

## **The complaint**

Mr A is unhappy that Legal and General Assurance Society Limited declined a claim for the critical illness benefit under his decreasing life insurance policy with critical illness cover ('the policy'). And its decision to void the policy (and a separate increasing life insurance policy that was in place, which he'd applied for at the same time as the policy).

Although Mr A is being represented, I've referred to him throughout.

## **What happened**

Mr A applied for the policy in February 2022 via an insurance intermediary. When applying for the policy he was asked a number of questions – including about his lifestyle, health and medical history.

After the policy started, Mr A was very sadly diagnosed with multiple sclerosis and made a claim on the policy for the critical illness benefit. That claim was declined by Legal and General. That's because Legal and General says Mr A misrepresented his answers to certain questions when applying for the policy (and another life insurance policy he applied for at the same time). It voided both policies and refunded the premiums paid.

Mr A complained to Legal and General. It maintained its decision to decline the claim and void the policies. Unhappy, Mr A brought a complaint to the Financial Ombudsman Service. Our investigator considered what had happened and didn't uphold the complaint. Mr A disagreed so his 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 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 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 A failed to take reasonable care not to make a misrepresentation when answering certain questions. Overall, I'm persuaded that Legal and General has acted fairly and reasonably by declining Mr A's claim for the critical illness benefit. And voiding the policy (and the other life insurance policy). I've set out my reasons below.

### **Did Mr A make a qualifying disclosure?**

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

Have you ever:

Had any neurological condition or visual disturbance, for example epilepsy, multiple sclerosis, muscular dystrophy, cerebral palsy, motor neurone disease, Parkinson's disease, optic neuritis? Please ignore long and short sightedness that's been corrected.

I'll refer to this as 'the medical question'.

Under 'lifestyle', Mr A was asked for his weight.

I'll refer to this as 'the weight question'.

Mr A was also asked:

Have you ever been told by a medical professional that you should reduce the amount of alcohol you have because you were drinking too much?

Have you ever...attended or been advised to attend an alcohol support group?

I'll refer to these together as 'the alcohol question'.

I'm satisfied that these three questions are clear. And on the application form, it's reflected that Mr A answered:

- 'no' to the medical question.
- 102kg to the weight question.
- 'no' to the alcohol question.

When reviewing Mr A's claim, Legal and General concluded that he'd answered the medical question, the weight question and the alcohol question incorrectly. And I think it's acted fairly and reasonably when doing so. That's because:

- I'm satisfied that Mr A should've answered 'yes' to the medical question. Around one month before applying for the policy, Mr A's optician wrote to Mr A's GP to say that Mr A had presented with sudden vision loss in the left eye over the past couple of days and requesting an urgent referral to a neurological department. And subsequent GP consultation notes – also dated January 2022 – reflects that Mr A had been referred to ophthalmology and had reported pain behind the left eye four days ago and blurred vision. Further, the hospital consultant's letter dated March 2022, so shortly after Mr A applied for the policy, says that Mr A had blurred vision in January 2022 which lasted for more than a month.
- I'm satisfied Mr A should've declared his weight as being 122kg as that's what the

GP recorded as being his weight in January 2022, around one month before applying for the policy.

- I'm satisfied Mr A should've answered 'yes' to the alcohol question. There are references in his GP notes (for example in November 2015) to Mr A 'binge drinking' and declining advice to 'be referred to alcohol related treatments' and to 'cut down'. And in April 2019 under 'plan', it's reflected 'alcohol consumption counselling'.

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

Mr A says that he hadn't experienced any of the conditions listed in the medical question. Mr A may not have known the reasons for his vision loss/ blurred vision. But ultimately, he had experienced visual disturbance around a month before applying for the policy and had actively sought medical attention for this. Further, I think it's also relevant that even if Mr A didn't think he should've answered 'yes' to the medical question, there was another question asking whether "during the last three months" he'd had "...changes to his vision". And he answered 'no' to that question too. So, if he didn't think he needed to answer 'yes' to the medical question due to the list of other conditions, I think he should've declared the change in his vision when answering this question.

Mr A says he thinks the insurance intermediary put down the wrong weight on the application. However, I don't think Legal and General has unreasonably relied on the information in the application, which Mr A said was correct at the time.

Mr A says his level of drinking has been misrepresented in the GP records. He's also said that his employer undertakes random alcohol tests so his alcohol consumption wouldn't have been as high as indicated in his GP notes at certain times. However, based on the GP entries, I still think Mr A ought to have answered 'yes' to the alcohol question as he was specifically being asked whether he'd been told by a medical professional that he should reduce the amount of alcohol he had because he was drinking too much or been advised to attend an alcohol support group.

Legal and General has provided underwriting guidance showing that if Mr A had answered either the medical question, the weight question and/or the alcohol question correctly, as he should've done, it would have offered the policy (and other life insurance policy) on different terms. So, the answer to any of the three questions mattered to Legal and General.

### **Declining the claim and cancelling the policy**

Legal and General concluded Mr A's misrepresentation was deliberate or reckless.

Taking into account Mr A's explanations about why he answered the three questions in the way he did, I don't think he's been able to give a credible explanation supported by the facts for the misrepresentations having occurred when considered against the medical evidence. Nor do I think there are any credible mitigating circumstances to explain why he answered the questions in the way that he did.

I'm satisfied that Legal and General has fairly concluded that Mr A's misrepresentation was deliberately or recklessly made. And as the three questions were asked before agreeing to insure Mr A, I think he knew that they were relevant to Legal and General – or didn't take sufficient care about whether or not it was relevant to Legal and General.

I've looked at the actions Legal and General can take in line with CIDRA. Under this 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 Legal and General has done here. And I don't think it's acted unfairly and unreasonably in the circumstances of this complaint by doing so - and cancelling the policy and other life insurance policy.

Legal and General could've also chosen to retain the premiums paid for both policies. It didn't do that here; it reimbursed Mr A for the monthly premiums paid since the date they both started. I think Legal and General acted fairly by doing this.

### **My final decision**

I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 December 2023.

David Curtis-Johnson  
**Ombudsman**