

## **The complaint**

Mr C as Trustee of the Mrs O Trust is unhappy that Legal and General Assurance Society Limited ('L&G') declined the claim made under a group life insurance policy which Mrs O benefitted from ('the policy').

Although, Mr C as Trustee of the Mrs O Trust, is being represented by Mrs O's husband – Mr O (who has been corresponding with L&G) - for ease and to avoid confusion, I've referred to Mr C throughout as he is the Trustee of the Mrs O Trust.

## **What happened**

A claim was made on the policy in 2023 for the terminal illness benefit, after Mrs O was very sadly diagnosed with a brain tumour.

Shortly before Mrs O sadly died, L&G declined the claim. It concluded that when making an application to be added to the policy, Mrs O failed to declare that she'd smoked in the last 12 months. Had she done so, it says she would've been charged more for the policy. And as L&G concluded that she'd made a deliberate or reckless misrepresentation when answering the smoking question, it could cancel the policy and decline the claim.

Mr C appealed and after L&G maintained its decision to cancel the policy and decline the claim, a complaint was brought to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold the complaint. Mr C disagreed so this complaint has been passed to me to consider everything afresh 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.

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## **L&G's decision to cancel the policy and decline the claim**

When determining this issue, I've taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

I've also considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law in this case. CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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.

I have a lot of empathy for the situation Mrs O's family find themselves in, but I'm satisfied L&G has acted fairly and reasonably by cancelling the policy and declining the claim. I'll explain why.

The application form Mrs O completed contains the following question:

During the last 12 months have you smoked any cigarettes, cigars, a pipe or used nicotine replacements? A simple medical test may be required to check your answer.

If you've smoked any cigarettes, cigars, a pipe, used e-cigarettes (whether or not they contain nicotine), or used nicotine replacements at all in the last 12 months you need to answer 'Yes - regularly' or 'Yes - occasionally'.

I'm satisfied this question is reasonably clear and it's reflected that Mrs O answered "none at all" in response.

Around 12 months and three weeks before the date of the application, there's an entry in Mrs O's medical records which reflects that she uses 'ecig' (referencing e-cigarette). As this was within the 13 months before applying for the policy, I think it was fair and reasonable for L&G to want to find out more information about this.

From L&G's contact notes I've seen that it asked Mr O about this and he confirmed that Mrs O had used an e-cigarette to quit smoking cigarettes years before. Mr O also said that Mrs O vaped using no nicotine, she liked to have something in her hand if she had the urge to smoke and would primarily use flavoured vapes.

Based on the available information, I'm satisfied that L&G fairly and reasonably concluded on the balance of probabilities that Mrs O continued to vape using e-cigarettes within the 12 months before applying for the policy.

Mr O has also told the Financial Ombudsman Service that when completing the application, Mrs O may have considered herself to be a non-smoker and answered the question in an extremely busy work environment. Although Mrs O may have worked very hard to give up smoking cigarettes – and the e-cigarettes she used may not have contained nicotine - the question asked in the application is reasonably clear; that smoking includes e-cigarettes whether or not they contain nicotine. So, I'm satisfied that L&G has fairly concluded that Mrs O answered this question incorrectly and she should've answered 'yes – occasionally'.

I'm persuaded the answer to this question mattered to L&G. It's provided underwriting evidence that it would've charged a higher premium for the policy if Mrs O had answered the smoking question correctly. I'm therefore satisfied that the misrepresentation made by Mrs O was a 'qualifying' one.

L&G has concluded that Mrs O's misrepresentation was deliberately or recklessly made. I'm satisfied that's a fair and reasonable conclusion for it to reach.

I'm satisfied it's fairly concluded that Mrs O must have known that the answer to the question was incorrect or that she had disregard for the accuracy of the answer when completing the question.

I'm also satisfied that she reasonably ought to have known that the answer to the question was relevant to L&G. The application says "you must answer the questions truthfully and accurately" to ensure L&G can pay valid claims. And the declaration at the end of the application includes: "I am aware that the information provided will form part of the legal relationship between us and if any of it is found to be incorrect it may mean that a claim is not paid, or the policy is amended or cancelled".

The relevant ABI guidance from the time also says: "since lifestyle information is usually more familiar and easier for customers to understand... customers should give a particularly credible and convincing explanation for clearly evidenced misrepresentation not to be classified as deliberate or reckless".

I find that L&G has fairly concluded that no credible or convincing explanation has been given for the misrepresentation made to the smoking question in the circumstances of this case.

I've looked at the actions L&G can take in line with CIDRA if a qualifying misrepresentation was deliberate or reckless. If the misrepresentation would've resulted in a different underwriting outcome, it can avoid the contract of insurance and decline a claim made under the policy. That's what L&G has done here and when doing so, I think it's acted fairly and reasonably by relying on CIDRA.

Further, L&G doesn't need to return any premiums paid for the policy. However, in this case, it has decided to refund the premiums and I think it's acted fairly and reasonably by doing this.

When deciding this complaint, I've taken into account all of Mr C's points including what he says about there being no evidence to link the cause of Mrs O's death with smoking nicotine-free e-cigarettes. I understand the point he makes but for reasons set out above, I'm satisfied L&G has fairly relied on CIDRA to cancel the policy and decline the claim.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C as the Trustee of the Mrs O Trust to accept or reject my decision before 1 January 2025.

David Curtis-Johnson  
**Ombudsman**