

## **The complaint**

Mrs M is unhappy that Legal and General Assurance Society Limited declined a claim on a life insurance policy.

## **What happened**

Mrs M took out a joint life insurance policy with her late husband (Mr I) in 2014. When Mr I sadly died she claimed on the policy for the benefit.

Ultimately the claim was declined because Legal and General said that questions about Mr I's medical history hadn't been answered accurately. They said that if the questions had been answered accurately, they wouldn't have offered the policy. And, they considered this to be a deliberate or reckless misrepresentation.

Our investigator looked into what happened and didn't uphold the complaint. She thought that Legal and General had acted reasonably based on the questions asked and the medical information available.

Mrs M didn't agree and asked an ombudsman to review the complaint. She wanted to see the underwriting criteria the insurer had applied and questioned why there wasn't a requirement to provide an update about health annually. Furthermore, she felt Legal and General had a duty of care to carry out a medical check to see if the policy would be accepted when it was applied for. Mrs M also highlighted that her husband hadn't died from anything related to the conditions which hadn't been declared.

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.

The relevant rules and industry guidelines say that Legal and General has a responsibility to handle claims promptly and fairly. I have also considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I think this is relevant law.

I've also considered the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

CIDRA 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. 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 Legal and General) 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 several 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 that the qualifying misrepresentation was deliberate or reckless and they wouldn't have offered cover at all if they'd been given the right information during the application process. They've declined the claim, cancelled the policy and refunded the policy premiums.

Mrs M and Mr I applied for the policy via a third party who gathered all the information about their circumstances. During the application Mr I was asked:

"Apart from anything you've already told us about in this application, during the last 5 years have you seen a doctor, nurse or other health professional for raised blood pressure, raised cholesterol or condition affecting blood or blood vessels, for example anaemia, excess sugar in the blood, blood clot, deep vein thrombosis?

Apart from anything you've already told us about in this application, during the last 5 years have you seen a doctor, nurse or other health professional for any condition affecting your gall bladder, liver or pancreas, for example hepatitis, fatty liver?

Apart from anything you've already told us about in this application, during the last 5 years have you seen a doctor, nurse or other health professional for anxiety, depression or any mental illness that's required treatment or counselling, or chronic fatigue syndrome?

Apart from anything you've already told us about in this application, during the last 12 months have you had any medical condition, illness or injury that you've received treatment for over a continuous period of 4 weeks or more?

Apart from anything you've already told us about in this application, during the last 12 months have you been referred to or had any investigations in hospital, for example biopsy, scan, ECG?"

Mr I answered, 'no' to all of these questions but I think it's reasonable to conclude he ought to have answered 'yes'. I say that because the medical evidence reflects that during the relevant time periods Mr I was:

- Treated for depression in 2012 for which he was prescribed medication by his GP. He also saw his GP the following year as his symptoms worsened.
- Referred for blood tests in 2013 which demonstrated he had low vitamin D. Further tests were ordered which showed raised ferritin levels, raised glucose levels and abnormal liver function results. Mr I's alcohol intake was also discussed.
- Attended the GP later in 2013 and said he'd reduced his alcohol intake. However his liver function tests were still abnormal and an ultrasound showed he had a fatty liver and gallstones.

I'm satisfied that this information mattered to Legal and General. They've provided underwriting information which demonstrates that if this information had been provided they would have declined to offer the policy. I've therefore considered whether it was reasonable for Legal and General to conclude that the misrepresentation was deliberate or reckless.

The application for the policy took place in early 2014, not long after these appointments. So,

I'm persuaded that this information was most likely fresh in Mr I's memory. He'd attended a number of appointments within a short period and been given, in my view, important information about his health which I think he ought reasonably to have understood to be important to an insurer. Mr I also signed a document after the application process was complete which confirmed his answers to the questions were accurate. The same document also explained that a claim could be declined if the information was not correct or was incomplete. So, I think Mr I had a further opportunity to disclose the relevant information. Taking all of the above into account I'm satisfied that Legal and General fairly concluded the misrepresentation was deliberate or reckless.

CIDRA says that in cases of deliberate or reckless misrepresentation the insurer is entitled to decline the claim, avoid the policy and retains the premiums. In the circumstances of this case Legal and General have offered to refund the premiums which goes beyond what CIDRA requires them to do. Therefore, I'm satisfied that Legal and General has acted fairly.

I appreciate that Mrs M would like to see the underwriting information. However, that's commercially sensitive information and it's not possible to share it with her. I hope it reassures Mrs M to know that someone independent has reviewed the available evidence.

Mrs M has also queried why there was no annual update on medical health conditions and why Legal and General didn't check information with their GP at the time they took out the policy. However, there's no requirements for Legal and General to do so. And, in any event, I'm satisfied they've fairly applied the policy terms and conditions.

I've also considered that Mrs M has also said Mr I died of an unrelated condition. However, as I've outlined above the issue in this case is whether the policy would have been offered to Mr I at all. For the reasons I've outlined above I'm satisfied it wouldn't have been.

### **My final decision**

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 December 2024.

Anna Wilshaw  
**Ombudsman**