

The complaint

Mr I, Mr P and Mr L (together referred to as 'the trustees') are unhappy that Legal and General Assurance Society Limited declined a claim made on a term assurance policy ('the policy') taken out by Mr M. And its decision to cancel the policy and refund the premiums paid.

What happened

Mr M applied for the policy in May 2016. When applying for the policy he was asked a number of questions – including about his lifestyle, health and medical history.

Mr M sadly died in 2021 and the trustees made a claim under the policy for the benefit to be paid. That claim was ultimately declined by Legal and General. That's because Legal and General says Mr M didn't answer some questions correctly when applying for the policy. It cancelled the policy and refunded the premiums paid.

The trustees complained to Legal and General. It maintained its decision to decline the claim and cancel the policy. Unhappy, the trustees brought a complaint to the Financial Ombudsman Service. Our investigator considered what had happened and didn't uphold the complaint. The trustees disagreed so this 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.

That includes the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

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 Legal and General) must 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.

Legal and General says Mr M failed to take reasonable care not to make a misrepresentation when applying for the policy. Overall, I'm persuaded that Legal and

General has acted fairly and reasonably by declining the claim made under the policy by the trustees and cancelling the policy on the basis that it wouldn't have been offered at the time. I've set out my reasons below.

Did Mr M make a qualifying disclosure?

When applying for the policy, Mr M was asked a number of questions about his health and medical history including:

During the last 2 years have you seen a health professional about...
A stomach, bowel or oesophageal condition, for example Crohn's?

And

Apart from anything you've already told us about, during the last 2 years have you been referred to, or been under the care of, a hospital specialist?

I'll refer to these as 'the medical questions'.

I'm satisfied the medical questions are clear. And on the application form, it's reflected that Mr M answered 'no' to them. When reviewing the claim made on the policy after Mr M's death, Legal and General concluded that he'd answered the medical questions incorrectly. It says, they should've been answered 'yes'.

I think Legal and General has acted fairly and reasonably when reaching this conclusion. That's because at the end of May 2014 (and within the two years leading up to the date of applying for the policy and answering the medical questions), Mr M met with a consultant surgeon. The consultant's letter reflects:

- Mr M described classical symptoms of gastroesophageal reflux disease and it "sounds very much as if he does have significant gastroesophageal reflux disease".
- Mr M was unwilling to take antacid tablets and that Mr M would like to consider surgery. "I am going to arrange an upper GI endoscopy and I have also arranged oesophageal physiology studies to assess function and both acidic and non-acidic reflux".

I've gone on to consider whether Legal and General has fairly concluded that Mr M had made a qualifying misrepresentation under CIDRA by answering the medical questions incorrectly. And I'm satisfied it has.

I appreciate that had Mr M waited around a week later to apply for the policy, his answers to the medical questions may have been accurate. However, I'm satisfied Mr M acted without reasonable care when answering the medical question.

The consultant's letter dated May 2014 reflects that Mr M's symptoms "have gradually worsened over the years and are now dominating his life". So, I think it's something he reasonably ought to have recalled when applying for the policy. And if he didn't recall the exact date of seeing the consultant, he could've checked his medical records. Further, within the application, it says: "when answering the following questions, if you're unsure whether to tell us about a medical condition, please tell us anyway." So, if Mr M was unsure about the date he saw the consultant, or when he was referred for further investigation (because this took place almost two years before applying for the policy), he was encouraged to tell Legal and General about this anyway.

The medical evidence suggests that the investigations recommended by the consultant didn't take place before Mr M applied for the policy. Legal and General has provided underwriting guidance showing that if Mr M had answered the medical questions correctly, it would have asked for further details and based on the available information, it wouldn't have offered the policy at the time of application in the circumstances of this case. Based, on the underwriting evidence provided by Legal and General to the Financial Ombudsman Service, I'm persuaded that is what most likely would've have happened. So, I think the answer to the medical questions mattered to Legal and General.

I know the trustees have asked to see the evidence provided by Legal and General to support their position. And I can understand why. But the Financial Conduct Authority's Dispute Resolution: Complaints Sourcebook ('DISP'), which sets out how complaints should be handled, says at DISP 3.5.9 (2) and 3.5.10 that The Financial Ombudsman Service can accept certain information in confidence. I'm satisfied that the information Legal and General has given us is genuinely commercially sensitive and can be accepted - and considered by the Financial Ombudsman Service - in confidence.

Declining the claim and cancelling the policy

Legal and General concluded Mr M's misrepresentation was careless. I think a reasonable person would have considered the answers to the medical questions were relevant to Legal and General – and that was why they were being asked. And although answering the medical questions in the way that he did, may have been the result of an oversight or mistake made by Mr M, I'm satisfied that the conclusion reached by Legal and General is fair and reasonable in the circumstances of this case.

I've looked at the actions Legal and General can take in line with CIDRA. Under this legislation it's entitled to take the action it would've taken had the misrepresentation not occurred. Because I'm satisfied that the policy wouldn't have been offered at the time, I'm satisfied Legal and General has acted fairly by cancelling the policy and refunding the premiums.

I know the trustees will be very disappointed with my decision, and I would like to pass on condolences to them during a very difficult time. I hope it will help them to know that this complaint has been reviewed by someone who is impartial and independent of the parties.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I, Mr P and Mr L to accept or reject my decision before 2 January 2024.

David Curtis-Johnson
Ombudsman