

The complaint

Mr C's complained that Legal and General Assurance Society Limited ("L&G") unfairly declined his terminal illness and critical illness claims and cancelled the policies.

Mr C has been assisted in making his complaint by a claims management company (CMC). Comments and submissions attributed to Mr C in this decision include those made on his behalf by the CMC.

What happened

At the start of 2019, Mr C applied to L&G for a life policy and a critical illness policy. As part of the application, he completed a health and lifestyle questionnaire. Based on the answers he provided, L&G accepted his application and the policy started immediately.

Towards the end of 2023, Mr C was sadly diagnosed with lung cancer. So he contacted L&G to make a claim. Based on the information he provided, L&G considered both a critical illness claim and whether to pay the life benefit, on the basis that Mr C's condition met the policy definition of a terminal illness. And they considered a claim under a separate policy Mr C had bought in 2017.

L&G settled the claim on the 2017 policy. But they declined both the critical and terminal illness claims made on the 2019 policies, because they said Mr C had told them he hadn't smoked at all in the 12 months before he bought the policies. L&G said that this was a reckless misrepresentation on Mr C's part, which allowed them to decline the claims and cancel the policies.

Mr C complained, but L&G didn't change their position. Nor did they agree to Mr C's request to re-categorise the misrepresentation as careless. So Mr C brought his complaint to the Financial Ombudsman Service.

Our investigator reviewed the information provided by both parties and concluded L&G didn't need to do anything different to resolve the complaint. She was satisfied their decision that Mr C had made a reckless misrepresentation was fair and in line with the relevant law.

Mr C 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 Mr C's complaint. I know this isn't the outcome he was hoping for and I'm sorry about that. I hope it will help if I explain the reasons for my decision.

Where an insurer thinks its customer has made a misrepresentation, we expect them to address 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.

In this case, L&G say Mr C failed to take reasonable care when he answered “none at all” to the question:

“During the last 12 months have you smoked any cigarettes, cigars, a pipe or used nicotine replacements?”

I think that question is clear. L&G obtained Mr C’s medical records as part of their assessment of his claims. These set out a history of smoking both before and after he bought the policy. And they included an entry made five days before he bought the policies, which recorded Mr C as a smoker. So I think it was fair to conclude Mr C misrepresented his smoker status when he bought the policies in 2019.

And I’m satisfied that Mr C’s misrepresentation was a qualifying one because L&G have shared evidence that showed Mr C would have been offered the policies at a different rate if they’d known he smoked.

Mr C’s testimony has focused L&G’s categorisation of the misrepresentation as reckless. He says it was careless. I’ve thought carefully about this. It’s important because, if the misrepresentation is reckless, CIDRA allows L&G to decline the claim, void the policy and keep the premiums Mr C has paid. But if it’s careless, CIDRA says L&G should treat the policy in the way it would have done if no misrepresentation had been made. Where they would have offered a policy, but at a higher premium, we’d expect an insurer to settle a claim on a proportionate basis.

It’s been submitted on Mr C’s behalf that his wife completed the application and that she filled in the form using information he gave her. I’ve thought about this, but I’m not persuaded it changes anything. The information came from Mr C. It doesn’t align with his medical records. It was for him to sign the application form, which was done after a declaration which says:

“This Declaration must be read by Mr C before proceeding with this application.

- *The information given in this application has been provided truthfully and accurately.*
- *I agree to immediately inform Legal & General in writing if there are any changes to any answers given on the application before the policy starts.*
- *I am aware that the information provided will form part of the legal relationship between us and if any of it is found to be incorrect it may mean that a claim is not paid or the policy(ies) is amended or cancelled.*
- *....”*

And L&G have evidenced that they sent Mr C copies of his answers on two occasions, giving him the opportunity to review and correct any mistakes. He didn’t do so. I think it’s fair to say in those circumstances that Mr C was reckless as to whether the right information about his smoking was provided to L&G.

My attention has also been directed to several different parts of the Association of British Insurers' Code of Practice "*Managing Claims Involving Misrepresentation For Individual and Group Life, Critical Illness and Income Protection Insurance Products*".

I've considered the guidance contained in the Code. It details how insurers should gather and assess information. While I've considered the sections I've been referred to, I think the most persuasive guidance is contained in paragraph 7.4.4, which deals with lifestyle information – including smoking. That says:

"since lifestyle information is usually more familiar and easier for customers to understand, it follows that customers should give a particularly credible and convincing explanation for clearly evidenced misrepresentation not to be classified as deliberate or reckless."

As I've set out above, I think the misrepresentation is clearly evidenced here. I can see L&G gave Mr C the chance to explain why he'd answered the question as he had – as the code of practice says they should. I've listened to that call. Mr C told the call handler he couldn't remember why he'd answered as he had and said it was a long time ago. As L&G have pointed out, he didn't mention his wife completing the application for him.

I don't think Mr C's answer can be said to be a "*particularly credible and convincing explanation*". So this is a further reason for me to conclude L&G's categorisation of the misrepresentation as reckless was fair.

Because of this, L&G were entitled to decline the claim and void the policy. And, although they were entitled to keep Mr C's premiums, they offered to return them to him. Mr C didn't accept this offer, although I hope that, if he now wants to do so, L&G would honour it. But, for the reasons I've explained, I don't think they need to do any more to resolve this complaint.

My final decision

For the reasons I've explained, I'm not upholding Mr C's complaint about Legal and General Assurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 July 2025.

Helen Stacey
Ombudsman