

The complaint

Miss M and Miss M have complained – in their capacity as executors of the late Miss B's estate – that Legal and General Assurance Society Limited ("L&G") acted unfairly when they declined the estate's claim on Miss B's life insurance policy and cancelled the policy.

The executors have been assisted in bringing their complaint by a firm of solicitors. References to comments made by Miss M and Miss M include comments made by the solicitors on their behalf.

What happened

In 2017, Miss B bought two life insurance policies from L&G. As part of the application process, she completed a health and lifestyle questionnaire. Her application was accepted and cover started in late April 2017.

In autumn 2022, Miss B very sadly died. Miss M submitted claims on the policies to L&G.

As part of their assessment of the claim, L&G obtained Miss B's medical records. They concluded from reviewing these that Miss B hadn't accurately answered questions in the application about her mental health. They said that, if she'd answered them differently, they wouldn't have offered her cover. L&G said Miss B had made a reckless misrepresentation - which meant they could decline the claim and cancel the policy.

Miss M and Miss M complained about L&G's decision, the time it had taken to reach the decision and about L&G not providing her with their late mother's medical records. In response, L&G said their decision to decline the claim on the basis of Miss B's misrepresentation had been correct. But they did accept they had delayed in processing the claim and had given Miss M and Miss M incorrect information about how to obtain her mother's medical records. They said they would pay £550 compensation for this.

After they received L&G's response, Miss M and Miss M consulted solicitors who made further representations on the executors' behalf. These didn't change L&G's position. So Miss M and Miss M brought the estate's complaint to the Financial Ombudsman Service.

Our investigator reviewed all the available information and concluded L&G didn't need to do any more to resolve the complaint. He was satisfied that, based on the available evidence, L&G's decision that Miss B had recklessly misrepresented her health at the time she applied for the policy was fair.

The executors didn't agree with the investigator's view. So the matter's been passed to me to make a 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 that, I'm not upholding the estate's complaint. I know the executors will find that upsetting and I'm very sorry about that. I hope it will help if I explain the reasons for my decision.

Where an insurer says a customer made a misrepresentation, we expect them to deal with that in line with the law. The relevant law 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 say Miss B made a misrepresentation in her application because she answered "no" to the following questions:

"Have you ever:

- been admitted overnight to hospital or referred to a psychiatrist for mental illness, anorexia or bulimia?*

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:

- anxiety, depression or stress that's required treatment or counselling, or chronic fatigue syndrome?*

Apart from anything you've already told us about in this application, during the last 12 months have you:

- had any medical condition, illness or injury that you've received treatment for over a continuous period of 4 weeks or more?"*

L&G say her medical records show she should have answered "yes" to these questions. I've reviewed the records.

The records show Miss B had a considerable history of mental health issues, for which she'd regularly sought her GP's advice over a number of years. She'd been referred to psychiatric services as well as for counselling and had been prescribed medication. There are regular entries in the records relating to her mental health from late 2012 to 2014 - which falls within the five year period before Miss B bought the policies. And there is an entry the day before she bought the policies, where Miss B talked about anxiety and panic attacks.

Once they had this information, I can see L&G contacted Miss M to see if she could provide any explanation as to why Miss B answered the questions as she did. Miss M explained that Miss B had been diagnosed with restless leg syndrome in 2016 – which she'd disclosed. She said this had caused Miss B difficulty in sleeping and sometimes led to temporary bouts of mild anxiety. She also described Miss B's difficult family circumstances, both at the time and historically. She said her mother was well and happy at the time she applied for the policies.

I've thought carefully about this. I've no doubt Miss M shared the information about her mother as she understood it. But I find Miss B's medical records more persuasive about the

extent of her mental health issues. I'm satisfied from what I've seen that it was reasonable for L&G to conclude Miss B had misrepresented her mental health when she applied for the policies.

L&G have provided underwriting information, which I've considered. I don't think from what I've seen they would have offered Miss B the policies if she'd have answered the questions accurately. So I'm satisfied she made a qualifying misrepresentation.

And I've thought about how L&G have categorised the misrepresentation and the remedy they've applied. Where a misrepresentation is deliberate or reckless, an insurer can decline any claims, cancel the policy and keep the premiums. If it's careless, an insurer needs to think what it would have done if there had been no misrepresentation. If they wouldn't have offered the policy, they may cancel it. But CIDRA requires them in those circumstances to refund the premiums.

L&G say Miss B's misrepresentation was reckless. I think that's fair. I think it's unlikely she would have forgotten her long history of seeking support for her mental health. And the fact she saw her GP just the day before her application would most likely have meant her mental health was uppermost in her mind at that time. I can't say the misrepresentation was careless.

Even though L&G have decided Miss B's misrepresentation was reckless, they've refunded her premiums to her estate. That's more than they're required to do by CIDRA. It wouldn't be fair for me to say they should do more.

Finally, I've thought about the compensation L&G have paid Miss M and Miss M. While I recognise they were distressed by the claims process and outcome, we can't award compensation for distress to anyone other than the person our rules refer to as an "eligible complainant". In this case, that's Miss B's estate itself – not her representatives. I'm pleased to note L&G did accept their service to the executors had fallen short and paid them compensation for that. But, for the reasons I've explained, I don't think they need to do any more to resolve the estate's complaint.

My final decision

For the reasons I've explained, I'm not upholding the complaint made about Legal and General Assurance Society Limited brought on behalf of the late Miss B's estate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss B to accept or reject my decision before 24 June 2025.

Helen Stacey
Ombudsman