DRN-5307623

## The complaint

Mrs W is unhappy that Legal and General Assurance Society Limited (L&G) cancelled her income protection insurance policy and declined a claim made on it.

Mrs W is also unhappy that L&G said it would either reduce the benefit on her life and critical illness insurance policy or increase the premium she'd need to pay for it, given that she had made a misrepresentation when applying for the life and critical illness policy (at the same time as applying for the income protection policy).

## 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 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 for income protection and life and critical illness. Had this question been answered correctly, it says it wouldn't have offered the income protection policy to her and her life and critical illness policy would've cost more.

So, it's declined the claim Mrs W made on her income protection policy, cancelled this policy and refunded her the monthly premiums she paid for it.

It's also said it would've offered the life and critical illness policy on different terms. So, it said it would either reduce the benefit on her life and critical illness policy in proportion to the

premium she paid for it (compared with what it says she should've paid for it) or alternatively, if Mrs W would like to retain the £100,000 benefit, it gave her the option of paying more for this policy.

**Did Mrs W make a misrepresentation when applying for the policies?**

When applying for policies 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 a number of years before applying for the policies, 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 she 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, wouldn't have ended up offering the income protection policy to her.

I'm also satisfied that she would've been charged more for her life and critical insurance policy.

I therefore find that Mrs W's misrepresentation is what CIDRA refers to as 'qualifying' misrepresentation.

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

L&G has concluded that the misrepresentation was careless (as opposed to deliberately or recklessly made). I find that L&G has acted fairly and reasonably in 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.

Because I'm satisfied that the income protection policy wouldn't have been offered to Mrs W at the time, I find that L&G has acted fairly and reasonably by cancelling that policy and declining the claim made on it (on the basis that the income protection policy wouldn't have been in place for Mrs W to claim on). It's also refunded the premiums paid the income protection policy which I think is in line with CIDRA and fair and reasonable.

If Mrs W had answered 'yes' to the referral question when applying for the policy, I'm also satisfied that she would've been charged more for the life and critical illness policy.

So, I find that L&G has acted fairly and reasonably by concluding that it would either reduce the benefit under that policy in proportion to the premium actually paid for it. Or, alternatively, if Mrs W wanted to keep the benefit as it was, she would have to pay more for the life and critical illness policy. I understand that the benefit has since been reduced in line with the premium Mrs W paid (compared with what it would've cost to have a benefit of £100,000), which I think is reasonable.

Based on the underwriting information L&G has provided, I'm also satisfied that it wouldn't have offered total permanent disability benefit or waiver of premium benefit, so I'm satisfied that these benefits have also been fairly removed from Mrs W's life and critical illness policy.

**My final decision**

I don't uphold this complaint.

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

David Curtis-Johnson
**Ombudsman**