DRN-5907205

The complaint

Miss C complains that Legal and General Assurance Society Limited avoided her life and critical illness insurance policy and refused to pay a claim.

What happened

The background to this complaint is well known to the parties, so I won't repeat all the details here. In brief summary, in January 2016, Miss C took out life and critical illness cover with L&G.

Most unfortunately, in March 2023, Miss C was diagnosed with pulmonary fibrosis. In August 2023, Miss C made a critical illness claim. But L&G said Miss C hadn't given full and accurate information during the application process. L&G considered this to be a qualifying misrepresentation, saying had Miss C answered correctly, it would've charged a higher premium.

L&G refused to pay the claim, as it considered Miss C had deliberately or recklessly misrepresented her circumstances on application. It cancelled her cover, but said in its decline letter that it would refund the premiums paid.

Miss C complained, but L&G maintained its stance, so Miss C came to the Financial Ombudsman Service. Our investigator didn't uphold her complaint, so Miss C asked for an ombudsman to review everything and issue a final 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 so, I'm not upholding this complaint. I know this will be unwelcome news for Miss C and I'm sorry about that, particularly in view of Miss C's recent health challenges. I'll explain my reasons, focusing on the points and evidence I think are material to the outcome of the complaint. So if I don't mention something specifically, it's not because I haven't read and thought about it. Rather, I don't consider it changes things.

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.

When applying for the policy, L&G said Miss C failed to take reasonable care not to make a misrepresentation when she answered '*none at all'* to the following question:

> *'During the last 12 months have you smoked any cigarettes, cigars, a pipe or used nicotine replacements?'*

L&G relied on entries in Miss C's medical records – obtained for the purposes of assessing her claim – which it says showed she should've answered this question differently. I've reviewed the medical evidence provided. I can see that Miss C attended a GP appointment in March 2015. Of particular note are the following excerpts from the full GP record for that appointment:

> *'Smoker roll ups 6-7 pd*
> *'Symptoms starting to resolve currently so see how she goes, if persistent ongoing issue for ENT review given smoker*
> *'Smoking cessation advice'*

I appreciate Miss C disputes the accuracy of this record, arguing that her GP must've misunderstood her smoking history. Whilst I accept this is possible, I still think it was reasonable for L&G to rely on the record as an accurate reflection of Miss C's smoking status on the day of the appointment. I note Miss C attended the surgery about an issue where smoking status would've been a relevant line of enquiry. I also note that the full record is detailed and specific. I don't think L&G acted unfairly here.

Miss C was subsequently sent a personal details confirmation document. The cover letter warns Miss C that if the answers on her application are not correct, are incomplete, or are out of date, it may mean that a claim will be declined and the policy cancelled. Under a question asking if L&G has got Miss C's details right, Miss C has ticked *yes*. And under the *Declaration*, Miss C has signed to confirm the information given is true and complete.

Ultimately, Miss C was responsible for answering questions accurately. I'm satisfied the question asked was clear and unambiguous. And that when Miss C applied for the policy, she should've answered the smoking question differently. So I'm satisfied Miss C failed to take reasonable care when taking out the policy.

L&G has said that had Miss C answered the smoking question accurately, it would have applied different terms, charging a higher premium, as is common insurance practice for customers who are smokers. I'm satisfied full medical disclosure would've made a difference to L&G's decision, so Miss C's misrepresentation was a qualifying one.

L&G considered Miss C's misrepresentation to be deliberate or reckless, meaning she either knew, or must have known, that the information given was both incorrect and relevant to the insurer, or she acted without any care as to whether it was either correct or relevant to the insurer. The Association of British Insurers publishes industry guidance on managing claims involving misrepresentation. Regarding lifestyle information, such as smoking, its code of practice notes that 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 evidence misrepresentation not to be classified as deliberate of reckless. I don't think that's the case here. I consider it was a fair categorisation, particularly given the relatively short period time between Miss C's consultation with her GP and her taking out cover.

CIDRA sets out the actions an insurer can take in cases of misrepresentation. In the circumstances of Miss C's misrepresentation, L&G was entitled to cancel the policy and keep the premiums. However, it confirmed to Miss C that it would return the premiums paid. I understand this has happened, although it's not something I could require L&G to do. Given this, I don't think L&G needs to do anything more in respect of this complaint. Once again, I'm sorry to send disappointing news to Miss C.

My final decision

For the reasons given above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 23 December 2025.

Jo Chilvers
Ombudsman