DRN-5053325

The complaint

Mrs F and Mrs D have complained – in their capacity as surviving Trustees of the F Trust – that the Royal London Mutual Insurance Society Limited ("RL") declined the claim made on the policy when the third trustee, Mr F, passed away and cancelled the policy.

What happened

In 2016, Mr F bought a whole of life policy from an insurer I'll call A. He placed the policy in trust, with himself, Mrs F and Mrs D as trustees. In 2024, A's whole of life policies were transferred to RL. References to RL's actions in this decision include those taken by A before the transfer.

Mr F sadly died at the start of 2024. The surviving trustees submitted a policy claim. As part of their consideration of the claim, RL obtained copies of Mr F's medical records.

Having reviewed the records, RL declined the claim. They said the medical information Mr F had provided in his application was inaccurate. And, if they'd known the true position, RL said Mr F wouldn't have been offered cover.

Mrs F appealed the claim decision. But RL didn't change their conclusion. So the trustees brought the complaint to our service.

Our investigator reviewed the information provided by the parties and concluded RL didn't need to do any more to resolve the complaint. She was satisfied the medical records showed Mr F had consulted his GP a few days before applying for the policy and had been told further tests were needed. But this information wasn't included in the application. So she was satisfied Mr F had made a misrepresentation. And, because RL had shown they wouldn't have offered Mr F a policy before the outcome of those tests was known, she said it was fair for RL to decline the claim and cancel the policy.

The trustees didn't agree with the investigator's view. So I've been asked to make 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 that, I'm not upholding the trustees' complaint. I understand that's likely to be upsetting news and I'm sorry about that. I hope it will help if I explain the reasons for my decision.

If an insurer thinks a customer has made a misrepresentation, they need to address that in line with the relevant law. In this case, that 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.

In this case, RL say Mr F made a misrepresentation because he answered "no" to the questions:

"Other than previously stated, in the last five years have you had, been treated for or been advised to have follow-up for any of the following:

58-65…

66 Any disorder of the kidney, bladder, prostate or genito-urinary system, including blood or protein in the urine?

67-69…

70 Are you awaiting the results of any investigations or are you aware of any symptoms or complaints that you haven't consulted a doctor or received treatment for?...."

RL say Mr F should have answered "yes" to these questions because his medical records show that, a few days before his application, he consulted his GP about poor urinary flow and was told further tests should be done. Sadly, those tests ultimately led to a diagnosis of prostate cancer.

Mrs F says her husband didn't disclose the information because his GP told him he had a urinary tract infection. While I accept Mr F may have been told that, his notes don't record any diagnosis was made during the consultation. But they do record that Mr F should have blood and urine tests, an ECG and a prostate examination. On that basis, I think it's reasonable to say Mr F should have answered the two questions differently and that he misrepresented his health in his application.

I'm satisfied the misrepresentation is a qualifying one, because RL have confirmed they wouldn't have offered Mr F a policy until the outcome of the tests was known. And, because those tests sadly confirmed a cancer diagnosis, they wouldn't have offered him cover on any terms.

Finally, I've considered the remedy applied in this case. I can't see that RL ever set out for the trustees whether they'd concluded the misrepresentation was deliberate or reckless, or was careless. But I have seen an internal email which says Mr F *"must have known"* the information that he was awaiting tests was relevant to RL.

I understand from this that RL categorised the misrepresentation as deliberate or reckless. Given there was only a few days between Mr F consulting his GP and applying for the policy, I don't think it's likely he'd have forgotten he was having tests. So I think that categorisation is fair.

Where a customer makes a deliberate or reckless misrepresentation, CIDRA allows the insurer to void the policy and keep all the premiums paid. But I can see that, in this case, RL have refunded the premiums to the trustees. As that's more than CIDRA requires of them, I

can't say that's unfair. And so I don't think they have to do any more to resolve the trustees' complaint.

My final decision

For the reasons I've explained, I'm not upholding the complaint the surviving trustees of the F Trust have made about the Royal London Mutual Insurance Society Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mrs D as surviving trustees of the F trust to accept or reject my decision before 10 January 2025.

Helen Stacey
Ombudsman