

The complaint

Mrs M is unhappy that The Royal London Mutual Insurance Society Limited declined a claim for the critical illness benefit made on her life and critical illness insurance policy ('the policy') and that it's voided the policy.

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

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

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 it's for the insurer 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.

Royal London has concluded that Mrs M didn't take reasonable care when answering a question about whether she'd had investigations into her health when applying for the policy. Had this question been answered correctly, Royal London says it wouldn't have ended up offering her the policy.

So, Royal London has declined Mrs M's claim for the critical illness benefit, cancelled the policy as if it had never been in place and refunded the premiums paid for it.

Did Mrs M make a misrepresentation when applying for the policy?

When Mrs M applied for the policy, she was asked a number of questions about her medical history, health and lifestyle.

One of the questions asked was:

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, DCG, echocardiogram or other heart investigation...

I'll refer to this as 'the investigations question'. I'm satisfied this question is clear.

It's reflected that Mrs M answered 'yes' to the investigations question.

And from a list, she answered this was due to: 'abscess'.

Later in the application, she was asked more questions about the abscess including:

Are you awaiting hospital or specialist referral, investigation or surgery for this condition?

- Await referral
- Await investigations
- Await results of investigations
- Await surgery
- No

It's reflected that Mrs M answered: 'no'.

Mrs M had an ultrasound in 2020 so she correctly answered 'yes' to the investigations question. However, I'm satisfied Royal London has fairly concluded that she wrongly said this was to investigate an abscess.

Mrs M's GP has said that Mrs M's symptoms were "pain, redness and swelling of right submandibular area. Pain had originally started around the right mastoid and spread to the submandibular and neck area". Mrs M was referred for further investigations and an ultrasound scan took place. At that stage, there's nothing in the medical records from the time which suggests that this was due to an abscess.

So, I'm satisfied Royal London has fairly and reasonably concluded that Mrs M made a misrepresentation when answering the investigation question.

Was this a 'qualifying' misrepresentation?

The medical evidence reflects that due to the findings of the ultrasound scan in around March 2020, it was recommended that Mrs M undergo ultrasound guided sampling of the impacted area of the body.

It's agreed that Mrs M wasn't aware of this recommendation; she heard nothing more after the original ultrasound.

I appreciate that Mrs M didn't know that any follow up was needed. But she was aware that she'd undergone an ultrasound the year before applying for the policy and the results hadn't been confirmed.

Had Mrs M answered the investigations questions accurately had disclosed what the investigation was for (rather than abscess) and that the results of the original ultrasound were unknown, I think it's likely that Royal London would've obtained further medical

information from the time. That would've revealed that further investigations had been recommended in the ultrasound report.

Royal London has provided underwriting evidence to support that it wouldn't have offered the policy if it had been aware of the outstanding follow up into Mrs M's previous ultrasound results.

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

Based on the answers given in the application, I don't think Royal London was under any obligation to request medical information at that time as it was reasonably entitled to rely on the answers given by Mrs M as being accurate.

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

I'm satisfied that Royal London has concluded that the misrepresentation was careless (as opposed to being deliberately or recklessly made).

Taking into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products (and what it says about classing misrepresentations as careless) I think that's reasonable.

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 investigations question had been correctly answered when applying for the policy.

Royal London has cancelled the policy on the basis that it wouldn't have been offered at the time. I think it's acted fairly and reasonably by doing so as that's in line with the underwriting guidance provided.

I'm also satisfied it's fairly declined the claim on the basis that the policy wouldn't have been in place for the claim to have been made on the policy.

In line with the misrepresentation being careless, and following CIDRA, Royal London has also refunded the premiums Mrs M paid for the policy. I think that's fair. Although Mrs M has queried whether interest should be paid on the premiums, I don't think Royal London need to do this. It wasn't its error which led to the premiums being paid by Mrs M.

I know Mrs M will be very disappointed and I have a lot of empathy for the situation she finds herself in. However, for reasons set out above, I find Royal London has acted fairly and reasonably.

Other issues

Mrs M is also unhappy with the way in which the claim was handled by Royal London. This concern is being investigated as a separate complaint to the one I'm deciding so I haven't addressed this point.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 April 2025.

David Curtis-Johnson
Ombudsman