

The complaint

Mr D is unhappy with Zurich Assurance Limited's decision to terminate his claim and cancel his cover.

What happened

Mr D had income protection cover with Zurich through his employer. In 2015, Mr D was diagnosed and treated for a pancreatic tumour. He was left suffering with symptoms of an uncontrollable bowel and unable to work in his insured occupation. Mr D's income protection claim was accepted and he began receiving benefit. Mr D returned to work in a reduced capacity from February 2022. Mr D could only work a maximum of two days per week owing to his symptoms of fatigue and his need to be near a toilet at all times. However, Zurich terminated his claim following a review of surveillance footage it obtained in December 2022.

Mr D said Zurich had unfairly terminated his claim because the available medical evidence supported he was too unwell to return to his pre-illness occupation. Mr D said he'd been working in a reduced capacity at home and that Zurich had been paying him proportionate benefit to supplement his reduced income. He maintained he's unable to return to work in his previous role due to the nature of his unpredictable symptoms being incompatible with the demands of his insured occupation.

Zurich said Mr D misled it over the severity of his symptoms. It said it gave Mr D opportunities to disclose relevant information honestly and accurately and that the information he provided was inconsistent with the surveillance footage it obtained. Zurich said Mr D showed greater functionality than he previously described and that he failed to share important information, when asked, about his daily and weekly routine. It said Mr D did that purposely to continue to receive benefit under the policy.

Our investigator partially upheld this complaint. She said Zurich's decision to terminate Mr D's claim was fair in light of the surveillance footage. She said this showed Mr D was able to be out of the house and away from toilet facilities for extended periods. But she didn't think Mr D had purposely misled the insurer. She accepted he'd not shared relevant information about his daily routine, including the 45-minute school run and the hour-long dog walk each morning, but she didn't think this was reason enough to say he'd been deliberately misleading.

Our investigator said therefore Zurich couldn't fairly cancel Mr D's policy and so it needed to reinstate his cover and pay him £200 compensation for the distress and inconvenience caused.

Both parties disagreed with her findings. Zurich said Mr D told it he needed to use the toilet, for at least 30 minutes, between six-seven times every morning before lunch. It said the surveillance footage demonstrated this wasn't the case. It also said Mr D told it he could only manage a 20-minute dog walk, which the footage disproved.

Zurich said Mr D cited his increased need to use the toilet as the reason he was unable to fulfil the material and substantial duties of his insured occupation and that the evidence

persuasively challenges that. Zurich also said had it not been for the surveillance footage, it would have continued to pay Mr D benefit he was no longer entitled to.

Mr D said, in summary, the medical evidence supports his incapacity and that it cannot be ignored. Mr D said his insured occupation is demanding and that his ongoing medication, bowel issues and diabetes mean he's unable to return to that role. He said although he's been able to do some work, it's less demanding and work that he's able to readily stop when he needs to. He'd like Zurich to reinstate his claim and pay his incapacity benefit. And so, it's now for 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.

Having done so, I've decided to partially uphold it and for broadly similar reasons to those given by our investigator. I agree with our investigator's outcome that Zurich fairly terminated Mr D's claim as the evidence shows he has greater functionality than was previously known.

But I'm not persuaded Zurich has sufficiently shown Mr D deliberately misled it. I say that because, although he misreported the duration of his dog walks and failed to mention he completed the school run each morning, he still made efforts to share relevant information with the insurer. So, I'm persuaded this was more of an oversight in the circumstances, rather than a deliberate attempt to mislead. So, Zurich must reinstate Mr D's cover under the policy. I'll explain why.

The relevant rule that applies in this case comes from the Insurance Conduct of Business Sourcebook (ICOBS) and says Zurich must assess claims promptly and fairly and must not reject a claim unreasonably. I've considered this and other relevant industry guidance whilst assessing Mr D's complaint.

The policy terms say about incapacity:

"The Member cannot perform the Material And Substantial Duties of their employment and they are not doing any paid work"

The policy terms also say about misleading the insurer:

"We can also cancel cover or benefits for a Member or change the terms of their cover or benefits, in line with reasonable Underwriting, insurance practice and the Consumer Insurance (Disclosure and Representations) Act 2012, if you or the Member

- *misled us by mis-statement, concealment or omission*
- *knowingly claim benefit for a purpose not provided for under this policy*
- *agreed to any attempt by a third party to obtain an unreasonable monetary gain that disadvantages us"*

Although I may not respond to every point Mr D has raised, I want to reassure him I've considered everything he's said. The informal nature of this service enables me to do that so I can resolve complaints with minimal formality.

- The medical evidence supported Mr D's claim up until the point the surveillance footage became available. The reason the footage had such an impact on Mr D's claim is because it significantly contrasts with his testimony about how his symptoms impact his ability to fulfil the material and substantial duties of his insured role. Mr D

described being unable to carry out his role because of his increased need to use the toilet without notice. He said this made it impossible for him to commit to the demands of his occupation where he'd be expected to lead lengthy meetings. He also said he'd be unable to travel to work given his symptoms.

- The surveillance footage showed Mr D was able to complete the school run by car for 45-minutes each morning he was observed, followed by a one and half mile dog walk upon his return home. Zurich said this indicated Mr D had greater capacity than it was led to believe. It reasonably concluded Mr D was away from his home on average for around three hours each morning, without seemingly needing to use the toilet during that time.
- Zurich said it spoke to Mr D on the final day the footage was captured and asked him to describe a typical week. It said Mr D reported waking at 7.30am and having to always be close by a toilet and that his symptoms were most persistent in the morning until lunchtime. He described needing to use the toilet on up to seven occasions daily, for around 30 minutes each time. Zurich said the surveillance footage didn't support Mr D's reported symptoms as he was observed completing the activities detailed above without needing to use the toilet.
- Zurich said this shows Mr D had a greater level of function than he was otherwise prepared to share. I think that was a reasonable conclusion for Zurich to draw from surveillance. Mr D's response to that argument was that there were gaps in the footage whilst he was walking his dog, during which he emptied his bowels by the river. I should say this wasn't in the footage, but even if that was the case, this was on one occasion, and it doesn't indicate his symptoms are persistent enough to render him incapacitated as described by the policy terms. It's also inconsistent with his earlier testimony about his toilet duration as there were one-to-two-minute intervals where he was out of footage. Throughout the five days of surveillance, Mr D wasn't seen using toilet facilities at any of the locations he frequented. He was also out of the house for a significant time each morning, which is the time of day when he reported being most symptomatic.
- Mr D said his medical evidence supported his claim and noted his symptoms that caused incapacity. I should say I understand the argument Mr D is making here, but I find it less persuasive when I consider the medical evidence shows his symptoms were largely self-reported. That's to say Mr D described his frequent and unpredictable bowel habits and these were documented by the medical professionals responsible for his care. It was on that basis medical opinions were reached about Mr D's ability to work and his incapacity. Zurich argued that Mr D's testimony has been shown to be unreliable following its investigation. I'm also persuaded the contemporaneous medical evidence is less reliable when considered in the broader context of the surveillance footage, and Mr D's inaccurate reporting of his symptoms.
- Zurich shared the footage with one of the medical professionals that previously said Mr D was too unwell to work, following an independent medical examination in August 2022. He initially said Mr D suffered with physiological and psychological symptoms which meant he was unable to achieve any fixed work schedule. After reviewing the surveillance footage, the same doctor said it was now his medical opinion that Mr D was well enough to return to work in his original occupation. He said the validity of his earlier report was undermined and questionable as it was based solely on the subjective self-reporting from Mr D. He said the footage appeared to contradict how Mr D described his symptoms in August 2022.

- This was a view shared by Zurich's chief medical officer who also found there was no evidence of unpredictable bowel habits and no evidence of Mr D carrying paraphernalia that would otherwise have been expected of someone at risk of a sudden, unexpected defecation accident. I think this reasonably shows Mr D's symptoms, although likely challenging to manage, aren't frequent or severe enough to render him totally incapacitated. I should make clear that I'm not dismissing Mr D's symptoms as I believe he does suffer with the aftereffects he's described. But I think the evidence persuasively shows his symptoms in the mornings aren't as incapacitating as they perhaps once were and Zurich can fairly rely on that to stop paying him benefit.
- Mr D challenged this and said the other medical professionals didn't share that view. He provided evidence to support that, but I find it less persuasive in the circumstances as it doesn't adequately explain why Mr D is unable to perform the material and substantial duties of his role. It describes the anxiety Mr D suffers because of his unexpected bowel movements but doesn't offer a clinical finding on the functional impairment preventing Mr D returning to his occupation full time. Anxiousness and embarrassment, whilst understandable, isn't a functional limitation for the purposes of Mr D's claim and doesn't satisfy the incapacity criteria in the circumstances. And whilst Mr D's self-reported symptoms are documented, I find the surveillance footage more persuasive as it shows he has a greater functionality than he previously shared with his medical team. I therefore think Zurich can reasonably rely on the testimonies of its chief medical officer and the independent specialist to fairly cease paying benefit to Mr D and terminate his claim.
- Whilst I'm satisfied Zurich reasonably terminated Mr D's claim, I don't think it's sufficiently shown he misled the insurer. I say that because Mr D disclosed other relevant information throughout the claim, including sports activities and coaching he was involved with and other activities, like his dog walks. I accept he said the walks were usually 20 minutes, rather than an hour each time, but I'm not persuaded that means he intentionally tried to mislead Zurich.
- I've listened to the call that took place on the final day of surveillance. Zurich highlighted this call as the key piece of evidence showing Mr D had misled it about his activities that week. Zurich asked Mr D to describe a typical week with his symptoms, rather than asking specifically about the week he was under surveillance. Mr D disclosed he walks his dogs and tries to keep as active as possible, whilst remaining close to toilet facilities. Mr D subsequently explained the footage obtained is consistent with that, although he also conceded he sometimes relieves his symptoms outside when walking his dogs. So, it's for these reasons I disagree with Zurich's argument that he misled it, because its line of questioning wasn't specific enough to reasonably conclude that's the case here.

Putting things right

To put things right, Zurich must reinstate Mr D's cover under the group income protection policy for the reasons I've explained. It must also pay him £200 compensation for the distress and inconvenience caused.

My final decision

I'm partially upholding Mr D's complaint. Whilst I agree Zurich Assurance Limited ceased paying the claim fairly, I think its decision to cancel his cover altogether was unfair. It must now reinstate Mr D's cover under the group income protection policy. Zurich Assurance Limited must also pay Mr D £200 compensation for the distress and inconvenience caused

by cancelling his cover unfairly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 May 2026.

Scott Slade
Ombudsman