

## **The complaint**

Mr G and Mrs K are unhappy that AML Associates Financial Services Limited ('AML') mis-sold them a joint decreasing life insurance policy with critical illness cover ('the policy').

## **What happened**

Mr G and Mrs K applied for the policy – through AML – at the end of 2017. And the policy started in March 2018. Later that year, Mr G had a stroke and subsequently made a claim for the critical illness benefit under the policy.

That claim was ultimately declined by the insurer because it said that Mr G had deliberately or recklessly misrepresented an answer to a question about whether he smoked. The insurer said had Mr G answered this question correctly and declared that he still smoked nicotine free e-cigarettes, it wouldn't have offered him critical illness cover. That's because he'd also declared having another medical condition.

The insurer declined the claim, cancelled the policy and refunded the premiums paid by Mr G and Mrs K.

Mr G and Mrs K had previously complained to the Financial Ombudsman Service about the decision taken by the insurer. An investigator had looked into what happened in 2022 and didn't uphold that complaint. Mr G and Mrs K accepted this outcome.

Subsequently, Mr G and Mrs K complained to the Financial Ombudsman about AML and the sale of the policy. That was after complaining to AML and AML accepting that its representative hadn't asked Mr G the exact question on the insurer's application form. It took responsibility for this initial error. However, it said that Mr G had opportunities to correct this information before and just after the policy started, which he didn't do. In its final response letter dated April 2023, it offered Mr G and Mrs K £750 compensation as a gesture of goodwill.

Our investigator felt this offer was fair and didn't recommend AML do anything more to put things right. Mr G and Mrs K disagreed. So, their complaint against AML was passed to me to consider everything afresh to decide. I issued my provisional decision explaining why I was intending to direct AML to pay more compensation to Mr G and Mrs K. I said:

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When selling the policy to Mr G and Mrs K AML had a regulatory obligation (amongst others) to treat them fairly, as customers. For the reasons set out below, I don't think it did so here.

### **Asking the wrong question**

AML accepts that its representative asked Mr G the wrong question when taking out the policy. Although he was asked whether he'd smoked during the past 12 months, the insurer's question said "if you've smoked any cigarettes, cigars, a pipe, used e-cigarettes (whether or not they contain nicotine) at all in the last 12 months you need to answer 'yes...'

Although Mr G says he'd given up smoking cigarettes a couple of years before, he was smoking nicotine free electronic cigarettes/vapes.

Had the representative asked him the correct question, I've got no reason to doubt that Mr G wouldn't have answered 'yes' to this question. And if so, the insurer has said that Mr G would've only been offered life insurance (for an additional premium) and it would've declined the application for critical illness cover.

Although AML says that Mr G had further opportunities to consider and correct the answer to the smoking question, I'm not persuaded that he did.

I can see that he met with a medical professional on behalf of the insurer before taking out the policy. He was asked to sign a document which contained the following information:

What is your smoking status? (A smoker is someone who smokes or uses a tobacco product, nicotine replacement or electronic cigarettes).

The answer is recorded as: Ex-smoker

How long ago is it since you last smoked, used tobacco, nicotine replacement or an electronic cigarette?

The answer is recorded as: 1-2 years ago.

These questions are different to the one on the insurer's application form. It doesn't clarify that electronic cigarettes include nicotine free electronic cigarettes like the form does.

Further, Mr G has said that at the medical appointment he was smoking his electronic cigarette and the medical professional took a sample to check that there was no nicotine in his system. The insurer's notes reflect that this test came back negative. So, I don't think anything at that meeting should've reasonably alerted Mr G to the fact that AML had asked him the incorrect question on the application. If he was being asked to declare his nicotine electronic cigarettes, I can understand why he would've reasonably thought the medical professional would've noted that the answer given was incorrect as he was smoking in their presence.

Mr G also signed a 'checking your details' form (sent to him by the insurer) in May 2018 - so shortly after the policy started. It asks him to check the details on the application and to tick a box to either confirm the details are correct or not. And if they weren't right to say what changes needed to be made. It's reflected that Mr G signed to say that the details were correct.

However, Mr G says he didn't receive the application along with this form. I find his submissions on this point to be persuasive and consistent. Even though he could've contacted the insurer to ask for the application before completing and signing the form, Mr G says that he contacted the representative at AML who initially made the application on his behalf, and he visited him. He says he was advised to complete and sign the form in this way as everything was correct. Relying on what he was advised, he did that. Again, I find his submissions on this point persuasive and plausible, particularly given that the representative misinterpreted the smoking question initially so it's plausible that the representative believed that everything was correct at the time Mr G signed the 'checking your details' form.

So, I don't think it would be fair and reasonable for Mr G to held responsible for not correcting the answer to the smoking question after the initial application was made.

If Mr G was treated fairly by AML from the start – and he'd been asked the correct question about his smoking status when applying for the policy by AML – I'm satisfied that he would've either chosen to proceed with life insurance only or AML would've considered whether other life and critical illness policies were available for him with other insurers. But even if that's the case, I've been provided with no evidence that critical illness cover would've been available given Mr G's circumstances at the time (or if so, at a price Mr G was willing to pay).

So, on the balance of probabilities, I'm not persuaded that Mr G would've ended up with critical illness cover at that stage or that such cover would've been in place at the time of his stroke, several months later.

However, even if I'm wrong on that point, and alternative critical illness cover had been taken out with a different provider and a claim was made, I'm not persuaded that Mr G's stroke would've resulted in a successful claim for critical illness benefit.

I don't know how stroke would've been defined under an alternative policy. But I think the definition would've most likely been similar to the stroke definition set out in the Association of British Insurers (ABI) guide to minimum standards for critical illness cover in place at the time. I'll refer to this as 'the ABI guidance'. And that's consistent with the way in which stroke is defined in the policy terms Mr G and Mrs K did end up with but was later cancelled. The definition includes "death of brain tissue due to inadequate blood supply or haemorrhage within the skull..."

In the insurer's letter to Mr G dated November 2022 explaining why his claim for critical illness was being declined, as well as explaining why it considered he'd carried out a deliberate/reckless misrepresentation when answering the smoking question, it also said:

In terms of the claim for your stroke. There is insufficient evidence to state with any certainty that you'd had a stroke. You underwent a CT scan that was reported as "normal" and you were unable to tolerate an MRI scan, so this test was not performed. As we are unable to determine any death of brain tissue as required by your policy terms and conditions. Whilst it's been classified as a "stroke like event" this is not a valid stroke claim.

And based on the medial evidence I've been provided with; I've seen nothing to convince me that he would've met the likely definition of stroke under an alternative policy which he may have taken at the time – including death of brain tissue.

## Impact

I'm satisfied that Mr G and Mrs K did want life and critical illness insurance when applying for the policy in 2017. The policy was cancelled by the insurer in late 2022 and Mr G and Mrs K have been without cover since.

The insurer did offer Mrs K a life and critical illness policy, should she wish to continue being insured under a standalone policy. I understand Mrs K didn't want this. That's of course her decision to make but I don't think it would now be fair and reasonable for me to hold AML responsible for her not proceeding with life and critical illness cover as offered.

However, because of AML's error, I'm satisfied that Mr G is now unfairly left without life insurance which I think he would've taken out in 2017/2018 if things had happened as they should've.

Although he and Mrs K have received a premium refund for the policy, given that Mr G has

had a stroke and is around five years older since the policy was taken out, I think it's likely that life insurance would be a lot more expensive than it would've been at the time.

I'm also satisfied that Mrs K and, in particular, Mr G have been put to significant distress and inconvenience as a result of AML's error in this case. That includes:

- Unnecessarily making a claim for critical illness on the policy, which would never have been offered to him.
- Being told by the insurer that the answer to the smoking question had been deliberately or recklessly misrepresented by him.
- Having to disclose when taking out other insurance products - such as car insurance – that they've had an insurance policy cancelled/avoided. Mr G and Mrs K says this has caused them significant difficulty as when disclosing this on comparison websites, they're their insurance options are much more limited. And the options they are presented with are more expensive. Based on experience, I accept what they say about that. I'm satisfied that this would be distressing for Mr G and Mrs K particularly as the error occurred through no fault of their own.
- The time and effort having to raise concerns with the insurer initially, and then AML, about the decision to cancel the policy.
- Mr K's worry, frustration and upset that should he wish to apply for life insurance going forwards, this is likely to cost far more than it would've done had he'd taken out life insurance five years earlier when he was younger and before he'd had a stroke.

AML offered £750 compensation in its final response letter as a gesture of goodwill. I don't think that fairly and reasonably reflects the impact this has had on Mr G and Mrs K over a significant period of time, and the continuing impact it's likely to have on them going forward. Particularly given Mr G was still recovering from the effects of his stroke.

I'm intending to direct AML to provide a letter to Mr G and Mrs K, on headed paper and signed by a director of the company, setting out its error when selling the policy to Mr G and Mrs K. And explaining that Mr G and Mrs K have been absolved from all responsibility for that error; nothing Mr G and Mrs K did resulted in a qualifying misrepresentation occurring when applying for the policy.

Mr G and Mrs K will then be able to produce that letter to potential insurers or insurance brokers when applying for insurance products going forward when declaring that that they've had an insurance policy cancelled.

When responding to this provisional decision, AML should provide to the Financial Ombudsman Service a draft of the letter it will provide.

However, I'm satisfied that's still likely to result in unnecessary frustration and inconvenience going forwards to Mr G and Mrs K as it's unlikely that they'll be able to use comparison sites to search for insurance policies such as travel, motor and buildings insurance, as there will be no way of uploading AML's proposed letter at that stage. So, they'll likely need to engage the services of an independent insurance broker to do this for them and explain the situation in advance.

I'm satisfied that £4,000 more fairly reflects the distress and inconvenience AML's error has caused Mr G and Mrs K and the likely impact this will have on them going forwards.

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I invited both parties to provide any further information in response to my provisional decision, which they both did.

In summary, AML said:

- It had made a mistake when initially completing the application for Mr G. However, it didn't consider my proposed increase in compensation was fair and reasonable.
- There were two occasions when Mr G could've altered the information on the application form if it was inaccurate. And the insurer would've declined insurance at that time.
- Mr G hadn't submitted any proof that he'd had a stroke.
- AML is a small firm and has an excellent claim history.
- Several insurance companies have advised AML that all applications must be treated fairly on a new client basis.
- It doesn't understand the reason for a letter as any decision I made can be used as proof going forwards.
- The insurer had said Mr G's misrepresentation was deliberately or recklessly made. And Mr G should accept some responsibility for the error for the misrepresentation.

In summary, Mr G and Mrs K said:

- The insurer has said that if it knew that Mr G had vaped, it would've still offered the policy but at a much higher rate.
- The wrong question wasn't asked of Mr G, AML's representative put down the wrong answer.
- AML showed a lack of skill and care and there were other errors in the application such as Mr G's job title.
- Mr G had never seen the application form submitted on his behalf.
- It was extremely important that Mr G had life and critical illness cover.
- Mr G accepts that the policy may not have paid out for a stroke this time around however the policy would've still been in place to cover other critical illnesses which could occur in the future.
- Mr G has been told that no insurance company will now offer him life or critical illness insurance due to his medical history.
- The stress has impacted Mr G's mental and physical health, his relationship and caused work issues.
- AML has electronically signed to give Mr G's permission for two insurers to obtain quotes and access Mr G's medical records. He says a box was ticked saying he didn't want to see any information before it was sent to the insurer. Mr G says he had no knowledge of this at the time.

### **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.

That includes all further points both parties have raised in response to my provisional decision. Having done so, I'm not going to depart from my provisional decision. I'll explain why.

- Even if the correct question was asked of Mr G and he answered it correctly, and it was AML's representative who interpreted the answer to be recorded on the application form incorrectly, I don't think this impacts my decision on the case. Ultimately, AML has accepted responsibility for the error which initially occurred, and I don't think Mr G can reasonably be held responsible for the answer which was initially given to the insurer.
- Although AML says there were two opportunities for Mr G to correct the answer, I've explained in my provisional decision why I don't think Mr G would've reasonably realised the information was incorrect. So, although the insurer treated the misrepresentation as recklessly or deliberately made, I don't think Mr G is responsible for that misrepresentation.
- I've taken into account that the insurer's letter to Mr G dated November 2022 says: "if we'd known about your smoking habits, we'd charged a much higher premium". However, I think this needs to be read together with the insurer's final response letter dated June 2022 to Mr G. It says: "if we had known about your use of e-cigarettes, we would not have considered offering you critical illness cover and would have charged a much higher premium for life assurance. Our underwriters have confirmed this is because of the combined effect of using e-cigarettes and other health conditions you disclosed in your application. Therefore, as no policy would exist, you would not be in a position now to make a claim". The insurer's underwriting guidance also supports that had it known about Mr G's use of e-cigarettes (nicotine free), it would've declined to offer critical illness and life insurance would've been offered but at a higher premium.
- So, I'm satisfied on the balance of probabilities that this insurer wouldn't have offered Mr G critical illness cover had it been given the correct information about him still smoking nicotine free e-cigarettes.
- I appreciate that Mr G has been left without critical illness cover. Had he been told at the time that this insurer wouldn't offer critical illness cover if the smoking question had been answered 'yes', it's possible that critical illness cover would've been available with another provider at a price that Mr G was willing to pay at the time. However, I've seen no evidence of that. Further, and in the alternative, even if was available, Mr G hasn't established that he has had a critical illness since the policy was taken out. So, he hasn't yet lost out on making a successful claim as a result. Although, he may experience a critical illness in future which would led to a successful claim on an alternative policy (if it had been available), I think that's too speculative for me to hold AML responsible for this possibility in future. However, I accept that Mr G would be worried and upset by this.
- In terms of life insurance, as I said in my provisional decision, although Mr G (and Mrs K) have received a premium refund for the policy, given that he has had a stroke and is a number of years older since the policy was taken out, I think it's likely that life insurance would be a lot more expensive than it would've been at the time (if it's even available for Mr G for a similar benefit amount). When considering fair compensation, I've taken into account the upset that Mr G has been left without a life insurance policy which would've still been offered to him had the insurer known about him smoking nicotine-free e-cigarettes around the time of application.
- For reasons set out in my provisional decision, I remain satisfied that £4,000 compensation is fair and reasonable in this case to reflect the impact on Mrs K, and particularly Mr G. When making this finding, I've taken into account the further

submissions Mr G made in response to my provisional decision about the toll on him. However, I don't have persuasive medical evidence that his recent health issues are because of the stress AML's error has had on him and the issues he describes with his relationship could've been caused by a variety of reasons. However, I am prepared to accept that it wouldn't have helped matters and this is considered as part of the compensation amount, I'm directing AML to pay.

- I also think it's fair and reasonable for AML to provide a letter in the terms set out in my provisional decision. Whilst Mr G and Mrs K can – if they choose – refer to this final decision when applying for insurance policies going forwards, I think a letter from AML would also help ensure that the reason for the policy being declined for a qualifying misrepresentation is clearly explained.
- I know Mr G is also unhappy with AML obtaining quotes for new insurance policies for him (he says without his consent). I can't see that this issue was set out in Mr G's complaint to AML dated September 2022 or addressed as part of AML's final response letter dated April 2023. So, Mr G would need to raise this complaint with AML to investigate in the first instance.

### **Putting things right**

I direct AML to:

- pay Mr G and Mrs K £4,000 compensation for distress and inconvenience. If already paid to them, AML can deduct from this amount the sum of £750 offered in its final response letter.
- provide Mr G and Mrs K with a letter, on headed paper and signed by a director of the company, setting out its error when selling the policy to them. This should explain that Mr G and Mrs K have been absolved from all responsibility for that error. And nothing they did resulted in a qualifying misrepresentation being made when applying for the policy.

### **My final decision**

I partially uphold Mr G and Mrs K's complaint and direct AML Associates Financial Services Limited to put things right as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs K to accept or reject my decision before 19 June 2024.

David Curtis-Johnson  
**Ombudsman**