

## **The complaint**

Mrs J is unhappy that Legal and General Assurance Society Limited cancelled her life insurance policy.

## **What happened**

Mrs J took out a life insurance policy. Legal and General carried out a random check of the policy and identified that information in her medical records didn't correspond with the information she disclosed when she applied for the policy. They cancelled the policy because they said they wouldn't have offered her cover had this information been disclosed.

Mrs J complained to Legal and General, but they maintained their decision was fair. Unhappy, Mrs J complained to the Financial Ombudsman Service.

Our investigator looked into what had happened. He didn't think Legal and General had acted unreasonably on the basis of the medical evidence. So, he didn't uphold Mrs J's complaint. Legal and General made an offer to settle the complaint. They offered Mrs J £200 compensation for delays in refunding the premiums and 8% simple interest on the refund.

Mrs J didn't accept that offer and asked an ombudsman to review the complaint. In summary, she says that Legal and General have misinterpreted the medical evidence and she had correctly disclosed her medical history. Mrs J feels that Legal and General have discriminated against her due to her mental health. She obtained further information from her GP in support of her position. So, I need 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 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 (a policy). 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 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 thinks Mrs J failed to take reasonable care not to make a misrepresentation when she was asked questions about her mental health during the sales process.

Mrs J was asked:

Have you ever tried to harm yourself or planned to harm yourself in any way?

The answer recorded was 'tried to harm yourself'.

How many times have you tried to harm yourself?

The answer recorded was '1'.

When Legal and General obtained Mrs J's medical records as part of random checks they noted that more than one incident of self-harm was referred to on Mrs J's records.

Mrs J says there was one relevant medical episode, not multiple episodes. She says that her medical information has been misinterpreted.

However, Legal and General relied on the medical records which indicated it was most likely relevant medical information hadn't been disclosed. I think it was reasonable for them to work on the basis of the information that was available in the medical records.

More recently, during the time that the Financial Ombudsman Service was investigating the complaint, Mrs J provided more information as she's sought to get her GP records amended. She provided a letter from her GP in September 2023 which provided more clarification on the notes. But I don't think it was unreasonable for Legal and General to rely on what was documented when they made their random checks. In any event, the additional note from the GP says:

Mrs J was seen by Dr [redacted] on 27 February 2002 following an episode where she had cut her wrists. Dr [redacted] sutured her wrists. Mrs J disclosed that she had taken an overdose of paracetamol on 27 February 2002. From the records Mrs J also disclosed that over the previous two weeks she had taken several overdoses of paracetamol and that on the 27 February she had taken all her dothiepin and a paracetamol overdose. She agreed to hospital admission for assessment of her paracetamol levels and medical monitoring. She was discharge home on 7 March 2002.

The corresponding original note says:

Cut wrists yesterday, and took overdose of paracetamol, also over the past 2 weeks has taken paracetamol, took all of the dothiepin tablets a few days ago.

Legal and General has provided the underwriting criteria for the policy Mrs J was offered. It shows that they wouldn't have offered a policy to anyone with that number of incidents of self-harm recorded on their medical records. Even taking into account the recent further information I don't think Legal and General would have offered a policy based on the underwriting criteria I've been provided with.

Overall, I don't think it was unreasonable for Legal and General to conclude that Mrs J had made a qualifying representation based on the evidence that was available. Legal and General treated Mrs J's misrepresentation as careless rather than deliberate. I think that was reasonable as I don't think there's any evidence Mrs J's actions were deliberate or reckless.

As I'm satisfied Mrs J's misrepresentation should be treated as 'careless' I've looked at the actions General Insurance can take in accordance with CIDRA. In such circumstances they are entitled to avoid the policy but should return the premiums. That's what Legal and

General have done and they've offered to pay simple interest on that amount which I think is reasonable.

I've considered what Mrs J has said about discrimination. It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Legal and General has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint. That includes thinking about what a Court would likely decide if Mrs J were to make a claim under the Equality Act 2010 – the relevant provisions of which I've set out below.

Legal and General can't discriminate against Mrs J because of a protected characteristic, including a disability related to her mental health. Even if Mrs J does meet the definition of being disabled as defined by the Equality Act 2010 – and so is protected against discrimination under the Act – Schedule 3 of the Equality Act 2010 sets out some exceptions if certain conditions are met. Legal and General doesn't contravene the provisions of the Act relating to disability discrimination by doing anything in connection with insurance business where the thing is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it's reasonable to rely, and it's reasonable to do that thing.

This is known as the insurance exception. 'Insurance Business' means business which consists of effecting or carrying out contracts of insurance.

As I've outlined above, I think Legal and General fairly and reasonably relied on the available information. And, I think they've adequately demonstrated that Mrs J's medical history relating to her mental health was relevant to the risk it was prepared to accept on the policy. I don't think they've treated her unfairly or differently to other customers in the same situation.

Mrs J has pointed to information on Legal and General's website about how they approach mental health conditions. Mrs J says that she's not had a recent decline in her mental health. But, I think this is general guidance and just gives some examples of the types of issues that can impact on the policies it can offer. So, this hasn't changed my thoughts about the overall outcome of this complaint.

Legal and General Assurance Society Limited has already made an offer to refund the premiums, pay £200 and pay 8% simple interest per annum on the refund of premiums to settle the complaint. I think this offer is fair in all the circumstances.

### **My final decision**

My decision is that Legal and General Assurance Society Limited should pay £200 compensation, refund the premiums and pay 8% simple interest per annum if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 29 November 2023.

Anna Wilshaw  
**Ombudsman**

