DRN-5708261

The complaint

Miss J is unhappy that Zurich Assurance Limited cancelled her life and critical illness insurance policy taken out in April 2023 ('the policy') and declined a claim for the critical illness benefit.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

That includes The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law.

I've also taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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, it's for the insurer to show it would've offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several 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.

I understand Miss J's strength of feeling and can see that Zurich's decision to cancel the policy back to the inception date and decline the claim for critical illness has greatly impacted her. I have a lot of empathy for her circumstances. I know she'll be very disappointed but for reasons I'll go on to explain, I'm satisfied Zurich has acted fairly and reasonably.

Was there a misrepresentation?

Miss J used a third-party insurance broker to apply for the policy, and I'm satisfied that it was acting as Miss J's agent.

When applying for the policy, Miss J was asked many questions about her health, medical history and lifestyle.

Zurich concluded that Miss J answered a number of questions on its application incorrectly. However, for the purposes of this decision, I've focussed on the question that I think is most relevant to this complaint. That is:

> Other than for the conditions you have already told us about earlier in this application:
>
> In the last 2 years, have you had or been advised to have any medical investigations, or are you waiting for any test results, appointments or investigations with your doctor or other medical professional?

I'll refer to this as the 'medical investigations question' and I'm satisfied it's reasonably clear.

It's reflected that Miss J answered 'yes' to this question, declaring 'dizziness'.

However, I'm satisfied that Zurich has fairly concluded that Miss J should've also declared gynaecological investigations under the medical investigations question. That's because:

- On 1 July 2022, Miss J reported to her GP surgery that pelvic pain felt easier but still present in the lower abdomen and "would like review by gynae as pain still present".

- She'd had a MRI scan in December 2022 but was unable to attend the follow-up appointment in March 2023. The MRI scan showed a 4cm cyst on the right ovary. The follow up didn't take place until late 2023. So, I'm satisfied that supports Zurich's position that Miss J was still under investigation and / or awaiting test results.

- In March 2023, Miss J's GP notes reflect that she'd had a telephone consultation to discuss blood test results. These were carried out due to "fatigue and some lower pelvic pains" and that she has been "seen by gynaecology and has follow up arranged". It's also reflected that she was having a repeat blood test that afternoon.

When assessing the claim, Miss J was asked why she didn't declare the gynaecological investigations when answering the medical investigations question.

Having listened to the call, she says her doctor had called her to say everything was OK and she didn't need to come to the appointment. She also says that her symptoms had resolved and health had improved so didn't attend the appointment. However, the medical evidence simply reflects that Miss J was "unable to attend" the follow up in March 2023. There's no record of her receiving a call from her doctor to say she didn't need to attend the follow-up in March 2023. Further, the GP notes from March 2023 refer to her having a gynaecology follow up appointment arranged.

I'm also satisfied that Zurich has fairly concluded that these investigations should've been disclosed in any event at they'd taken place in the 2 years before applying for the policy.

So, I'm satisfied Zurich has fairly concluded that Miss J made a misrepresentation.

Was this a 'qualifying' misrepresentation?

Had Miss J declared the gynaecological investigations when answering the medical investigations question, Zurich has provided underwriting evidence to support that it wouldn't have offered the policy at the time.

I'm persuaded by this evidence and it's common for life and critical illness insurers to postpone offering cover until investigations are complete and any diagnosis is given.

I'm therefore persuaded that Zurich has fairly concluded that Miss J's misrepresentation is what CIDRA refers to as a 'qualifying' misrepresentation.

Has Zurich acted fairly and reasonably by taking the action it did?

Zurich has concluded that the misrepresentation was reckless. However, I don't think I need to make a finding on whether that's a fair conclusion for it to reach. Because I'm satisfied that the misrepresentation was at least carelessly made given the medical evidence and the date of the application for the policy.

If Miss J's misrepresentation was careless (as opposed to reckless), I'm satisfied that Zurich would've reached the same outcome in the circumstances of this case.

When a misrepresentation is careless, CIDRA says that Zurich can do what it would've done if the answer to the medical investigations question had been answered correctly.

Zurich cancelled the policy on the basis that it wouldn't have been offered at the time. As explained above, I think that's supported by the evidence provided. So, I'm satisfied it's acted fairly and reasonably by doing so.

I'm also satisfied it's fairly declined the claim for the critical illness benefit on the basis that the policy wouldn't have been in place for the claim to have been made.

And although Zurich has considered the misrepresentation to be reckless, it has agreed to refund the premiums paid for the policy to Miss J which it didn't need to do. It only needed to do this is the misrepresentation was careless. So, whether the misrepresentation was reckless or careless, I'm satisfied that Zurich has acted fairly by refunding the premiums.

When deciding this complaint, I've taken into account all points made by Miss J including the other ombudsman decisions she's referred me to. I'm satisfied the circumstances of those complaints are different to Miss J's complaint. And in any event, I've considered what's fair and reasonable in the individual circumstances of her complaint.

I've also considered Miss J's GP's letter dated June 2025. The letter says that Miss J's genealogical 'episode' was completely unrelated to Miss J's later cancer diagnosis which resulted in the claim. That may be right but if Miss J had fully and accurately declared the genealogical investigations when applying for the policy, I'm satisfied that the policy wouldn't have been offered to her at the time. And therefore, the policy wouldn't have been in place when she later sought to claim on the policy for the critical illness benefit.

The GP letter also sets out a timeframe on the genealogical investigations. However, looking at the more contemporaneous medical evidence from the time, I'm satisfied that the timeline isn't complete. For example, it doesn't make reference to a MRI scan in December 2022 or a missed appointment to follow up in March 2023. I've placed more weight on the medical evidence, summarised earlier in my decision.

Other issues

Miss J is also unhappy about a call that took place between her and one of Zurich's representatives.

Zurich accepts that the call wasn't handled well. It's apologised and, ultimately, paid Miss J £250 compensation. I've listened to the call, and I agree that it should've been handled better overall. I'm satisfied that the call would've been upsetting for Miss J, particularly as she was situationally vulnerable, recovering from cancer treatment.

However, I'm satisfied that £250 compensation fairly reflects the distress and inconvenience she experienced because of the call.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 13 November 2025.

David Curtis-Johnson
Ombudsman