

## **The complaint**

Mr D is unhappy that The Royal London Mutual Insurance Society Limited ('Royal London') ended a claim made on his income protection insurance policy and asked him to pay back the benefit it had been paying to him under the policy.

Although Mr D is being represented in this complaint, for ease, I've referred to him throughout.

## **What happened**

In around 2014, Mr D applied for personal protection cover including cover for life, critical illness, total permanent disability, income protection and payment cover for sickness. Royal London accepted the application and cover started.

In around 2019, Mr D made a successful claim on his income protection policy as it was established that because of his anxiety, he was unable to work in line with the policy terms. The claim was reviewed by Royal London, and it arranged for Mr D to attend an independent medical evaluation (IME) which he did in May 2022.

As part of the IME, Mr D reported having felt suicidal when he was younger (and before applying for personal protection insurance) due to a very traumatic incident he was involved in. He had a few counselling sessions at the time which he said he didn't find particularly helpful.

Royal London obtained further medical history from Mr D's GP as when applying for the policy in 2014, Mr D didn't declare ever having had depression, stress, anxiety or other mental disorder.

Having reviewed Mr D's medical history, Royal London concluded that Mr D had misrepresented his answer about his mental health on his application. It said had it known that Mr D had experienced anxiety and stress when applying for cover, it would've added the following exclusion to the income protection cover and also for the payment cover for sickness benefit:

We will not pay a claim if it directly or indirectly because of any mental or nervous disorder, including but not limited to stress or anxiety-related disorders, its treatment or any complications arising from the disorder or its treatment.

I'll refer to this as 'the mental health exclusion'.

It also said that a similar exclusion would've been added to total permanent disability cover.

Having applied the mental health exclusion, and because Mr D's income protection claim related to time off work sick due to anxiety, Royal London said the claim wouldn't have been covered. So, it stopped paying the claim and requested Mr D pay back the benefit Royal London had paid him.

Unhappy Mr D brought a complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold the complaint. Mr D disagreed and raised further points in reply. These didn't change our investigator's opinion, so this complaint has been passed to me to consider everything afresh to decide.

### **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.

That includes the submissions made by Mr D which I'm thankful for. I'm not going to respond to each point made. I hope Mr D understands that no discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to fulfil my statutory remit.

I've also taken into account The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied it's relevant law. 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 it's for the insurer (in this case, Royal London) to show it would have offered the insurance 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.

Royal London has concluded that Mr D didn't take reasonable care when answering a question his mental health when applying for cover. Had this question been answered correctly, Royal London says it would've added the mental health exclusion to his income protection cover (and other cover he had the benefit of).

I have every empathy for Mr D's situation. I know that Royal London's decision to end the income protection claim and request for him to pay back to Royal London the benefit paid to him to date will have greatly impacted Mr D and his family financially. However, for reasons I'll go on to explain, I'm satisfied that Royal London has acted fairly and reasonably.

### **Did Mr D make a misrepresentation when applying for the policy?**

Mr D made an application for personal protection insurance including income protection cover through an independent third party. I've seen the completed application which Mr D was sent in 2014 reflecting the answers he provided.

One of the questions asked was:

Do you have or have you ever had, any of the following?  
Any depression, stress, anxiety, suicide attempt, mania, schizophrenia or any other nervous or mental disorder?

I'm satisfied this question was reasonably clear and it's reflected that Mr D answered the question 'no'.

Mr D was sent the completed application to check and the covering letter says:

Because we use this information to make a decision about the terms we offer, it's important that it is accurate and complete. If any information in this form is incorrect, missing or misleading, we may not pay any future claim.

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

Further the completed application form contains a declaration which includes:

I understand that...

If the person covered doesn't check the answers in this application form and doesn't answer all questions honestly, in full and to the best of their knowledge and belief, any plan issued as the result of this application may be cancelled or the terms changed, and any claims may be refused if the terms offered would have differed had complete and accurate information been provided.

CIDRA also says 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.

I've seen nothing to say that Mr D did tell Royal London that the answer to the mental health question was incorrect.

Looking at Mr D's medical history, I'm satisfied that Royal London has fairly and reasonably concluded that his answer was incorrect because Mr D's medical records reflect:

- he completed a course of counselling in 1998 and the 'presenting problems of anxiety' were successfully explored.
- his GP completed a mental health assessment in 2006 and it's noted that he was diagnosed with depression with anxiety and prescribed anti-depressants.
- in 2013, Mr D was feeling stressed and was losing his temper more easily. It's reflected that Mr D wasn't sure what was triggering this. There had been a "bit of stress at work" but he felt it was a "build up of various factors". He didn't want medication but was given contact details for a NHS programme referred to as 'improving access to psychological therapies'.

I've taken into account the reasons why Mr D says he didn't think to answer 'yes' to the question about his mental health when applying for the policy taking into account the entries above. Including that:

- the stress he was feeling in 2013 was due to acid reflux and worrying that this might be due to something more serious. There is mention in the medical records of Mr D experiencing indigestion and that he was given medication for this (which Mr D says cleared up the issue). However, given the way stress is presented as the first problem being discussed in his GP records and it's reflected that indigestion was perhaps related to stress, I think Royal London has fairly concluded that Mr D was experiencing stress in 2013.
- the depression with anxiety he'd experienced in 2006 was situational and related to a relationship break-up. He says he genuinely forgot about this as his personal circumstances had significantly changed by the time he applied for personal protection cover. However, given how the medical question is drafted, I still think

Royal London has fairly concluded that Mr D ought to have answered it 'yes'.

- Mr D didn't complete a course of counselling in 1998. He only attended three sessions and was not diagnosed with anxiety or stress (or equivalent). However, I'm satisfied that the medical evidence from the time refers to this as Mr D presenting with anxiety. I don't think this entry is outside the scope of the question being asked although I've seen reference to an internal note by Royal London that "it may be" when assessing the claim. However, ultimately this is one of the incidents relied on and I don't think it's unfairly done so.

I've taken on board that two of three entries above, Mr D says he wasn't diagnosed with mental health conditions. However, the question doesn't ask whether he was diagnosed, it asked whether he'd ever had any of the listed conditions / symptoms.

I appreciate that Mr D didn't access his medical history before applying for personal protection insurance. However, it is for him to recall information about his medical history and if unsure, to check before answering questions.

I've also taken into account what Mr D says about having more recently been disclosed with Attention Deficit Disorder (ADD) and that this would've been present since childhood and when applying for cover. He says ADD affects his memory and his ability to recall details of events that happened in the past. However, I think it was reasonable for Royal London to rely on the information provided by Mr D in his application form and assume that the answers given by him were correct, when agreeing to provide cover.

### **Was Mr D's misrepresentation a 'qualifying' misrepresentation?**

Looking at the underwriting information provided by Royal London, I'm satisfied that had Mr D answered the question about his mental health correctly, the mental health exclusion would've been added to income protection cover. And looking at the underwriting information, even if Royal London reasonably ought to have disregarded the anxiety mentioned in Mr D's medical records in 1998 (which I don't think it should've for reasons set out above), I remain satisfied that the mental health exclusion would've still been added on based on the anxiety and stress mentioned in Mr D's medical records in 2006 and 2013.

I'm therefore persuaded that Mr D's misrepresentation is what CIDRA refers to as a 'qualifying' misrepresentation.

### **Has Royal London acted fairly and reasonably by taking the action it did?**

Royal London concluded that Mr D's misrepresentation was careless (as opposed to deliberately or recklessly made). I'm satisfied Royal London has acted fairly and reasonably by concluding this.

I've looked at the actions 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 question about mental health had been answered correctly. Royal London has added the mental health exclusion. Taking into account the medical evidence in conjunction with its underwriting guidance, I find Royal London has acted fairly and reasonably by doing this.

I'm also satisfied that it's acted fairly and reasonably by ending the income protection claim on the basis that the mental health exclusion would've been in place and the claim wouldn't have been covered in the first place. Mr D was off work for anxiety which would've been excluded.

As the monthly benefit would never have been paid for Mr D being unable to work due to anxiety, I'm also satisfied that Royal London has fairly and reasonably requested that he pay back the benefit he's been paid under income protection cover. I understand this to be almost £20,000 in total.

### **Other benefits**

Mr D had also taken out payment cover for sickness benefit. If Mr D hadn't made a qualifying misrepresentation, based on the underwriting information I've been provided, I'm satisfied that the mental health exclusion would've also been added to this element of cover, and a similar exclusion added to total permanent disability cover.

So, I find that it's fair and reasonable for Royal London to request that Mr D repay to Royal London all premiums that have been waived under payment cover for sickness benefit for the duration of the claim. I understand this totals almost £5,000.

### **Other issues**

Mr D says that his condition amounts to a disability under the Equality Act 2010 ('the Act') and that Royal London has failed to make reasonable adjustments during its interactions with him or considered the impact of its actions.

Anxiety (or Mr D's recently diagnosed ADD) isn't automatically deemed to be a disability under the Act but even if Mr D meets the definition of disability under section 6 of the Act, and so the Act is a relevant consideration in this case, I don't have the power to determine whether the Act has been breached. Only a court can do that. However, where relevant and amongst other considerations, I am required to take into account the law when considering what's fair and reasonable.

It isn't disputed that Mr D has been experiencing anxiety and is situationally vulnerable. However, I don't think that means that Royal London has acted unfairly by ending the claim and requesting Mr D pay back the benefits received for the reasons set out above. I don't think it would be fair and reasonable for me to direct Royal London to overlook the qualifying misrepresentation made by Mr D when applying for the policies in 2014 because of Mr D's medical conditions / symptoms and that he is vulnerable.

However, due to the amounts involved, I do think Royal London should work with Mr D (or his representative) to try to agree a reasonable repayment plan rather than Mr D having to pay a significant amount of money back to it all at once. I'm pleased to see that Royal London offered to do this in its letter dated November 2023.

Having considered Royal London's communications with Mr D, I'm not persuaded that they were inappropriate or unreasonable.

### **Other issues**

- Given what was recorded in the IME report about the traumatic incident which Mr D was involved in and the reason for him accessing counselling before applying for cover in 2014, I'm satisfied Royal London acted reasonably by relying on that information to then request earlier medical records to consider whether Mr D made a qualifying disclosure when applying for personal protection. Whilst the question about mental health in the application form doesn't ask directly whether Mr D had ever accessed counselling, I think Royal London reasonably wanted to consider what was reflected in Mr D's medical notes about this incident and the reason why he attended

counselling.

- Whilst reviewing Mr D's past medical history as part of the income protection claim that had initially been accepted, Royal London also concluded that Mr D hadn't answered a question correctly about whether he'd ever had a disorder of the eyes when applying for cover. Royal London has added an eye exclusion to the income protection cover as a result (as well as other elements of cover). Mr D hasn't complained about this, and it isn't specifically addressed in Royal London's final response letter dated March 2024. So, I haven't considered whether Royal London has acted fairly and reasonably by adding this exclusion.
- When deciding this case, I've taken into account whether Royal London should've reasonably done more when assessing his income protection claim at the outset to determine whether Mr D had made a qualifying misrepresentation when applying for the policies. However, I've seen the forms that were sent to Mr D and his GP to complete around the time of making the claim. Questions were asked whether Mr D had experienced anything similar previously and whether there was any past medical history relevant to the condition which led to him being absent from work. Nothing was mentioned. In the absence of anything to the contrary, I'm satisfied Royal London was fairly entitled to rely on the information provided when first assessing the claim, rather than requesting more medical evidence around that time to see if there was specifically any history of mental health conditions / disorders.
- Mr D says he gave authority for Royal London to access his medical history when making the claim for income protection and it should've requested all of his earlier medical records then. However, I'm satisfied Royal London relied on the information provided by Mr D and his GP which said that he hadn't experienced a similar condition before 2019. Although Mr D says his GP didn't consider the symptoms which led to the claim as linked to previous symptoms, the claim hasn't ended because of it relating to previous symptoms. If Mr D had answered the question relating to mental health accurately when applying for cover and disclosed his past symptoms, I'm satisfied the mental health exclusion would've been added to the income protection cover at the outset (as well as other elements of cover set out in my findings above).

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 May 2025.

David Curtis-Johnson  
**Ombudsman**