DRN-3685082

The complaint

Mrs L has complained through her representative, Mr L, that First Complete Ltd trading as PRIMIS Mortgage Network cancelled her existing life and critical illness insurance policy earlier than it should have done. She thinks that this prevented her from making a successful claim for skin cancer under the policy.

What happened

First Complete's adviser arranged a life and critical illness policy with an insurer, who I'll refer to as R, for Mrs L in January 2019. The application was made jointly with Mr L, but each of them took out a separate policy. And First Complete's adviser went through the application questions with Mr L for both policies. And – after the adviser had submitted both applications to R – they sent a letter to Mrs L with a copy of the application, including the answers provided to the questions on it. The letter asked her to check the answers and let R know if any of them were wrong. It also asked her to let R know if any of the answers changed between the date of the application and the date the policy was to start. Mrs L didn't contact R and the policy started on 2 February 2019.

The policies for both Mr and Mrs L with R were to replace existing policies with an insurer, who I'll refer to as A. According to A the adviser at First Complete cancelled Mrs L's existing policy with them on 31 January 2019 by logging into an online portal.

On 1 February Mrs L saw her GP, which she has said was about an eye problem. They also discussed a mole on her leg and her GP referred her to a dermatologist about this. Mrs L had the mole removed on 22 February 2019 and was told on 12 March 2019 that it was skin cancer. She then submitted a claim under her new policy with R.

When she discussed her claim with R by telephone Mrs L was asked about how the mole was discovered and she said it just appeared after she'd had a mole removed from the same place five years previously. She said that this was removed and checked and was harmless. She went on to say that the mole had, over the last year or so, kept gettting bigger and darker and had a different colouration. It is difficult to understand from the call recording what Mrs L said next, other than she referred to the mole being pink. She then said it had become abnormal looking, so she went to her doctor who sent her straight to a dermatologist.

R avoided Mrs L's policy on the basis she failed to take reasonable care not to make misrepresentations when applying for it. In doing so, it relied on the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

They said the first misrepresentation was because the following question on Mrs L's application form had been answered incorrectly:

'*APART FROM ANYTHING YOU HAVE ALREADY TOLD US ABOUT, DURING THE LAST 5 YEARS HAVE YOU HAD, OR DO YOU CURRENTLY HAVE, ANY OF THE FOLLOWING:*

A tumour, lump, cyst, polyp, growth or any mole/naevus that has bled, changed in appearance or become painful.'

This question was answered '*No*'.

R said the second misrepresentation was because the following question was answered 'No' and Mrs R didn't tell them that she'd been referred to a specialist before the policy started.

'APART FROM ANYTHING YOU HAVE ALREADY TOLD US ABOUT, IN THE LAST 3 YEARS, HAVE YOU…

Been referred to a specialist or had or been advised to have any investigations?'

R's view in this regard was based on the fact that the evidence suggested the mole on Mrs L's leg had been changing and that she was referred to a specialist about it on 1 February 2019. They also pointed out that Mrs L had received a letter with a copy of their application on 21 January 2019 asking her to check the answers on her application to make sure they were correct. The letter also said it was important she let R know if any of the answers to the questions on the application form changed between the date they completed them and the date their cover began.

Mrs L was also sent a letter on 3 February 2019, after the policy had started, enclosing a form for her to sign to confirm she was happy with the policy. This letter also said if there had been any changes to any of the answers given in her application, and she didn't tell R, it could mean they wouldn't pay a claim.

It is not clear whether Mrs L actually signed and returned this form. But, it is clear she didn't tell R about her referral to a specialist on 1 February, despite this happening before her policy with them started.

Mr L eventually complained on Mrs L's behalf about the fact First Complete's adviser had cancelled her policy with A earlier than he should have done, leaving her with a gap in cover. He said that if the adviser had cancelled it at close of business on 1 February Mrs L could have made a successful claim under it for her skin cancer. He thought First Complete should pay what Mrs L would have received if she'd been able to do this.

First Complete rejected Mrs L's complaint. It said that if she'd answered the abovementioned question about moles correctly when making her application to R, the application would have been postponed and eventually not gone ahead. And this would have meant the policy with A would have remained in place. It said – in view of this - it was Mrs L's fault she wasn't able to make a claim under the policy with A. It also said Mrs L was advised her policy with A had been cancelled and that she could have contacted them to reinstate it when she was referred to a specialist.

Mr L asked us to consider Mrs L's complaint about First Complete. One of our Investigators did this. He established that if First Complete's adviser had cancelled Mrs L's policy with A on 1 February it would have run until 28 February. He also established Mrs L could have made a successful claim under it, as A would have taken the date her mole was biopsied as the date of diagnosis for skin cancer. He also established with A that the mole met the criteria for a successful skin cancer claim under the policy Mrs A had with them. I later established that A would have paid £71,923.14 in settlement of the claim, as the critical illness sum insured had decreased gradually over the term of the policy. Our Investigator explained that he thought First Complete should pay what Mrs L would have received if she could have

made a successful claim under her policy with A.

First Complete didn't agree with our Investigator's view and asked for an Ombudsman's decision. It still thought it was Mrs L's fault her policy with A wasn't in force at the point she needed it to be for a successful claim. It also pointed out that Mrs L was advised by letter that her policy had been cancelled with effect from 31 January 2019 and if she wasn't happy about this she could have contacted A and asked for it to be reinstated.

I issued a provisional decision on 9 June 2022 in which I set out why I'd provisionally decided First Complete should pay Mrs L what she'd have recieved in settlement of her claim for skin cancer if their adviser had processed the cancellation of her policy with A at the earliest on 1 February 2019. And – if as a result of this - it had still been in force on 22 February 2019, when Mrs L's mole was removed and sent for biopsy.

The amount I suggested First Complete should pay was £71,923.14, plus interest. This was on the basis that I thought the adviser had made an error in processing the cancellation of the AIG policy on 31 January 2019 without checking what impact this would have. I said that, if he'd checked, as I think he should have done, he would have found out this would mean the policy would be cancelled on this date, as opposed to 28 February if he'd processed the cancellation a day or two later. And because he himself had advised Mrs L not to cancel her existing policy until her new policy had started, he would then have not processed the cancellation of her policy with A until 1 or 2 February 2019, meaning it would still have been in place on 22 February 2019 and Mrs L could have made a successful claim under it.

I gave both parties until 23 June 2022 to provide further comments and evidence. Mr L came back to say Mrs L agreed with my provisional decision and that they had nothing further to add.

First Compete came back with a lengthy submission. In essence, this stated that, although it accepted its adviser should have checked when Mrs A's policy with A would end if he processed the cancellation on 31 January 2019, he would not have actually needed to cancel it at all if Mrs L had correctly answered the question about growths or moles in her application to R; and let them know that she'd been referred to a specialist before her new policy with R actually started.

After I received First Complete's submission, I decided to speak with its casehandler. This was because I wanted to understand her views on the case better. I also felt this was appropriate because I'd spoken to both Mr and Mrs L and had not - until this point - spoken to anyone at First Complete.

So, I spoke at some length to First Complete's casehandler. She reiterated the views she'd set out in her response to my provisional decision. This led me to reconsider Mrs L's complaint and obtain a recording of her telephone conversation with R about her claim at the outset.

As I've already mentioned, in this telephone conversation, when she was asked about the mole that resulted in her claim she told the claim handler that over the last year or so it had just kept getting bigger and darker and different in colouration. This suggested to me Mrs L did realise the mole had changed and that she should have realised when she checked it that the answer to the question on her application to R about moles etc had been answered incorrectly by Mr L. It was also of concern to me that the conversation suggested Mrs L had gone to her GP about the mole and not about an eye condition as she'd suggested.

I sent the recording to Mr L and asked him to provide his and Mrs L's comments. I also sent it to First Complete for it to comment.

I appreciate listening back to the call was traumatic and stressful for Mrs L, but I felt it was important to get her comments on it, as I didn't think what she said in it really supported the version of events she'd provided when Mr L made the complaint to First Complete.

Mr L explained that Mrs L was talking about details and descriptions in the call that she had picked up about the mole after her visit to her GP. And that she was overwhelmed during the call due to the distressing time she'd had leading up to it. He's added that after saying the mole had just appeared Mrs L used language that she'd been hearing repeatedly from the medical professionals treating her. Mr L has said her reactive answer was that the mole just appeared. He has said that – despite saying in the call the mole had kept getting bigger Mrs L is adamant that to the naked eye there was nothing concerning about the mole. And that, in saying it had just kept getting bigger, she was once again repeating what she'd heard from medical professionals. Mrs L also maintains she did go to her GP with an eye complaint. And neither Mr or Mrs L think the question about moles was answered incorrectly on the application form for Mrs L's policy with R.

First Complete – on the other hand – said it thinks the call backs up its view that Mrs L answered this question incorrectly and that it was this that led to her not being able to make a successful claim, as opposed to the error by its adviser in cancelling her existing policy with A before the policy with R had actually started. It also added that the reference in the call to having a previous mole removed shows Mrs L had also answered questions incorrectly in her application to A in 2017 and in a previous application to another insurer in 2014.

It also said the incorrect answers to these questions and the question about moles in 2019 may have influenced the adviser's decision to recommend new policies for Mrs L. It pointed out that the manual the adviser at First Complete had to follow when recommending replacement products said he should take particular care where there had been a change in the health circumstances of the customer since they took out the original product.

I issued a second provisional decision on 16 August 2022 and I set out what I'd provisionally decided as follows:

Whilst I fully appreciate Mrs L was going through a very difficult time when she spoke to the claim handler at R. And I understand Mr L's comments about the context of the call and the amount of information Mrs L had heard from medical professionals, I'm not persuaded that she didn't have at least some awareness that the mole had changed in the period leading up to her visit to the GP and mentioned it because of this. Her GP notes do support her contention she went to see her GP about an eye problem, but I think what she said in the call to the claim handler suggests she had at least some concerns about the mole at this time.

It is also clear that questions on the application forms for the policies she took out in 2014 and 2017 in relation to medical investigations, referrals and procedures, as well as the questions about moles, were answered incorrectly. I don't think these would have had any bearing on the applications themselves, as the mole Mrs L had removed in 2014 was harmless.

As the change was minor in Mrs L's case and of no real consequence, I'm not persuaded this would have stopped the adviser continuing with the policies in 2014 and 2017, but it does show a certain amount of carelessness on Mrs L's part when completing and/or checking applications for policies she was taking out. And it supports the view that she and Mr L on her behalf failed to take reasonable care when taking out the policy with R in 2019.

I've given further consideration to what part the two parties to this complaint played in Mrs L not being able to make a successful claim after she was diagnosed with skin cancer in 2019.

Despite what Mr L has said, I still think he failed to answer the question about moles on the application form for Mrs L's policy with R correctly. And I think Mrs L failed to correct this when she was asked to check the answers that had been recorded. I think the answer to this question was wrong for two reasons. Firstly, Mrs L had had a mole that had changed in 2014 and this had been removed, ie in the last five years. Mrs L also failed to tell R that she'd been referred to a specialist just before her policy started, despite being warned in a letter by R she needed to let them know if any of the answers in the application changed in this period.

Mrs L had also failed to answer questions correctly on two previous applications concerning moles and treatment she'd received, although – as I've said- I am not persuaded these would have made any difference to First Complete's adviser's decision to recommend new policies for her in 2014 and 2017. This is because the mole that was removed in 2014 was harmless and so not really a change in Mrs L's health. Although, I do accept if the question regarding moles had been answered correctly in 2019, it would probably have stopped him recommending a new policy at this time. Also, they do – in my opinion – show a lack of awareness on Mr and Mrs L's part of the importance of making sure the answers provided to medical questions when applying for policies are correct.

And it is clear that if the question regarding moles had been answered correctly in Mrs L's application to R in 2019 the policy wouldn't have gone ahead. This is because R would have deferred the application until the results of the investigation by a specialist were available. It is also clear if Mrs L had told R she'd been referred to a specialist on 1 February 2019 they would again have deferred the policy pending the results. And it is also clear that at this point Mrs L's policy with A could have been reinstated.

So, I think it is fair to say Mrs L was at least partly to blame for the fact her policy with A wasn't in place at the point she saw a specialist about what turned out to be skin cancer. And, as I've mentioned previously, if it was still in place at this time she could have made a successful claim under it.

However, it is also clear that First Complete's adviser is partly to blame for the fact Mrs R's policy with A wasn't in place when she saw the specialist. This is because, as I have also previously explained, he failed to check what would happen if he cancelled it on 31 January 2019. And he wrongly assumed it wouldn't end until Mrs L's policy with R had started ie, there wouldn't be a break in cover, as per his own advice to Mr and Mrs L that this should not be allowed to happen. And, if he had checked and correctly established he should wait and cancel Mrs L's policy on 1 or 2 February, it is clear that it would have continued until 28 February and Mrs L could have made a successful claim under it for skin cancer and received £71,923.14.

So, having reflected on what First Complete has said in response to my provisional decision, listened to a recording of Mrs L's telephone conversation with the claim handler

at R. And, having reconsidered what – in my opinion – was a failure on Mrs L's part to make sure the answer to an important question on her application form to R was correct, as well as failing to inform them of her referral to a specialist before her policy with them started, I no longer think it would be fair and reasonable to make First Complete pay Mrs L the full amount she would have received if her policy with A had still been in force on 22 February 2019.

So, bearing in mind, I consider Mrs R was partly to blame for the fact her policy with A wasn't still in place on 22 February 2019; but considering First Complete's adviser was also partly to blame, I think First complete should only have to pay Mrs L 50% of what she would have received if she had made a successful claim, ie, £35,961.57. And I don't think it's appropriate for me to make First Complete add interest to this amount. This is also because of the part Mrs L's carelessness played in her not being able to claim under her policy with R.

I gave both parties until 30 August 2022 to provide further comments and evidence.

Mr L has said Mrs L accepts what I've provisionally decided.

First Complete has said, in summary:

It doesn't think my version of events acknowledges the importance of the fact that Mr L was always under the impression he did not have to disclose anything to anyone until the date of diagnosis. It believes this was the catalyst for the non-disclosure by Mr L in 2019 and therefore 'forms part of the audit trail and decision', just as much as the non-disclosure does and must be considered equally.

- It's pointed out that Mr L had reiterated to it several times his belief that there was no need to disclose anything until a diagnosis was made. It has said that had Mr L not made this incorrect assumption it's fair to say the whole scenario would not have happened. And it doesn't feel I've attached enough weight or importance to this. It's pointed out that Mr and Mrs L have never provided any evidence to show that the adviser gave Mr L this impression.

- It has gone on to say that the fact Mr and Mrs L missed opportunities to disclose the changes to the mole on Mrs L's leg time and time again shows he had a mistaken belief that they didn't need to disclose anything until there was a definite diagnosis. It thinks this is backed up by the fact that they even did nothing when Mrs L got a letter from AIG saying the policy had been cancelled after she'd seen her GP and been referred for her mole, despite having the chance to reinstate it at this point.

- It's pointed out that in the call in which Mrs L discussed her claim with R, it's clear the appointment she made with her doctor on 1 February was for the mole on her leg, as opposed to being for an eye condition as she's suggested. And therefore it is not disputed that this condition started when Mrs L's policy with A was still in place. It doesn't think she was confused on this call.

- It doesn't think I've taken into account the fact that by the time Mrs L received the policy documentation from R she knew she'd been referred to a specialist for the mole on her leg, but didn't inform R. And the fact that Mrs L simply failed to realise she needed to let R know is not commensurate with the evidence provided.

- It has also pointed out that it was not its adviser's fault that Mr L held an incorrect view and it thinks I should take into consideration the fact that Mrs L had the chance to alieviate the situation by disclosing the fact she had a mole that had changed and had been referred to a specialist about it. And it believes it is the incorrect assumption by Mr L that he and Mrs L didn't need to disclose these things that drove the rest of his actions. And it was this that was the actual cause of the situation Mr L found herself in with regards to her claim.

- It thinks my suggestion it should pay £35,961.57 doesn't take into consideration this incorrect assumption by Mr L. It has pointed out that it is this that was the begining of 'what happened' and Mr and Mrs L are wholly responsible for the position they are now in, where Mrs L has no critical illness cover in place with A or R.

In summary, it thinks an incorrect assumption by Mr L is the cause of the situation Mrs L finds herself in and not the actions of its adviser, which it far outweighs. In other words, it thinks it was Mr and Mrs L's failure to disclose changes to the mole on her leg that set its adviser on a different path than he would have taken if Mr L had disclosed it. And it believes this should hold far more weight than the action on the part of its adviser 'and must be viewed as the "cause" from the outset'.

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 noted what First Complete has said, but I still think what I provisionally decided in my second provisional decision is the fair and reasonable outcome to Mrs L's complaint.

I don't agree Mr L assumed he and Mrs L didn't need to disclose things without a definite diagnosis. His references to not taking action until Mrs L had a diagnosis of skin cancer were when he was explaining why they didn't claim earlier and why they didn't ask for the AIG policy to be reinstated. It remains my view that the reason Mr L didn't disclose the changes to the mole on her leg was a failure on his part, on behalf of Mrs L, to take reasonable care not to make a misrepresentation. And, the reason Mrs L didn't correct this error when she received a copy of the answers to the application questions and when she received the policy documentation was also due to a failure on her part to take reasonable care i.e. she didn't pay enough attention to the documentation she received.

I agree the telephone conversation Mrs L had with R about her claim does suggest she made the appointment with her GP because of the mole on her leg and not because of an eye condition. Although her GP notes do suggest otherwise. It also suggests that she knew the mole had changed before she saw her GP. And this is why I explained in my second provisional decision that I thought this call backed up my view that there was a clear failure on Mr and Mrs L's parts to take reasonable care not to make misrepresentations. This remains my view.

I appreciate that First Complete thinks that Mr and Mrs L's failures to take reasonable care led to their adviser suggesting a new policy, which he never would have recommended if Mr L had answered the question about moles correctly or if Mrs L had corrected the answer Mr L had provided when she was asked to check it. And I also accept if Mrs L had told R about the changes to her mole and the referral to a specialist after her policy had started, her policy with R would have ended and her policy with A could have been reinstated. And this means Mr and Mrs L missed three clear opportunities to disclose information. But this does not alter the fact First Complete's adviser also made a significant error, going against his

own advice in doing so, which also led directly to Mrs L not being able to claim under her policy with A for the reasons set out in my two provisional decisions. This means I think equal weight should be given to the advisers failing as to Mr and Mrs L's failings.

In saying this, I understand Mr and Mrs L's failings started a chain of events leading to First Complete's adviser cancelling their policy with A. But he made a clear mistake and cancelled it too early unnecessarily and left a gap in cover, despite warning Mrs L to make sure there was no such gap. And this prevented Mrs L from being able to make a claim as a result of her diagnosis of skin cancer in March 2019. And this is the reason why I think First Complete must pay 50% of what Mrs L would have received if she had been able to make this claim.

Putting things right

It remains my view – as set out in my second provisional decision, that the fair and reasonable outcome to Mrs L's complaint is for First Complete to pay her 50% of what she'd have received if she'd been able to claim under her policy with A if it was still in force until the end of February 2019; which would have been the case if its adviser had not cancelled it too early in error on 31 January 2019. 50% of the amount she would have received is £35,961.57.

My final decision

For the reasons set out above and in my second provisional decision, I've decided to uphold Mrs L's complaint about First Complete Ltd trading as PRIMIS Mortgage Network and I order them to pay her £35,961.57.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 12 October 2022.

Robert Short
Ombudsman