DRN-4498403

The complaint

Mr and Mrs K complain that Taylormade Finance Ltd didn't pass relevant medical information onto the insurer when selling them life and critical illness insurance policies.

What happened

In January 2018, Mr and Mrs K applied for a flexible protection plan, consisting of life and critical illness insurance policies, through Taylormade. The original application expired and was resubmitted to the insurer by Taylormade, with the plan starting in June 2018.

In early 2022, Mrs K tried to make a critical illness claim with the insurer. The insurer initially said the claim wasn't covered because Mrs K hadn't been diagnosed with a critical illness as defined by the policy. After carrying out further investigations, the insurer said Mrs K hadn't told it when taking out the plan that she'd been diagnosed with epilepsy in March 2018 and, if she had, it wouldn't have offered her any insurance cover. The insurer cancelled the plan, refunded Mrs K for the premiums she'd paid and arranged for a new plan to be set up for Mr K.

Unhappy, Mr and Mrs K brought a complaint about Taylormade to the attention of our service. They said they'd told Taylormade's representative about Mrs K's epilepsy diagnosis so that the application for the plan could be changed. One of our investigators looked into what had happened but didn't uphold Mr and Mrs K's complaint. Mr and Mrs K didn't agree with our investigator's opinion, so the complaint was referred to me.

I made my provisional decision about this complaint in November 2023. In it, I said:

'Mr and Mrs K have also brought a complaint to our service about the insurer's actions, including what they say was the insurer's failure to send them a copy of the June 2018 plan application summary. Mr and Mrs K's complaint about the insurer is being considered separately by our service, under a different complaint reference number. When making my provisional decision about this complaint, I'm only considering the regulated activities which Taylormade, as the seller of Mr and Mrs K's plan, is responsible for.

This plan was sold on an advised basis. Industry rules require Taylormade, amongst other things, to ensure that the plan was suitable for Mr and Mrs K and met their demands and needs at the time it was taken out. Taylormade also needed to provide Mr and Mrs K with information about the plan that was clear, fair and not misleading so they could make an informed choice about whether to buy it.

I have no way of knowing for certain exactly what happened between January 2018 and June 2018. So, I must base my provisional decision on the available evidence to decide on the balance of probabilities what I think is more likely than not to have happened in the circumstances.

I've considered all the documentation which Taylormade has provided. It's not in dispute that the medical information contained in the 'Medical Information Capture Form' and the plan application form completed on behalf of Mrs K on 31 January 2018 were correct based on

the position as it was at the time. What is in dispute is whether Mr and Mrs K told Taylormade about Mrs K's epilepsy diagnosis in March 2018, as this condition wasn't mentioned on the June 2018 plan application.

Mr and Mrs K say they saw Taylormade's representative in person a total of three times in early 2018. They say they told him verbally in a face-to-face meeting at their home, after 18 March 2018, about Mrs K's epilepsy diagnosis. Mr K says he watched Taylormade's representative make notes of what they were telling him about this medical condition. Mr K says when he asked Taylormade's advisor if this would affect their insurance application, he was told it wouldn't make any difference. Mr K says he has since spoken to Taylormade's representative on the phone, who admitted failing to change the details on the original plan application form.

According to Taylormade's records, an initial fact-find was completed by its representative during a home visit with Mr and Mrs K on 23 January 2018. Taylormade says another home visit is likely to have taken place on either 31 January 2018 or 1 February 2018 – but there are no records or notes of this. Taylormade has said that subsequent queries which arose relating to Mr and Mrs K's mortgage would usually be dealt with over the phone, meaning that a third home visit from Taylormade's representative would have been extremely unlikely. But, Taylormade also doesn't have any records or notes of any such phone call relating to the mortgage or of another 'completion' phone call which Taylormade says was made to Mr and Mrs K on 30 May 2018.

I asked Taylormade to confirm what verbal or written checks were carried out with Mr and Mrs K before the June 2018 plan application was submitted to confirm that their medical details hadn't changed since January 2018. Taylormade has suggested that a telephone call took place to check the medical details but it has no records or notes of any such call.

Taylormade has pointed to a change in an answer to a question relating to the digestive system from the January 2018 application form to the June 2018 application form as evidence that it called to check whether Mr and Mrs K's medical details had changed. But I don't accept this is persuasive evidence that such a telephone call is likely to have taken place. While I can see that the question which Taylormade has referred to was answered differently on the two applications, I can also see that this medical condition was disclosed by Mr and Mrs K on the original 'Medical Information Capture Form'. So, the available evidence suggests that this medical condition wasn't a new development since January 2018 but was instead one which was disclosed to Taylormade from the outset.

Mr and Mrs K have, I think, been extremely consistent and plausible in their testimony about their recollection of the events that took place and I have no reason to doubt anything they've said. I haven't seen a statement from Taylormade's representative setting out his version of events. Based on all the available evidence, I'm satisfied that its likely Mr and Mrs K told Taylormade about Mrs K's epilepsy diagnosis and that Taylormade failed to pass this information on to the insurer.

So, overall, I think there were failings in the sales process by Taylormade which resulted in Mr and Mrs K being sold a plan which wasn't suitable for them. Whether or not the insurer sent a summary of the June 2018 application details to Mr and Mrs K doesn't change my findings that Taylormade didn't comply with its obligations when selling this plan.

I understand Mr and Mrs K feel they've been left significantly out of pocket because of Taylormade's actions. But I don't think it would be fair or reasonable in the circumstances to require Taylormade to pay compensation to Mr and Mrs K to the value of what any successful claim under the original plan might have been. I'm satisfied that, if Taylormade had told the insurer about Mrs K's epilepsy diagnosis and the results of a subsequent MRI

scan in April 2018, the insurer wouldn't have offered Mrs K any cover. And, based on the evidence I've seen, I think it's unlikely that Mrs K would have been able to obtain alternative cover elsewhere with a different insurer. Even if Mrs K had been able to obtain another policy at the time, there's no guarantee that the condition she tried to claim for in 2022 would have been covered under that other policy anyway.

Having said that, I'm satisfied that Mr and Mrs K have experienced distress and inconvenience as a result of Taylormade's actions at a level which I'd consider substantial. Mr and Mrs K were understandably disappointed and worried to find out they didn't hold a plan providing the level of financial protection which they thought they had, at what was already a very difficult time due to Mrs K's illnesses.

I therefore currently intend to direct Taylormade to pay an award of £1,500 compensation for the impact of its actions on Mr and Mrs K.'

Taylormade didn't accept my provisional decision. It said it was disappointed that I based my findings on the balance of probabilities rather than on actual evidence, and that its staff are aware of the importance of updating insurers about any changes in the health of prospective policyholders. Taylormade said it has nothing to gain by failing to update an insurer about such changes and again pointed to what it says was the insurer's failure to send Mr and Mrs K a copy of the completed insurance application summary to check the answers provided to the medical questions asked.

Mr and Mrs K didn't agree with the award of £1,500 compensation which I said I intended to make. Mr and Mrs K say this sum doesn't put them back into the position they would have been in if the error had never been made as, if they'd realised Mrs K wouldn't have been able to obtain insurance cover, they'd have saved money instead. Mr and Mrs K feel an award of compensation in excess of £5,000 would be more appropriate in the circumstances.

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.

The Financial Ombudsman Service applies one standard of proof across the complaints we determine, and that is the balance of probabilities. In reaching my provisional findings about what I think is most likely to have happened in the circumstances, I considered and addressed all the available evidence. This includes the evidence provided by Taylormade as well as that provided by Mr and Mrs K.

I've taken into account Taylormade's comments about having nothing to gain by failing to update the insurer but I haven't concluded that the error here was deliberate. The error is just as likely to have been accidental. Taylormade had the opportunity to investigate and address Mr and Mrs K's assertions that its representative admitted to failing to change the details on the June 2018 application form but doesn't appear to have done so.

Our service has issued a final decision in which I said I found it likely that Mr and Mrs K's insurer didn't provide them with a completed copy of the June 2018 insurance application summary for them to check. But this doesn't change my findings that it would be fair and reasonable for Taylormade to pay compensation for the impact of its own failings on Mr and Mrs K.

Mr and Mrs K have been given a refund by the insurer of the premiums they paid for Mrs K's cover. This reflects the fact that Mrs K's policies should never have been sold to them, so Mr

and Mrs K should never have been paying this portion of the premium. I accept that, as an alternative to buying Mrs K's policies, Mr and Mrs K may have saved this money instead but I don't think I can fairly conclude that they're likely to have saved a higher amount based on their circumstances as they were at the time.

Overall, I remain satisfied that a payment of £1,500 is fair and reasonable compensation for the impact of the situation on Mr and Mrs K. I appreciate this is less than what Mr and Mrs K were hoping for and I'm sorry to disappoint them but an award of compensation at the level they've mentioned isn't one which I'd consider fair in the circumstances of this individual case.

This means I won't be changing my provisional findings.

Putting things right

Taylormade Finance Limited needs to put things right by paying Mr and Mrs K £1,500 compensation for the distress and inconvenience they experienced.

Taylormade Finance Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs K accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

I'm upholding Mr and Mrs K's complaint about Taylormade Finance Limited and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 26 January 2024.

Leah Nagle
Ombudsman