DRN-4789256

Financial Ombudsman Service

The complaint

Mrs J has complained that the Royal London Mutual Insurance Society Limited declined a claim under her life and critical illness policy. She has also complained about the service she received.

What happened

The background to this complaint is well known to the parties so I won't repeat it in detail here. In summary Mrs J was diagnosed with breast cancer in 2023. Royal London declined her claim as it felt that she should have answered questions on the application form differently, and had she done so it wouldn't have offered cover. It accepted that Mrs J had received poor customer service and offered £350 in compensation.

Mrs J remained unhappy and referred her complaint to this service. Our investigator didn't recommend that the complaint be upheld. She found that there had been a qualifying misrepresentation under the relevant legislation and the steps taken by Royal London had been in line with the legislation. She felt that the compensation offered was fair.

Mrs J appealed. She didn't feel it was fair to say there was a 'risk factor' when the scans she had were clear. She felt that a proportionate would have been to increase the premium rather than adding an exclusion to the policy. With regard to the compensation offered for poor service she reiterated that she hadn't been treated in a fair manner.

Mrs J also submitted a new report from her consultant. This report was sent to Royal London for its comments. Royal London maintained its position. It said that the case had been fully assessed and the further medical information didn't change its position.

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'm aware I've summarised the background to this complaint, no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I've fully reviewed the complete file and having done so I agree with the conclusion reached by our investigator. I'll explain why.

The Insurance Code of Business Sourcebook (ICOBS), says that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the law; the terms of the insurance contract; and the available medical evidence, to decide whether I think Royal London has treated Mrs J fairly.

The relevant law in this case 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.

Royal London has said that Mrs J failed to take reasonable care not to make a representation when answering the following question:

Apart from anything you have already told us about, in the last 3 years have you:

Been prescribed medication or treatment regularly for a period of four consecutive weeks or more, or have you been under review from your doctor or a medical professional? Including Physio, Counselling, Prescriptions from your own doctor, even if you did not take them. You don't need to tell us about contraception, fertility, dental treatment or reviews purely in relation to pregnancy.

Been referred to a specialist or had, or been advised to have, any investigations? Including: Blood tests, Biopsy, Ultrasound, X-Ray, CT/MM 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 You don't need to tell us about investigations which were purely for pregnancy, infertility or simple fractures which have resolved with no time off work, or about genetic tests that meet the criteria outlined previously.

Mrs J answered negatively this question. However her medical records showed that she had been experiencing discharge from her breast for two years from March 2017. She had six ultrasound scans in that time – the results of all of those were normal. She also had a mammogram in that time which was normal. Mrs J was discharged from care in March 2019 with advice to return if she changed her mind about the surgery (she had previously refused) or she had a worsening of symptoms.

I don't find that Royal London treated Mrs J unfairly when it concluded that she should have answered positively to the above questions. I say this because the medical records show that she had been under the review of a medical professional, had been referred to a specialist and had had investigations. The questions are clear.

So I need to consider whether misrepresentation was qualifying, that is what would Royal London have done had it been given the correct answer. I can't share the full underwriting details as they are commercially sensitive. But I'm satisfied from the underwriting evidence I've seen that because of the persisting symptoms over a period of time Royal London would have request a targeted report from Mrs J's GP. As the investigations had failed to reveal an underlying cause, and tissue hadn't been sent to pathology, malignancy wouldn't have been excluded. Therefore a breast cancer exclusion would have been added to critical illness and total permanent disability covers. It follows that the misrepresentation was qualifying under the CIDRA. Mrs J questions this, as she believes that in 2017-2019 she had nothing wrong with her, as demonstrated by her scan results. I appreciate this but the question didn't ask about her understanding of her health, it asked about investigations. And having seen the underwriting guidelines I'm satisfied that she would have been treated as anyone else in her

position, and an exclusion would have been added to her policy.

I haven't disregarded the May 2024 report from Mrs J's consultant. He didn't think that the earlier episodes of discharge and later diagnosis of breast cancer were related. His medical opinion is unchallenged. But unfortunately for Mrs J I don't find this makes any difference to this complaint. The reason for the claim decline wasn't because the conditions were related; but because if the questions had been answered correctly Mrs J wouldn't have been offered a policy without a breast cancer exclusion.

Royal London has said that the misrepresentation was careless. I find that was fair – there is nothing to suggest it was deliberate or reckless. As it wouldn't have offered cover if the question was answered correctly, Royal London has offered to refund the premiums paid - this accords with the actions it can take in accordance with CIDRA. However Royal London has also advised Mrs J that the policy can continue, with a breast cancer exclusion and life cover which is unaffected. Mrs J should advise Royal London how she wishes to proceed.

I've considered the service Mrs J experienced. I can see that from the receipt of her GP report until a decision letter was issued was nearly 10 weeks. Although it does take time to fully assess a claim, I'm satisfied that the delays and scant communication at this time would have been worrying for Mrs J and added to the stress she was under. But Royal London offered £350 in compensation, and I find that was fair.

In all the circumstances I don't find that Royal London treated Mrs J contrary to the law or the relevant regulations, unfairly or unreasonably.

My final decision

The Royal London Mutual Insurance Society Limited has made an offer to pay £350 in resolution of this complaint. I find that is fair in all the circumstances. My final decision is that Royal London should pay Mrs J £350.

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 12 August 2024.

Lindsey Woloski
Ombudsman