pressure or raised cholesterol?
>
> • anxiety, stress, depression, chronic fatigue, obsessive compulsive disorder, or other mental health condition?
>
> • 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?
>
> • any disease or disorder of the eyes or ears such as visual impairment in one or both eyes, ringing in one or both ears, tinnitus, labyrinthitis or Meniere's disease?"

Mr M answered 'no' to all of the above questions.

However, Mr M's medical records show that in 2018 Mr M had issues with dizziness, pins and needles and hearing loss. And in July 2020 Mr M was experienced stress due to issues at work. The notes say:

> Dark days for weeks now. Concentration poor. Sleep poor. Drinking more than he used to. Occasional dark thoughts."

In August 2020 also Mr M discussed consistently high blood pressure readings with his GP. So, I'm satisfied Mr M ought to have an answered 'yes' to those questions. I've taken into account that the episode of stress was a one off and reactive episode as opposed to an enduring mental health issue. And I appreciate that no medication was required for treatment. However, the question I've outlined above still ought to have been answered as 'yes'. I've also considered that prior to the policy commencing Mr M had a medical. But I'm not persuaded that Zurich ought to have reasonably known from that information that Mr M had previously experienced a period of stress. So, I think it reasonably relied on the contents of that report.

The underwriting information that Zurich has provided demonstrates that if Zurich had been aware of this information they wouldn't have offered a policy to Mr M. This means I'm satisfied that Mr M's misrepresentation was a qualifying one. Zurich has classified the misrepresentation as 'careless' which I think is fair. There's no persuasive evidence that Mr M deliberately misled Zurich about his medical history.

As I'm satisfied that Mr M's misrepresentation should be treated as 'careless' I've looked at the actions Zurich can take in line with CIDRA. It says they can decline the claim, cancel the policy and refund the premiums. That's what Zurich has agreed to do. So, I think they've

acted in line with relevant legislation. I appreciate that Zurich did make an offer to allow cover to continue with an exclusion. However, this wasn't something they were obliged to do and Mr M didn't accept that offer.

I appreciate that Mr M feels Zurich didn't handle the claim promptly and fairly. However, I'm satisfied that Zurich were reasonably gathering medical evidence which was relevant to the claim. And, there were also issues with the accuracy of some of Mr M's medical notes which needed to be explored. So, on balance, I'm not persuaded there were any unreasonable delays.

For all the reasons I've outlined above I don't think it is fair and reasonable to uphold Mr M's complaint.

My final decision

I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 June 2025.

Anna Wilshaw
Ombudsman