

The complaint

Mrs T's complained that Legal and General Assurance Society Limited ("L&G") unfairly declined the claim she made on her critical illness policy. And they cancelled her policy and refunded the premiums she'd paid, because they said Mrs T had made a misrepresentation in her application.

Mrs T's son (Mr T) now has power of attorney for her. He made the claim and has brought the complaint on her behalf.

What happened

In summer 2014, Mrs T bought a life and critical illness policy from L&G. She used an independent financial adviser to apply, including to complete the medical questionnaire.

By spring 2024, Mrs T was sadly suffering from a neurodegenerative condition. So Mr T contacted L&G to make a claim on her behalf. No specific diagnosis had been made. But L&G considered the claim under the total and permanent disability section of the policy.

L&G obtained Mrs T's medical records to help them assess the claim. Having reviewed those, they declined the claim and cancelled the policy because they said Mrs T hadn't given an accurate answer to the question:

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

- ...
- *been referred to or had any investigations in hospital, for example biopsy, scan, ECG?*

Mrs T answered "no" to this question. L&G say she should have answered "yes" because her medical records showed that, a couple of months before she applied for the policy, she'd had an MRI scan. L&G said, if they'd known about this at the time, they would have postponed offering her cover. And they wouldn't have offered her cover after the postponement period had passed because, by that time, Mrs T had been diagnosed with symptomatic Huntington's disease.

Mr T complained. Following their investigation of the complaint, L&G accepted they hadn't refunded Mrs T's premiums as quickly as they should have done and paid her £200 compensation. But they didn't change their decision on the claim. So Mr T brought Mrs T's complaint to the Financial Ombudsman Service.

Our investigator reviewed all the information submitted by both parties and concluded L&G didn't need to do any more to resolve Mrs T's complaint. He was satisfied L&G's decision that Mrs T had made a misrepresentation was reasonable in light of the evidence – and that L&G had dealt with the misrepresentation in line with the relevant law.

Mr T didn't agree with our 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 Mrs T's complaint. I know this isn't the outcome she or Mr T were hoping for. I hope it will help if I explain the reasons for my decision. I'll do so, focusing on the points and evidence I consider the crux of my decision. So if I don't mention something in particular, it's not because I haven't thought about it. Rather, it doesn't change the outcome of the complaint.

It's not my role to decide Mrs T's claim. I have to decide whether L&G have dealt with the claim fairly, in line with the policy terms and the relevant law. 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 (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.

I've set out above the question L&G wasn't answered accurately. Mr T has suggested that the question wasn't clear and that any misrepresentation Mrs T made was innocent. I've thought about this.

I don't agree with Mr T's suggestion that the question isn't clear. I think it is. It says that it wants to know about "any investigations in hospital". And it gives examples of the types of investigation that may be done. The medical records show that Mrs T was admitted to hospital at the time she had an MRI – which is a type of scan. So I'm satisfied it should have been disclosed.

I think it's very unlikely that Mrs T would have forgotten about the scan when she applied for the policy. It was done only two months before – and it was during a hospital stay – which I think would have made it memorable. So I think it's fair to say that, by answering "no" to the question, Mrs T made a misrepresentation.

Mr T has submitted that Mrs T's answer should be classed as an innocent misrepresentation because she'd not been notified of any negative outcome following the scan. So L&G would have provided cover either way.

I have considered this. An innocent isn't a qualifying misrepresentation under CIDRA. But I don't think it's reasonable to say Mrs T's misrepresentation was innocent. The Association of British Insurers Code of Practice explains that, for a misrepresentation to be innocent:

"...a reasonable person would have considered that the information was not relevant to the insurer."

I've seen from Mr T's testimony that Mrs T was reluctant to accept there was anything wrong with her. But I don't think it's reasonable to say the information about Mrs T's scan wasn't relevant to L&G. Insurers use the information collected in the medical questionnaire to decide how big a risk covering a customer presents, whether or not to offer a policy and, if so, on what terms and at what cost. It's reasonable to include in that assessment information about any investigations or tests because they may change the risk that customer presents. So I can't fairly say that a scan undertaken during a hospital admission isn't relevant.

Mr T has also said that a broker dealt with the application – who may not have captured the information correctly. If Mr T believes that Mrs T wasn't properly supported by the financial adviser when she was sold the policy, that's a matter he would need to raise with them as a separate complaint. Who made the misrepresentation doesn't make any difference to L&G's right to deal with it in accordance with CIDRA.

In this case, it's clear the misrepresentation is a qualifying one within the meaning of CIDRA, because L&G have provided evidence to show that, had they known about Mrs T's scan, they would have postponed offering her cover. And when - about six weeks later - she was diagnosed with symptomatic Huntington's disease, they wouldn't have offered cover at all. I've noted Mr T has been frustrated that L&G haven't shared this data with him. We wouldn't expect them to, as it's commercially sensitive information. But I am satisfied from what they have shared with our service that their decision was consistent with their established approach.

I can see that L&G concluded Mrs T's misrepresentation was careless. The ABI guidance says careless misrepresentation is:

"...anything from an understandable oversight, or an inadvertent mistake, to serious negligence."

I think it's reasonable to say Mrs T's answer was an oversight or an inadvertent mistake. So it's fair to categorise the misrepresentation she made as careless. In those circumstances, CIDRA says an insurer should do what it would have done if the misrepresentation hadn't been made. L&G have evidenced that they wouldn't have offered the policy – so cancelling it was fair. And they've refunded the premiums as CIDRA requires.

I can see there was a delay in processing the refund, for which L&G paid Mrs T £200 compensation. That's in excess of any interest award I would make for a delayed payment – so I think it's fair. And I don't think L&G need to do any more to resolve Mrs T's complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 October 2025.

Helen Stacey
Ombudsman