

The complaint

Mr D complains that Zurich Assurance Ltd has turned down claims he made on a personal Level Protection Plan.

What happened

The circumstances of this complaint are well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr D took out a Level Protection Plan in 2012. This provided, amongst other benefits, critical illness cover of £25,000.

Unfortunately, in late 2023, Mr D made a claim on the policy under the 'Total permanent disability – unable before age 60 to do your own occupation ever again' (TPD) section of the policy. That's because Mr D had suffered from a spinal condition which had required surgery. Following the surgery, Mr D was left with serious mobility problems and urinary issues.

While Mr D had been able to return to work, this was on the basis that Mr D's employer had made very significant adjustments to his role to enable him to do so.

Zurich turned down Mr D's claim. That's because given Mr D had been able to return to work, it didn't agree that he'd met the TPD definition set out in the policy.

Mr D was very unhappy with Zurich's position and he complained. He also asked Zurich to consider whether his claim would be covered under the critical illness section of the policy – using either the 'paralysis of limbs' definition or the 'total permanent disability – unable before age 65 to look after yourself ever again' definition.

Zurich maintained its decision regarding the TPD claim. And it didn't think Mr D's claim met either of the critical illness definitions he'd claimed under either. Mr D therefore asked us to look into his complaint.

Our investigator didn't think Zurich had treated Mr D unfairly. She didn't consider it had been unreasonable for it to have found that Mr D hadn't shown he met the TPD definition or the critical illness definitions set out in the policy terms. And she thought it had been fair for Zurich to turn down Mr D's claims.

Mr D disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 25 November 2025, which explained the reasons why I thought Mr D's complaint should be upheld. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the policy terms and the available evidence, to decide whether I think Zurich handled Mr D's TPD claim fairly.'

First, I appreciate that Mr D made a critical illness claim under the two definitions I've referred to above. Our investigator concluded that it had been reasonable for Zurich to find Mr D's claim didn't meet either of those policy definitions. But I don't think I need to make a finding on that point. And that's because I'm not currently persuaded that it was fair or reasonable for Zurich to turn down Mr D's TPD claim.

I've first considered the policy terms and conditions, as these form the basis of the contract of insurance between Mr D and Zurich. Mr D made a claim under the TPD definition, so I've set out below how Zurich defines TPD. The policy says:

*'Loss of the physical or mental ability through an illness or injury before age 60 to the extent that the insured person is unable to do the material and substantial duties of their own occupation ever again. The material and substantial duties are those that are normally required for, and form a significant and integral part of, the performance of the persons own occupation that cannot reasonably be omitted or modified. Own occupation means your trade, profession or type of work you do for profit or pay. **It is not a specific job with any particular employer and is irrespective of location and availability.**' (My emphasis added).*

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on a policy. That means it was Mr D's responsibility to provide Zurich with enough evidence to show he met the TPD definition.

Zurich doesn't appear to dispute that Mr D's health has been seriously impacted by his spinal issue. The available medical evidence shows that Mr D's mobility has been affected, to the extent he requires crutches/walking aids to walk short distances and that his urinary function has been impacted, too. It seems to me that Zurich's decision to decline Mr D's TPD claim instead centres on the adjustments his employer made which allowed him to return to work.

Mr D sent Zurich a copy of the job description for his role – which I shall refer to as being within the construction industry. Much of his role was carried out on building sites, involved attending meetings on site and ensuring compliance with regulations.

Given Mr D's condition, his employer undertook a risk assessment and made very significant adjustments to his own occupation to allow him to carry out a sedentary role. While I haven't listed each of the adjustments the employer made, I've copied below an extract from the employer's letter to Zurich explaining some of the changes it had made.

'Due to his current condition, whilst he can carry out...functions within the office environment, he cannot attend our construction sites due to the issues of mobility around our construction sites which is fundamental to (his) role. Access and egress to construction site can be very challenging at the best of times which is very unsuitable for (Mr D) and his condition...

Following his illness (Mr D) is unable to perform any of the on-site functions listed which form an essential and fundamental part of (Mr D's) role.

Typically, a (Mr D's role) will be on site for two days a week as a minimum which would account for 40% of [their] time with larger schemes requiring more time spent on site: (Mr D) post illness, now spends 100% of his time working in the office or from home with 0% of his time spent on site.

As a team, (Mr D) is assisted with the essential on-site duties by others including myself... When I am unable to attend in his place, I will allocate another member of the...Team...to

carry out these duties to assist (Mr D) with fulfilling his duties.'

There's no argument that Mr D has been able to return to work. But in my view, that is due to the extremely significant adjustments the employer has made to allow him to undertake a very altered role. As I've set out above, the TPD definition clearly states that it doesn't apply to a specific job with any particular employer. However, it seems to me that these amendments are extremely specific to Mr D's job with his current, particular employer. Given the employer's reference to on-site functions being an essential and fundamental part of Mr D's role, it seems that this is a material and substantial duty which is normally required. I'm not persuaded it's fair for Zurich to say that the inability to perform these key parts of Mr D's general role can be easily omitted or modified more generally.

Based on what I've seen, I think it's more likely than not that but for the heavy adjustments Mr D's employer made to his role, he would have met the TPD definition. I think the evidence points to Mr D being effectively unable to carry out the material and substantial duties of his own occupation as they were prior to his spinal issue. Effectively, it seems to me he is undertaking a very different role and is highly unlikely to ever be able to carry out the material and substantial duties of his own occupation ever again.

So, on the very specific facts and circumstances of this complaint, I don't currently think it was fair or reasonable for Zurich to turn down Mr D's TPD claim. And it follows that I'm currently planning to tell Zurich to now accept and pay Mr D's TPD claim, together with interest.'

I asked both parties to send me any further evidence or comments they wanted me to consider.

Mr D accepted my provisional findings.

Zurich strongly disagreed with my provisional decision and I've therefore summarised its response:

- The main premise for the declination of Mr D's claim is primarily that he remains in employment, albeit with modifications;
- Page 10 of the contract states: *'To make a claim you must be totally permanently unable to carry out all the tasks of your own occupation. You must, if you can, take action to lessen the effect of a disability, or change the way you do your own occupation to enable you to carry out all the tasks. If you don't do so we won't pay.'* On that basis, Zurich considers the need to modify tasks is made explicit in the contract terms;
- The policy states that an insured's own occupation is the job they were performing immediately before their disability. While Mr D's employer had contended that Mr D spent 40% of his time on site, this was at odds with the claim questionnaire Mr D had completed, which stated that most of his role was office based;
- Regardless of the scale of the adjustments Mr D's employer has made to his role, they have been made. Therefore, it was possible for his work tasks to be omitted – meaning the policy definition hasn't been met;
- Mr D's employer also had statutory duties to make adjustments to his role under the law. Nor is there independent evidence which shows whether reasonable adjustments could have been made to allow Mr D to attend site visits;
- I hadn't referenced part of the relevant TPD definition which states: *'The relevant specialists must reasonably expect that the disability will last throughout life with no prospect of improvement irrespective of when the cover ends or the insured person expects to retire.'* It stated that while it didn't dispute the impact Mr D's spinal issue had had on him, it hadn't seen medical evidence which shows the permanence of the

position. It said it hadn't seen the outcomes of recovery and it's understanding that the capacity for improvement had been discussed. Mr D had also been seeing a physiotherapist to good effect and that occupational therapy was suggestive of improving symptoms. It said it needed to be satisfied that Mr D's disability was permanent, but this was something it hadn't investigated because it had concluded the TPD definition hadn't been met;

- It believes it's pure speculation to consider whether duties would be omitted or modified 'more generally' because the occupation relevant to the claim is with Mr D's current employer which has made omissions and modifications to his role.

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.

Having done so, my final decision is the same as my provisional decision and for the same reasons. I'll now go on to address Zurich's further comments.

Before I do so, I'd like to reassure Zurich that while I've summarised its detailed response to my provisional findings and the evidence it attached, I've carefully considered all that it's said and sent me. However, in this final decision, I won't be addressing each and every point Zurich has made and nor do our rules require me to. Instead, I've focused on what I believe to be the key issues.

There's no dispute that Mr D has been able to return to work for his previous employer and that he continues to have the same job title. Therefore, I entirely accept that on a strict interpretation of the contract terms, Mr D hasn't met the relevant definition of TPD. But that's not the end of the matter. I'm not bound to apply a strict application of the policy terms. I have the discretion, under our rules, to depart from such a strict interpretation of the contract if I consider it's fair and reasonable to do so.

I acknowledge too that the policy terms require an insured person to modify the tasks of their job role, if possible. And that statute law requires an employer to make *reasonable* adjustments to allow a person to continue working, if they meet the relevant definition of disability under the Act.

In my view though, given the employer's evidence as to the specific duties of Mr D's insured role and the detail set out in the risk assessment which was completed ahead of his return to work, the adjustments the employer made were extremely significant. And it remains the case that the adjustments the employer indicated they made to Mr D's role were so significant as to fundamentally alter a substantial amount of the essential and fundamental tasks of Mr D's role. I'm still satisfied that given the scale of those adjustments; Mr D is essentially carrying out a very different role to the job his employer indicated he was carrying out previously. It's still the case too, that on balance, it's unlikely Mr D would be in a position to carry out all of the material and substantial duties of his own occupation for *any* employer, rather than his current one.

Zurich has provided me with a copy of Mr D's claim questionnaire. I acknowledge that this states, in Mr D's own words, that he was mainly office-based and carried out a mainly sedentary role. I've considered this carefully because I appreciate Zurich feels it's at odds with what Mr D's employer has suggested were the material and substantial duties of his role.

I note though that Mr D has also stated that part of his duties included '*visiting and walking around sites*' and that he was undertook '*visits to sites for meetings and to check progress*

and quality of work completed. The questionnaire also states that Mr D was required to undertake regional travel as part of his job. That being the case, I don't agree that Mr D's questionnaire is at odds with his employer's evidence. Instead, I find it corroborates Mr D's employer's statement that site visits were a material and substantial part of his role – and indeed, the role he was performing prior to his spinal issue. And I think this reinforces that these duties form part of the material and substantial duties of Mr D's insured role more generally.

Zurich correctly states that the TPD definition requires an insured person to be unable to carry out their role *ever again*. It's also referred to the point that the disability must be expected to last throughout life, with no prospect of improvement. I accept there is little medical evidence underpinning this point and that the limited medical evidence available does suggest there has been some improvement in Mr D's symptoms – although the evidence indicates that Mr D's legs had '*become stiffer over time*' and that he had heightened sensitivity in his feet. But I don't think the medical evidence suggests, on balance, that Mr D is likely to sufficiently recover his mobility to be able to undertake the material and substantial duties of his insured role again – especially given Mr D's age, the reported leg stiffness and the urinary symptoms he'd developed. I'd add that this was medical evidence it was open to Zurich, as the expert in the situation, to have obtained during the claims process when considering whether or not Mr D's claim met the terms overall.

In the round then and taking into account the totality of the evidence, I still think it's more likely than not that but for the heavy adjustments Mr D's employer made to his role, he would have met the TPD definition. And therefore, I still find on the very specific facts and circumstances of this complaint, that it wasn't fair or reasonable for Zurich to turn down Mr D's TPD claim. So I'm now directing Zurich to now accept and pay Mr D's TPD claim, together with interest.

My final decision

For the reasons I've given above and in my provisional decision, I uphold this complaint and I direct Zurich Assurance Ltd to pay Mr D's TPD claim, in line with the policy terms and conditions, together with interest on the settlement at an annual rate of 8% simple from one month after Zurich had the evidence it needed to accept the claim until the date of settlement.

If Zurich considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 January 2026.

Lisa Barham
Ombudsman