

The complaint

Mrs B is unhappy that Legal and General Assurance Society Limited has declined a claim she made on her life insurance policy.

What happened

Mrs B has a term assurance policy which includes cover for terminal illness. The policy was taken out in 2016 during a phone call. Mrs B had previously held a different policy with Legal and General.

She claimed on her policy in 2023 - the claim was declined, and the policy was cancelled. Legal and General said she'd answered the questions about her medical history incorrectly. And it considered this to be reckless qualifying misrepresentation, which entitled them to decline the claim and cancel the policy.

Mrs B brought her complaint to the Financial Ombudsman Service. Our investigator didn't uphold the complaint because he didn't think Mrs B had accurately answered the medical questions.

Mrs B didn't agree and has asked for an ombudsman's decision. In summary, she says she did disclose her medical conditions. She's also concerned that Legal and General no longer have a copy of the call recordings. 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 B failed to take reasonable care not to make a misrepresentation when she answered questions about her medical history. I've looked at the copy of the application form which records the questions Legal and General say were asked and the answers recorded.

The relevant questions are:

(1) When answering the following questions, if you're unsure whether to tell us about a medical condition, please tell us anyway.

Apart from anything you've already told us about, during the last two years have you:

- Been prescribed any treatment for a continuous period of 2 weeks or more?
- Been referred to, or been under the care of, a hospital specialist?
- Had a blood test, biopsy, scan or any form of heart investigations?

(2) During the last 2 years have you seen a health professional about:

- Anxiety, depression or stress?

The answer to all these questions is recorded as 'no'.

I've looked at the application document which was completed in January 2016 and records the answers Mrs B gave during the application process. Legal and General say, in summary, that Mrs B failed to disclose various appointments and treatment for Behcets disease, Fibromyalgia, blood tests and depression during the two years before the policy was taken out. I think the questions asked were clear. And, having looked at Mrs B's medical record, I think she ought to have disclosed this information and answered 'yes' to the questions I've outlined above.

I've considered what Mrs B has said about having had a previous policy with Legal and General where she had disclosed some of this medical information. However, she'd held that policy for many years. And I think the application process made it clear that she was being asked about all conditions, as opposed to new conditions since she'd last applied for a policy. She was also sent a form which asked her to check the details she'd provided which gave her a further opportunity to share information about her health. Mrs B confirmed the information was correct.

Legal and General no longer have a copy of the relevant call. I can understand why Mrs B is disappointed by this as Legal and General did have it available when the claim was assessed. However, I'm satisfied that I can reach a fair and reasonable outcome. I've looked at the notes of the call which are referred to in the claims file and the final response letter. The notes show that a representative at Legal and General listened to the call and summarised what was said. They confirm that all the application questions were asked and Mrs B didn't disclose the information. The notes say:

'Went through full application, Qs read word for word and time given to answer. No mention of Behcets, Fibromyalgia, Anxiety & depression'.

The note also confirms that the questions I've set out above were asked and answered 'no'. That's also consistent with the application document. I'm persuaded, on balance, that the call notes and application document reflect the questions asked and the answers given.

Although Mrs B recalls feeling pressured that's not reflected in the note of the conversation. And, she also had the opportunity to check the answers she'd given or cancel the policy in

the cooling off period if she felt the policy wasn't right for her. So, this point hasn't changed my thoughts about the overall outcome of the complaint.

Legal and General have provided evidence that if Mrs B had disclosed this information, they'd have charged her a much higher premium. This means I'm satisfied that Mrs B's misrepresentation was a qualifying one.

Legal and General has said Mrs B's misrepresentation was deliberate or reckless because they thought the facts showed that Mrs B must have known the answers she gave were wrong and it would have been clear that the information would have been relevant to them.

I don't think it was unreasonable for Legal and General to conclude Mrs B's misrepresentation was deliberate or reckless. She'd previously disclosed details of her Behcets to Legal and General in a previous application. In a call to Legal and General when they queried why she'd not disclosed her medical history she said, in summary, that she recalled the importance of disclosing it from when she'd discussed life insurance with an independent financial advisor in 2006, which is when the first policy was taken out. She also had the opportunity to check and correct information when she was provided with a 'Check Your Details' form. Mrs B had also had a number of appointments, tests and treatments within the relevant time period, and which were shortly before the application was made. So, I think they are likely to have been reasonably fresh in her memory at the time.

As I'm satisfied Mrs B's misrepresentation was deliberate or reckless I've looked at the actions Legal and General can take in accordance with CIDRA. They can avoid the policy and keep the premiums. If there's a claim they don't have to pay this as effectively the policy never existed. In this case Legal and General have agreed to refund the premiums. So, I think the action they've taken is fair and reasonable. It also goes beyond what is required by CIDRA.

My final decision

For the reasons I've set out above, I've decided not to uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 5 January 2024.

Anna Wilshaw
Ombudsman