

## **complaint**

This complaint concerns Zurich Assurance Ltd's ('Zurich') decision to decline a claim under the late Mr J's term assurance policy. The complaint has been brought by the late Mr J's parents, Mr and Mrs H.

## **background**

In 2009, the late Mr J took out a level term assurance policy with Zurich. The policy provided level cover of £29,177 over a term of 25 years.

Sadly, Mr J passed away in September 2014 and a claim was made on the policy. Zurich considered the claim but turned it down. It told the late Mr J's mother, Mrs H, that this was because Mr J hadn't answered questions about his alcohol consumption correctly in the application form. It said if it had known about Mr J's history of alcohol dependence it wouldn't have been able to offer him any insurance cover. So, Zurich cancelled the policy and returned the premiums Mr J had paid for it.

Mr and Mrs H were unhappy with Zurich's decision. They said the evidence they'd seen from before Mr J died showed that he didn't have any alcohol related illnesses. They also complained about the way Zurich handled the claim, saying the decision could've been made sooner. Zurich didn't change its decision, so Mr and Mrs H brought their complaint to this service.

Our adjudicator didn't think the complaint should be upheld. She thought Zurich's decision was fair as she'd seen evidence to show that it wouldn't have offered Mr J any cover, had he told it about the amount of alcohol he was consuming and the advice he received to reduce his intake. The adjudicator also thought Zurich's claim handling was reasonable in this case.

Mr and Mrs H didn't agree with the adjudicator's view and asked for the complaint to be reviewed by an ombudsman.

## **my findings**

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 reached the same conclusions as the adjudicator for largely the same reasons.

When a consumer hasn't given the insurer relevant information in response to a clear question, this is known as a 'misrepresentation'. Industry guidance commonly recognises three types of misrepresentation – deliberate/reckless, careless and innocent. An insurer is entitled to take action depending on the type of misrepresentation.

Before I decide whether the action Zurich took was fair, I need to look at whether it was right to say Mr J hadn't answered questions about his health correctly.

When completing his application, Mr J was asked whether he drank alcohol, to which he answered, "yes". He was then asked the following questions:

*'On average, how many units do you drink each week? (1 unit = a half pint normal strength beer, larger or cider or 125ml (small) glass of wine or 25ml (pub) measure of spirits. A half*

*pint of premium strength beer (4.2% ABV and above), lager or cider should be recorded as 2 units)*'

Mr J recorded that he drank 20 units of beer, lager or cider and 2 units of spirits per week. He was then asked:

*'Have you ever sought or been given medical advice to reduce your alcohol consumption (other than during pregnancy)?'*

Mr J answered, "no" to this question.

Having seen Mr J's medical records, it seems that Mr J had been seeing various medical professionals about his problem with alcohol since 2006. I've seen a letter from the Substance Misuse Services to Mr J's GP from November 2006. The letter said Mr J had told one of the social workers that he'd been drinking two bottles of red wine or three litres of cider each day. A note in Mr J's medical records from 11 March 2009 says that a discussion had taken place regarding his alcohol use. The note says Mr J recognised that he was alcohol dependent and that he wished to address it. So, the GP wrote that Mr J would be referred to a Community Alcohol Team. I've seen a letter from the Community Alcohol Team to Mr J's GP from May 2009. This says that Mr J had been engaging with the service regarding his alcohol consumption of 27 units per day and that it was looking at his detoxification options.

There is another note in his records showing that a further discussion about his alcohol use took place on 26 August 2009. A note from 24 November 2010 says that Mr J was drinking '1 – 2 bottles of wine a day on average'. I've also seen a letter from a doctor from February 2011 which says Mr J drinks around 20 units a day and has been drinking this amount for the last 10 years.

In view of the above, I think Mr J should've answered the question about the average number of units he drank per week differently. I say this because there is evidence from around six months before he applied for the policy that he was drinking 27 units of alcohol per day. This would amount to 189 units per week. And the evidence from February 2011 says that Mr J had been drinking an average of 140 units of alcohol per week for the last 10 years. So, I think it's more likely than not that Mr J was drinking significantly more than 20 units per week. I also think Mr J should've answered the question about whether he'd sought or been given medical advice to reduce his alcohol consumption differently. This is because the note from March 2009 shows that he'd sought help to address his alcohol use and he'd been referred to a Community Alcohol Team.

I don't think Mr J intended to deliberately keep this information from Zurich. Mr and Mrs H have said that Mr J lived with them at the time and they'd seen no sign of heavy drinking. They also said Mr J hadn't been diagnosed with any alcohol related illness and he was still fit for work at the time. But, I don't think I can disregard the information recorded by the various medical professionals during this period. And this was information Zurich needed to know in order to assess whether it was prepared to offer Mr J insurance.

Mr J was told about the consequences of not providing accurate information and he was given the opportunity to correct any mistakes in the application form before the policy started. So, I think he was careless when completing and checking the application as he should've known that the answers he'd given to the above questions weren't correct.

In cases of careless misrepresentation, the appropriate remedy is to restore the position that would've existed if the insurer had known the relevant information at the outset. Had Mr J told Zurich the correct number of units he was drinking and that he'd sought advice to reduce his consumption, Zurich says it would've asked for further information. It then would've found out that Mr J was alcohol dependent and as he was still drinking alcohol at the time of application, it wouldn't have been able to offer Mr J any cover. It has provided evidence to that effect.

So, having taken all of the above into account, I think Zurich's decision not to pay the claim under the late Mr J's policy and return the premiums paid was fair. This is because it wouldn't have been able to offer Mr J any insurance cover if he'd given it all of the relevant information at the outset. I appreciate that this will be very disappointing for Mr and Mrs H.

Mr and Mrs H have said that Zurich's handling of the claim was poor and it should've made its decision sooner. I've looked at the claims notes which show when the claim was made, when the requests for information were made and when the decision was communicated. But, I don't think Zurich delayed matters unreasonably. Zurich needed to ask for further information from the late Mr J's GP in order to work out whether Mr J had given it accurate information at application. This took some time to obtain but I don't think these delays were caused by Zurich. So, overall, I don't think Zurich could've made a decision any sooner than it did and I think the information it asked for was necessary in order to make a fair decision.

### **my final decision**

For the reasons set out above, I don't uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 30 December 2015.

Hannah Wise  
**ombudsman**