

The complaint

Mr and Mrs C have complained that Legal and General Assurance Society Limited ('L&G') cancelled Mr C's policy and refused to pay his claim.

What happened

Mr and Mrs C took out income protection insurance policies, underwritten by L&G in 2021. Mr C made a claim when he was diagnosed with an illness.

L&G reviewed his medical history and said Mr C had answered questions about his health incorrectly. And it said it considered one of his answers to be a deliberate or reckless qualifying misrepresentation, which entitled it to decline the claim, cancel the policy and refund the premiums paid.

Mr C brought his complaint to us and our investigator thought it shouldn't be upheld because Mr C hadn't answered the questions accurately and L&G had acted fairly, in accordance with the law.

Mr and Mrs C disagreed and asked for an Ombudsman's decision. Specifically, they are unhappy about the way L&G has classed Mr C's answers as 'deliberate or reckless'. They feel his misrepresentation was careless rather than deliberate or reckless.

And so the case has been passed to me to decide.

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 issued my provisional decision on 29 January 2024 but neither side has provided any further comments. So I don't see any reason to depart from my provisional findings which I have set out below and which I adopt as my final decision.

I don't think this complaint should be upheld. I will explain why. But I should also say that my decision will focus on what I consider to be key, although I reassure Mr and Mrs C that I have carefully considered everything they have said in detail, including their letter dated 23 December 2023.

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 C failed to take reasonable care not to make a representation when he didn't declare his problems with his back and elbow.

I've looked at the question asked which says: "...during the last 5 years have you seen a doctor, nurse or other health professional for: lupus, fibromyalgia, gout or any type of arthritis, neck, back, spine or joint trouble, for example rheumatoid arthritis, sciatica?"

Mr C says the question is ambiguous and misleading but I disagree. I think the question is clear about "any" type of back, spine or joint trouble. And I agree with L&G that a reasonable person would read the question carefully, and provide information about any recurring back pain within the last 5 years. Although the question provides examples of conditions, it doesn't limit it to just these conditions. And I think that is clear enough.

L&G has explained that even if it was to disregard some of the incorrect answers, it still thinks Mr C's misrepresentation relating to the question about his back was deliberate or reckless due to the nature and number of entries in Mr C's GP medical records about his ongoing back pain. And it would have added exclusions at the time of application had Mr C answered the questions accurately.

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

I agree that L&G's conclusion is a reasonable one due to the discussions which were recorded in Mr C's medical records about his back pain and its recurrence. L&G is entitled to rely on the contemporaneous medical records. I note Mr C has been in touch with his GP regarding amending the medical notes but L&G is entitled to rely on the notes as they were presented.

I don't think L&G's conclusion and classification of the misrepresentation was unreasonable for the detailed reasons it has already given to Mr C.

As I'm satisfied that Mr C's misrepresentation should be treated as deliberate or reckless, I've looked at the actions L&G can take in accordance with CIDRA.

If Mr C has made a deliberate or reckless misrepresentation, L&G can decline the claim, cancel the policy and refund the premiums.

As this is in line with the remedies detailed in CIDRA, I think this is the fair and reasonable outcome to this complaint.

Mr and Mrs C have also complained about L&G's service when investigating the misrepresentation. Specifically, they are unhappy that L&G didn't take Mr C's condition into account when asking him for an explanation about his answers to the questions. Having considered all of the available evidence, I am satisfied that L&G acted reasonably and gave Mr and Mrs C a full opportunity to provide their explanations through the appeals process. In addition, I think L&G's panel has fairly considered the misrepresentation in sufficient detail and where appropriate, has given Mr C the benefit of the doubt, in line with the relevant rules, codes and law.

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 C and Mrs C to accept or reject my decision before 12 March 2024.

Shamaila Hussain
Ombudsman