DRN-4311312

The complaint

Ms N is unhappy with the way in which Legal and General Assurance Society Limited ('L&G') handled a claim made under her critical illness policy ('the policy') and its decision to decline the claim and cancel the policy.

What happened

Ms N applied for the policy in 2020. When applying she was asked a number of questions – including about her health and medical history. Based on all the information provided L&G accepted Ms N's application and the policy commenced.

A couple of years later, Ms N made a claim on the policy as she'd been diagnosed with cancer. That claim was ultimately declined by L&G because it concluded that Ms N hadn't disclosed that she'd had breast cancer previously when taking out the policy. It considered she'd made a deliberate or reckless disclosure when answering a question about whether she'd ever had cancer when applying for the policy. It also said that if she'd answered the question correctly, the policy would have been offered on different terms. So, it declined the claim, cancelled the policy and reimbursed Ms N for the monthly premiums she'd paid for it.

It also offered Ms N £800 total compensation for some service failings when assessing her claim; it accepted that there had been some unnecessary delays for which it apologised for.

Unhappy, Ms N complained to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold the complaint. Ms N disagreed so her complaint has been passed to me to consider everything afresh and decide.

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.

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. 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 (in this case L&G) 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 says Ms N failed to take reasonable care not to make a misrepresentation when

answering certain medical questions when taking out the plan. And overall, I think L&G has acted fairly and reasonably by declining Ms N's claim, cancelling the policy and reimbursing the premiums paid for it. I'll explain why.

Did Ms N make a qualifying misrepresentation?

I've listened to the recording of the call Ms N had with L&G's representatives when first applying for the policy. Ms N is asked a number of questions about her medical history including:

> "Have you ever:
>
> Had any form of cancer, Hodgkin lymphoma, non-Hodgkin lymphoma, leukaemia or melanoma?"

Ms N confirmed she hadn't.

Ms N says this question is misleading. I disagree. I'm satisfied that this is a clear question. I'm also satisfied that Ms N didn't answer the question correctly because she'd been diagnosed with cancer previously and had received treatment for it.

When considering whether Ms N misrepresented the answer given, L&G asked her for an explanation for why she'd answered the question in the way that she had. It's reflected that Ms N said she'd answered all questions asked of her correctly, she was only asked about her health during the past five years and her understanding was, legally, L&G wasn't able to ask her questions relating to her health going back more than five years.

Having considered Ms N's responses, I'm satisfied L&G has fairly and reasonably concluded that she made a qualifying misrepresentation under CIDRA as the question clearly asked whether she ever had any form of cancer; it wasn't restricted to the last five years. So, she should've answered 'yes' to that question.

L&G has provided underwriting guidance showing that if Mr N answered this question correctly, as she should have done, it would have offered the policy on different terms. So, the answer to this question mattered to L&G.

When making this finding, I've taken into account what Ms N has more recently said that she thought she was only be asked whether she ever had Hodgkin lymphoma, non-Hodgkin lymphoma, leukaemia or melanoma. However, that's not consistent with what she said previously and further, I'm satisfied that she was first asked whether she had any form of cancer.

Declining the claim and cancelling the policy

L&G concluded that Mr N's misrepresentation was deliberate or reckless.

Taking into account Ms N's explanations about why she answered question in the way she did, I don't think she's been able to give a credible explanation supported by the facts for the misrepresentation having occurred when considered against the medical evidence that she had been diagnosed and treated for cancer around seven years previously. Nor do I think there are any credible mitigating circumstances to explain why she answered this question in the way that she did. I'm satisfied that L&G has fairly concluded that Ms N's misrepresentation was deliberately or recklessly made.

And as the question was asked before agreeing to insure Ms N, I think she knew that the

questions being asked were relevant to L&G – or didn't take sufficient care about whether or not it was relevant to L&G.

I've looked at the actions L&G can take in line with CIDRA. Under the legislation it's entitled to cancel the policy and doesn't have to pay any claims as it can treat the policy as if it never existed. That's what L&G has done here, and I don't think it's acted unfairly and unreasonably in the circumstances of this complaint by doing so.

L&G could have also chosen to retain the premiums paid for the policy. It didn't do that here; it reimbursed Ms N for the monthly premiums she'd paid for the policy since the date it started. I think L&G acted fairly by doing this.

Delays

L&G has an obligation to handle claims fairly and promptly. It accepts that there were times when it unreasonably delayed assessing Ms N's claim and progressing it as quickly as it should have after receiving certain information. This led to Ms N having to chase L&G for updates and not receiving call backs as requested. It also accepted that it failed to provide Ms N with a recording of the sales call within a reasonable timeframe.

L&G has apologised and offered Ms N compensation in the total sum of £800 in recognition of this. I can see that this was a worrying time for Ms N, which would have been exacerbated by the delays caused by L&G and Ms N having to chase it up. But I think £800 fairly reflects the distress and inconvenience she's experienced.

My final decision

I don't uphold Ms N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 10 October 2023.

David Curtis-Johnson
Ombudsman