

## The complaint

Mr and Mrs H complain that The Royal London Mutual Insurance Society Limited has turned down a terminal illness cover claim they made under the Life cover provided by a 'Personal Menu Plan'. They're also unhappy that Royal London cancelled their policy from the start because it considers Mr H failed to take reasonable care to answer its medical questions.

## What happened

The circumstances of this complaint are well-known to both parties. So I've simply set out a summary of what I think are the key events.

In February 2022, Mr and Mrs H applied for a Personal Menu Plan through a broker. During the sales process, they were asked questions about their health. Mr H declared that he had diabetes; high blood pressure and that he'd had a back operation. Royal London agreed to offer Mr and Mrs H cover. Mr H subsequently told Royal London that he'd had a kidney stone and a clear MRI scan following his back operation.

Sadly, in September 2022, Mr H was diagnosed with Motor Neurone Disease (MND). So he made a terminal illness cover claim on the policy.

Royal London obtained Mr H's medical records. It noted that in the months before Mr H applied for the policy, he'd been referred to neurology for symptoms of right-sided weakness. A few weeks before Mr H took out the policy, he'd been referred for an MRI scan and nerve conduction studies. Royal London concluded that Mr H had failed to take reasonable care to answer some of its medical questions accurately when he applied for the policy. It said that had Mr H disclosed his symptoms and referral, it wouldn't have offered him cover and it would have deferred his application until he had a diagnosis. So Royal London considered that Mr H had made a qualifying, careless, misrepresentation under relevant legislation. It therefore turned down the claim and cancelled the policy from the start. It refunded the premiums Mr H had paid for the plan.

Mr and Mrs H were unhappy with Royal London's decision and they asked us to look into their complaint. In summary, they felt that as Mr H had declared his back operation and a clear MRI, he had answered Royal London's questions accurately. They also told us that Royal London's representative had visited their home ahead of the policy being set-up and had therefore had the opportunity to ask questions about Mr H's symptoms.

Our investigator didn't think Royal London had treated Mr H unfairly. She thought it had been fair for Royal London to conclude that Mr H had made a qualifying misrepresentation under relevant law. And that therefore, it had been reasonable for Royal London to cancel Mr H's policy.

Mr and Mrs H disagreed and so the complaint's been passed to me to decide.

I issued a provisional decision on 2 July 2024 which explained the reasons why I didn't think Royal London had treated Mr and Mrs H unfairly. I said:

*'I was sorry to hear of the circumstances that led to Mr H's claim and to read about Mr H's diagnosis. I understand that this has been a very distressing time for Mr H and his family. I've carefully considered all that Mr and Mrs H have said and sent us. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.*

*The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've taken those rules into account, amongst other things – including relevant law and industry principles – to decide whether I think Royal London has treated Mr and Mrs H fairly.*

*The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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 Mr H applied for the policy through an independent broker, he was asked a number of questions about himself and about his health. Royal London used this information to decide whether or not to insure Mr H and if so, on what terms. Royal London says that Mr H didn't correctly answer all of the questions he was asked at application and that he didn't declare his full medical history when he reviewed the application. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mr H's claim.*

*Royal London thinks Mr H failed to take reasonable care not to make a misrepresentation when he applied for and took out the policy. So I've carefully considered whether I think this was a fair conclusion for Royal London to reach.*

*First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. Both Royal London and Mr H have provided me with identical copies of the application form, which both parties agree form the questions Mr H was asked. I'll set out below the questions Royal London thinks Mr H failed to take reasonable care to answer:*

*The application form shows that Mr H declared diabetes, high blood pressure and that he'd answered 'yes' to having suffered from a form of joint pain, arthritis or neck, back, spine, or muscle pain or stiffness. He declared he'd had a back operation. Further down the page, Mr H was asked:*

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

*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.'

Mr H answered 'no'.

The form went on to ask:

**'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? 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.'*

Again, Mr H answered 'no'.

*In my view, these questions were asked in a clear and understandable way and ought to have prompted Mr H to realise what information Royal London wanted to know. Royal London thinks that Mr H ought to have disclosed symptoms of right-sided weakness and that he'd been referred for an urgent MRI scan and a nerve conduction study at the point he applied for the policy. So I've next looked carefully at the available medical evidence to decide whether I think Mr H took reasonable care to answer Royal London's questions.*

*It's common ground that Mr H underwent spinal surgery in September 2020, while he was abroad. Mr H has provided us with a letter, from the treating surgeon, dated February 2024, which says:*

*'(Mr H) consulted me on 13 August 2020 with weakness in the right foot of approximately 6 months duration and of uncertain origin...*

*He had an uneventful post-operative course.*

*(Mr H's) right foot drop did not improve over the following six weeks.'*

*Mr H's GP filled in Royal London's terminal illness questionnaire in August 2023. The GP stated that Mr H's symptoms had first started in October 2021. The GP said that the nature of these symptoms was a weakness in Mr H's right hand. The form said that Mr H had first consulted with these symptoms in November 2021 and had been referred to neurology.*

*Accordingly, Mr H was seen on 15 January 2022 by Dr D – a neurology senior clinical fellow. I've seen a copy of the clinic letter which was sent to Mr H's GP. The letter gave a diagnosis of: 'right sided weakness and speech problem – under investigation.'*

*Dr D said: 'About eighteen months ago...he noticed his foot dragged. He had falls. Above 12 months ago...he had...nerve decompression surgery. After that he made some improvement of his right foot function although it never completely recovered. Over the last 12 months it*

*has got progressively worse. He has difficulty lifting his right leg. He has also noticed that the strength of the upper right limb is not as good as it used to be. He drops things. He has difficulty brushing his hair. His wife also noticed that intermittently his speech becomes slurred...*

*As he has a speech problem I will repeat his brain scan urgently as an outpatient.'*

*On 24 January 2022, Dr D wrote a further letter, which included the following:*

*'About two months ago he noticed that he has right upper limb weakness. He has difficulty writing and brushing his teeth. He also noticed that movement of the left hand is also slow...*

*He came to the clinic in a wheelchair. He needs the assistance of one person plus walking stick to transferring [sic] from wheelchair to the bed. He was unable to lift his leg up and lie down on the bed due to difficulty with his mobility...*

*Clinically he has a rather rapidly progressive weakness which started in the left leg then spread to the right arm...I will organise an MRI of his brain urgently. If the brain scan comes back normal, I will organise nerve conduction studies.'*

*Dr D wrote to Mr H on 14 February 2022, giving normal blood test results. The letter stated that Dr D was still waiting for the MRI results. The letter also said:*

*'In the meantime, I have organised a nerve conduction study.'*

*I've considered the evidence very carefully. It seems that at the time of application, Mr H was suffering from progressively worsening right-sided weakness, which had spread to his arm, as well as his foot. He also attended a clinic appointment in a wheelchair and slurred speech had been noted. So I think Mr H should have been prompted to answer 'yes' to the question which asked about symptoms of muscle weakness and reduced motor power.*

*It's clear that at the point of application, he was also under the care of neurology and had undergone a brain scan for which he was awaiting results. He was also sufficiently incapacitated that his doctor noted he required a wheelchair and assistance in climbing out of that chair. So I think he ought to have answered yes to Royal London's question regarding whether Mr H had been referred to a specialist or advised to have investigations within the last three years.*

*I accept Mr H did declare his back surgery. But it appears that even after the surgery, his right foot drag had persisted and had progressively worsened. So I don't think it was unreasonable for Royal London to have concluded that he ought to have declared his symptoms, referral and investigation.*

*Following the application, Mr H contacted Royal London to declare an MRI scan for a six month check following his surgery and a kidney stone. I can see that the MRI scan did produce a clear result. But it's also clear that Mr H's brain scan took place significantly longer than six months after the 2020 surgery. And he was still waiting for a nerve conduction study. So I think he ought to have been prompted to tell Royal London about these tests, too.*

*In my view, Mr H didn't answer Royal London's questions accurately. I think he ought to have been prompted to answer yes to its questions. I've borne in mind what he's told us about the reason for using a wheelchair but I don't think it was unfair for Royal London to rely on the available medical evidence when assessing this claim. And while I appreciate Royal London did request blood tests from Mr H ahead of offering cover, it tells us that this*

*was carried out by an unrelated third-party provider which only takes blood samples. It says no details about Mr H's medical history or application were given to the company and it wasn't authorised to take medical details on its behalf. So while I've considered Mr and Mrs H's comments on this point, I don't think it's enough to suggest Mr H made a full declaration.*

*Royal London has provided us with business-sensitive, confidential, underwriting evidence which shows that had Mr H told it about his symptoms and investigations, it would have postponed cover until he had a diagnosis. In my view then, the available evidence suggests that Mr H did make a qualifying misrepresentation under CIDRA. So I think Royal London is reasonably entitled to apply the relevant remedy available to it under the Act.*

*Royal London has classified Mr H's misrepresentation as careless. Based on the evidence before me, I think that was a reasonable position for Royal London to take. I say that because I don't think Mr H intended to mislead Royal London – but it seems he didn't take enough care to ensure he answered its questions correctly.*

*CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. If it wouldn't have offered the policy, it may cancel the policy from the outset and refund the premium. In this case, as I've explained, Royal London has shown us that it wouldn't have offered Mr H a policy and would have postponed cover.*

*So whilst I sympathise with Mr H's position, I currently think it was fair and reasonable for Royal London to decline his claim, cancel the policy and refund his premium. So I find its actions are in line with CIDRA.*

*I understand that when Mr H first made the claim, Royal London incorrectly told him it would be accepted. So I can entirely understand how upsetting and disappointing it must have been when Mr H learned that Royal London had turned down his claim and cancelled his policy. It appears that Royal London offered Mr H £300 compensation to reflect the impact of its error on him. In my view, this was a fair, reasonable and proportionate offer of compensation for this mistake. And so it follows that I don't plan to direct Royal London to offer anything more.'*

I asked both parties to send me any further evidence or comments they wanted me to consider.

Royal London didn't respond by the deadline I gave.

Mr and Mrs H disagreed with my provisional findings and I've summarised their detailed response:

- Mr H's diagnosis had been a terrible shock and they'd had no idea of the diagnosis which was to come;
- Mr H had had back issues for years and he'd lived with it until 2019, when it had begun to affect his mobility. Following the 2020 surgery, Mr H had progressed well with regular physiotherapy and his foot drop had been corrected. Until August 2022, Mr H had been able to participate in all aspects of working life;
- Mr H's mobility had decreased but they'd believed this was due to Mr H not being able to undergo physiotherapy as a result of Covid-19 restrictions. They'd managed to get an appointment with a specialist in November 2021 and Mr H was referred for an urgent MRI due to the Covid delays he'd experienced. The results of the MRI came through after the policy application and showed no significant abnormality.

They'd put Mr H's right-sided weakness down to fatigue;

- In January 2022, they completed on a new home and took out the policy to protect their mortgage. They said they'd never have bought the house they'd chosen had they known what lay ahead;
- The policy application had been made early in Mr H's NHS journey and they'd still been under the impression that all of Mr H's symptoms were caused by his back condition. They said the application had been done telephonically by the broker; that Mr H had been open and honest when he answered the questions. They said they'd relied completely on the broker and on the broker's interpretation of the application form;
- They questioned how the definition of a reasonable consumer would be construed when the broker, who they felt had acted on Royal London's behalf, completed the form, having been made aware of all of Mr H's medical issues;
- The third-party provider who took Mr H's blood for testing was also aware of his back problems;
- They considered that Mr H's answers to the questions I've set out above were not straightforward . And they maintained that they'd believed Mr H's ongoing problems were all due to his earlier back problems.

### **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, whilst I'm very sorry to disappoint Mr and Mrs H, my final decision is the same as my provisional decision and I'll explain why.

I'd like to thank Mr and Mrs H for their detailed response to my provisional decision. Although I've summarised what they've said and I haven't gone on to address each point, I have read and considered all of their comments in their entirety.

First, I must make it clear that the broker who sold the policy to Mr and Mrs H wasn't working on behalf of Royal London and nor was it a tied agent of Royal London. The broker was providing advice to Mr and Mrs H in an independent capacity and acting on Mr and Mrs H's behalf, rather than Royal London's. The broker, was, in effect, acting as Mr and Mrs H's agent. This means that Royal London isn't responsible for any of the broker's actions. So if Mr and Mrs H consider that the broker gave them incorrect or misleading advice or failed to accurately record the answers Mr H gave during the application process, they'd need to raise this directly with the broker.

I also entirely accept that at the time of policy application, Mr and Mrs H didn't and couldn't have foreseen the diagnosis Mr H would eventually be given. I understand this must have come as a real and devastating shock to their family. However, even though I appreciate Mr H wasn't aware of the actual cause of his symptoms and investigations, I still think Royal London's questions were sufficiently clearly drafted that he ought to have been prompted to disclose his muscle weakness; loss of motor power and referral for a nerve conduction study – even if he did think they were likely down to his previous back pain.

That's because, as I've said above, it seems - from the spinal surgeon's evidence of February 2024 - that the back operation Mr H underwent in September 2020 didn't resolve

the foot drop he experienced. And it's still the case that Mr H's GP noted that he'd first suffered from right handed weakness in October 2021 and had been referred to neurology in November 2021. Dr D noted that Mr H's symptoms had deteriorated, that the limb weakness had spread and that Mrs H had said Mr H's speech had become slurred. I don't think Royal London acted unfairly when it relied on Dr D's evidence to conclude that Mr H was experiencing symptoms and was under investigation when he applied for the policy. And that therefore, he ought reasonably to have disclosed his symptoms and the investigations which were subsequently arranged to it.

I appreciate Mr and Mrs H say that Mr H told the third-party provider about his health when they conducted the blood test. But Royal London maintains that the third-party wasn't authorised by it to discuss Mr H's medical history and wasn't given a copy of his application. Therefore, I don't think I could reasonably conclude that Mr H did provide Royal London with a full disclosure which it failed to act on.

Overall, despite my natural sympathy with Mr and Mrs H's position, I don't think it was unfair for Royal London to conclude that Mr H had made a careless misrepresentation under CIDRA and to rely on the legal remedy under the act. So I'm not telling Royal London to pay this claim or reinstate the policy. It's still open to Mr and Mrs H to accept the compensation Royal London offered them should they wish to.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 4 September 2024.

Lisa Barham  
**Ombudsman**