

The complaint

Mrs C and Miss C as trustees of the C Trust (the trustees) complain that Legal and General Assurance Society Limited (L&G) have declined a claim on a life assurance policy.

What happened

The late Mr C took out a life assurance policy with L&G. Mr C applied for the policy in early March 2016 and it went live in early April 2016. I'm sorry to hear that Mr C died in February 2023 at which point the trustees raised a claim with L&G. After investigating the claim, L&G declined the claim and avoided the policy as they believe that Mr C misrepresented during his application. The trustees were unhappy with the claim outcome and so brought a complaint to our service.

Our investigator didn't uphold the trustee's complaint. They thought L&G had acted in line with the relevant legislation in how they'd dealt with the complaint. The trustees didn't agree. They raised the following points in response to our investigator's outcome:

- There is no link between the misrepresentation and the cause of death
- The investigator didn't comment on L&G saying they wouldn't have offered a policy
- The question should have been broken up into different parts

As agreement with both parties couldn't be reached, the complaint 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.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether L&G acted in line with these requirements when it declined to settle the trustee's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to the trustees, I've reached the same outcome as our investigator.

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 misrepresentation when he answered the following question on his application:

'Have you ever had diabetes or a heart condition, for example angina, heart attack, heart valve problem, heart surgery?'

I've looked at Mr's C medical records which confirm that Mr C was diagnosed with diabetes in 2015. Mr C was also prescribed some medication for his diabetes at the time of his diagnosis. I've also seen that Mr C was sent multiple review requests prior to his application.

Based on what I've seen, I don't think Mr C answered the question correctly. I think the question is clear in what it wants to know. As Mr C's diagnosis had only been a year before, he'd been prescribed medication and had received requests to attend a review, I don't think he took reasonable care when answering the question. I appreciate the trustees feel the question should have been split in two, to separate diabetes and heart conditions, but I don't agree. I think the question is clear enough as it is.

Under CIDRA, I next need to decide if the misrepresentation was qualifying.

L&G have provided evidence to show us what they would have done had they been provided with the correct information. This includes historic pages from their underwriting manual as well as commentary from an underwriter.

Had Mr C confirmed he'd had a diagnosis of diabetes, L&G has confirmed that a further set of questions would have been asked specifically about his diabetes. L&G's underwriter has confirmed that from a manual perspective, they would have declined Mr C's application based on the information that would have been provided. L&G has also provided their automatic underwriting flowchart. This shows that a significant additional rating would have been applied to the premium. Either way, the misrepresentation did make a difference to the underwriting outcome and so it would be qualifying under CIDRA.

L&G has said that Mr C's misrepresentation was deliberate or reckless.

CIDRA defines a deliberate or reckless misrepresentation as:

"(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer."

Mr C was diagnosed with diabetes just 12 months before his application. He'd also been prescribed medication for it and had received requests to attend a review on multiple occasions over the 12 months after his diagnosis. I think Mr C must have been aware of his diagnosis when answering the application questions. So, I don't think L&G categorising Mr C's misrepresentation as deliberate or reckless was unreasonable.

As I'm satisfied 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. Under CIDRA, when

classified as deliberate or reckless, L&G isn't obliged to pay the claim and can treat the policy as if it never existed. But L&G also offered to refund the premiums paid. Under CIDRA L&G weren't required to do this, so I think they acted fairly. It doesn't make a difference whether L&G would have offered Mr C a policy or not in this case. At best, Mr C would have been offered a policy with a significant increase in premiums had he disclosed his diabetes. However, as this still means it was a deliberate or reckless qualifying misrepresentation, under CIDRA L&G are still allowed to take the action they have.

The trustees have also raised that Mr C's cause of death isn't relevant to the misrepresentation. Whilst this may be the case, this doesn't change the outcome. If an insurer identifies a misrepresentation, whether it's relevant to the claim or not, they're still allowed to rely on it.

I'm very sorry that my decision doesn't bring the trustees more welcome news at what is a very difficult time for them. But in all the circumstances I don't find that L&G has treated the trustees unfairly, unreasonably, or contrary to law in declining the claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint. I don't require Legal and General Assurance Society Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Miss C as trustees of the C Trust to accept or reject my decision before 25 September 2024.

Anthony Mullins
Ombudsman