

The complaint

Mr C and Mrs C have complained that The Royal London Mutual Insurance Society Limited trading as Scottish Provident have declined Mr C's claim and cancelled their life and critical illness policy.

What happened

Mr C submitted a claim in 2021 under their joint policy for total and permanent disability benefit. The policy was taken out in 2006 through a financial adviser. Scottish Provident declined the claim and cancelled the policy. It said that Mr C had answered the following questions incorrectly:

Do you currently have or have you ever had any of the following: ...

e - any other disorder of the central nervous system (the brain, spinal cord and nerves) not already mentioned

Have any of your parents, brothers or sisters ever had any of the following medical conditions before they reached age 60?...

k - muscular dystrophy

Mr C answered 'no' to these questions.

Scottish Provident said that Mr C should have answered yes because he had been diagnosed with spinal muscular atrophy and had a family history of the disease.

Our investigator was satisfied that had the questions been answered correctly critical illness cover would have been declined but life cover may have been offered. Accordingly she recommended that Scottish Provident calculate how much the premiums would have been for life cover only and if Mr C and Mrs C wanted to take this cover they would need to pay the amount back to Scottish Provident. She also felt that compensation was due to Mr C and Mrs C in the sum of £300 for the distress caused by having their policy voided completely.

Mr C and Mrs C didn't accept this. In summary they said that the family history question wasn't a reason given by Scottish Provident for declining the claim. They also felt that critical illness cover would have been provided as positive answers had been given in response to the questions about heart attack and cancer – also degenerative diseases. They felt Scottish Provident should have requested medical records at the time of application. Mr C and Mrs C indicated that they didn't want life cover to be re-instated with Scottish Provident and they felt that the £300 recommended in compensation was not enough to cover the stress and anxiety that the situation had caused.

Scottish Provident subsequently confirmed with underwriting evidence that life cover wouldn't have been offered to Mr C, and because of the misrepresentation they weren't obliged to offer it to Mrs C.

I issued a provisional decision on 15 December 2022. I explained that I was not minded to

uphold the complaint. I said as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Firstly, I'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties. No discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I've fully reviewed the complete file. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

I note that Mr C and Mrs C have posed several questions to our investigator. Our role is to resolve disputes and we cannot give advice. I hope that my decision will assist in answering some of the queries Mr C and Mrs C had, but it may be that they still have some questions. I regret that they will need to take independent advice if this is the case. I recognise that Mr C and Mrs C will be disappointed by my decision, but I'm not minded to uphold this complaint. I'll explain why.

In considering what's fair and reasonable, I need to have regard to the relevant law and regulations, regulators' rules, guidance and standards, codes of practice and (where appropriate) what I consider to have been good industry practice at the time. The relevant law in this case is the Marine Insurance Act 1906. This required Mr C and Mrs C to act with utmost good faith when applying for the policy and to tell Scottish Provident about anything that would be material to it. If they didn't provide the correct information then, provided Scottish Provident would have offered the policy on different terms or not at all if the correct information had been provided, Scottish Provident would be entitled to avoid their policy.

When assessing the claim Scottish Provident needed to follow the good industry practice set out in the ABI Code of Practice – Managing Claims for Individual and Group Life, Critical Illness and Income Protection Insurance Products September 2019 (the code).

With regard to the first question, Scottish Provident believe Mr C answered incorrectly because he did have a disorder of the central nervous system (the brain, spinal cord and nerves) not already mentioned. It is clear that he did, and that he had known about his condition since childhood. However what is relevant here is whether he was aware that his condition was a disorder of the central nervous system as defined when he took the policy out. Mr C says although he knew he had muscular dystrophy but it was only later that his condition was named as SMA – spinal muscular atrophy. So he wasn't aware it was a disorder that the insurer was asking about.

But even if I was to accept this was so, I'm minded to find that he should have answered the question about his family's history of muscular dystrophy positively as he was aware of his family history of the disease and it was apparent that this was material to Scottish Provident. Had he done so I'm satisfied that its underwriters would have requested a medical report following which Mr C wouldn't have been offered any cover. This being so I'm not minded to conclude that Scottish Provident have treated him unfairly by declining his claim and cancelling his policy. As I'm minded to find that this question was answered incorrectly, and it was a question material to the risk proposed, Scottish Provident were not obliged to offer terms to Mrs C either.

For completeness I would add that Scottish Provident was entitled to rely on the answers given on the application form and wasn't obliged to require a medical report at that stage.

I do accept that Scottish Provident didn't mention the family history question in its claim decline letter to Mr C. However, although I can see that this is disappointing for Mr C and Mrs C, it doesn't mean that it is not entitled to rely on it now.

As life cover wouldn't have been offered to Mr and Mrs C, I'm not minded to say that Scottish Provident should pay them compensation for the worry of being without this cover.

Finally I note Mr C and Mrs C's point about cover for other types of degenerative illness Scottish Provident offers. It is for Scottish Provident to decide what cover it will provide, that is a commercial decision with which this service can't interfere. However I'm satisfied by the underwriting evidence I've seen that cover wouldn't have been offered to Mr C or to someone with his family and medical history.

I invited both parties to respond with any further evidence or comments.

Scottish Provident didn't have anything further to add.

Mr C and Mrs C made the point that Scottish Provident cancelled their policy and returned their premium based on one question only. And they felt that the answer they gave to that question was correct – something with which our investigator had agreed.

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 am not persuaded to change my provisional findings and I adopt them here. Mr C and Mrs C's representation is not new – I addressed this in my provisional decision. I said:

I do accept that Scottish Provident didn't mention the family history question in its claim decline letter to Mr C. However, although I can see that this is disappointing for Mr C and Mrs C, it doesn't mean that it is not entitled to rely on it now.

It was for this reason I didn't need to make a finding on whether there had been a misrepresentation regarding the negative answer to question 'e' – as I was satisfied that there was a clear misrepresentation regarding the family history. This alone was enough for Scottish Provident to cancel the policy – notwithstanding it didn't mention it in its letter of 1 November 2021.

In all the circumstances I don't find Mr C and Mrs C have been treated unfairly.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 7 February 2023.

Lindsey Woloski
Ombudsman