DRN-5225430

The complaint

Mr M complained that Legal and General Assurance Society Limited (L&G) declined a claim and then cancelled his life and critical illness policy. Mr M was also unhappy with how long it took L&G to come to a claim outcome.

Throughout the complaint process, Mr M has had a representative helping him. In this decision, any reference to Mr M includes the actions and comments of his representative.

What happened

Mr M has a life and critical illness policy with L&G which he applied for in January 2018 and started in March 2018.

In July 2023, Mr M sadly suffered from a critical illness covered by his policy and as a result raised a claim. I'm sorry to hear about Mr M's health and wish him all the best with his recovery.

Having reviewed his claim, L&G eventually declined it. They also avoided the policy but refunded the premiums Mr M had previously paid. L&G told Mr M that they believed he'd misrepresented on his policy application. Mr M was unhappy and raised a complaint.

L&G upheld Mr M's complaint. They agreed the claim had taken longer than it should. As a result, they offered Mr M £300 compensation. L&G didn't think they'd made an error with the claim outcome. Mr M was still unhappy and so brought the complaint to this service.

Our investigator didn't uphold the complaint. They thought the compensation L&G had offered for the delays was reasonable. They didn't think L&G had unfairly declined the claim. Mr M appealed. Mr M didn't think the investigator had accounted for a medical condition he had at the point of the application. He also thought he was being penalised for the actions of the broker. This was because English wasn't his first language and there was no evidence the broker had expanded on the questions. Mr M was also going through a bereavement at the time of the application. The investigator didn't think these things changed the outcome of the complaint. As no agreement could be reached, the complaint has been passed to me 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.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether L&G acted in line with these requirements when it declined to settle Mr M's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to Mr M, I've reached

the same outcome as our investigator. I've explained why in more detail below.

At the outset I acknowledge that I've summarised his complaint in far less detail than Mr M has, and in my own words. I'm not going to respond to every single point made.
No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

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.

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 Mr M failed to take reasonable care not to make a misrepresentation when he answered the following questions during the application:

"*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, excess sugar in the blood, blood clot, deep vein thrombosis? (**Answered Yes)***
    - *Please select from this list. Only select other when you cannot find a match (**Answered Raised Cholesterol)***
    - *Which of the following most closely describes your last cholesterol reading? (**Answered Normal or low)***

- *any condition affecting your gall bladder, liver or pancreas, for example hepatitis, fatty liver? (**Answered No)***"

I've been provided with Mr M's medical records. I've seen the following entries:

- November 2016 – Diagnosed with a liver condition
- May 2017 – Stated as having a condition effecting his blood
- December 2017 – Raised cholesterol

Based on the medical evidence, the questions that were asked and the answers given, I'm satisfied that Mr M answer the questions incorrectly. I think the questions are clear in what they want to know and so I don't think Mr M has taken reasonable care in how he answered the questions. Whilst I appreciate Mr M has raised concerns with how his broker set out the questions and his language barrier, these aren't issues for L&G. If Mr M is unhappy with the actions of his broker, he would need to raise them directly with his broker. Whilst I'm sorry to hear about potential health issues and the loss of his dad around the time of the application, Mr M still had a duty to answer the questions correctly.

Under CIDRA, I next have to see whether the misrepresentation is a qualifying one. This means, would L&G have done anything differently had the correct information been provided. L&G has provided me copies of their underwriting guides as well as comments from their underwriting department. From what I've seen, had L&G been provided with the correct information, they wouldn't have offered Mr M a policy. As a result, I'm satisfied that Mr M's misrepresentation was a qualifying one.

CIDRA outlines the actions L&G can take in the event of a qualifying misrepresentation. However, CIDRA sets out different levels of misrepresentation. In this case, L&G have said that Mr M's misrepresentation was careless. This is the lowest level of misrepresentation. Based on what I've seen, I think categorising the misrepresentation as careless is reasonable.

CIDRA sets out that when a qualifying misrepresentation is careless and the insurer wouldn't have offered the policy, the insurer is able to decline any claims, avoid the policy but they must refund all premiums paid. As this is what L&G have done, I think they've acted fairly.

I'm very sorry that my decision doesn't bring Mr M more welcome news at what I can see is a very difficult time for him. But in all the circumstances I don't find that L&G has treated Mr M unfairly, unreasonably, or contrary to law in declining the claim.

In response to our investigators view, Mr M didn't respond on the compensation award for the delays. So, I assume that he isn't disputing this further. I won't be going into detail, but I agree that £300 is fair and reasonable for the distress and inconvenience caused to Mr M because of the delays. L&G has confirmed that this hasn't been paid to Mr M yet, so L&G should now pay this to Mr M.

Putting things right

L&G should pay Mr M £300 for the distress and inconvenience caused due to delays in assessing the claim.

My final decision

For the reasons I've explained above, I uphold this complaint and direct Legal and General Assurance Society Limited to pay Mr M £300 if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 March 2025.

Anthony Mullins
Ombudsman