DRN-4311893

The complaint

Mrs M and Miss R as trustees of the M Trust have complained that Vitality Life Limited declined its claim and cancelled the policy.

What happened

Very sadly Mr M passed away and the trustees claimed on the policy. The background to this matter is well known to both parties so I won't repeat it in detail here. In summary Vitality said that Mr M failed to disclose material information when applying for the policy. It says that if he had done so the policy wouldn't have been offered. It cancelled the policy and refunded the premiums paid. Mrs M, on behalf of the estate disputes this and referred the complaint here.

Our investigator didn't recommend that the complaint was upheld. He didn't find that Vitality had done anything wrong.

Mrs M on behalf of the estate appealed. She didn't agree that Mr M had failed to take reasonable care when taking out the policy and explained why.

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.

Firstly though, 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. Having done so I agree with the conclusions reached by the investigator. I'll explain why.

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.

Mr M applied for the policy on 5 September 2017. He did so as previously he'd had cover with his employer, but he started a new job and life cover wasn't provided. He was asked several questions about his medical history. These included:

Apart from any condition you have already told us about, have you had any of the following in the last 5 years:

Any disorder of the digestive system, liver, stomach, oesophagus, pancreas, colon or bowel, including Gastric ulcer, Hepatitis, Pancreatitis, Colitis or Crohn's disease? Ignore minor indigestion, heartburn, appendicitis (operated and fully recovered) or irritable bowel syndrome (IBS) that only cause occasional mild discomfort and for which you have not required investigation or hospital referral and none are planned.

And

Apart from anything you have already told us about in this form, do you have any impairment or medical complaints that you intend seeking medical advice for, or are you currently awaiting the results of any investigations?

Mr M had answered 'no' to these questions. Vitality say he should have answered affirmatively. I've looked carefully at the medical evidence and the representations made by Mrs M following our investigator's view in order to determine whether Vitality's finding that Mr M failed to take reasonable care when answering the questions differently was fair.

Mr M had seen his GP three times in August 2017 as he was suffering from abdominal pain and vomiting. I accept that he didn't know exactly what his medical problem was. I take on board Mrs M's point that he would not have been familiar with medical terminology. However he had been to his GP on three occasions in the month before taking out the policy with stomach issues and been referred for investigation.

In the third week of August a mass was identified and an urgent ultrasound was arranged. This was in the main to exclude aortic aneurysm as Mr M had a family history. Mrs M has said that Mr M wasn't informed of the suspected mass, he believed the ultrasound was just to rule out an embolism or aneurysm. Even though the result had been reported as normal, I'm satisfied that it was reasonable for Vitality to conclude that he should have answered the first question above affirmatively.

Then the day before he applied for the policy Mr M returned to his GP, he was still suffering with abdominal pain. It was agreed that Mr M would trial some treatment for stomach inflammation or gastritis and provide a stool sample to test for H pylori. Mr M agreed to an ultrasound of the abdomen if there was no progress. So no conclusions had been reached as to the cause of Mr M's condition, and as Mrs M accepts, there was to be ongoing assessment.

I find that the questions asked were clear and in all the circumstances I find it was reasonable for Vitality to conclude that Mr M failed to take reasonable care when answering them. I note that Mr M had undergone a health check just before the start of the policy, but this wasn't part of the underwriting process. The policy was offered on standard terms.

The remedy available to the insurer under CIDRA depends on whether the misrepresentation was a qualifying one. Vitality has provided underwriting evidence which demonstrates that had Mr M answered the questions correctly it would not have offered cover when it did. Accordingly I'm satisfied it would have acted differently and therefore the misrepresentation is qualifying. Vitality has classified it as a careless misrepresentation, rather than deliberate or reckless, and I think that is fair. There is nothing to suggest that Mr M deliberately withheld the correct information. Vitality has voided the policy and refunded the premiums paid – that is in line with the remedies set out in CIDRA.

I recognise my decision will be very disappointing to Mrs M and Miss R, but I don't find that Vitality has done anything wrong, treated the trust unfairly, contrary to the policy terms or to law. It follows that there is no basis for me to require Vitality to pay the trust's claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Miss R as trustees of the M Trust to accept or reject my decision before 21 November 2023.

Lindsey Woloski
Ombudsman