

## **The complaint**

Miss S is unhappy with the way in which Legal and General Assurance Society Limited handled a claim made for the terminal illness benefit under an increasing life insurance policy ('the policy'). And its later decision to decline the claim, cancel the policy and refund the premiums paid it.

## **What happened**

Miss S applied for the policy in 2018. When applying for the policy she was asked a number of questions – including about her lifestyle, health and medical history.

Very sadly, Miss S was diagnosed with terminal cancer in 2022 and she made a claim under the policy for the terminal illness benefit. Legal and General declined the claim in 2023.

That's because it said Miss S had misrepresented her weight when applying for the policy. It says, if she had correctly answered the question about her weight, it wouldn't have offered the policy to her. Legal and General also cancelled the policy, refunding the premiums she'd paid for it since it started.

Miss S initially complained to Legal and General about the time taken to assess her claim. And after the claim was declined, she also raised concerns about that. Legal and General maintained its decision to decline the claim and void the policy. However, it did accept that that it had caused some delays and offered Miss S £250 compensation.

Unhappy, Miss S asked the Financial Ombudsman Service to look into her concerns. Our investigator considered what had happened and didn't think Legal and General had acted unfairly by declining the claim, cancelling the policy and refunding her premiums. However, she did think Legal and General should pay additional compensation to Miss S in the sum of £250 (so, totalling £500). Both parties disagreed so Miss S' complaint was passed to me to consider everything afresh and decide.

I issued my provisional decision in January 2024. An extract of which is set out below.

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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 Miss S failed to take reasonable care not to make a misrepresentation when answering a question about her weight. And although it says that she answered other questions incorrectly, it was the misrepresentation about her weight which resulted in her policy being cancelled and claim declined.

I am very sorry to read the diagnosis Miss S has received. I can't begin to imagine what she's going through. However, I'm independent of the parties and have to consider what's fair and reasonable in this case. I know Miss S will be very disappointed but, overall, I think Legal and General has acted fairly and reasonably by declining her claim and cancelling the policy. I've set out my reasons below.

### **Did Miss S make qualifying misrepresentation?**

When applying for the policy, Miss S was asked a number of questions including asking her to state her weight at the time of application. It's reflected that she answered: "85.3kg". I think this was a clear question.

When reviewing Miss S's claim against her medical records, Legal and General concluded that she'd misrepresented her weight at the time.

Although there's no record of her weight in her medical records from around the time of her application in 2018, there are entries from around a year before and around a year after the date of her application. It's reflected that her weight was 125kg in February 2017 and 140kg in January 2019. Legal and General observed that up until the date of the application and then the following year in 2019, her medical notes reflect that her weight was increasing. It said that most likely her weight was between 125kg and 140kg in 2018 when she applied for the policy.

When assessing the claim, Legal and General asked Miss S to explain why she'd stated her weight to be around 85kg when applying for the policy. She said that her weight had always fluctuated significantly. In 2017/2018 she followed a specific diet plan and lost weight in preparation for a significant life event. But once she started eating a more varied diet, her weight increased to significantly more than it was prior to dieting. She said this explained her recorded weight in 2017 and 2019.

Miss S also provided letters from her brother, a friend, her GP and a former employer. In summary these letters reflect that Miss S's weight did fluctuate over the years due to "yoyo dieting" and there were times when she lost considerable weight in a relatively short period of time by following a particular diet. However, after a period of time – when she started eating a more varied diet – she'd put on the weight she'd lost and more. Her former employer particularly recalls that Miss S was losing weight in 2017 to prepare for a particular special event. However, importantly, the letters don't record what her weight was in 2018.

There's nothing in her medical records to suggest that her weight had fluctuated in several years leading up to the date of the application. And although her former GP mentions Miss S losing 18kg in three months in 2013, her medical records generally suggest that her weight was increasing over the years. Legal and General has also provided details of previous policy applications Miss S has made with it over the years. When, comparing those applications to her medical records detailing her weight from the time, it's said that there was a pattern of Miss S significantly underestimating her weight on those occasions too. Having considered the applications against her medical records at those times, I'm satisfied that this is the case.

It's entirely possible that Miss S did lose a significant amount of weight in 2018 and she did weigh around 85kg as reflected on her application form. However, when considering the totality of evidence in this case, I think Legal and General has fairly concluded on the balance of probabilities that this was unlikely.

So, I'm satisfied it's fairly concluded that Miss S hadn't correctly stated her weight at the time of the application.

I've gone on to consider whether Legal and General has fairly concluded that Miss S made a qualifying misrepresentation under CIDRA by answering the weight question incorrectly. And I'm satisfied it has.

It's provided underwriting guidance showing that if Miss S had accurately given her weight when applying for the policy, it wouldn't have offered it to her, when considering her height against her weight and her body mass index. It would've declined to offer critical illness cover at that time and the life cover would've been more expensive. So, the answer to this question mattered to Legal and General.

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

Legal and General concluded that Miss S's misrepresentation was deliberate or reckless. Taking into account Miss S' explanation about why she answered the weight question in the way she did, when considered against her medical records, I'm satisfied that Legal and General has fairly concluded that Miss S' misrepresentation was deliberately or recklessly made.

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.

Legal and General could've also chosen to keep the premiums paid for the policy. It didn't do that here; it reimbursed Miss S for the monthly premiums she'd paid for the policy since the date it started. I think Legal and General acted fairly by doing this.

Even if I'm wrong on this point, I'm satisfied that the misrepresentation was, at the least, carelessly made. And I've seen evidence from Legal and General, that given her weight and height at the time of application, it wouldn't have offered the policy to her according to its underwriting criteria.

### **Delays**

Legal and General has an obligation to handle claims fairly and promptly. It accepts that there were times when it unreasonably delayed progressing the claim as quickly as it should have. That includes chasing for medical information. It also says it should have more proactively provided Miss S with updates.

Legal and General apologised and offered Miss S £250 compensation in recognition of this. I can see that this was a very worrying time for Miss S, which would've been exacerbated by the delays caused by Legal and General and Miss S not receiving regular updates. But I think £250 fairly reflects the distress and inconvenience she's experienced.

I know Legal and General provided Miss S with its final decision around a week after she said she would be appealing the decision. However, at that stage, I'm satisfied that she

hadn't indicated that she wanted to provide Legal and General further information in support of her claim and as part of any appeal. So, in the circumstances, I don't think Legal and General acted unreasonably by providing its final response within the timeframe it did and without waiting to see if Miss S wanted to provide further information in support of her appeal.

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I invited both parties to provide any further information in response to my provisional decision.

Legal and General had nothing further to add. Miss S didn't reply.

### **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.

Having received no new information in response to my provisional decision, I'm satisfied there's no compelling reason to depart from my provisional findings.

For this reason, and for reasons explained in my provisional decision (an extract of which is set out above and forms part of this, my final decision) I direct Legal and General to pay Miss S £250 compensation for distress and inconvenience offered in its final response letter dated April 2023 - if it hasn't done so already.

### **My final decision**

Legal and General Assurance Society Limited has already made an offer to settle the complaint, as set out above. I find that's fair in all the circumstances.

My final decision is that Legal and General Assurance Society Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 March 2024.

David Curtis-Johnson  
**Ombudsman**