

## **The complaint**

Mr S is unhappy with that Zurich Insurance Company Ltd has declined a claim he made on his travel insurance policy and with the service he received.

## **What happened**

Mr S needed emergency medical treatment whilst abroad. He's unhappy that the claim was declined and with the time it took Zurich to give him a claim decision.

Zurich looked into what happened and maintained their decision to decline the claim was fair as Mr S hadn't accurately disclosed information about his medical history in line with the policy terms. Mr S complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. In summary, she thought Zurich had demonstrated that Mr S hadn't provided the relevant information about his medical history during the application process and, had he done so, that this policy wouldn't have been offered. She also highlighted that the policy terms supported that the decision to decline the claim was fair and reasonable. However, she thought Zurich ought to refund the premiums Mr S paid in line with the relevant legislation.

Mr S didn't agree and asked an ombudsman to review the complaint. In summary, he didn't think Zurich had demonstrated that he'd failed to declare his medical history. And he highlighted that it had taken a long time for Zurich to provide their decision. 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 very sorry to read of the circumstances which led to Mr S making a claim. I can also see that this situation has caused him a lot of worry and stress. I'm very sorry to see that it's had such a significant impact on his mental health and wellbeing. I have a lot of empathy with what he's said about this.

## **Misrepresentation at the point of sale**

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.

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.

Mr S answered questions about his medical history during the application process. So, I'm satisfied CIDRA applies here. From the information provided I'm persuaded it's most likely the policy was taken out online, via a price comparison website. He was then directed to the Zurich website to complete the application process.

The information provided by Zurich demonstrates it's most likely Mr S was asked some initial questions (often referred to as 'gateway questions') when he started the application process. I'm satisfied that most likely included the following question:

Have you or anyone in your party been prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past two years?

I think Mr S ought to have answered 'yes' to this question as his medical records demonstrate that he'd consulted with his GP on at least two occasions during the relevant time period.

I think it's most likely that 'no' was the answer given to this question by Mr S. The information from Zurich demonstrates that if 'yes' was entered then further questions would have been asked about Mr S's medical history and that this type of policy would not have appeared on the quotation page. I note that's consistent with the policy schedule which shows that there were no medical conditions listed. So, on balance, I'm persuaded that it's most likely Mr S answered 'no' to the question asked. Therefore, I think Mr S failed to take reasonable care not to make a misrepresentation during the application process.

Zurich has provided evidence which shows that this policy wouldn't have been offered to Mr S if he'd disclosed the correct information in answer to the 'gateway' questions. This policy wouldn't have appeared in the list of quotations available to Mr S. Instead, he'd have been offered policies from a range of insurers who were prepared to offer cover for pre-existing conditions. This means I'm satisfied that there was a qualifying misrepresentation.

I've taken into account that Mr S feels Zurich ought to be able to provide more detailed information specific to his personal sales journey rather than generic screenshots. However, I'm persuaded that Zurich has provided enough information about the sales process in order for me to reach a conclusion about what is fair and reasonable. Where information is missing, or incomplete, I've considered what's most likely to have happened on the balance of probabilities. That includes all the information that's been provided and the experience of the Financial Ombudsman Service.

I appreciate that Mr S feels the reason for a claim is completely unconnected to the information he failed to disclose. However, that's not central to the outcome of the complaint. Mr S would not have had this policy had the questions been answered correctly.

I think the misrepresentation was careless because I don't think Mr S deliberately sought to mislead Zurich. I think it's more likely he didn't disclose the information in error or selected the wrong answer in error. As I'm satisfied the misrepresentation was careless I've looked at the actions Zurich can take in line with CIDRA.

In such circumstances, where the policy wouldn't have been offered, they are entitled to

decline the claim, treat the policy as if it never existed and refund the premiums. So, I think Zurich should refund the premiums to Mr S.

### **The policy terms**

I'm aware that Mr S feels very strongly Zurich haven't evidenced that his previous health consultations needed to be disclosed. There's other available evidence which further persuades me it wouldn't be fair and reasonable to uphold this complaint.

Zurich highlighted that the policy terms set out the following information:

The policy does not cover any claim arising directly or indirectly from, or in connection with, any medical condition for which at the time of taking out this policy or booking a trip, (whichever is later), you, or anyone insured under this policy, have in the last two years: taken any prescribed medication or received treatment or advice from a medical practitioner or have experienced symptoms for which you or they should reasonably have sought treatment or advice from a medical practitioner.

I'm satisfied this was drawn to Mr S's attention in the policy documentation, including the policy terms and Insurance Product Information Document.

The medical evidence shows that in June 2024 Mr S reported to his GP the circumstances of the claim. That included that Mr S had experienced right sided pins and needles and numbness and was diagnosed with disc protrusion. That's consistent with medical evidence from Mr S's admission also refers to right leg numbness which also impacted his upper body and head. Given his symptoms there were concerns that he could be having a stroke.

However, I think Zurich did reasonably refer to the policy exclusion. In December 2023 Mr S reported back pain to his GP. In February 2024 he experienced back pain on the right hand side which included an episode of numbness. Mr S was advised to seek urgent medical attention in the event of symptoms including leg weakness and numbness which didn't go away.

I appreciate that Mr S was taken to hospital because of the concerns about a stroke. But given the symptoms Mr S experienced, and the available medical information which suggests there were similar symptoms, I think Zurich reasonably relied on the policy term. So this further persuades me it would not be fair and reasonable to uphold this complaint.

### **Delays**

Mr S says he'd submitted all the relevant documentation by early September 2024 but he didn't receive a decision until January 2025.

Mr S didn't contact Zurich until after he'd received treatment. This had an impact on how the claim was handled, in part because he'd incurred significant medical expenses. The information submitted was also quite extensive, particularly the medical information.

I've looked through the timeline of events and, given the nature of the claim, I don't think this was an unreasonable timescale. The medical information needed to be reviewed and a claims decision made. Whilst I appreciate it was longer than Mr S hoped to wait I think this was a reasonable timeframe given the nature and complexity of the claim.

### **Putting things right**

Zurich needs to put things right by refunding the policy premium to Mr S.

**My final decision**

I'm partly upholding this complaint and direct Zurich Insurance Company Ltd to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 December 2025.

Anna Wilshaw  
**Ombudsman**