DRN-5221771

The complaint

Mr and Mrs W are unhappy that Legal and General Assurance Society Limited ('L&G') said it would change the terms of their joint life insurance policy ('the policy'), given that Mrs W made a misrepresentation when applying for the policy (at the same time as applying for other personal protection insurance policies).

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law.

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

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 several 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 has concluded that Mrs W didn't take reasonable care when answering a question when applying for a range of personal protection policies – including the life insurance policy she holds jointly with Mr W. Had this question been answered correctly, it says the policy would've cost more.

So, the policy has now been set up on different terms, including a reduced benefit in line with the premium they paid for the policy compared with what it should've cost.

Did Mrs W make a misrepresentation when applying for the policy?

In the application, Mrs W was asked a number of questions about her health and medical history. That included:

> When answering the following questions, if you're unsure whether to tell us about a medical condition, please tell us anyway. There's no need to tell us about the same condition more than once in this application.
>
> Have you ever:
>
> Been admitted overnight to hospital or referred to a psychiatrist for mental illness, anorexia or bulimia?

I'll refer to this as 'the referral question'. I think this question was clear and that Mrs W answered 'no' to it.

Mrs W's medical evidence reflects that around nine years before applying for the policy, she was referred to a consultant psychiatrist with possible cyclothymia.

I appreciate that it was subsequently recorded that there was no evidence of Bipolar Affective Disorder and Mrs W was discharged from the psychiatrist's care. I also note Mrs W's concerns about informing L&G about the history which led to the referral to the psychiatrist. And I, of course, completely understand why she wouldn't want to revisit this.

However, given that Mrs W was referred to a psychiatrist, her symptoms at the time, and possible diagnosis, I'm satisfied that L&G has fairly and reasonably concluded that Mrs W should've answered 'yes' to the referral question. There's nothing to indicate that she was being asked to disclose the history which led to the referral on the application.

I'm therefore satisfied that L&G has fairly and reasonably concluded that Mrs W misrepresented the answer to the referral question.

Was this a 'qualifying' misrepresentation?

Looking at the underwriting information provided by L&G – along with the relevant medical evidence from the time – I'm satisfied on the balance of probabilities that if Mrs W had answered the referral question accurately, L&G would've asked for medical information. And ultimately, based on information contained in her medical history, would've offered the policy to Mr and Mrs W on different terms.

I therefore find Mrs W's misrepresentation was a 'qualifying' misrepresentation under CIDRA.

Has L&G acted fairly and reasonably by taking the action it has?

L&G has concluded that the misrepresentation was careless (as opposed to deliberately or recklessly made). Taking into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products (and what it says about classing misrepresentations as careless) I find that L&G has acted fairly and reasonably by reaching that conclusion.
I've looked at the actions L&G can take in line with CIDRA if a qualifying misrepresentation is careless. I'm satisfied it can do what it would've done if the referral question had been correctly answered.

If Mrs W had answered 'yes' to the referral question in the application, I'm satisfied that she and Mr W would've still been offered the policy but on different terms. So, I find that L&G has

acted fairly by changing the terms of the policy (and setting up a new policy to reflect the changes) in line with its underwriting guidance, including reducing the life benefit in the way that it has.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 5 March 2025.

David Curtis-Johnson
Ombudsman