

The complaint

Mrs B complains because Zurich Assurance Ltd ('Zurich') hasn't paid a claim for total permanent disability benefit under her life and critical illness insurance policy.

Mrs B also complains about Zurich's delay in dealing with her claim.

What happened

Mrs B holds decreasing term life and critical illness insurance, underwritten by Zurich.

In November 2021, Mrs B made a claim for total permanent disability benefit. In December 2021, Zurich sent Mrs B an occupational questionnaire to complete. Later the same month, Zurich sent a medical report to Mrs B's doctor for completion and let Mrs B know it had done this, as well as confirming details of when she'd next be updated.

Zurich sent Mrs B a final response letter in January 2022, in response to her complaint about its delays, saying someone was on leave and that it had told Mrs B this. However, Zurich paid Mrs B £60 compensation in respect of its initial delays in assessing her completed claim form.

Mrs B's doctor replied to Zurich with the information it had asked for in February 2022. Zurich then asked Mrs B's former employer for the job description for her former role, which it received in March 2022.

In April 2022, Zurich sent Mrs B another final response letter saying it was in the process of reviewing the information that had been provided by her former employer.

In June 2022, Mrs B brought her complaint to our service.

In July 2022, Zurich told Mrs B that her claim wasn't covered under her policy. Zurich said this was because Mrs B had said on her policy application form, completed in September 2014, that driving wasn't essential for her to perform her job. Zurich said the occupational questionnaire completed by Mrs B and the job description provided by her former employer indicated that Mrs B drove significant mileage as an essential part of her occupation and, if it had been told about this when the policy was taken out, it wouldn't have offered her cover on the same terms. Zurich said it could amend Mrs B's policy retrospectively to remove cover for 'total permanent disability' benefit or, alternatively, it offered to cancel her policy and refund the total premiums she'd paid. Zurich didn't issue a final response letter about its decision to decline Mrs B's claim but has consented to our service considering the complaint in its entirety.

Our investigator looked into what had happened. He said he thought Zurich should reassess Mrs B's claim and pay her £250 compensation for its error in declining it. Mrs B accepted our investigator's opinion but Zurich didn't, so the complaint was referred to me as the final stage in our process.

In the meantime, Zurich obtained additional evidence from Mrs B's former employer about the level of driving that was involved in her role in 2014. I shared this evidence with

Mrs B. Mrs B subsequently withdrew her consent for her former employer to release any further information about her former employment.

I made my provisional decision about Mrs B's complaint in June 2023. In it, I said:

'When considering Zurich's actions in this case, I've taken into account the relevant law (The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA')). I've also had regard to good industry practice about misrepresentation, treating customers fairly and managing claims (namely the 2019 Code of Practice set out by the Association of British Insurers), as well as what I think is fair and reasonable in all the circumstances.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care required is that of a reasonable consumer. If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a 'qualifying misrepresentation'. For a misrepresentation to be a qualifying one, the insurer must 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 a 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.

Zurich thinks Mrs B failed to take reasonable care not to make a misrepresentation because of how she answered a question she was asked on the insurance policy application completed in September 2014. Mrs B answered 'no' in response to the following question, which I think was both clear and specific:

'Other than driving to and from your usual place of work, is driving essential for you to perform your job?

I've considered everything Mrs B has told us about her occupation as it was in 2014. I accept that the nature of Mrs B's role has changed over time, and that it's difficult to quantify exactly how much driving was involved at a particular point in time. Mrs B told us she didn't drive as part of her role when she applied for this policy.

The new information provided by Mrs B's former employer says:

'The ... job role has not changed significantly over the years although the level of complexity increased and the caseloads increased.

Yes the role always involved driving but this definitely increased over the years as the caseloads grew. Between 2010 and 2019 the role was not locality based and [Mrs B] often had the very rural/remote caseload so lots of driving...'

I understand Mrs B disputes some of this information, and questions whether the employee who provided the information would be clear on what her role involved. However, I think the evidence from Mrs B's former employer carries significant persuasive weight. I've also considered the job description provided by Mrs B's former employer (which, although the document 'creation date' post-dates the policy application, refers to driving as an essential part of the role) and a call between Mrs B and Zurich in June 2022 when Mrs B said it was hard to say how much driving she did in 2014.

Overall, I think it's more likely than not that Mrs B's occupation in 2014 did involve essential driving other than to and from her usual place of work which a reasonable consumer would have realised that Zurich wanted to know about in response to the question asked.

This means that I don't think Mrs B took reasonable care not to make a misrepresentation about the level of driving involved in her occupation when she took out this policy.

However, I don't think Zurich has demonstrated that Mrs B made a qualifying misrepresentation under CIDRA. To do this Zurich needs to show that, without the misrepresentation, it wouldn't have entered into the contract at all, or would have done so only on different terms.

Mrs B's former employer has said:

'Between 2010 and 2019 ... from recollection it was around 500 miles + per month = probably nearer 8000 annually.'

Zurich says this information is hugely at odds with the information which Mrs B provided on her occupational questionnaire. However, as I've already mentioned above, I think the evidence from Mrs B's former employer has significant persuasive weight. Furthermore, although the occupational questionnaire asks for details of Mrs B's occupation at the time of policy commencement, I note that Zurich's covering letter to Mrs B enclosing the questionnaire refers to her occupation immediately before she became unfit to work. So, I'm not satisfied that the information contained in the completed questionnaire can fairly be relied upon by Zurich as an accurate reflection of the level of driving Mrs B did in 2014.

Overall, based on the available evidence, I think it's more likely than not that Mrs B was driving approximately 8000 miles annually in 2014.

Zurich has provided evidence showing that it would still have offered cover to Mrs B on the same terms as it did if she had told it she was driving this level of mileage as part of her occupation. So, I don't think Zurich has demonstrated that there has been a qualifying misrepresentation under CIDRA which means it isn't entitled to any of the available remedies for careless misrepresentation (which is how it has treated this situation).

Mrs B's former employer told Zurich that 'Finance may be able to track exact mileage'. Zurich has since contacted the former employer again to ask for these details, but Mrs B has withdrawn her consent for any further information to be released.

An insurer is entitled to carry out reasonable investigations to satisfy itself that a claim is covered and I'd generally expect a policyholder to co-operate with any such enquiries if they want to have their claim paid. So, ordinarily I wouldn't direct an insurer to reassess or accept a claim in a situation where a policyholder has refused to consent to information being released by a third party in response to reasonable enquiries.

However, based on the very specific and individual circumstances of this case – including the fact that Zurich has had since March 2022 to request any information it needed from Mrs B's former employer to support its decline of her claim and Mrs B's financial situation as well as her declining health – I don't think Mrs B's refusal to allow her former employer to release any further information to Zurich should prevent her claim from being reconsidered. In any event, based on the evidence I've seen, it seems uncertain whether Mrs B's former employer would now be able to confirm what the exact mileage was.

This means I currently intend to direct Zurich to reconsider Mrs B's claim. I'd expect Zurich to do so promptly but, if Zurich reasonably requires further medical information to assess the claim, then it's entitled to request this.

Zurich has already paid Mrs B £60 compensation for its delays in assessing the claim

between November 2021 and January 2022. I don't think Zurich handled Mrs B's claim promptly or provided her with appropriate information on the progress of her claim between February 2022 and July 2022, as required under industry rules. I'm satisfied that additional compensation is warranted for the impact of these further delays on Mrs B. I think a payment of £190 compensation (making a total of £250 compensation overall) would be fair and reasonable in the circumstances.'

Zurich didn't accept my provisional decision. In summary, it said:

- Mrs B's assertion that she didn't drive as part of her role when she took out the policy is at odds with what she told Zurich during her telephone call with it in June 2022;
- it declined the claim based on Mrs B's completed occupational questionnaire and the job description provided by her former employer and it only sought further information from Mrs B's former employer because of her assertion to our service that she completed the occupational questionnaire incorrectly (which is directly at odds with what Mrs B told Zurich during the telephone call in June 2022). Zurich says it didn't feel there was a need to verify the job description provided by Mrs B's former employer until our investigator's involvement;
- the new information provided by Mrs B's former employer is not based on any evidence whatsoever and even Mrs B has questioned whether the individual providing the information would have known what her role entailed. The completed occupational questionnaire is more reliable than the estimates and recollections of an individual at Mrs B's former employer about what her position was some 9 years earlier, and there are no grounds upon which to dismiss the occupational questionnaire entirely.
- I previously gave Zurich the opportunity to verify the position with Mrs B's former employer but, now that Mrs B has withdrawn her consent to information being shared, it's unfair that I am prepared to take the new information from Mrs B's former employer at face value.

Mrs B accepted my provisional decision but queried what further medical information Zurich could need in order to accept her claim, and said she was fearful that Zurich would prolong the matter even further.

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've given careful thought to Zurich's response to my provisional decision.

I accept that Mrs B has provided contradictory information about whether her role involved driving in 2014. I'd reiterate that I'm satisfied it's likely Mrs B's role did involve essential driving other than to or from her place of work at that time. So, I'm not disputing that Mrs B made a misrepresentation – which Zurich has treated as careless. However, what is in dispute is the level of driving involved and whether Mrs B made a qualifying misrepresentation.

I also accept that it seems to be very hard to quantify how much driving was involved in Mrs B's role in 2014 and Zurich has acknowledged that it's difficult for Mrs B to be precise about this. None of the evidence currently available in this case is conclusive as to the level of driving involved in Mrs B's role in 2014, but I'm entitled to base my decision on the evidence

currently available to me and I'm satisfied that it's fair and reasonable to both parties if I do so in this case.

Mrs B told our service that she completed the occupational questionnaire based on her role as it was more recently (and not in 2014). I think the wording of Mrs B's covering email and completed questionnaire supports this, as she repeatedly described the position in the current – and not in the past – tense. Mrs B doesn't appear to have ever told Zurich this directly, but I think this is understandable as Mrs B's complaint was already with our service at the point when Zurich declined her claim. And I don't agree that what Mrs B has told us about the completed occupational questionnaire contradicts anything Mrs B told Zurich during the telephone call in June 2022. I note that the heading on the occupational questionnaire asking for details of occupation at the time of policy commencement is clear but, as set out in my provisional decision, the covering email which Zurich sent to Mrs B was contradictory. Contrary to what Zurich has said, I haven't dismissed the content of the occupational questionnaire as evidence – I've considered it fully but, instead, have given other evidence more persuasive weight.

That evidence is the new information provided by Mrs B's former employer. I've taken into account everything Zurich has said about this, including Zurich's comments that there's no evidence to support what has been said, the length of time that has passed and Mrs B's remarks about the individual that provided the information. But, for the reasons I've explained both here and in my provisional decision, I remain satisfied that the new information from Mrs B's former employer – as evidence from a third party with no apparent vested interest in the claim - carries more persuasive weight than Mrs B's completed occupational questionnaire.

Generally, I would expect a policyholder to fully co-operate with an insurer's reasonable enquiries. This would include agreeing to the release of information from relevant third parties such as a former employer. But Zurich had the opportunity to fully interrogate the available evidence, and to obtain additional supporting evidence, before it declined Mrs B's claim. It's for Zurich to demonstrate that Mrs B made a qualifying misrepresentation if it wishes to invoke the remedies set out under CIDRA and I don't think the evidence which Zurich had at the point of claim declination necessarily supported such a conclusion. While the creation date of the job description alone may not have been a reason to question the documents contents, the job description doesn't confirm the mileage that Mrs B was required to drive in her role. I note that an email from Mrs B's former employer to Zurich dated 16 March 2022 says the job description was requested in place of a form that had been sent to the former employer to be completed. So, I remain satisfied that Zurich had the opportunity to request any further information it needed about what mileage Mrs B was driving in 2014 from March 2022. Zurich also had the opportunity to ask for Mrs B's former employer's finance department to track Mrs B's exact mileage from when it first received the new information in March 2023, without waiting for an explicit invitation from our service about whether it wished to consider doing this. Based on the individual circumstances of this case, I don't think it would be fair or reasonable to treat the fact that Mrs B has now withdrawn her consent to information being shared by a third party as fatal to the reconsideration of her claim.

So, for these reasons, as well as the reasons set out in my provisional decision, I'm upholding Mrs B's complaint. This includes a direction for Zurich to reconsider Mrs B's claim, subject to the provision of any additional medical evidence which Zurich may reasonably require.

Neither Zurich's refusal to pay Mrs B's claim nor Mrs B's complaint to our service related to the medical information in this case. So, I haven't considered and have no power to make a determination about whether the available medical evidence is sufficient for Zurich to accept

Mrs B's claim within this final decision. It's for Zurich to decide, in the first instance, if it has the medical evidence it requires. I can understand why Mrs B is concerned that this issue may cause further delays but, if there is reasonable additional medical information which Zurich needs, it's entitled to request this. If Mrs B is unhappy with any such request for further information, or with the time Zurich takes to now reconsider her claim, she'd need to complain directly to Zurich about the matter before bringing a new complaint to our service.

Putting things right

Zurich Assurance Ltd must put things right and do the following:

- reconsider Mrs B's claim, accepting that there was no qualifying misrepresentation at application stage;
- pay Mrs B £190 compensation for the distress and inconvenience she experienced.

My final decision

I'm upholding Mrs B's complaint against Zurich Assurance Ltd and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 9 August 2023.

Leah Nagle
Ombudsman