

The complaint

The estate of Ms E is unhappy that Legal and General Assurance Society Limited ('L&G') declined a claim made by Ms E on her decreasing life insurance policy which included critical illness cover ('the policy').

What happened

I issued my provisional decision earlier in October 2024 explaining why I was intending to uphold this complaint and direct L&G to pay more compensation that was recommended by our investigator. An extract of my provisional decision is set out below.

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I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. That includes the relevant ABI code of practice for managing claims for individual and group, life, critical illness and income protection insurance products.

I've also taken into account 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. 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 (in this case, L&G) 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's decision to cancel the policy and decline the claim

L&G has cancelled the policy and declined the claim made on it. It says Ms E made a careless misrepresentation when not updating an answer she gave on her application form, before the policy started. Had she done this, L&G says it wouldn't have offered the policy to her at the time. So, it says it was entitled to cancel the policy and not cover the claim.

For the reasons set out below, I'm not persuaded that L&G has acted fairly and reasonably.

- The application form completed by Ms E asked a number of questions about her health and medical history. That included asking her: "during the last 3 months have you had any of the following? Unexplained bleeding, weight loss, lump or growth..." It's reflected that Ms E answered 'no' to that question.

- Everyone agrees that this question was answered correctly at the time the application was made.
- However, L&G says that Ms E should've subsequently amended the answer to 'yes' because between the completion of the application in June 2022 and the policy starting (a few months later) she'd experienced unexplained bleeding in her stools.
- The application details form which contained the answers to the questions Ms E gave contains a declaration which says: "I agree to immediately inform Legal & General in writing if there are any changes to any answers given on the application before the policy starts".
- Before she sadly died, Ms E was asked why she didn't amend the application and inform L&G about the bleeding before the policy started. Ms E said that she didn't consider the bleeding to be 'unexplained'. She'd taken part in a physical activity a couple of months before the policy started and later that night became unwell, vomiting and having diarrhoea for a number of days. She said that she had intermittent blood in her stools in the weeks after this, which she put down to the stomach infection she'd had, which she thought was possibly caused by a parasite or a small tear in her rectum.
- I'm satisfied that Ms E was consistent in what she said about that. And I currently find her explanation to be plausible and persuasive.
- The question asks her whether she had 'unexplained' bleeding and for her, I can understand why she thought the bleeding was due to the stomach infection she'd had due to the physical activity she'd taken part in. I intend to accept this explanation. And I disagree that a reasonable consumer in the same circumstances would've considered the bleeding 'unexplained' as L&G says.
- In support of what Ms E says, I've seen a letter from her GP dated December 2023 (so after the claim was declined) which reflects that the blood in Ms E's stools was noticed within less than a month of the stomach infection she had and consistent with Ms E's account of a couple of weeks following. And "I feel it was reasonable to assume that the two were related". I've also taken into account L&G's medical officer's opinion which is also supportive of Ms E not answering the question incorrectly. L&G's contact notes reflect that the medical officer said that the question was "ambiguous and should therefore be construed in favour of the customer. If we wanted customers to declare any bleeding that hadn't yet been investigated, then this is how we should have worded the question...I can't agree that that there's a strong balance of probabilities that she should have declared her bleeding by the time the duty period ended".
- It follows that I don't think CIDRA is a relevant consideration in this case because it's only relevant if Ms E answered the question about having unexplained bleeding wrongly. Because I'm satisfied that she answered the question correctly, I don't think it's fair and reasonable for L&G to cancel the policy and decline the claim.

Distress and inconvenience

Ms E sadly died around four months after being told that her claim had been declined. Her estate says that she "wanted to die knowing her children had the chance to be a little more financially secure" by successfully claiming on the policy and using some of the money to spend time making memories with her children, taking them for days out and getting them gifts they wanted; "generally making the last few months of her life as joyful as possible

building happy memories with her children”.

The estate says that she was unjustly denied this opportunity and carried on working until two days before her death even though she was terminally ill. And that she told one of the executors of the estate that she felt like she let her children down.

I’m satisfied that’s entirely plausible, and I accept the submissions made.

I’m also satisfied that if L&G had accepted the claim as it reasonably ought to have done, that disappointment, worry and upset would’ve all been avoided, and Ms E would’ve had the benefit amount. And she could’ve spent time with her children and used some of the funds to treat them which I’m persuaded would’ve given her some pleasure during a very difficult situation.

Because L&G didn’t act fairly and reasonably in this case, she was prevented from doing that. So, I’m currently persuaded that L&G should pay £750 compensation to reflect the impact its decision to decline the claim had on Ms E during the last few months of her life. This is in addition to the £500 compensation it’s already agreed to pay to reflect the impact of the time taken for it to reach its decision to decline the claim.

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I invited both parties to provide me with any further information in response to my provisional decision to consider. The estate of Mrs E accepted my provisional decision. L&G said it had nothing further to add to what it’s already said.

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.

As neither party has provided any new information for me to consider, I’m satisfied that there’s no compelling reason for me to depart from my provisional findings.

For this reason, and for reasons set out in my provisional decision (an extract of which is set out above and forms part of this final decision), I uphold this complaint.

Putting things right

I direct L&G to pay:

- A. the claim made under the policy (less any refunds of the premiums it’s made, having cancelled the policy).
- B. interest on the sum set out at A above at a rate of 8% per year*, calculated from a month after the claim was made under the policy to the date of settlement.
- C. £750 compensation for distress and inconvenience (in addition to £500 compensation it’s already paid).

*If L&G considers it’s required by HM Revenue & Customs to take off income tax from any interest paid on this amount; it should tell the estate of Ms E how much it’s taken off. It should also give them a certificate showing this if they ask for one. That way the estate of Ms E can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I uphold this complaint and direct Legal and General Assurance Society Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms E to accept or reject my decision before 25 November 2024.

David Curtis-Johnson
Ombudsman