DRN-5094240

The complaint

Mrs C is unhappy that The Royal London Mutual Insurance Society Limited declined a claim made on a term assurance policy she held jointly with her husband, Mr C after he sadly died.

Although Mrs C is being represented in this complaint, for ease, I've referred to her throughout.

What happened

Mr and Mrs C applied for a term assurance policy in August 2000. When doing so, they answered 'no' to the medical questions they were asked in the application form. The policy started on or around 5 January 2001 with a policy number ending 316. However, later in January 2001, Mr and Mrs C told The Royal London that they didn't want to go ahead with the policy.

Subsequently, Mr and Mrs C requested the policy be reinstated. And after signing a new direct debit mandate, a term assurance policy was offered with a different policy number (ending 630) – which started on 3 May 2001.

Mr and Mrs C applied for subsequent amendments to the policy benefit. And in 2004, shortly before Mr C died, Mr and Mrs C made a further request to increase the policy benefit which they say was accepted and had come into effect, substantially increasing the death benefit. After Mr C's death, a claim was made on the policy for the death benefit which Mrs C says was further increased in 2004.

The claim was ultimately declined by The Royal London on the basis that Mr C had experienced chest pain in November 2000 and had subsequently undergone heart investigations. The Royal London says Mr C ought to have disclosed this before the policy started in May 2001. Had he done so, The Royal London says it wouldn't have offered the policy to him at the time. So, it voided the policy and refunded Mrs C the premiums they'd paid.

The Royal London also says that the further benefit increase never went ahead in 2004 as the insurance intermediary requested the amendment not take place.

Unhappy, Mrs C brought a complaint to the Financial Ombudsman Service. Our Investigator didn't uphold the complaint. Mrs C disagreed and raised several points in reply. These didn't change our Investigator's opinion so the complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision in July 2024 explaining why I wasn't intending to uphold this complaint. However, as my reasons for doing so differed somewhat to our investigator's I wanted to give the parties an opportunity to reply. An extract of my provisional decision is set out below.

…………………………………………………………

Given the date Mr and Mrs C applied for term assurance and the date the policy started in 2001, I'm satisfied that the relevant law at the time was the Marine Insurance Act 1906. Mr and Mrs C had a duty of utmost faith which effectively placed a high duty on them as consumers to disclose all material information which they knew or ought to have known.

Although, The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') was not in force at the time – and so isn't relevant law – I think it would still be fair and reasonable for me to take into account the principles of CIDRA as I think they amounted to good industry practice at the time Mr and Mrs C applied for term assurance in 2000, and the policy starting in 2001.

The Royal London's decision to decline the claim

I'm satisfied that the policy which started in early January 2001 was cancelled by The Royal London and replaced with the policy which started early in May 2001. They have different policy numbers, so I don't think the later policy was a reinstatement of the first.

However, I'm satisfied that due to short period of time between Mr and Mrs C saying that they didn't want to proceed with the policy which started in early January 2001 and then asking for it to be reinstated, The Royal London reasonably relied on the information on the application form dated August 2000 when offering the policy which ended up starting in May 2001.

I've considered whether The Royal London has acted fairly and reasonably by cancelling the policy which started in May 2001. I have a lot of empathy for the situation Mrs C finds herself in and I know she'll be very disappointed but, overall, I think it has. I've set out my reasons below.

- When making the application for term assurance in August 2000, Mr and Mrs C didn't declare any medical conditions. However, the declaration they signed at the end of the application included: "I confirm my understanding that failure to disclose a material fact may lead to the avoidance of the plan applied for, or a rejection of any claim thereunder. I understand that I must therefore inform [The Royal London] in writing of **any material fact occurring before the commencement of the policy**. I confirm my understanding that I am not covered under this plan until such time as this application has been accepted…and I have been notified in writing…that cover has commenced" [**my emphasis**].

- Further, the Royal London sent Mr and Mrs C a letter dated 2 May 2001 telling them that it had accepted their application for term assurance. The policy acceptance schedule enclosed with the letter sets out the terms on which the policy was being accepted. The schedule is only a page and a half long and at the end of the first page (leading on to the second) it says: "The acceptance is given based on the facts stated in the application form and any other documents you submitted. If you know of any change to these facts (including changes in nature or frequency of the treatment of or any investigations into conditions described on the application) or any illness, **complaint** or accident **that occurs between the date of the application and the start date, you must tell us in writing so we can confirm our acceptance**. If you do not tell us about the changes to these facts, this could lead to a claim being rejected. **If you have any doubt as to whether a fact is relevant, then you should disclose it**" [**my emphasis**].

- Whilst The Royal London could've asked Mr and Mrs C to have completed a new application for term assurance and make a new medical declaration, I don't think it was unreasonable in the circumstances of this case for it to rely on the information

provided by Mr and Mrs C in their application form completed in August 2000.

- The policy started on 3 May 2001, and I've seen nothing which persuades me that Mr C made any further disclosures to The Royal London around this time or at any time after the application for term assurance was made.

- Looking at the medical evidence, it's reflected that Mr C reported chest pain in November 2000 (after the application for term assurance). It's also reflected that he requested a referral to a heart specialist on 3 January 2001. He also had a heart scan on 24 January 2001 (which was after the January 2001 policy was cancelled and around a week before he and Mrs C requested the policy be reinstated).

- Further, the medical practitioner's statement completed at The Royal London's request after the claim was made dated December 2004 reflects that in April 2001, a consultant cardiologist was undertaking extensive investigations.

- The consultant cardiologist's letter dated 18 May 2021, so after the May 2021 policy started, summarises the investigations which took place, the results of the investigations and concludes that they'll review Mr C "again in four to six months when he will have a full lipid screen".

- Given the declaration Mr and Mrs C signed when applying for term assurance and what's said in the schedule enclosed with The Royal London's letter dated 2 May 2001, I'm satisfied that Mr C reasonably ought to have informed The Royal London about his chest pain, the referral to a heart specialist and heart investigations. I'm satisfied by not doing so amounted to a misrepresentation.

- I've taken on board Mrs C's comments that it's unreasonable to expect Mr C to recall the application he completed nine months previously. However, the referral to a heart specialist and subsequent investigations took place not long before the Mr and Mrs C were sent the schedule enclosed with The Royal London's letter dated 2 May 2001 so I'm less persuaded by this submission.

- I think Mr C reasonably ought to have been aware that this was a medical issue that The Royal London should've been made aware of in light of the statement in the schedule. I think he ought to have been reasonably aware that the "central chest pain, shortness of breath, dizziness and reduced exercise tolerance" referred to in the consultant cardiologist's letter dated May 2001 – which resulted in the subsequent (extensive) heart investigations taking place – occurred after completing the application for term assurance.

- Further, and in the alternative, Mr C did visit his GP about chest pain in November 2000, around three months after completing the application for term assurance and signing the declaration in the application form. I'm satisfied that this was a material fact that he reasonably ought to have told The Royal London about.

- I'm satisfied that The Royal London has fairly concluded that this misrepresentation was deliberate or reckless. I'm satisfied that it's acted reasonably by doing so.

- The initial policy started two days after Mr C requested a referral to the heart specialist and Mr and Mrs C asked The Royal London not to proceed with the policy around four days before the heart scan took place. They then asked for the policy to be reinstated a week after the heart scan took place. On the balance of probabilities, I'm satisfied that they knew or reasonably ought to have known that this was

something The Royal London would've wanted to know about (particularly in light of the wording of the schedule sent to them on 2 May 2001), and they deliberately or recklessly didn't tell The Royal London about it at the time.

- I'm satisfied the misrepresentation mattered to The Royal London and it would've impacted its decision to offer the policy (or the basis on which it offered the policy).

- Evidence from the reinsurer suggests that had Mr C disclosed his chest pain and subsequent investigations the decision would've been taken to either postpone offering the policy or Mr and Mrs C would've been charged a higher premium for it. But I'm satisfied by what The Royal London says; that this information was provided on the presumption that the consultant cardiologist's letter dated 18 May 2001 had been made available to The Royal London prior to the policy starting.

- The Royal London has more recently provided underwriting information which supports that had it known about the chest pain and heart investigations at the time, it would've postponed offering term assurance. That's because it wouldn't have been able to offer cover until the outcome of the cardiology referral and investigations were known. I'm persuaded by this evidence and in my experience, it's not uncommon that where an applicant for life insurance (or similar) is awaiting investigations, or symptoms which have yet to have been established, the decision is taken to postpone offering cover for a period of time after until investigations are complete.

- Although Mr C had been discharged by the consultant cardiologist in April 2001, the result of the investigations wouldn't have been made available to the underwriter until after 18 May 2001 as that's the date of the letter the cardiologist wrote to Mr C's GP with his findings. That's after the date the policy started. Further, the consultant cardiologist said he'd like to have a follow up appointment with Mr C in four to six months.

- In light of this and given that I'm satisfied The Royal London's conclusion that the misrepresentation was deliberately or recklessly made, I'm satisfied that it's fair and reasonable for The Royal London to void the policy and it doesn't have to pay any claims. It's able to treat the policy as if it never existed.

- The Royal London has chosen to reimburse Mrs C for the monthly premiums paid for the policy since the start date. Although I don't think it needed to do so in the circumstances of this case, I think it's acted reasonably by making this payment.

- I've taken into account the following points when deciding this complaint and I've explained why I'm not persuaded by them.

- When requests were made to increase the policy's death benefit on behalf of Mr and Mrs C in subsequent years, The Royal London obtained Mr (and Mrs) C's medical records which included reference to the chest pain and the heart scan in 2000 and 2001.

- So, The Royal London received these medical records after the policy had started. However, at that time, I think it's likely The Royal London focused on the period between the policy starting and the date of the request. The application form for existing customers from the time of applying for the increased benefit includes shortened medical questions which included: "since the start date of your plan have you consulted, or are you intending to consult, your doctor or any other doctor or have been advised to have an operation, X-ray, check up or investigation?", to which

Mr and Mrs C answered ‘no’.

- So, I’m satisfied that the medical records were most likely obtained to check any health issues which occurred since the policy started and there would’ve been no reason for The Royal London, at that stage, to have proactively considered the medical information before the start date of the policy.

- I’m therefore not persuaded that The Royal London reasonably ought to have been aware of the misrepresentation which took place before the policy started in May 2001 or had accepted the misrepresentation in any way (and nonetheless decided to continue with the insurance contract).

- I’ve considered the other final decisions referred to me by Mrs C. The circumstances seem different to the complaint I’m deciding. In any event, I’ve considered the individual circumstances of this complaint when determining what’s fair and reasonable, as I’m required to do.

- Mrs C has also said that I shouldn’t focus on whether there has been a misrepresentation. However, I’m satisfied that this is central to the complaint I’m determining. As it’s the reason put forward by The Royal London to void the policy and ultimately decline the claim, I’m satisfied that it’s appropriate for me to consider whether The Royal London has acted fairly and reasonably by concluding that Mr C made a misrepresentation.

The benefit increase in September 2004

As I think it’s fair and reasonable for The Royal London to void the policy, I’m satisfied that it’s irrelevant whether or not the policy benefit was increased in 2004. If this did happen it would’ve been an amendment to the existing policy taken out in May 2001. It wasn’t a new policy taken out in the summer of 2004.

So, as the policy was voided, I’m satisfied any amendments to the policy wouldn’t survive.

……………………………

I invited both parties to provide any information in response to my provisional decision.

The Royal London had nothing to add.

Mrs C raised a number of points in response to my provisional decision and provided further documents, most of which I’d been provided with before.

In summary she said:

- Mr C’s heart investigations which took place in early 2001 came back clear with no heart conditions being diagnosed. Lipid levels were deemed fine, and no medication or treatment were required. Mr C was discharged a few weeks before the policy started in early May 2001.

- The Royal London should, and would, have reviewed Mr C’s medical history at the time of the applications made to extend the life benefit in 2002 and 2004 (which would’ve included Mr C’s symptoms in November 2000 and Mr C’s heart investigations in early 2001). So, The Royal London has accepted that Mr C had

these investigations and still continued with cover and offered increased life benefits in 2002 and 2004 based on the applications made at the time.

- Even if, in 2002 and 2004, The Royal London didn't review Mr C's medical records from before the policy started when offering an increased life benefits then, it would've considered the letter dated May 2001 from the consultant cardiologist as this was dated just after the policy started in May 2001.

- The Royal London's own Chief Medical Officer (CMO) had every opportunity to consider and make further enquires after Mr C underwent an examination in 2004 prior to The Royal London offering an increased life benefit in 2004. The CMO considered Mr C's previous cardiac symptoms at the time.

- The Royal London waived or affirmed any alleged misrepresentation made by Mr C leading to the policy being offered in May 2001.

- Any alleged misrepresentation was, at most, careless and should be irrelevant to the outcome.

- A previous decision made by an Ombudsman at the Financial Ombudsman and referred to by Mrs C is directly relevant to this case.

- The increase in policy coverage in September 2004 is binding on the Royal London.

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 thankful for the detailed submissions provided in response to my provisional decision on behalf of Mrs C. I acknowledge I've only summarised some of the points made – and in my own words.

I'm also not going to respond to each point. I hope Mrs C understands that no discourtesy is intended by this. Instead, as I also explained in my provisional decision, 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 be able to fulfil my statutory remit.

I know Mrs C will be very disappointed but for reasons I'll go on to explain, the further points raised (some of which I'd considered previously), haven't changed my mind. And I don't uphold this complaint.

- Although Mr C's heart investigations carried out in early 2001 didn't reveal any evidence of significant coronary heart disease, the medical evidence dated from just after the policy started supports that he was to be reviewed in four to six months' time. At the time the policy started, I'm satisfied, on the balance of probabilities and for reasons set out in my provisional decision, that The Royal London wouldn't have offered the policy at the time.

- Given the questions that were specifically asked on the applications increasing the life benefit in 2002 and 2004, I remain satisfied that the medical records received at the time were most likely obtained to check any health issues which occurred since

the policy started and there would’ve been no reason for The Royal London, at that stage, to have proactively considered the medical information before the start date of the policy.

- I’m not persuaded that The Royal London affirmed the contract by being aware of material facts about his health that Mr C didn’t disclose before the policy started in May 2001. Nor do I find that it accepted the misrepresentation which occurred.

- Given the passage of time I can’t know for sure but looking at the medical records sent with the GP report at the time, I’ve seen nothing which persuades me on the balance of probabilities that the consultant’s cardiologist’s letter dated May 2001 was included or considered by The Royal London when considering the further applications in 2002 and 2004. When providing this letter to the Financial Ombudsman Service, The Royal London said that it had been obtained from the re-insurer as its paper file has since been destroyed.

- I’ve taken on board what Mrs C says about the medical examiner’s confidential report which was completed separately for her and Mr C in April 2004 after the application was made to increase the life benefit then. Whilst the medical examiner’s confidential report is dated around three years after the policy started, Mrs C says it’s relevant because it supports that The Royal London was aware of the condition/symptoms which has led to the policy being voided and claim declined during the lifetime of the policy. And The Royal London not only allowed the policy to continue but accepted applications to increase the life benefit.

- I can see that when completing the examiner’s confidential report, Mr C is asked whether he’s ever suffered from, or required medical attention for, any of the following…” Listed is “chest pain, undue breathlessness on exertion, high blood pressure, palpitations, rheumatic fever, angina, intermittent claudication, coronary thrombosis or stroke”. I’ll refer to this as the ‘chest pain question’. There’s a tick in the ‘yes’ box. And further details are given about him having ‘hypertension’ for seven years.

- Further, Mr C is asked “within the past 5 years, have you taken any drugs, pills or tablets or had any medical treatment in any other form?” Again, there’s a tick in the ‘yes’ box. And it’s reflected that Mr C recently had to have investigation for recurrent breathlessness, had a CT scan on his thorax and lung biopsy and was diagnosed with chronic pneumonia.

- And when answering questions about having had any type of x-ray, laboratory test or other special investigation, there’s no mention of the heart investigations which took place in early 2001.

- So, I’m satisfied that there’s no mention on the medical examiner’s confidential report of the symptoms Mr C had in November 2000 (including chest pain) or subsequent heart investigations in early 2021, including having an ECG and echocardiogram.

- Although some of the questions on the medical examiner’s report included reference to going back five years, that’s different to the questions on the application forms to increase the life benefit which asks about issues since the start of the policy. So, although being asked questions about things that happened five years ago does also pre-date the policy starting, I’m not convinced that this means The Royal London was actively considering medical issues within the last five years, but which also covered that small period before policy started when considering the applications for the life

benefit increase. I think the questions on the medical examiner's confidential report were standard questions and The Royal London at that stage wanted to know about medical issues which occurred since the policy started, in line with the questions on the application form.

- I've also considered that there's a section on the medical examiner's confidential report with questions about cardi-vascular system which apart from one question to do with blood pressure, haven't been answered for Mr C. These questions have been answered on Mrs C's report from the time even though she didn't answer 'yes' to chest pain question. However, I don't think not asking these questions meant that The Royal London was aware of the symptoms in November 2000 and subsequent heart investigations in early 2001, or that it's reasonable to assume that the medical officer doing the report was aware of them and that's why the questions weren't asked. I don't think the evidence supports that. Further, even if the cardio-vascular system questions were asked, I don't think they would've revealed what had happened in late 2000/early 2001. As it asks questions like whether there was abnormity in pulse, whether the heart is enlarged and whether the sounds of the heart are abnormal.

- Just before the date the policy started, Mr and Mrs C received the policy schedule. The schedule says: "The acceptance [of the policy application] is given based on the facts stated in the application form and any other documents you submitted. If you know of any change to these facts (including changes in nature or frequency of the treatment of or any investigations into conditions described on the application) or any illness, complaint or accident that occurs between the date of the application and the start date, you must tell us in writing so we can confirm our acceptance. If you do not tell us about the changes to these facts, this could lead to a claim being rejected. If you have any doubt as to whether a fact is relevant, then you should disclose it".

- It isn't disputed that Mr C experienced chest pain after completing the application in August 2000 and before the policy started in May 2001. He was undergoing investigations into symptoms (including chest pain, breathlessness, dizziness and reduced exercise tolerance) in the weeks leading up to the policy starting (and after the date the initial policy started in January 2001 had been cancelled at Mr and Mrs C's request).

- Under the Marine Insurance Act (the relevant law at the time), Mr C had a duty of utmost faith which effectively placed a duty on him as a consumer to disclose all material information which he knew or ought to have known about. And if he didn't do that, the insurer can void the policy. I'm satisfied The Royal London has acted fairly by voiding the policy in this case.
- Even taking into account the principles of CIDRA (though not in force, and not relevant law, at the time), I remain satisfied that The Royal London has acted reasonably by voiding the policy and declining the claim.

- I'm satisfied that it's fair to conclude that the misrepresentation was deliberate or reckless. Even though those investigations resulted in no heart conditions being diagnosed, Mr C had been seen by a cardiologist and underwent heart investigations. I'm satisfied this is something he ought to have been aware should be disclosed based on the information on the application form (referred to in my provisional decision, an extract of which appears above) and on the schedule of insurance sent to Mr and Mrs C in May 2001. And I'm satisfied it's fair to conclude that he deliberately didn't disclose those symptoms and heart investigations, or he

acted recklessly (as opposed to carelessly) by not telling The Royal London about them.

- I've considered the ombudsman's decision Mrs C has referred me to. I don't agree that the circumstances of that complaint are similar to this one, although that decision does involve misrepresentation. I've considered the individual circumstances of this complaint when deciding whether The Royal London has acted fairly and reasonably.

- As I think it's fair and reasonable for The Royal London to void the policy, I'm satisfied that it's irrelevant whether or not the policy benefit increase (to £1.3 million) did take effect in 2004. If this did happen it would've been an amendment to the existing policy taken out in May 2001. It wasn't a new policy taken out in the summer of 2004. So, if that change did take effect, the policy has been voided and that benefit isn't payable.

- I've also taken into account Mrs C's submissions around The Royal London not responding adequately to a data subject access request ('DSAR') she made. I've seen correspondence from the Information Commissioner's Office ('the ICO') dated December 2023 (after Mrs C's complaint that I'm determining was brought to the Financial Ombudsman Service). The ICO said The Royal London had infringed its data protection obligations and failed to respond to the DSAR in time and recommended that The Royal London should continue to work with Mrs C to resolve her DSAR request. Mrs C is also concerned that The Royal London hasn't provided all relevant information to the Financial Ombudsman Service as part of its investigation into her complaint and says that she has made an updated DSAR request which The Royal London is due to comply with by early November 2024.

- I've been provided with a significant number of documents in this case, and I'm satisfied that I have the information I require to make a fair and reasonable decision without waiting for the further DSAR request made by Mrs C being actioned by The Royal London.

- So, for the reasons set out above and in my provisional decision (an extract of which is set out above and forms part of this final decision), I don't uphold Mrs C's complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 17 December 2024.

David Curtis-Johnson
Ombudsman