

The complaint

Mr H has complained that Legal and General Assurance Society Limited ('L&G') refused to pay a claim and added an exclusion to his policy.

What happened

Mr H took out an income protection policy, underwritten by L&G. He made a claim which L&G declined as it said he'd answered a question it had asked about a joint problem incorrectly. And it treated this as a careless qualifying misrepresentation, which entitled it to add an exclusion and decline the claim.

Mr H brought his complaint to us and our investigator didn't think it should be upheld.

Mr H doesn't agree with the investigator and has asked for an Ombudsman's decision. He says he did not have a knee problem which is why he didn't declare it at the point of sale.

So the case has been passed to me for 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 so, I don't think this complaint should be upheld. 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 Mr H failed to take reasonable care not to make a misrepresentation when he answered 'no' to a question about joint trouble within the last 5 years.

I've looked at the question and I don't think Mr H took reasonable care when answering this question. It says:

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

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

Lupus, fibromyalgia, gout or any type of arthritis, neck, back, spine or joint trouble, for example rheumatoid arthritis, sciatica?"

Mr H says there is no evidence that he had a knee injury and that is why he didn't disclose his injury as it wasn't relevant to the question about joint trouble. He says he had a calf muscle tear instead.

I have carefully considered the medical evidence L&G reviewed and this clearly shows that Mr H was diagnosed with a knee injury, he complained about knee pain and he wore a knee brace for a week. So I don't think Mr H took reasonable care when answering the question about joint trouble as he should have disclosed the knee pain and his contact with doctors relating to this.

L&G has provided underwriting evidence to show that had Mr H answered the question correctly, it would have added a knee exclusion to the policy.

This means I'm satisfied that Mr H's misrepresentation was a qualifying one.

L&G has treated Mr H's misrepresentation as careless, which offers the most favourable outcome for Mr H.

I've looked at the actions L&G can take in accordance with CIDRA. As L&G has added an exclusion and declined the claim, this is in line with the remedies detailed in CIDRA. I think this is a fair and reasonable outcome to this complaint so I won't be asking L&G to do anything further.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 March 2025.

Shamaila Hussain
Ombudsman