

The complaint

Mr S has complained that Legal and General Assurance Society Limited ('L&G') has unfairly declined his claim and cancelled his policy.

What happened

Mr S took out an income protection policy through L&G in May 2022 and made a claim when he was unable to work due to Long Covid.

L&G said he hadn't answered questions about his medical history correctly when he bought the policy. And it considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to decline the claim and cancel the policy.

Mr S brought his complaint to us and our investigator didn't think it should be upheld.

Mr S doesn't agree with the investigator and has asked for an Ombudsman's decision because he says he answered all of L&G's questions truthfully.

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.

Having done so, I don't think this complaint should be upheld. I'll explain why.

I have carefully considered everything Mr S has said in detail, even if I don't explicitly address it in my decision. Instead, I have focused on what I consider to be key, as our rules allow me to do this.

I've considered good industry practice, the relevant law and ABI Code of Practice applicable to this complaint.

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.

L&G thinks Mr S failed to take reasonable care not to make a misrepresentation when he

answered questions about his health incorrectly.

I've looked at the questions asked which Mr S answered 'no' to. I've also considered Mr S' reasons for answering the questions in the way that he did.

The following questions were asked:

- ... during the last 5 years have you contacted a doctor, nurse or other health professional for: any condition affecting your ears or hearing, for example Meniere's disease, deafness?
- ...during the last 12 months have you: had any medical condition, illness or injury that you've received treatment for over a continuous period of 4 weeks or more?
- During the last 3 months have you had any of the following...unexplained changes with walking, movement or mobility, numbness or tingling, mental functioning...any other symptom that you may have contacted a health professional about for the first time.

Mr S says he answered all questions truthfully. He says his tinnitus didn't affect his ears and he wasn't aware that he needed to declare minor problems such as headaches or brain fog. He didn't fully understand what brain fog was and didn't think it was a neurological condition. He also didn't think he had treatment as he attended appointments with his GP but didn't actually receive any treatment.

Having considered the above, I don't think Mr S took reasonable care when answering the above questions, especially when the application form asks Mr S to declare anything he isn't sure of. Even though he says he didn't receive 'treatment' when consulting his GP, he discussed his symptoms with his GP (who issued a medical certificate) and took time off work as a way of getting better and to alleviate some of his symptoms. So this could be considered to be treatment.

But even if I accept he answered the first two questions listed above accurately, I don't think the third question was answered correctly. I don't think it's reasonable that he didn't think brain fog or something affecting his head (tinnitus) and concentration was something L&G wouldn't want to know about, especially since it was affecting his ability to work.

Mr S had consulted his GP in April and May 2022 and had complained of brain fog and headaches when concentrating. I agree with L&G that this is something he should have declared under the 'mental functioning' question. Mr S has said his concentration problems weren't 'unexplained' as he had a headache when he was concentrating – so he knew what was causing his headache.

I don't think this is a reasonable explanation as Mr S wouldn't know why he was experiencing headaches when concentrating as he hadn't yet been diagnosed with Long Covid and he had tested positive a number of weeks ago. As he has said throughout, he isn't a medical professional and isn't able to self-diagnose or provide an explanation to his brain fog. I think it would have been reasonable for him to answer 'yes' to the third question listed above as his brain fog and headaches when concentrating meant he took time off work and at the time of application, these were unexplained changes to his mental function.

L&G has provided its confidential underwriting criteria and guidelines to show that if Mr S had answered the questions correctly, it wouldn't have offered him a policy at that point and would have postponed. And it had asked Mr S to explain why he had answered the questions the way he did, in line with the ABI Code, before reaching a decision.

This means I'm satisfied that Mr S' misrepresentation was a qualifying one.

L&G has said Mr S' misrepresentation was deliberate or reckless. I've looked at the actions L&G can take in accordance with CIDRA.

If a misrepresentation is deliberate or reckless, L&G can avoid the policy, keep the premium and not pay the claim. But it has refunded Mr S' premiums and so has effectively treated his misrepresentation as careless. L&G has given Mr S the most favourable outcome available. So I think this is the fair and reasonable answer to this complaint.

L&G did pay Mr S £300 compensation for the delay in dealing with his claim which I think is reasonable considering the delay didn't cause any financial loss but did cause some distress and inconvenience whilst he was waiting for a decision. I think that's fair and so I won't be asking L&G to do anything further.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 April 2024.

Shamaila Hussain
Ombudsman