DRN-5299169

The complaint

Mrs F complains about the way Legal and General Assurance Society Limited (L&G) handled a claim she made on a joint life assurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mrs F and her husband, Mr F applied for a joint Mortgage Decreasing Term Life Assurance Policy in February 2022. The policy became active in March 2022 and it provided cover for Mr and Mrs F's mortgage.

Unfortunately, in May 2022, Mr F became very unwell and was admitted to hospital. He was later diagnosed with cancer. And sadly, in August 2023, Mr F passed away. In September 2023, Mrs F made a claim on the policy.

L&G obtained Mr F's medical records to allow it to assess the claim. It noted that in November 2021, Mr F had seen his GP and had been given a diagnosis of likely reflux disease. He was also tested for H-Pylori and received a positive result in December 2021. Mr F had been prescribed antibiotics. L&G also noted that in March 2022, two days after the policy began, Mr F had seen a GP with ongoing symptoms of abdominal pain.

Based on Mr F's medical records, L&G concluded that he hadn't answered its medical questions correctly when he and Mrs F applied for the policy. It said that if he'd told it about his reflux disease and ongoing abdominal pain, it wouldn't have offered him cover. So it concluded he'd made a qualifying deliberate or reckless misrepresentation under the relevant law. It turned down the claim and offered to refund the premiums Mr F had paid. It did acknowledge there'd been delays and mistakes in its handling of the claim though, so it paid Mrs F £600 compensation.

Mrs F provided L&G with new medical evidence from Mr F's GP which supported the claim. L&G reviewed the evidence and went on to conclude that Mr F hadn't made a misrepresentation when he applied for the policy. Therefore, in June 2024, it accepted and settled Mrs F's claim. It also added interest to the settlement of 8%, backdated to October 2023. And it recognised that its handling of the claim had caused Mrs F further distress and inconvenience at an already very difficult time. So it paid Mrs F a further £700 compensation.

As Mrs F remained very unhappy with L&G's handling of the claim, she asked us to look into her complaint. She said L&G had caused her real distress, worry and financial loss.

Our investigator didn't think it had been fair for L&G to conclude that Mr F had made a misrepresentation when he applied for the policy. So she didn't think it had been fair for it to turn down the claim. And she acknowledged that L&G's actions had caused Mrs F distress and inconvenience. But she thought the £1300 compensation L&G had already paid Mrs F was fair and reasonable in the circumstances. And she also thought the interest L&G had paid on the claim settlement sufficiently compensated Mrs F for any financial loss she'd

suffered as a result of the delay in settling the claim.

Mrs F disagreed and so the complaint's been passed to me to decide.

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, whilst I'm very sorry to disappoint Mrs F and I'm sorry to cause her further upset, I think L&G has settled this complaint fairly and I'll explain why.

First, I'd like to offer my sincere condolences to Mrs F and her family for the sad loss of Mr F. It's clear this has been a very difficult time for them. I'd also like to reassure Mrs F that while I've summarised the background to this complaint and her submissions to us, I've carefully considered all she's said and sent us.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as industry principles, the law, the policy terms and the available evidence, to decide whether I think L&G handled this claim fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). 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 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.

When Mr and Mrs F applied for the policy in February 2022, they were asked information about themselves and about their medical history. L&G used this information to decide whether or not to insure Mr and Mrs F and if so, on what terms. L&G says that Mr F didn't correctly answer the questions he was asked during the policy application. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of this claim.

L&G originally concluded that Mr F failed to take reasonable care not to make a misrepresentation when he applied for the policy. So I've considered whether I think this was a fair conclusion for L&G to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. L&G has provided us with a copy of the medical questions Mr F answered, on which it based its assessment of the risk. The application form asked:

'Health - Last 2 years

• 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 2 years have you contacted a doctor, nurse or other health professional for: any condition affecting your stomach, oesophagus or bowel, for example Crohn's disease, ulcerative colitis?

***Please ignore** diarrhoea, **food poisoning**, sickness or vomiting, **stomach bug or upset, provided no hospital investigation was advised or completed.**'* (My emphasis added).

Mr F answered: 'No' to this question.

In my view, this question was asked in a clear and understandable way and ought to have prompted a reasonable consumer to realise what information L&G wanted to know. It seems to me that L&G's question made it clear that potential policyholders didn't need to tell it about food poisoning, stomach bugs or upset if no hospital investigation was advised or necessary. L&G considers Mr F answered this question inaccurately, so I've next looked at the available medical evidence to decide whether I think this was a fair conclusion for L&G to draw.

Mr F's medical records show that in November 2021, he spoke with a GP because he'd been experiencing acute gastric symptoms for about a month. The GP concluded that this was '*likely GORD'* (gastro-oesophageal reflux disease). He was signposted to the NHS website for managing symptoms of reflux. And he was asked to provide a sample to test for H-Pylori. At that point, it appears Mr F believed he had a likely diagnosis of reflux.

In December 2021, Mr F was told that he'd tested positive for H-Pylori and he was prescribed antibiotics. And he didn't speak with the GP again until after he'd taken out the policy, because he'd been experiencing ongoing abdominal pain.

Based on the records, I don't think it was necessarily unreasonable for L&G to have concluded that Mr F had potentially failed to declare his diagnosis of reflux disease. So I don't think it was unfair for L&G to undertake further investigations.

In March 2024, Mrs F told L&G that Mr F hadn't declared his symptoms because he'd believed and had been told his symptoms were down to a bug – effectively H-Pylori. I note that in December 2023, Mr F's GP had written to L&G to state that following the positive H-Pylori test, Mr F had been started on an eradication regime in Mid-December 2021. The GP said that the reason for doing the test was '*because of a one month history of acute onset reflux disease…That commenced in October 2021 and seemed to improve with treatment.'* He wasn't tested again for H-Pylori until April 2022 – after the policy had begun and it was at this point that the eradication treatment was shown to have been successful.

Taking together Mrs F's testimony with the available evidence, I don't think it was fair or reasonable for L&G to subsequently conclude that Mr F had made *any* misrepresentation. It seems to me that the evidence indicates Mr F believed his symptoms of reflux to be caused by H-Pylori which was being treated by his GP. And it seems entirely plausible and likely to me that he'd have understood H-Pylori to fall within the heading of food poisoning, or a bug or upset stomach. Given no hospital treatment had been advised or undertaken at the time for that condition when Mr F applied for the policy, I think it was reasonable for Mr F to have answered 'no' to L&G's question. And I think he answered the question to the best of his knowledge and belief.

As such then, I don't think L&G acted fairly or reasonably when it turned down this claim and concluded that Mr F had made a misrepresentation. I think it had enough information to have accepted this claim by March 2024 at the latest. And I'd add that I think its decision to categorise the misrepresentation as deliberate or reckless, based on the evidence it had, is

likely to have caused Mrs F additional, real and unnecessary upset at an already extremely difficult time for her.

Following the submission of further evidence from Mr F's GP dated March and April 2024, which supported the claim, L&G accepted and settled the claim in full in June 2024. It also added interest of 8% simple to the settlement which was backdated to October 2023. I'm satisfied then that L&G has now settled the claim in line with the policy terms and that Mrs F's mortgage has been redeemed.

But I also think it's clear that L&G's handling of this claim caused Mrs F real, substantial distress and inconvenience. So I need to consider whether I think the £1300 total compensation L&G's already paid Mrs F fairly reflects this.

L&G didn't just unfairly decline the claim. There were some delays in its assessment of the claim and of the overall evidence. It also acknowledges that there was a data breach, that some evidence was missing from an information rights request Mrs F made, that Mrs F didn't receive call backs she was promised and that calls weren't always handled in an appropriate way. And I've taken into account what Mrs F's told us about the way she says L&G made her feel, together with the upset caused not just by the turning down of the claim, but also by its initial conclusion that Mr F had deliberately or recklessly misrepresented his health to it. I'm also mindful that Mrs F was put to unnecessary financial worries as she'd believed she need to sell the family home in the absence of the policy paying out.

In my view, these errors are likely to have caused Mrs F substantial distress and inconvenience over a period of several months, and, in particular, after the claim was turned down. So I think it's appropriate that L&G pay compensation to reflect this. But I do think the total award of £1300 that L&G's already paid Mrs F is fair, reasonable and proportionate in all of the circumstances based on the evidence I've seen. I understand Mrs F doesn't think it goes far enough. However, our awards aren't designed to fine or punish the businesses we cover and, on the facts of this case, I do find that L&G has already paid Mrs F fair compensation to reflect its mistakes.

I've also thought about whether L&G has put right any financial loss Mrs F suffered as a result of its delay in settling this claim. Mrs F has provided us with evidence from her mortgage provider that the mortgage accrued additional interest of around £4000 during the relevant period. But L&G paid Mrs F interest of around £14,610 on the settlement amount it paid her. In part, interest awards are designed to compensate a consumer for their financial or consequential losses, or the loss of use of funds they were entitled to. And this case, I think the interest L&G has already paid Mrs F fairly compensates her for the increase to her mortgage balance while it considered the claim.

Overall, as I've said, I think it's very clear that L&G made real mistakes in its handling of this claim and that these caused Mrs F substantial, unnecessary trouble and upset. But having considered everything, I think L&G has already settled this complaint fairly. So I'm not directing it to do anything more.

My final decision

For the reasons I've given above, my final decision is that Legal and General Assurance Society Limited has already settled this complaint fairly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 8 April 2025.

Lisa Barham
Ombudsman