DRN-5025473

The complaint

Mrs and Mr S, as the trustees of the S Trust, complain that Legal and General Assurance Society Limited (L&G) hasn't fully settled a critical illness claim Mrs S made on a life insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In February 2019, Mrs S applied for a life insurance policy which included critical illness cover. L&G accepted Mrs S' application and cover under the policy began.

Unfortunately, in July 2023, Mrs S was diagnosed with cancer and so she made a critical illness claim on the policy.

L&G obtained medical evidence from Mrs S' GP. It noted that Mrs S had been diagnosed with anaemia in June 2017. But it also noted that at application, Mrs S had answered 'no' to a question which asked her whether she'd had any condition of the blood (including anaemia) in the five years before the policy was taken out. It considered that Mrs S ought to have answered 'yes' to this question. And it said that if she'd accurately declared her condition, it would have charged her significantly more for the policy.

So L&G concluded that Mrs S had made a careless misrepresentation under relevant legislation. As Mrs S had paid 71% of the premiums she would have paid had she disclosed anaemia at the start, L&G settled her claim proportionately – paying 71% of the sum assured.

Mrs S was very unhappy with L&G's position and so she and Mr S asked us to look into this complaint.

Our investigator thought L&G had acted fairly. Based on all of the available evidence, he considered that Mrs S had likely made a qualifying misrepresentation under the relevant law. And he felt L&G had settled Mrs S' claim in line with the remedy available to it under the applicable legislation.

Mrs and Mr S disagreed. In brief, they said that if L&G had calculated the settlement properly, it would have deducted the additional premiums Mrs S ought to have paid from the settlement, rather than settling the claim proportionately.

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, whilst I'm very sorry to disappoint Mrs and Mr S, I think that L&G has settled their claim fairly and I'll explain why.

First, I'd like to reassure Mrs S that while I've summarised the background to this complaint, I've carefully considered all that's been said and sent. I was very sorry to read about Mrs S' diagnosis and I don't doubt what an upsetting time this has been for Mrs S and her family. I do hope her treatment is going well.

I must also make it clear that this decision will only consider whether I think L&G settled this claim fairly. I issued a separate decision which considered Mrs and Mr S' complaint about the way L&G handled this claim.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've taken those rules into account, amongst other things – including relevant law and industry principles – to decide whether I think L&G has treated Mrs S fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). 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.

When Mrs S applied for the policy, she was asked a number of questions about herself and about her health. L&G used this information to decide whether or not to insure Mrs S and if so, on what terms. L&G says that Mrs S didn't correctly answer all of the questions she was asked at application. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mrs S' claim.

L&G thinks Mrs S failed to take reasonable care not to make a misrepresentation when she applied for and took out the policy. So I've carefully considered whether I think this was a fair conclusion for L&G to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. I've been provided with a copy of Mrs S' policy application form. The application includes a section called: 'Health – Last 5 Years'. And it sets out the following question:

'*Apart from anything you've already told us about in this application, during the last 5 years have you seen a doctor, nurse or other health professional for:*

- *Raised blood pressure, raised cholesterol or condition affecting blood or blood vessels, **for example, anaemia**, excess sugar in the blood, blood clot, deep vein thrombosis.'* (My emphasis added).

Mrs S answered' no'.

In my view, this question was asked in a clear and understandable way, setting out clear examples of the type of conditions L&G wanted to know about. And I think it ought to have prompted Mrs S to realise what information L&G wanted to know. L&G thinks that Mrs S

ought to have disclosed a diagnosis of iron deficiency anaemia. So I've next looked carefully at the available medical evidence to decide whether I think Mrs S took reasonable care to answer L&G's question.

Mrs S' medical records show that in early June 2017, she spoke with a doctor about a history of long-standing menorrhagia. The notes say: '*feels as if may be anaemic as fatigue, previous low iron levels.'* The doctor recommended that Mrs S undergo a full blood count.

A few days later, the doctor noted that Mrs S' results were consistent with iron deficiency anaemia. And the GP went on to note: '*problem: iron deficiency anaemia. History: discussed anaemia and low iron.'* Mrs S appears to have been prescribed with two medications – which included medication for anaemia.

In my view, then, the medical evidence shows that around 20 months before Mrs S took out the policy, she received a diagnosis of anaemia, which appears to have been discussed with her and for which she was prescribed medication. So I think she ought to have been prompted to answer 'yes' to L&G's question.

I've gone on to consider whether I think L&G has demonstrated that Mrs S made a qualifying misrepresentation under CIDRA. L&G has provided us with business-sensitive, confidential, underwriting evidence. I'm afraid I'm unable to share this evidence with Mrs and Mr S, but I can assure them that I've checked it carefully. The evidence shows that if Mrs S had declared a diagnosis of anaemia, L&G would have charged a monthly premium of £36.41 for the policy rather than the £26.01 per month it actually charged. This means Mrs S only paid 71% of the premiums she would have been charged had she made a full disclosure.

In my view then, the available evidence suggests that Mrs S did make a qualifying misrepresentation under CIDRA. So I think L&G is reasonably entitled to apply the relevant remedy available to it under the Act.

L&G has classified Mrs S' misrepresentation as careless. Based on the evidence before me, I think that was a reasonable position for L&G to take. I say that because I don't think Mrs S intended to mislead L&G – but it seems she didn't take enough care to ensure she answered its question correctly. Indeed, it seems Mrs S told L&G that her failure to declare this question was an unintentional oversight on her part.

CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. CIDRA says:

'In addition, if the insurer would have entered into the consumer insurance contract…, but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

"Reduce proportionately" means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract… where:

X = Premium actually charged / higher premium x 100.'

As I've set out above, in this case, L&G has shown that if Mrs S had made a full declaration, it would have charged her a monthly premium of £36.41 rather than the £26.01 she actually paid. I'm satisfied then that based on what I've seen; L&G was reasonably entitled to settle Mrs S' claim proportionately. As Mrs S paid 71% of the premiums she ought to have paid,

L&G has paid 71% of the value of the sum assured. And therefore I find that L&G has fairly settled the claim in line with the remedy available to it under the Act.

So overall, whilst I sympathise with Mrs S' position, I think that L&G has settled her claim in line with CIDRA. And this means that I'm not directing it to pay anything more.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S of the S Trust to accept or reject my decision before 12 November 2024.

Lisa Barham
Ombudsman