DRN-5647826

The complaint

Mr F has complained that Legal and General Assurance Society Limited ("L&G") declined a claim he made and voided his critical illness policy.

What happened

The background to this complaint is well known to the parties. In summary Mr F made claims under two policies when he unfortunately suffered a heart attack in 2023. L&G declined the claim under the critical illness policy taken out in 2002 but paid the claim under a business protection policy taken out in 2018. This complaint concerns the declined claim. L&G said that Mr F hadn't correctly answered the question regarding his smoking status when taking out the critical illness policy in 2002.

Ultimately our investigator didn't find that L&G had treated Mr F unfairly by declining his claim. Mr F appealed.

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'm aware I've summarised the background to this, no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I've fully reviewed the complete file.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. So I've considered, amongst other things, the law and good industry practice to decide whether I think L&G has treated Mr F fairly. Having done so I agree with the conclusion reached by our investigator. I'll explain why.

The legislation in place when Mr F took out the first of the two policies was The Marine Insurance Act 1906. This simply required the customer to provide to the insurer all the information that would be material to it. And if the customer failed to disclose this information and the insurer could show it was material to them, i.e. it would have made a difference to the terms it offered or led to it not providing terms at all, the insurer was then entitled to avoid the policy (treat it as if it never existed).

L&G couldn't find the proposal form completed when Mr F took out the policy. This is not surprising given the passage of time. However it has now found a copy of a proposal form applicable from June 2002. I'm satisfied that this form would have been completed at inception. Mr F was asked *"Have you used any tobacco products in the last 12 months? This includes cigarettes, cigars and pipes or nicotine replacements."*

Mr F answered "no" to this question. His medical records show this answer was incorrect

and that he was smoking shortly before the policy commenced on 21 August 2002 and shortly afterwards on 19 September 2002. On 21 August 2002 when Mr F joined the GP surgery it is recorded that he smoked 1 cigarette a day. On 19 September 2002 it is recorded that he smoked 10 per day.

I haven't disregarded Mr F's representations about the medical records. He says that he stopped smoking as a teenager and didn't smoke since. And to this Service that he stopped smoking around the time his daughter was born in 1998. Here I'm concerned with the entries recording smoking in 2002. I find it unlikely that the entries recording Mr F as a smoker are incorrect. In the circumstances I don't find that it was unfair for L&G to take the entries in 2002 into account. They are a contemporaneous record and haven't been retracted to date.

I appreciate that Mr F feels L&G have not paid his claim due to a small discrepancy in his records. But L&G has shown that had Mr F answered the question correctly it would have made a difference to the underwriting of the policy. That is, the policy wouldn't have been offered on the same terms. The premium would have been significantly more – it would have increased by over 43%. This being so L&G was entitled to decline the claim. It concluded that the failure to answer the question correctly was deliberate or reckless. The guidance in the Association of British Insurers' Code of Practice – Managing Claims For Individual and Group Life, Critical Illness and Income Protection Insurance Products is not strictly binding but we consider it good insurance practice and fair and reasonable to take it into account. The latest version was published in 2023.

With regard to "Lifestyle Information" (such as smoking) the Code says: *Lifestyle information – 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.*

I think it was reasonable for L&G to conclude that Mr F would have been aware of his smoking habits in 2002. I don't find that a credible explanation has been given for the recordings in the medical records. Accordingly I'm not persuaded that by declining the meet the claim and voiding his policy L&G has treated Mr F unfairly, unreasonably or contrary to law or regulation. I understand that the premiums were returned.

I do recognise that Mr F will be disappointed by my decision and I'm sorry that it doesn't bring welcome news.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 1 August 2025.

Lindsey Woloski
Ombudsman