

The complaint

Mrs M's complained that Legal and General Assurance Society Limited ("L&G") unfairly declined the claim she made on her joint life insurance policy after her husband, Mr H, passed away.

Mrs M has been represented by a solicitor at times during the claim and complaint processes. Comments and statements attributed to Mrs M in this decision include those made by the solicitor on her behalf.

What happened

In spring 2013, Mr H and Mrs M applied for a joint decreasing term life insurance policy. Based on the information they provided in their application, L&G accepted the application and the policy began about three months later.

Mr H very sadly died at the start of 2024. So Mrs M made a claim on the policy. L&G assessed the claim and declined it because they said Mr H had said in his application he'd not smoked in the 12 months before he applied – which was inconsistent with his medical records. L&G said this entitled them to decline the claim and void the policy from the start.

Mrs M complained to L&G, but they didn't change their decision. So Mrs M brought her complaint to the Financial Ombudsman Service. Our investigator reviewed the information provided by both parties and concluded L&G didn't need to do any more to resolve the complaint. He said the conclusions they'd drawn about Mr H's smoking were reasonable in light of the available evidence. And he was satisfied that they'd dealt with the matter in line with the relevant law.

Mrs M didn't agree with our investigator's view. So the complaint's been passed to me to make 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 that, I'm not upholding Mrs M's complaint. I know she'll be upset by my decision and I'm sorry about that. I hope it will help if I explain my reasons for making it.

I can't decide whether L&G should pay the claim. Rather, my role is to decide whether the conclusion they've reached to decline it is fair, reasonable and in line with the relevant law.

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.

In this case, L&G say Mr H's medical records show he should have answered "yes" to the question:

"Have you used any cigarettes, cigars, pipes or nicotine replacements in the last twelve months – this includes occasional use?"

Mrs M says that, at the time they applied for the policy, Mr H had given up smoking, although he did start again after the policy started. I've considered this very carefully.

Mr H and Mrs M applied for the policy in March 2013. The term started at the end of June 2013. Mr H's medical records recorded him as a smoker on a number of occasions between 2008 and 2023.

There are no records of Mr H being a smoker in either March or June 2013. The closest pre-application record is from March 2011. There is also a record from August 2013, two months after the policy started. L&G say this shows Mr H was a smoker at the time of the application. Mrs M says it shows that Mr H wasn't a smoker in this period and his medical records are wrong.

I've thought about this, but I'm not persuaded by what Mrs M has said. I accept there are no records to show Mr H was smoking. But I think it's more likely that's because Mr H didn't consult his GP during that period than because he'd given up. I think it's likely that, if he had seen his doctor in that period and told them he'd given up smoking, his GP would have recorded that fact and would have disclosed it to L&G in response to their request for:

"...all records where his smoker status is mentioned..."

And, while I note Mrs M's belief that Mr H's medical records are wrong, in the absence of those records being corrected, I can't say it was unreasonable for L&G to make their decision using the information they contain.

I've seen that L&G didn't base their decision only on Mr H's medical records. They also spoke to Mrs M to check the information they'd received. I've listened to that call. In it, Mrs M says that Mr H had tried – but hadn't managed – to give up smoking and continued to smoke "a little". She said that he didn't smoke at home but she didn't know exactly how much he smoked elsewhere.

I think the content of that call supports L&G's conclusion that Mr H hadn't stopped smoking. The question is clear that he should have told L&G this, even if he only smoked occasionally. So, on balance, I'm satisfied it's fair to say Mr H didn't answer the question accurately and made a misrepresentation.

And I'm satisfied that the misrepresentation was a qualifying one as defined by CIDRA because L&G have provided evidence that, if Mr H had answered the question differently, they would have applied a higher premium to the policy.

Finally, I've thought about the remedy L&G have applied. The remedies set out in CIDRA vary depending on whether an insurer concludes the misrepresentation is deliberate/reckless or is careless.

In this case, L&G categorised Mr H's misrepresentation as deliberate/reckless. Guidance published by the Association of British Insurers (ABI) defines this as circumstances where:

"...the customer knew, or must have known, that the information given was both incorrect and relevant to the insurer, or the customer acted without any care as to whether it was either correct or relevant to the insurer."

The guidance also says that, for lifestyle information – such as smoking – a customer will need to give a *"particularly credible and convincing explanation"* as to why the misrepresentation shouldn't be classed as deliberate or reckless. Considering the information set out above, I don't think Mrs M has been able to do that. So I think L&G's classification is fair.

Where a deliberate or reckless misrepresentation is made, CIDRA allows an insurer to void the policy and keep any premiums paid. However, L&G have offered to void it and refund the premiums to Mrs M. Or they've said that she can continue the policy in her sole name and they will refund the premiums attributable to Mr H's cover.

Either of these is more than L&G is required to do by CIDRA. So I can't say that's not fair. I note Mrs M has declined these options to date, in the hope that her complaint would be upheld. But I'd expect L&G to honour this offer if she now wishes to take up one of them.

I've noted that Mrs M is pursuing the accuracy of Mr H's medical records with his GP. I've explained above why I think it was reasonable for L&G to rely on them. And they've confirmed that they would revisit the claim assessment if the records are changed.

That's what I'd expect them to do. But, at present, I don't think L&G need to do any more to resolve Mrs M's complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 20 March 2026.

Helen Stacey
Ombudsman