

The complaint

The estate of Mr M has complained that Legal and General Assurance Society Limited ('L&G') has unfairly declined a claim.

What happened

The late Mr M bought a life insurance policy in late 2014. He unfortunately passed away and a claim was made on his policy. But L&G said he hadn't answered a question about advice from a doctor correctly. And it considered this to be a deliberate or reckless qualifying misrepresentation which entitled it to decline the claim and cancel the policy.

The estate brought the complaint to the Financial Ombudsman Service but our investigator didn't think it should be upheld as Mr M had made a qualifying misrepresentation. And L&G has shown it wouldn't have offered a policy had Mr M answered the question correctly.

The estate disagreed and in summary, it said Mr M had answered the question in the way that he did as he was in denial about the advice he had received. And had Mr M answered correctly, he would have seen his GP and provided medical evidence to request up to date blood tests and the decision not to offer the policy may have changed.

The case has been passed to me for a final decision.

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.

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 M failed to take reasonable care not to make a misrepresentation when he answered 'no' to a question about advice he received from a health professional.

I've looked at the question and I don't think Mr M took reasonable care due to the number of entries in his medical records about the advice.

L&G has provided its underwriting information to show that Mr M would not have been offered a policy if he had correctly answered 'yes' to the question. This means I am satisfied that Mr M's misrepresentation was a qualifying one.

As I'm satisfied that Mr M's misrepresentation should be treated as deliberate or reckless, I've looked at the actions L&G can take in accordance with CIDRA. Although it said Mr M's misrepresentation was deliberate or reckless, it has refunded the premiums paid and so has effectively treated the misrepresentation as careless. As this is the most favourable outcome and in line with the remedies detailed in CIDRA, I think this is fair and reasonable.

The estate has argued that had Mr M answered the question correctly and if L&G declined to provide cover, he would have taken further tests. But I cannot consider hypothetical situations as the tests weren't taken and it can't be known what they would have shown. Additionally, L&G's criteria is clear that it wouldn't have offered a policy had the question been answered correctly. It is entitled to decide who it is willing to offer a policy to and I am satisfied that its criteria is clear.

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 the estate of Mr M to accept or reject my decision before 8 July 2024.

Shamaila Hussain
Ombudsman