

## **The complaint**

Mr K has complained that Zurich Assurance Ltd declined his critical illness claim and cancelled his critical illness and life insurance policies.

## **What happened**

On 12 June 2016 Mr K applied for two policies with Zurich. The first paid £10,000 either on his death or being diagnosed with a critical illness. The second paid £50,000 on his death.

On 18 July 2024, Mr K contacted Zurich to make a claim on the first policy as he'd been sadly diagnosed with cancer. When Zurich considered the claim it said Mr K had given incorrect information when he applied for the policy.

Zurich said had it known the correct information, it wouldn't have offered Mr K a critical illness policy and they'd have charged more for his life insurance policies.

Zurich said the misrepresentation was deliberate, which allowed them to cancel both policies and keep the premiums, but it chose to refund the premiums for both plans.

Unhappy Mr K referred his complaint to our Service.

Our investigator didn't recommend that the complaint be upheld. He didn't find that Zurich had done anything wrong.

Mr K appealed.

Mr K has been represented, but for simplicity in this decision I shall just refer to Mr K.

## **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.

First, I'd like to reassure Mr K that while I've summarised the background to his complaint, I've carefully considered all that's been said and sent to us including the detailed submissions he has made. In this decision though, I've focused on what I consider to be the key issues. Having done so, whilst I'm very sorry to disappoint Mr K, I agree with the conclusion reached by the investigator. I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the relevant legislation and the available evidence to decide whether I think Zurich treated Mr K fairly.

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 has concluded that Mr K failed to take reasonable care not to make a misrepresentation when answering the following questions on the application form:

*Tobacco and smoking*

*Q: Please tell us if you have smoked in the past?*

*A: I used to smoke but I gave up. Between 1-3 years ago.*

*Medical History*

*Q: Have you ever had:*

*Raised blood pressure or raised cholesterol?*

*A: No*

I find that clear questions were asked.

Taking the second question above first, Mr K's medical records show an entry in June 2016 where Mr K was advised to see the doctor about his cholesterol levels as they were noted to be high.

Mr K says that he didn't answer positively to this question. He said it wasn't based on malicious intent, rather made a misjudgement as to the importance of the information. He felt that his cholesterol level had returned to normal having taken the prescribed tablets and was no longer a significant health problem.

But Mr K has accepted that he was aware he should have disclosed this, so I don't find it was unfair for Zurich to conclude that Mr K failed to take reasonable care when answering this question.

With regard to the smoking question, there are numerous entries in the medical notes as to when Mr K gave up smoking but the entry closest to when the policy was taken out was in his GP notes of December 2015. This records that Mr K gave up smoking in October 2015. This was less than 12 months before the policy started, so the answer he gave was incorrect.

I haven't disregarded what Mr K has said about this. He has told this service that he stopped smoking on 31 December 2014 or 1 January 2015 – he says this is an extremely memorable and personal date for him. He has said that his memory of such an important life event as quitting smoking in the context of family planning is more reliable than a single, possibly

erroneous entry in his medical records, the origin of which he couldn't explain.

But I note that when Zurich asked Mr K about this in November 2024, he said that he couldn't remember when he stopped but wasn't smoking when the plans were applied for. And other entries in his medical records (July 2022 and November 2021) show he would have given up smoking some time in 2016.

In the circumstances I'm not persuaded it was unfair for Zurich to find that the medical notes were likely to be correct and therefore Mr K's answer that about when he had given up smoking was wrong.

Zurich has shown that it wouldn't have offered critical illness cover if the answers had been given correctly and life cover would have been offered but the premium would have been higher. So this is a qualifying misrepresentation under CIDRA. It has classified the misrepresentation as deliberate or reckless. I've thought carefully about this but I find the categorisation was fair.

Mr K accepts that he knew about the raised cholesterol – but didn't mention it as he didn't think it made a difference. I find that his disregard for the accuracy of the answer he gave was reckless. With regard to the smoking question as this was lifestyle information, I don't find it unreasonable that Zurich required a credible and convincing explanation here for the discrepancy between the answer given on the application form and the medical records. As indicated above, such an explanation wasn't forthcoming when Zurich initially posed the question to Mr K. In the circumstances I don't find that Zurich's classification was unfair. Under CIDRA it was entitled to decline the claim and cancel Mr K's policies, retaining the premiums paid. However I note it has refunded the premiums.

Despite my natural sympathy for Mr K given his diagnosis, I don't find that Zurich treated him unfairly or unreasonably. I'm very sorry that my decision doesn't bring him welcome news.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 October 2025.

Lindsey Woloski  
**Ombudsman**