DRN-5306354

The complaint

Mrs S has complained about the advice she received from ST&R Limited.

What happened

In June 2020 Mrs S took out a decreasing term life and critical illness policy over 15 years. The initial sum assured was £150,000 with a monthly premium of £104.37, this was with an insurer I'll refer to as A. In December 2021 Mr and Mrs S applied for a new mortgage and as affordability was tight they cancelled the 2020 policy direct debit with the intention of reinstating it, which they did and the policy continued thereafter.

In June 2022 their financial adviser, now employed by ST&R, carried out a demand and needs review with Mr and Mrs S over the telephone. Individual policies were recommended and it is only Mrs S who now complains. The details are recorded in the Demands and Needs statement of June 2022. A decreasing term life and critical illness policy over 13 years with an initial sum assured of £125,000 was recommended to Mrs S the monthly premium was £97.58. The advisor completed the application and health questions.

On 8 June 2022 Mrs S was sent an e-mail confirming that her policy was in place and she could access her policy schedule and booklet through the online portal. She was advised to read the schedule and booklet carefully and check that all the details were correct.

Mrs S was unfortunately diagnosed with breast cancer. In November 2022 she submitted a claim to the insurer but in July 2023 the insurer declined the claim due to misrepresentation. The insurer said she had not disclosed medical history. It referenced four specialist referrals and diagnostic tests and investigations.

Mrs S complained to ST&R. She said that she had told the adviser that she had been undergoing tests but had been reassured that the insurer would get a copy of her medical history from her doctor if she signed the medical consent form, which she did.

ST&R didn't find any evidence of wrongdoing. It said that correspondence from Mrs S suggested that she was happy and as no issues or objections were raised by her that any information was incorrect on the application suggests she was satisfied with the application process. And the cancelling of the direct debit for the previous policy provides more evidence she was happy with the new policy.

Our investigator considered the complaint and recommended that it be upheld. She found that ST&R needed to put Mrs S in the position that she would have been in if she hadn't changed policies in June 2022 because she would have had a successful claim under her existing policy with A.

ST&R didn't agree. In summary it said:

- The advice to take out a new policy wasn't unsuitable. A cheaper policy was arranged which matched the new mortgage.

- There is no evidence that Mrs S made the disclosures they say they did regarding Mrs S's health - it is regrettable that is no telephone recording of the relevant call. There is no evidence that the adviser told Mrs S not to worry as the insurer would get a copy of her medical history from her doctor if she signed the consent form.

- The adviser had asked Mrs S to check the information on the insurer's portal, which she did, before cancelling the direct debit for her policy with A.

- If the adviser had known Mrs S was under investigation he would have waited or advised to keep the existing plan. The adviser does not give advice to disclose or not – it is up to the customer to answer the questions correctly.

- Putting all the blame on the adviser is unfair especially when the customer has claimed through the Financial Ombudsman Service previously – so would have been aware that checking is very important and been on higher alert.

I issued a provisional decision saying as follows:

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

Although I've summarised the background to this complaint - no discourtesy is intended by this. I want to assure the parties I've read all the documentation, including text messages and submissions. But in this provisional decision I've focused on what I find are the key issues. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.

My provisional decision is not to uphold this complaint, I'll explain why.

- *The relevant regulations provide that a firm must take reasonable care to ensure the suitability of its advice for any consumer who is entitled to rely on its judgement. I don't find the policy recommended was unsuitable – it matched the new mortgage and was cheaper, although not substantially, than Mrs S was paying for the policy with A.*

- *Importantly Mrs S has said that she was very reluctant to change as she had numerous tests going on. She said that she told the adviser that she didn't think it was a good time to change. She said that the adviser told her not to worry and that if she signed the form the insurer would write to her doctors and gather all the information that they needed. Unfortunately the advice wasn't recorded, so I can't determine with any certainty what was said.*

- *However the adviser completed the application. He recorded Mrs S' previous health issue of underactive thyroid but answered 'no' to questions regarding scans and investigations and whether results were awaited. Mrs S has said this was a lie on the part of the adviser. I'm struggling to understand why, if Mrs S had explicitly told the adviser that she had had many tests and they were ongoing, he would have deliberately entered incorrect information on the form.*

- *But even if it I was persuaded that he did so (and for the avoidance of doubt I'm not), Mrs S was asked to check the answers given in the insurer's portal. She confirmed that she had done so before the direct debit for the policy with A was cancelled. So she had the opportunity to correct the incorrect answers given.*

- *Additionally the Statement of Demands and Needs dated 11 June 2022 provides the*

following Warnings:

The advice provided to you is based upon the information you have disclosed and therefore, if this letter does not coincide with your view of the situation or you require any further clarification, please contact us immediately.

It is important to emphasise that you must disclose any facts which are material to your application. A 'material fact' Is any Information that you think the issuing company should be aware of and may influence their judgement into offering you terms, affect their judgement on whether a plan would be offered at standard rates or would affect a decision to enter into a contract with you. Failure to disclose material information to the insurer could result in non-payment of the sum assured in the event of a claim. This product has been recommended to replace your existing policy.

So I'm satisfied that the importance of disclosing material facts was made clear. Mrs S could have contacted ST&R to advise the answers were incorrect.

- *Mr and Mrs S have made a previous complaint to this service regarding a similar matter that occurred eight years before this sale. That is not to say that they wouldn't have other complaints in the future and of course it is their right to bring the complaints here if not resolved. There is no suggestion whatsoever that there is anything untoward in doing so, and the facts of the earlier complaint are not relevant to this complaint. But correspondence from Mr and Mrs S in the earlier matter does say that they were fully aware of the consequences of the consequences of non-disclosure. So I don't think it unreasonable to conclude that they would have known the importance of ensuring that the answers recorded on the application form were correct.*

- *I am very sorry that my decision will bring Mrs S such unwelcome news. But in all the circumstances I don't find that ST&R Limited have treated her unfairly or that the recommended policy was unsuitable. This being so there is no basis for me to require it to make any payment to her.*

I invited both parties to respond but advised that unless the information changed my mind, my final decision was likely to be along the lines of my provisional decision.

ST&R agreed with my provisional decision and made no further comments. Mrs S didn't and asked me to reconsider.

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.

I do understand Mrs S' strength of feeling, but having carefully considered the points she has made in response to my provisional decision I am not persuaded to change my conclusion. I will explain why.

Mrs S has said that the money is secondary to the principle here. She evidenced that ST&R had received some poor reviews, believes it to be unethical and has made some disparaging remarks about the adviser. She felt it was clear that the advisers there were pressurised to sell. I should explain that the Financial Ombudsman Service doesn't regulate financial firms – that is the role of the Financial Conduct Authority.

Our statutory function is to resolve certain disputes – as an alternative dispute resolution scheme we operate differently from courts of law. Complaints are determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case. I do understand how disappointing it would have been for Mrs S to receive my provisional decision having received a different outcome from our investigator. Our process is that if no agreement is reached by initial assessment the case is passed to an ombudsman for decision. Ombudsmen will consider the case afresh and may come to a different conclusion to an investigator. That is what happened here.

Mrs S has said that she is a caring person and not the money grabbing person that the adviser has made her out to be. There is no suggestion that she isn't a caring person, and the adviser hasn't made any negative comments about her character. The letter that was sent from a previous complaint was taken only as an indication that Mrs S would have been aware of the importance of medical disclosure to the insurer. I found that to be relevant.

But importantly Mrs S felt that the adviser knew how ill she had been, asked her to complete a form to let the insurer have access to her medical files, but then didn't correctly fill out the application. As I said in my provisional decision if the adviser had been made aware of Mrs S' recent health issues and investigations it is perplexing as to why he would have deliberately omitted this information from the form. I say this particularly as Mrs S was asked to check the information was correct. So at this stage the adviser, had he only been trying to 'churn' the policy for commission as is suggested, would have been caught out.

I have seen the text messages between Mr S and the adviser – I don't find anything untoward or underhand. The adviser sought to assist with the claim – the messages suggest he was surprised that the claim hadn't been admitted, which does, in my opinion, show that he had been unaware of Mrs S' health investigations.

I was very sorry to read of Mrs S' diagnosis, and it is clear how important this matter is to her. But for the reasons given here and in my provisional decision, I don't uphold this complaint.

My final decision

My final decision is that I'm don't uphold this complaint about ST&R Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 7 March 2025.

Lindsey Woloski
Ombudsman