

The complaint

The estate of Mr S is unhappy with the way The Royal London Mutual Insurance Society Limited handled a claim made on Mr S's life insurance policy, after he sadly died including voiding the policy, declining the claim, and unreasonable delays.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my decision.

What I've decided – and why

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Did Mr S make a misrepresentation when applying for the policy?

I've considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law.

I've also taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

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 several 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.

The Royal London has concluded that Mr S didn't take reasonable care when applying for the policy and didn't answer some questions accurately. Had these questions been answered correctly, it says it wouldn't have offered the policy at the time. It's therefore cancelled the policy, declined the claim, and refunded the premiums paid for the policy.

I know the estate of Mr S feels very strongly that The Royal London hasn't acted fairly in this case but for reasons I'll go on to explain, I don't uphold this complaint.

Mr S applied for the policy via a third-party intermediary. I've seen a letter from The Royal London addressed to Mr S dated August 2016 enclosing the application form. The letter says:

If any information in this form is incorrect, missing or misleading, we may not pay any future claim.

Please take the time to thoroughly check the application form within this documentation pack and tell us about missing or inaccurate details.

The application form contains a number of questions about Mr S's medical history and lifestyle including:

Have you ever been medically advised to reduce your alcohol consumption or been disqualified from driving in the last five years?

This includes being referred for treatment or specialist support such as an alcohol addiction unit or Alcoholics Anonymous. We don't need to know about any spent driving convictions.

I'll refer to this as 'the alcohol question'. It's reflected that Mr S answered 'no' to this question.

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 stomach, digestive system, 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

I'll refer to this as 'the liver question'. It's reflected that Mr S answered 'no' to this question.

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...

I'll refer to this as 'the investigations question'. It's reflected that Mr S answered 'no' to this question.

The bottom of the application contains a declaration and consent which contains the following:

I declare that:

- The answers in this application form are true and complete to the best of my knowledge and belief.

- If any information in this application is missing or inaccurate, I'll inform Royal London in writing using the attached confirmation form...

Apart from correcting his height, I've seen no evidence that Mr S sought to correct any other answers given on the application form.

And when returning the form to The Royal London, correcting his height, he signed a further declaration saying:

I declare that the information on this confirmation form and on the application form...subject to any amendments above, is accurate and complete.

CIDRA says that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. And that a failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation.

For the following reasons, I'm satisfied that The Royal London has fairly and reasonably concluded that the answers given to the questions set out above were incorrect and Mr S misrepresented the information given.

- There's an entry in Mr S's GP notes dated May 2010 which reflects that he had an "alcohol problem drinking". And that he was "advised re management, advised self-refer to...drug and alcohol service". And a letter from a neurology registrar dated the end of 2015 says: "I spent a long time in the consultation discussing with him the merits from abstaining from alcohol altogether". So, I'm satisfied that The Royal London has fairly concluded that Mr S should've answered 'yes' to the alcohol question. I've taken on board the estate's comments that Mr S hadn't been disqualified from driving and because of the nature of his job he wouldn't have been able to drink much alcohol. However, I'm satisfied that The Royal London has fairly relied on the contemporaneous medical records from the time when considering whether Mr S answered the alcohol question incorrectly.
- There's an entry in Mr S' GP records dated 2014 advising him that he had a fatty liver. So, I'm satisfied that The Royal London has fairly concluded that Mr S should've answered 'yes' to the liver question.
- The medical evidence supports that Mr S had a brain MRI scan in early 2015 and been referred to a neurologist later in 2015. He'd also had an ultrasound of the upper abdomen in 2014. So, I'm satisfied that The Royal London has fairly concluded that Mr S should've answered 'yes' to the investigations question.

I've taken into account what the estate says about Mr S having learning difficulties, that he may not have understood the questions being asked of him and that The Royal London didn't comply with the Equality Act 2010. However, Mr S applied for the policy via a third-party intermediary; The Royal London didn't sell the policy to him.

Further, I've seen nothing which convinces me that Mr S made the Royal London aware at any time prior to the policy starting that he didn't understand any of the questions in the application form he was sent, setting out the answers which had been submitted to The Royal London.

I've also taken into account the estate's comments about Mr S's medical records being incorrect and that because of Mr S's vulnerabilities, the medical professionals "put words in his mouth". However, given the number of medical professionals involved in Mr S's care and the fact that he underwent objective investigations in the years leading up to apply for the

policy, I'm not persuaded by what the estate says. I'm satisfied that The Royal London has acted fairly by relying on what's reflected in the medical evidence.

Mr S's wife recalls that The Royal London sent a representative to take a sample of Mr S's blood around the time the policy was taken out. However, I've seen no evidence in further support of this. And given that Mr S didn't disclose any medical conditions on the application form, in my experience, it's unlikely that The Royal London would've arranged this. However, even if it had, I'm satisfied that this doesn't detract from Mr S answering certain questions incorrectly when applying for the policy.

Were these misrepresentations 'qualifying' misrepresentations?

There were other questions that The Royal London said Mr S answered incorrectly but I'm satisfied I don't need to make findings on whether Mr S did. That's because looking at the underwriting information provided by the Royal London - in conjunction with the relevant medical evidence from the time - I'm persuaded that had Mr S answered the alcohol, liver and investigations questions correctly, it wouldn't have ended up offering the policy to him. I'm therefore satisfied that the misrepresentations were what CIDRA refers to as 'qualifying' misrepresentations.

Has The Royal London fairly declined the claim?

The Royal London has refunded the premiums Mr S paid for the policy which it didn't need to do if it thought Mr S had deliberately or recklessly misrepresented the answers to the questions set out above. I'm therefore satisfied that it's fair to assume that The Royal London has concluded that the misrepresentations were careless (as opposed to deliberately or recklessly made). Given Mr S's medical history before applying for the policy, I find that The Royal London has acted fairly and reasonably by reaching that conclusion.

I've looked at the actions The Royal London can take in line with CIDRA if a qualifying misrepresentation is careless. I'm satisfied it can do what it would've done if the questions had been answered correctly.

Because I'm satisfied that the policy wouldn't have been offered at the time, I find that The Royal London has acted fairly and reasonably by voiding the policy, declining the claim (on the basis that the policy wouldn't have been in place for a claim to be made on) and refunding the premiums paid for the policy.

The handling of the claim

The Royal London has an obligation to handle claims fairly and promptly. I know it took many months for the claim to be assessed and for an outcome to be communicated.

However, overall, from what I've seen, I'm satisfied that The Royal London attempted to proactively progress the claim. It had to refer back to Mr S's GP on occasions for more information and that did delay the claim, but I don't think it was unreasonable for The Royal London to request further information relevant the disclosures Mr S made when applying for the policy.

Further, the executors of Mr S's estate aren't eligible complainants as the contract of insurance was between Mr S and the Royal London so I can't award any compensation for any personal distress and inconvenience experienced pursuing the claim and chasing The Royal London for updates in their capacity as executors of the estate.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 24 December 2024.

David Curtis-Johnson
Ombudsman