

The complaint

Ms Y complains that The Royal London Mutual Insurance Society Limited avoided her life and critical illness policy and refused to pay a claim.

What happened

The background to this complaint is well known to the parties, so I won't repeat it in detail here. In summary, Ms Y applied for cover in July 2021. In January 2023 she made a claim under the critical illness element of her plan, following a diagnosis of blood cancer. Royal London declined the claim, saying Ms Y hadn't given full and accurate information during the application process.

Royal London considered this to be a qualifying misrepresentation and treated it as careless. It said that, had Ms Y answered correctly, ultimately, it would not have offered critical illness cover at all. So Royal London refused to pay the claim. Although retro underwriting showed life cover could have been offered at a higher premium, Royal London also treated this as a decline, because it would have been more than twelve months after Ms Y's original application, so reapplication would've been required. Ms Y's plan was cancelled and the premiums paid refunded.

Ms Y complained but Royal London maintained its stance, so Ms Y brought the complaint to the Financial Ombudsman Service. Ms Y said she'd answered the application questions to the best of her knowledge. But our investigator didn't uphold the complaint, so Ms Y asked for an ombudsman to review the complaint and issue a final decision.

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'm not upholding this complaint. I know this will be disappointing news for Ms Y and I'm sorry about that. I'll explain my reasons, focusing on the points and evidence I think is material to the outcome of the complaint. So if I don't mention something specifically, it's not because I haven't read and thought about it. Rather, I don't consider it changes things.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to 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 the 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.

When applying for the policy, Royal London said Ms Y failed to take reasonable care not to make a misrepresentation when she answered no to the following questions:

Apart from anything you've already told us about, during the last 5 years have you had, or do you currently have any of the following:

Any form of:

Numbness

Pins and needles

Tremor

Change in skin sensation

Tingling

Muscle weakness

Loss or reduced power in limbs, including amputation

Difficulty with co-ordination

Persistent tiredness or fatigue?

Any stomach, digestive system, bowel, liver or blood disorder?

Including: Liver, pancreas and gall bladder conditions, Bowel disorder, Crohn's disease, Ulcerative colitis, Anaemia, Clotting disorders, Hepatitis, Gastric and duodenal ulcers, Disorders of the oesophagus including Barrett's oesophagus.

Apart from anything you've 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?

Including: Blood tests, Biopsy, Ultrasound, X-Ray, CT / MRI or other scan, ECG, echocardiogram or other heart investigation, Abnormal smear or abnormal mammogram, investigations using an internal camera such as an endoscopy, colonoscopy or laparoscopy. You don't need to tell us about investigations which were purely for pregnancy, infertility or simple fractures which have resolved with no time off work, or about genetic tests that meet the criteria outlined previously.

In addition, apart from anything you have already told us about:

Do you have any symptoms for which you haven't yet sought medical advice, or are you awaiting referral, investigation, results or treatment for anything else?

For example: A mole/blemish which has changed in appearance, Any lump, growth or hardening affecting the skin, breasts or testicles, Bleeding from the bowels, change in bowel habit, Persistent cough, Weight loss or unexplained bleeding, Onset of fits or seizures, Dizziness, blackouts/fainting.

Royal London said Ms Y should've disclosed that she had a chest x-ray and colonoscopy in late 2020, following lethargy and rectal bleeding. And Ms Y should also have disclosed a referral made to Haematology in January 2021, which was still outstanding when she applied for the policy in July 2021. This consultation did not take place until December 2021, following which further investigations were scheduled, ultimately leading to Ms Y's cancer

diagnosis in April 2022. Ms Y says she attributed her symptoms to anxiety and answered honestly to the best of her knowledge.

I've reviewed the medical evidence provided. I can see Ms Y had two telephone consultations with her GP in October 2020. The GP notes Ms Y's reported symptoms, including that she'd been feeling generally tired and weak since the beginning of lockdown. There's also reference to a history of blood in the stools for more than two months and persistent raised platelets. Gastrointestinal investigations were arranged. Further consultations took place in January and February 2021, after which Ms Y's haematology referral was expedited.

Ms Y was responsible for answering questions accurately. She had the opportunity to check the information she'd given when Royal London sent her a requested copy of her application form, showing all of the answers submitted. The cover letter stresses the importance of checking that the information is correct and the potential consequences of not doing so. I think Royal London's questions are clear. And it's evident Ms Y was having ongoing symptoms and had been referred for further investigations and specialist opinion. So I'm satisfied Ms Y failed to take reasonable care when taking out the policy.

Royal London has provided information about its underwriting criteria to show what would have happened, had Ms Y answered the questions accurately. This shows that full medical disclosure would've made a difference to Royal London's underwriting decision, so I'm satisfied Ms Y's misrepresentation was a qualifying one.

Royal London has treated Ms Y's misrepresentation as careless. The Association of British Insurers' Code of Practice – Misrepresentation and Treating Customers Fairly, says that for a misrepresentation to be careless, as opposed to deliberate or reckless, it results from failure by the customer to exercise reasonable care, including anything from an understandable oversight, or an inadvertent mistake, to serious negligence. And in the circumstances, a reasonable person would have considered that the information was relevant to the insurer.

Ms Y has argued that her misrepresentation was innocent, but I disagree. Relying on the evidence, I think Royal London's categorisation of the misrepresentation as careless is fair. I say this because, within the nine months prior to applying for the policy, Ms Y had consulted with her GP and was aware of the referrals for further investigations, one of which was still outstanding when she applied for the policy.

As I'm satisfied Ms Y's misrepresentation should be treated as careless, I've looked at the actions Royal London can take in accordance with CIDRA. Where the underwriting decision would have been to defer cover the insurer should try to determine what the ultimate underwriting decision would've been. Royal London has done this, demonstrating that it would not have offered Ms Y critical illness cover. And it's also acted in line with CIDRA in cancelling her life cover, as reapplication would've been required. So I think Royal London has acted fairly in cancelling Ms Y's plan and refunding premiums. Given this, I don't think Royal London needs to do anything more in respect of this complaint.

My final decision

For the reasons given above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 16 April 2024.

Jo Chilvers
Ombudsman