

The complaint

Mr R and Mrs R have complained that Legal and General Assurance Society Limited (L&G) declined a critical illness claim.

What happened

The background to this complaint isn't in dispute. Mr and Mrs R took out a critical illness policy through an independent financial adviser. The policy commenced in July 2022. Sadly in October 2023 Mrs R was diagnosed with breast cancer. L&G declined her claim. It said had she answered the questions correctly it would have added a breast cancer exclusion to the policy.

Our investigator didn't recommend that the complaint be upheld. She didn't find that L&G's conclusion that Mrs R had made a misrepresentation was unreasonable and she found that cover for breast cancer wouldn't have been offered if the application question had been answered correctly.

Mr and Mrs R appealed. They were represented by Mr K. Mr K said that the central issue to the appeal was whether L&G's decision to apply a breast cancer exclusion based on a simple fibroadenoma was fair and reasonable. He said that whilst it was not disputed that the fibroadenoma should have been disclosed, the consequences of the misrepresentation should be evaluated in proportion to the actual risk posed by the condition.

As no agreement has been reached the matter has been passed to me to determine.

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, and although I recognise that Mr and Mrs R will be disappointed by my decision, I agree with the conclusion reached by the investigator. I'll explain why.

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 that Mrs R failed to take reasonable care when answering the following questions:

Health – Last 5 years

When answering the following questions, if you're unsure whether to tell us about a medical question, please tell us anyway.

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

- A growth, lump, polyp or tumour of any kind?

And

Health – Last 12 months

When answering the following questions, if you're unsure whether to tell us about a medical question, please tell us anyway.

Apart from anything you've already told us about in this application, during the last 12 months have you:

- Been referred to or had any investigations in hospital, for example biopsy, scan, ECG? Please ignore investigations related to pregnancy or infertility where the results have been confirmed as normal.

Mrs R answered negatively to both of these questions. However she had been diagnosed with a fibroadenoma in 2021 and had been referred for a biopsy. Accordingly I find that it was fair for L&G to conclude that she should have answered both questions positively. This has been accepted.

L&G has shown that had the above questions been answered positively it would have added a breast cancer exclusion to her cover. This means that the misrepresentation was a qualifying one under CIDRA. L&G treated the misrepresentation as careless, as Mrs R said that she had been told the lump was non-cancerous so didn't have any impact. I think the careless classification was fair.

In these circumstances CIDRA provides that if the insurer would have entered into the consumer insurance contract on different terms, the contract is to be treated as if it had entered into it on those terms. It follows that by adding the breast cancer exclusion L&G has acted in accordance with CIDRA.

I do understand the point that Mr K made on behalf of Mr and Mrs R. That is that fibroadenomas do not increase the risk of breast cancer and therefore did not warrant an exclusion being added. In particular Mrs R's was a 'simple' fibroadenoma.

However insurers are entitled to decide which risks they want to cover – this is a commercial decision with which this service can't interfere. Although I can't share the commercially sensitive underwriting evidence L&G has provided, I'm satisfied that had the above questions been answered correctly a breast cancer exclusion would have been applied. This being so there is no basis for me to now ask L&G to remove it and to pay the claim.

The regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I don't find that L&G acted in a way that was

contrary to these rules or otherwise treated Mr and Mrs R unfairly.

I'm very sorry that this decision doesn't bring them the outcome they were hoping for.

My final decision

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 R and Mrs R to accept or reject my decision before 12 February 2025.

Lindsey Woloski
Ombudsman