DRN-5053157

The complaint

Mr and Mrs V and Mrs W have complained – in their capacity as trustees of the V Trust – that Legal and General Assurance Society Limited ("L&G") acted unfairly when they declined Mr V's critical illness claim and cancelled Mr and Mrs V's policy.

What happened

In summer 2021, Mr and Mrs V bought a joint life policy with critical illness cover. About 15 months later, Mr V was sadly diagnosed with a type of cancer. So he contacted L&G to make a claim.

As part of their assessment of his claim, L&G gathered medical evidence and reviewed the information Mr and Mrs V had given them during the application process. Having done that, they declined the claim, because they said Mr V hadn't given them accurate information in his application about his smoking status.

L&G said, if they'd known the information they saw when they got Mr V's records, they'd have charged him much higher premiums - and that this was a misrepresentation which entitled them to cancel the policy. L&G said they'd either refund all the premiums or – if Mr and Mrs V preferred – they'd offer Mrs V a policy in her sole name and would refund the proportion of the premiums which had been paid for Mr V's cover.

Mr and Mrs V complained about L&G's decision. They said Mr V had given up smoking in spring 2020 and evidence on his medical notes which contradicted that was wrong. L&G reviewed their decision, but didn't change it. So the trustees brought their complaint to our service.

Our investigator considered all the information and concluded L&G didn't need to do anything more to resolve the complaint. He said they'd dealt with the claim in line with the relevant law and the conclusion they'd drawn was fair, based on the information they'd received.

The trustees didn't agree with our investigator's view. So I've been asked to make 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 that, I'm not upholding the trustees' complaint. I know this will be unwelcome news and I'm sorry about that. I hope it will help if I explain the reasons for my decision.

I was sorry to read about Mr V's diagnosis. I understand this has been a difficult time for him and that it would have been upsetting not to be able to claim on the policy he and Mrs V had bought to protect themselves in these circumstances.

But I can only say L&G should do more to resolve the complaint if I don't think they've dealt with the claim fairly and reasonably. In cases where an insurer declines a claim because their customer didn't give them accurate information at the time of sale, the starting point is to see if the insurer acted in line with the relevant law.

That law is the Consumer Insurance (Disclosure and Representations) Act 2012 – known as CIDRA. CIDRA 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.

In this case, L&G say Mr V didn't take reasonable care in answering a question about smoking. The question asked:

"During the last 12 months have you smoked any cigarettes, cigars, a pipe or used nicotine replacements?"

Mr V answered *"None at all".* L&G say, based on the information they reviewed, he should have answered either *"Yes – regularly"* or *"Yes – occasionally".*

There's no suggestion the question's not clear. But Mr V says his medical records in relation to his smoking status aren't accurate. I've thought very carefully about this. As our investigator explained, it's not my role to decide when Mr V stopped smoking – rather, I have to decide whether the conclusion L&G has drawn is reasonable, based on the evidence available to them.

When a customer makes a claim, we'd expect an insurer to review relevant information – including medical records – when deciding whether to pay the claim. Mr V's records consistently him recorded as a smoker until 2022. So, on the face of it, L&G's conclusion he was smoking when he and Mrs V bought the policy in 2021 was fair.

But, in June 2023, Mr V's GP wrote to L&G advising them the record from October 2022 was an error and Mr V had stopped smoking in May 2020 – 13 months before he bought the policy. In these circumstances, I'd expect L&G to review their conclusions and consider any other evidence that was available.

I can see that, after they were advised the records were inaccurate, L&G contacted Mr V's GP on three occasions to clarify what they'd been told and to obtain copies of the records in which smoking was mentioned. Having done that, they noted multiple entries recording Mr V as a smoker after 2022, including references to the amount he smoked – which they found persuasive evidence that, despite his GP's letter, Mr V had continued to smoke.

So I'm satisfied L&G did review the claim when they were sent further evidence. And I don't think L&G's conclusion was unreasonable, based on all the evidence contained in the medical records.

But, even if I was satisfied the GP records shouldn't be relied upon, they're not the only evidence L&G obtained during their assessment. I can see Mr V attended a consultant's appointment in August 2021. The consultant's report includes the following:

"He smokes 10 a day with a 20 pack year history…."

Again, this information is specific about the amount Mr V smoked at the time of the consultation, along with his history. So I think it's reasonable to say it's unlikely this was an error.

Finally, I've noted that, when Mrs V first called L&G to discuss Mr V making a claim, the call handler asked her when Mr V had stopped smoking. Mrs V said he'd stopped the previous summer and, when she checked with Mr V, he confirmed that he'd stopped in June or July 2021.

Mr and Mrs V have said that listening to the calls will show they were upset and confused at the time – so may not have given accurate information. I've listened to the calls. But I'm not persuaded by what I heard that Mr and Mrs V were confused when that question. I think the answer was given freely and without hesitation – so I'm persuaded it was accurate.

That means, overall, I'm satisfied it was fair for L&G to conclude the available evidence shows Mr V didn't provide accurate information about his smoking status when he applied for the policy.

And I'm satisfied Mr V's answers were a qualifying misrepresentation as defined by CIDRA. L&G have provided evidence to show that, had he told them he'd been a regular or occasional smoker when he applied, they'd have charged him a higher premium.

Finally, I've thought about the remedy L&G have applied.

L&G categorised the misrepresentation as deliberate or reckless. I think that categorisation's fair. In such circumstances, CIDRA allows an insurer to decline any claim, cancel the policy and retain the premiums the customer has paid.

However, in this case, while L&G declined the claim and cancelled the joint policy, they offered either a full refund of the premiums paid, or a new policy in Mrs V's sole name, with a refund of the premiums attributable to Mr V's cover. I can see that Mr and Mrs V opted for a full refund. But either option was more than CIDRA obliged L&G to offer.

So I think L&G have acted fairly in declining Mr V's claim and refunding the premiums. And I don't think they need to do any more to resolve the trustees' complaint.

My final decision

For the reasons I've explained, I'm not upholding the complaint Mr V, Mrs V and Mrs W as trustees of the V Trust have made about Legal and General Assurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V, Mrs V and Mrs W as trustees of the V Trust to accept or reject my decision before 27 November 2024.

Helen Stacey
Ombudsman