

The complaint

Mrs M is represented by a solicitor in pursuing her complaint, which is made on behalf of herself and the estate of her late husband, Mr M. The solicitor says that Zurich Assurance Ltd ('Zurich') has unfairly refused a life assurance claim Mrs M made under her and Mr M's protection policy. Zurich says no payment was due under the policy because it had lapsed due to non-payment of premiums, and the lapse occurred before Mr M passed away.

What happened

I issued a provisional decision on this complaint on 12 June 2023.

In summary, despite my genuine sympathy for Mrs M, I believed the complaint could not succeed. I explained why I believed Zurich had fairly lapsed Mrs M and her late husband's term assurance policy due to unpaid premiums – in accordance with the policy terms. Accordingly, there was no insurance cover in place when Mrs M later came to make a claim.

I invited the parties to make any further submissions or provide evidence that they wanted me to consider. I haven't repeated the background here, as it is known to the parties. However, a full copy of the findings set out in that provisional decision is provided in italics below.

I was truly sorry to learn that Mr M had passed away, and I send my condolences to Mrs M and her family. I appreciate how distressing things have been for her, given the particularly difficult financial and emotional circumstances that have been set out by Mrs M's solicitor.

I do not wish to cause Mrs M any further upset in issuing this provisional decision. However, for the reasons I'll go on to explain, I have reached a different view on this complaint to that of our investigator. I do not consider Zurich to have acted unfairly in the circumstances; nor do I think it ought to pay the claim now. So, I do not believe this complaint can succeed.

I've looked carefully at everything both parties have said. I do think it was fair for Zurich to lapse the policy. I can see that Mrs M didn't intend for the policy to end, and that she didn't actually know about it at all. But be that as it may, the premiums couldn't be collected in September 2021, due to insufficient funds in the nominated bank account.

A protection policy such as this one will only remain in force so long as the premiums are paid. And while I appreciate the solicitor has explained the difficulty in payment taking place, it doesn't deter from the fact the premium was missed, despite three attempts at collection.

So, I have looked at the 'Level Protection Plan' terms and conditions. Those terms form the basis of the contract of insurance between the parties, and I need to review them to ensure they've been fairly interpreted by Zurich when it lapsed Mrs M and her late husband's policy.

The policy requires a premium payment to be made within 30 days, or the policy will cease. The terms say:

“If you don’t make payment when it is due, the plan will continue providing cover for 30 days. At the end of the 30-day period the plan will end and you won’t get any of your payments back. If we accept a claim during the 30-day period under the terms of your plan, we’ll deduct any due payment from the amount we pay.

Although your plan will have formally ended and you will therefore have no rights under the plan [my emphasis], you can ask us to reinstate your cover up to 60 days after your plan ended. To help us consider your request, we’ll ask you for details about your health and activities. If we agree to reinstate your plan, you will need to send us a cheque for the payments you have missed. We do not have to reinstate your plan.”

I therefore think it was fair for Zurich to cancel the policy effective 1 October 2021 – this being 30 days after the missed premium of 1 September 2021.

I am satisfied that on the evidence set out above, Zurich was entitled after 30 days from the missed payment to deem the policy lapsed in accordance with the terms and conditions. The outstanding issue for me to consider is whether Zurich’s subsequent actions from the date of the missed payment were either unfair or unreasonable.

Though Zurich has been able to provide evidence it sent a lapse notification letter of 21 September 2021, it hasn’t retained a file copy of it – because its automated process did not allow it to do so.

Whilst my view is that it would have been good practice to retain this letter, Zurich has been able to confirm the contents as they are a template issued to policyholders when a direct debit mandate collection has failed. On balance, I am persuaded Zurich issued the lapse letter on the date recorded within its system notes, with the template wording.

Though we do not have evidence of a copy issued to Mr and Mrs M, Zurich says the letter stated:

“We have been notified by your bank that they are unable to pay the monthly contribution due for the above policy and our direct debit has been returned unpaid.

*We value the fact that you chose this policy as an important part of your overall financial planning and we do not want you to lose any of its benefits by missing payment of your contributions., **Under the terms of the policy, protection ceases if the contribution remains unpaid at the end of this month [my emphasis].”***

I can’t say conclusively if this letter was received, and sadly, we cannot know for sure what happened. However, Zurich held the right address for Mr and Mrs M. And from the policy’s inception in 2016, annual policy statements had been issued to Mr and Mrs M at that address, so I don’t think it was unreasonable to write to them in the same way.

I believe it likely a lapse letter was sent to Mrs M and the late Mr M. And I note the later letter of 11 November 2011 appears to have been correctly received.

I am also mindful that Zurich isn’t contractually obliged to issue a lapse letter. The payment of the premiums was Mr and Mrs M’s responsibility. In return for the payment, Zurich had to provide the appropriate insurance cover, agreed from the outset in 2016.

I believe that good practice should require notification of a missed payment, so policyholders have chance to put matters right. However, I don’t agree that because the letter wasn’t retained on file or that the second letter was only issued on 11 November 2021 that I should

conclude Zurich is liable for Mrs M's life assurance claim payment now.

Even if I were to accept the September 2021 lapse letter was neither sent nor received, Mr and Mrs M would likely have known that their premium had not been successfully paid – because their bank would also have been aware that collection via direct debit had failed.

I recognise that Zurich's letter of 11 November 2021 merely said "the protection provided by your policy has now ended" – it did not say the relevant 30-day end date. But it didn't need to, because the first lapse letter had confirmed when the policy would end.

The November letter did go on to explain how "we will consider reinstatement of this policy within 90 days from the first missed contribution. The reinstatement will depend on your health at that time and payment of the missed contributions".

That statement was correct in accordance with the policy terms. The 90 days (calculated as the 60 days from the date the policy ended on 1 October 2021) ran up to 30 November 2021. However, I disagree that the 11 November 2021 letter is key to reinstatement. The right to cancel the cover is derived from the policy terms.

Because the 1 September 2021 premium was uncollected due to lack of available funds, Mr and Mrs M ceased to be insured 30 days after that date. That remained the case unless they took remedial steps in paying the missed premium before 1 October 2021. Thereafter, they were subject to a review of any changes to their health or circumstances since they had become uninsured – and sadly, these had changed because Mr M had since passed away by the time of notification to Zurich. The 11 November 2021 letter merely reconfirmed that position, since Zurich hadn't heard further from Mr or Mrs M.

I understand that the loss of cover came as a shock to Mrs M; I know her solicitor has explained that if she could have reinstated the cover, she would have done. I have absolutely no reason to doubt that.

However, whilst Mrs M and the solicitor say she was unaware of any lapsed cover until she contacted Zurich in November 2021, I do not agree that this lack of knowledge has arisen from any unreasonable steps on Zurich's part. And that is key here; in order for me to conclude that Zurich has acted unfairly or unreasonably in cancelling the insurance, I would need to be persuaded that it has acted contrary to the policy terms set out above in denying Mrs M and her late husband the opportunity to reinstate their cover.

I do not agree that any procedural step with the two letters of September and November 2021 has been sufficiently inadequate such that I could hold Zurich accountable for Mrs M's inability to make a claim when she came to notify it of Mr M's death on 25 November 2021.

Similarly, even if Mrs M had been aware sometime after the lapse but before Mr M passed away that she could apply to reinstate the cover subject to a declaration of health ('DoH') form, this would have required information from Mr M about any changes to his health. To presume a claim payment was due on that basis would require me to presuppose that Zurich would allow reinstatement on medical terms – and I've seen no clear evidence that it would have agreed to do so.

It follows that I cannot agree that a backdated claim should be paid. Sadly, no insurance was in place at the date Mr M passed away – and Zurich was correct in refusing the claim because the policy had already lapsed, in accordance with its terms and conditions.

Zurich confirmed it had no other comments to make.

Mrs M's solicitor told us that Mrs M did not accept the decision.

She said it was particularly upsetting to have an ombudsman reach a different outcome than the previous investigator. She reiterated that she never received any letters from Zurich – if she had done so, she would have moved money to cover the policy premiums. She also said that when she spoke with Zurich after Mr M had passed away, it suggested she shouldn't worry as she had until 1 November 2021 to reinstate the cover and Mr M had passed away on 31 October 2021.

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 thank the parties for responding promptly to my provisional findings. I also thank them both for their further comments.

However, none of the information I've seen changes my view on the complaint.

I realise it is incredibly upsetting for Mrs M that I have reached a different decision to our investigator. However, it is my role to review the complaint afresh – and having done so, I explained why I disagreed with the outcome previously reached.

I have to be fair to both parties in a complaint, and Zurich disagreed with our investigator, which meant it asked for the complaint to be passed to an ombudsman. If it is of assistance for Mrs M, she can find further information about our process on our website at: <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>.

Though Mrs M now says she did not receive any letters, the previous evidence I've seen showed that she said the first letter did not arrive but the later letter of 11 November 2011 appeared to have been correctly received and confirmed as such.

Nonetheless, I also explained that I believed the lapse letter was likely received; I was satisfied Zurich's records showed it was sent on 21 September 2021. Furthermore, Mr and Mrs M would likely have known that their premium had not been successfully paid – because their collection via direct debit had failed, for which they would or should have been notified by their bank. The 1 September 2021 premium was uncollected due to lack of available funds, which meant unless Mr and Mrs M took remedial steps in paying the missed premium before 1 October 2021, their cover would cease. It is incredible unfortunate that Mrs M was not able to do so – but I cannot hold Zurich accountable for that.

I haven't seen any objective evidence that Mrs M was told the cover was in place until 1 November 2021. However, what I believe she is referring to is the prospect of reinstatement, which I also addressed in my provisional findings. The extract from the November 2021 letter correctly told Mrs M how Zurich would consider reinstatement up to 90 days from the missed premium (so in this case, up to 30 November 2021).

Zurich would allow consideration of reinstatement subject to a subject to a DoH – but this would have needed information from Mr and Mrs M about any changes to their health. Mrs M did contact Zurich during the possible reinstatement period, but this was a few weeks after Mr M had sadly passed away and so, reinstatement of the lapsed cover was not possible.

My final decision

I am unable to uphold this complaint or make any award against Zurich Assurance Ltd – it

could not pay Mrs M's life assurance claim under her lapsed policy, for the reasons I've explained in my provisional decision and reiterated in this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 1 August 2023.

Jo Storey
Ombudsman