

The complaint

The estate of Ms L is unhappy that Legal and General Assurance Society Limited declined a claim made on the late Ms L's life insurance policy.

What happened

Ms L had a life insurance policy. She sadly died as a result of metastatic appendiceal mucinous neoplasm. The estate claimed on the policy but Legal and General declined the claim, cancelled the policy and refunded the premiums.

The estate complained to Legal and General but they maintained their decision was fair. They said Ms L had failed to accurately disclose information about her medical history and, had she done so, they wouldn't have offered her the policy at all. Unhappy, the estate complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He thought Legal and General had acted reasonably, and in line with the relevant legislation. So, he didn't think Legal and General needed to do anything to put things right.

The estate didn't agree and asked an ombudsman to review the complaint. They said that there were reassuring clinical findings prior to the application and there was no motive for incorrect disclosure. They also highlighted that the legislation required the standard of 'reasonable care' and that it was unfair to rely on assumptions about what may have been discussed between Ms L and her treating team. So, the complaint was referred 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.

I'm very sorry to read of the circumstances which have led to the claim and I'd like to offer my condolences to Ms L's family in relation to their bereavement.

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.

Legal and General say Ms L failed to take reasonable care when she answered questions during the application process in April 2014. Ms L disclosed that she'd had a lump removed. However, she was asked follow up questions which included:

Have you been advised to have further checks, reviews or follow up with your GP or other health professional?

Ms L answered 'no'. Legal and General say she should have answered 'yes' and I'm satisfied that's a reasonable conclusion to have reached in the circumstances. I'll explain why.

A letter from January 2014 from a Professor of Cancer Studies and Surgery says that Ms L's most recent CT scan was very reassuring. However, it goes on to say:

"However, we do see a number of these that materialise with disseminated mucin several years after the initial appendicectomy and we therefore at the very least need to follow this up on an annual basis to 5 years post appendicectomy, i.e. to 2017...it seems reasonable she continues her surveillance under your care in [redacted] and I would be grateful if you could forward us the scan report each December".

The estate make the point that there's no direct evidence that Ms L was aware of this information as it was correspondence between the professionals involved in her care. They've said it's been assumed that they were provided to or discussed with Ms L. And they've said Ms L had no letters, appointments, advice or instructions from a health professional between December 2013 and April 2014 when she applied for the policy.

There's a letter to Ms L, dated late December 2013, which says the CT scan performed was normal but that the specialist team would be following up with Ms L in due course. I can also see that Ms L's case was reviewed by a multi-disciplinary team (MDT) in August 2014 which refers to a recent CT scan and discusses Ms L's continuing management. The letter I've referred to above, which is dated between these events, also refers to the ongoing monitoring. And, there's a letter in March 2014, which refers to the fact that an application for funding for surgery had been declined. That letter refers to sticking to the plan of annual reviews for five years.

I've not found the representations by the estate to be persuasive in the circumstances of this case. It's clear from the medical notes that there was an ongoing concern, given Ms L's recent history, that there was a risk of cancer developing. However, where direct evidence isn't available, I've considered what's most likely to have happened.

I accept that it's possible Ms L wasn't told about the need to carry out ongoing reviews. However, given that there were ongoing discussions between the medical professionals about Ms L's care (which overlaps over with the period that Ms L applied for the policy) I think it's most likely Ms L was aware that she would remain under review and require further tests.

There was a clear ongoing concern about cancer developing, and Ms L was receiving input from the MDT, I think it's unlikely that this wasn't discussed with her. In reaching that conclusion I bear in mind that the high risk of developing cancer at a later date had been discussed with her previously and that a number of important communications were made between the professionals treating team in the months before the policy was taken out. That included, for example, that the application for funding for surgery hadn't been successful. On the balance of probabilities, I'm persuaded that it's most likely this information, or at least the key information, was communicated to Ms L.

That's not based on an assumption. It's based on what I consider most likely to have happened including the nature and volume of correspondence between the medical professionals, the nature of Ms L's condition, the previous discussions with Ms L about the potential for cancer to develop and the potential seriousness of the condition. Taking all of the above into account I think it's fair and reasonable, based on the available evidence, to conclude that Legal and General have adequately demonstrated that Ms L failed to take reasonable care not to make a misrepresentation.

Legal and General has provided evidence that if Ms L had answered 'yes' then they would have requested more medical information from Ms L's GP. Once that information had been received, and they'd been aware of the more detailed information about the ongoing reviews they wouldn't have offered cover to Ms L. This means I'm satisfied it was a qualifying misrepresentation.

Legal and General have said Ms L's misrepresentation was deliberate or reckless. However, I note that they've refunded the premiums which is the remedy CIDRA sets out for careless misrepresentation. That goes beyond the remedy set out in CIDRA. So, even if I concluded Ms L's misrepresentation was careless, rather than deliberate or reckless, this wouldn't change the ultimate outcome here for the reasons I'll go on to explain.

In the circumstances, where Legal and General wouldn't have offered Ms L the policy, they are entitled to decline the claim. In the event of deliberate and/or reckless misrepresentation they are entitled to keep the premiums. Where the misrepresentation is careless, they should refund the premiums. So, even if I concluded the misrepresentation was careless, Legal and General have already applied the remedy set out in CIDRA.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms L to accept or reject my decision before 8 January 2026.

Anna Wilshaw
Ombudsman