

The complaint

The estate of Mr A, represented by Mrs A, has complained about the settlement of a claim by Legal and General Assurance Society Limited (L&G) under Mr A's life assurance policy.

What happened

Very sadly this complaint concerns a claim as Mr A passed away in 2021. I extend my condolences to Mrs A.

The background is not in dispute. Mr A took out a life assurance policy through a broker in 2017. He was asked several questions on the application form. L&G says that Mr A answered two questions incorrectly and had he answered correctly his premium would have been greater. It therefore paid a proportionate settlement to Mr A's estate. Mrs A, on behalf of the estate disputed the questions were answered incorrectly and referred the complaint here.

Our investigator didn't find that L&G had done anything wrong. Mrs A appealed.

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.

Firstly though I'm aware I've summarised the background to this complaint and some sensitive medical details. No discourtesy is intended by this. Instead, 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. If there's something I haven't mentioned, it isn't because I've ignored it. I've fully reviewed the complete file and considered the representations Mrs A has made I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I recognise that Mr A will be very disappointed my decision and I'm sorry this decision doesn't bring more welcome news. I agree with the conclusion reached by our investigator, and I'll explain the reasons 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.

The application form asked the following questions:

During the last 5 years have you seen a doctor, nurse or other health professional for high blood pressure, ... or condition affecting blood or blood vessels, for example...excess sugar in the blood...?

During the last 12 months have you smoked any cigarettes...?

Having seen Mr A's GP's records L&G say that both those questions should have been answered affirmatively. This was because according to those records, Mr A was diagnosed with pre-diabetes (excess sugar in blood but not quite to diabetes levels) in April 2014. He saw his GP about this at the time as well as 4 February 2015. He also had pre-diabetes test results in September 2015 and July 2016. In May 2017 C had further increased blood sugar levels with a repeat test in June 2017 confirming a diabetes diagnosis. I do understand that Mr A gave L&G details of his condition and medication to L&G in 2020 – but this was some years after the application was submitted and the policy commenced.

With regard to the smoking question the records show Mr A as being a smoker in June 2017. Mrs A has said he smoked occasionally. The application form had the option to enter 'yes' occasionally'.

Mrs A has said that Mr A *did* give the correct details to the broker through whom he took out the policy. I've seen a copy of the application form which states '*You, the Agent, are responsible for ensuring that your customers read the declaration*'. The declaration, which is marked read and agreed by Mr A, declared that the information in the declaration had been provided truthfully and accurately. However, this complaint is against L&G who underwrite the policy, not the broker. It follows that I am only considering the actions of L&G. I don't find that L&G erred in relying on the completed application form.

I've seen too that L&G sent 'Check Your Details' letters to Mr A. This gave the opportunity to check the answers given on the application form. Mrs A has said that L&G had the wrong email address for him, although L&G has said it didn't bounce back. In any event the second letter was sent by post. It may be that Mr A didn't receive the posted letter, but I can't hold L&G responsible for this. Likewise I note Mrs A's wider comments about L&G – but here I'm looking at the complaint brought to us. This service has no power to regulate financial businesses.

The medical records show that answers on the application form received by L&G were incorrect. I'm satisfied from the underwriting evidence I have seen that had the answers been correct Mr A wouldn't have been offered cover on the same terms. This means that there was a qualifying misrepresentation. L&G have treated the misrepresentation as careless. I think that was fair. CIDRA provides that as Mr A should have paid a higher premium, L&G was entitled to reduce the claim payment proportionately. I can see that this is what it did.

I am sorry that my decision doesn't bring more welcome news, but in all the circumstances I don't find that L&G treated the estate of Mr A unfairly in settling the estate's claim in the way it did.

My final decision

For the reasons given above, and despite my natural sympathy, 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 Mr A to accept or reject my decision before 1 September 2023.

Lindsey Woloski
Ombudsman