

## **The complaint**

The estate of Mrs H has complained about Legal and General Assurance Society Limited ("L&G") settlement of two life insurance claims.

## **What happened**

In July 2018 Mrs H took out two policies with L&G. One was decreasing life insurance with critical illness for a term of 25 years with a sum insured of £15,000, the other decreasing life insurance only for the same term, with a sum insured of £150,000.

Very sadly Mrs H died in 2020. L&G assessed the estate's claims but concluded that Mrs H had made a misrepresentation when taking out the policies. It paid the life claim proportionately but said that it wouldn't have offered critical illness cover at all. L&G initially refunded the critical illness premium only on this policy – but later noticed it offered life cover too and paid that life claim proportionately as well, with interest and compensation to the estate.

Unhappy, with the settlement the estate referred their complaint here. The investigator didn't find that L&G had treated the estate unfairly – they found that L&G had fairly concluded that there had been a qualifying careless misrepresentation. This was that Mrs H hadn't disclosed a history of gestational diabetes or raised blood sugar levels. So he didn't recommend that L&G did anything more.

The estate appealed – it is represented but for simplicity of reading I shall just refer to the submissions as being made by the estate.

In summary the estate didn't agree that Mrs H had failed to take reasonable care when applying for the policy. It said that although she had pre-diabetes just before her application, this was neither diabetes nor ongoing diabetes.

As no agreement was reached the matter has been passed to me to determine.

## **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'd like to reassure the estate of Mrs H that whilst I've summarised the background to this complaint, I've carefully considered all the submissions made. In this decision though 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.

I recognise that the estate will be disappointed by my decision, but I agree with the conclusion reached by the investigator. I'll explain why.

The relevant law in this case 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 said that Mrs H had failed to take reasonable care when answering the following questions when applying for the policies in July 2018:

***Health – Ever***

*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*

*Had diabetes or a heart condition, for example angina, heart attack, heart valve problem, heart surgery?*

Mrs H answered 'no' to this question although the medical evidence shows that she had been diagnosed with gestational diabetes in 2017.

***Health - Last 5 years***

*When answering the following questions, if you're unsure whether to tell us about a medical condition, please tell us anyway.*

*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: raised blood pressure, raised cholesterol or condition affecting blood or blood vessels, for example anaemia, excess sugar in the blood, blood clot, deep vein thrombosis?*

Mrs H selected 'anaemia' from the above list; however, the medical evidence shows that she had previously had excess sugar in the blood in June 2018. I have thought carefully about the estate's arguments that Mrs H didn't fail to take reasonable care when answering the questions as the gestational diabetes was related to her pregnancy.

Whether a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the circumstances. I'm satisfied that the questions asked were clear and specific. I do appreciate that Mrs H's diabetes was gestational – but I find that the answer to the question should still have been positive. L&G asked a clear question and had specifically said that if the person proposing was unsure whether to tell it about a medical condition, they should tell L&G anyway. L&G didn't require only certain types of diabetes to be disclosed, and the question asked whether she has 'ever' had diabetes. So I don't think it was unfair to conclude that Mrs H didn't take reasonable care when answering this question.

I note that Mrs H did disclose anaemia – but I don't think it follows that she took reasonable care in relation to the other questions indicated here. Excess sugar in the blood was noted in the medical records only weeks prior to the application in 2018. I'm not persuaded that it was unfair for L&G to conclude that too should have been disclosed.

I can't share the underwriting guidance L&G has shared as it is commercially sensitive (although I note some has been shared with the estate), but I'm satisfied that L&G has shown that had the questions been answered correctly it wouldn't have offered the critical illness cover at all. It would have offered the life policies, but at a higher premium. Therefore, I find that the misrepresentation was qualifying.

L&G has treated the misrepresentation as careless – I think that is fair. There is nothing to suggest it was deliberate or reckless. This means that the remedies that it has offered are in line with the legislation. That is, it wouldn't have offered the life and critical illness policy, so it has refunded the premium paid. And for the life policies it has settled the claims proportionately. I note that L&G didn't settle one life claim initially but did subsequently do so. It has offered compensation to the estate for the inconvenience caused.

In all the circumstances, and although I am very sorry that my decision doesn't bring welcome news, I don't find that L&G has treated the estate unreasonably, unfairly or contrary to law by settling the claims in the way it has. This being so I don't require it to take any further action.

### **My final decision**

For the reasons given my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 17 November 2025.

Lindsey Woloski  
**Ombudsman**