

The complaint

Mr L has complained that Legal and General Assurance Society Limited (L&G) has not settled his terminal illness claim in full.

What happened

The background is well known to the parties so I won't repeat it in detail here. In summary Mr L took out a decreasing term life insurance policy in 2021. He made a claim on the policy when he was diagnosed with cancer. When assessing his claim L&G said that Mr L had not taken reasonable care when answering some of the questions on the application form. It said that had it done so it would have charged a higher premium – so it settled the claim proportionately.

Mr L didn't accept this and referred his complaint here. Our investigator didn't recommend that the complaint be upheld – he didn't find that L&G had done anything wrong. Mr L appealed.

As no agreement has been reached the matter has been passed to me to determine.

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 and some sensitive medical details. 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 reviewed the complete file and considered the representations made after our investigator's view. Having done so, and although I'm sorry to disappoint Mr L, I agree with the conclusion reached by our 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.

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.

During the application for his policy in 2021 Mr L was asked if he had ever: *Had diabetes or*

a heart condition, for example angina, heart attack, heart valve problem, heart surgery? He answered no to this question. But L&G has said that Mr L didn't declare that he had been diagnosed with Sick Sinus Syndrome which had required him to have a pacemaker fitted. His medical records showed that he had been under regular review. When asked why he didn't declare this Mr L said he didn't consider it to be a heart condition. He hadn't suffered symptoms for many years, and it didn't cause him any issues.

Additionally on the application form Mr L was asked to record his height and weight. Both these recordings were incorrect. By way of explanation Mr L said that he's lost some height over time but didn't know why his weight was recorded incorrectly. He added that the form had been completed by his adviser. In this decision I'm considering the actions only of L&G.

I'm not persuaded that it was unreasonable for L&G to treat the answers given to these clear questions as incorrect. So I've looked to see what L&G would have done had it known the correct information.

L&G has provided underwriting evidence to show that had the answers to the above questions been correct it would have charged Mr L a higher premium. I can't share the commercially sensitive information but I'm satisfied that the incorrect answers did make a difference – which means that the misrepresentation was qualifying. L&G has treated the misrepresentation as careless rather than deliberate. I find that was fair - I'm not satisfied by the responses Mr L gave that the incorrect answers were deliberate or reckless.

CIDRA sets out the remedies available to an insurer in the case of careless misrepresentation. CIDRA is concerned with disclosure and representations by a consumer to an insurer before a consumer contract is entered into or varied. I recognise that the questions referred to above are not related to Mr L's cancer diagnosis. But L&G has followed the law as set out in CIDRA and made a proportionate settlement to Mr L. The proportionate settlement was based on the amount of cover remaining, as this was a decreasing term policy.

I'm very sorry my decision doesn't bring Mr L more welcome news. But in all the circumstances I'm satisfied that L&G has treated him fairly and reasonably. It follows that I don't require it to take any further action. If Mr L has new medical evidence to counter that which L&G has seen, he can present that to L&G for consideration.

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 Mr L to accept or reject my decision before 7 March 2024.

Lindsey Woloski
Ombudsman