

The complaint

Ms M and Ms T are unhappy that Legal and General Assurance Society Limited cancelled a joint life insurance policy ('the policy') shortly after it had started.

What happened

Towards the end of 2022, Ms M and Ms T applied for the policy. When doing so, they were individually asked a number of questions – including about their lifestyle, health and medical history. Based on the answers given, Legal and General offered the policy to them.

Legal and General says it checks around one in ten applications made either before or shortly after a life insurance policy begins (by obtaining information from the applicant's doctor). That is what happened here after the policy started. Having considered the medical information received for Ms M (and follow up medical information requested), Legal and General decided to cancel the joint policy but offered Ms T a single life insurance policy.

Legal and General concluded that Ms M had been seen by a psychiatrist and been diagnosed with a personality disorder in 2002. And she hadn't declared this when asked whether she'd ever been treated by a psychiatrist.

Legal and General says if Ms M had answered a question about this correctly, it wouldn't have offered the policy.

Ms M complained to Legal and General and after it maintained its position, she brought a complaint to the Financial Ombudsman Service. Our investigator considered what had happened and didn't think Legal and General had acted unfairly. Ms M disagreed so her 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.

I know Ms M and Ms T will be very disappointed but, overall, I think Legal and General has acted fairly and reasonably by cancelling the policy. I'll explain why.

Did Ms M make a qualifying misrepresentation?

When applying for the policy, Ms M was asked a number of questions including:

Apart from anything you've already told us about in this application, during the past 2 years have you been in contact with a doctor, nurse or other health professional for:

Anxiety, depression or stress that's required treatment or counselling, or chronic fatigue syndrome?

It's reflected Ms M answered: 'yes'.

It then says: 'please select from this list' (of conditions) and 'depression' is selected.

One of the follow up questions is then:

Have you **ever** been treated by a psychiatrist or psychiatric nurse? **(my emphasis)**

I'll refer to this as 'the follow up psychiatrist question'. It's reflected that Ms M answered 'no' to this question.

I've considered Ms M points about the follow up psychiatrist question not being clear. But I disagree.

Although the first question about whether she'd been in contact with a doctor, nurse or other health professional for anxiety, depression or stress which has required treatment or counselling related to the past two years, I think it's clear that this follow up psychiatrist question isn't restricted to the last two years, as it says 'have you ever...' Further, the follow up psychiatrist question doesn't say it's restricted to the condition disclosed (in this case, depression) unlike some of the other follow up questions. It's asking about whether she'd been treated by a psychiatrist more generally.

When reviewing the claim against Ms M's medical records, Legal and General concluded that she should've disclosed being treated by a psychiatrist and answered 'yes' to the follow up psychiatrist question. I think its conclusion was fair and reasonable.

The medical evidence reflects that a consultant psychiatrist diagnosed Ms M with a personality disorder in 2002. Although Ms M says the appointment with the psychiatrist only lasted around 40 minutes and was arranged and paid privately for her by a parent, I think it's fair and reasonable for this appointment to amount to her being treated by a psychiatrist (even though her GP wrote a letter in March 2023 saying that no further management or treatment for this was deemed necessary at the time or since).

When asked about why she didn't declare this, Ms M initially told Legal and General that she couldn't recall the appointment as nothing happened as a result. I appreciate the appointment took place around 20 years before applying for the policy, but I think it's reasonable to conclude that this is something she should've been able to recall, having been asked a direct question about having ever been treated by a psychiatrist. Particularly as she recalled it 2010 when seeing a clinical psychologist as a letter from them dated January 2010 reflects: "she remembers being diagnosed with a personality disorder by Dr.... Consultant Psychiatrist".

I've gone on to consider whether by answering this question incorrectly Ms M's misrepresentation amounted to a qualifying misrepresentation under CIDRA. And I'm satisfied it did.

Legal and General has provided underwriting information and opinion from its chief medical officer supporting that if she'd answered the follow psychiatrist question correctly, it wouldn't have offered a joint policy to Ms M and Ms T. So, I'm satisfied the answer to this question mattered to Legal and General.

Cancelling the policy

I'm satisfied that the misrepresentation was careless rather than deliberate or reckless.

I've looked at the actions Legal and General can take in line with CIDRA. Under this legislation it's entitled to act as it would've done if it had been told about the information when applying for the policy. I've seen evidence from Legal and General, if Ms M had answered the follow up psychiatrist question correctly, it wouldn't have offered the policy. So, I don't think it's acted unfairly and unreasonably in the circumstances of this complaint by cancelling the policy but offering a single life insurance policy to Ms T.

Having cancelled the policy and treating it as never being in place, Legal and General has also agreed to refund the premiums paid for the policy. I also think that's fair and reasonable, and in line with what I'd reasonably expect it to do.

Discrimination in breach of the Equality Act 2010

It's not the role of the Financial Ombudsman Service to determine 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 of each individual complaint.

When doing so, I'm required to take several things into account including the relevant law, regulations and what we consider to be good industry practice at the time. So, although it's for the Courts to determine whether there's been a breach of the Equality Act 2010 ('the Act'), I am required to take the Act into account, if it is relevant, amongst other things when deciding what's fair and reasonable in the circumstances of a complaint.

Even if Ms M's condition amounts to a disability as defined by the Act (which I make no finding on) - and so the Act is a relevant consideration in this case – there is an insurance exception contained at section 21 of Schedule 3 of the Act in respect of disability discrimination.

Simply put, the provisions of the Act relating to disability discrimination do not apply to anything done in connection with insurance business if:

- it's done by reference to information which is both relevant to the assessment of the risk to be insured and from a source on which it is reasonable to rely; and
- it's reasonable to do that thing.

I'm satisfied Legal and General's decision to cancel the policy after it began is in line with what it would've done had Ms M answered the follow up psychiatrist question correctly when taking out the policy, and in line with the underwriting information.

Legal and General also provided me with information from an independent source (dated 2020). This document references medical journals / articles and reflects that those

individuals with a personality disorder present an increased risk for protection insurance products such as life insurance and explains why. I'm satisfied that it's fair and reasonable in the circumstances of this case for Legal and General to rely on this information which I think is from a reliable source and relevant to the increased risk of a claim being made.

Other issues

Ms M is unhappy with the content of Legal and General's letter dated March 2023 explaining the reasons for cancelling the policy. In its final response letter, Legal and General accepted that the letter wasn't well worded. It apologised and said it had arranged for feedback to the person who wrote the letter. As the final response letter is dated around two weeks after the letter Ms M was unhappy with, I'm satisfied Legal and General promptly accepted its error, apologised and arranged feedback. I think that's enough to put things right in the circumstances of this case and an apology fairly and proportionately reflects the impact the contents of the letter had on Ms M.

Ms M is also unhappy that she may not be able to get life insurance with another provider. I don't know if that's the case but for reasons set out above, I don't think Legal and General has acted unfairly by cancelling the policy. It's also said that if Ms M is able to get further medical opinion from someone qualified challenging the diagnosis of personality disorder made in 2002, it would consider a new application for her. I think that's fair and reasonable. Legal and General isn't under any obligation to pay for that medical opinion in these circumstances, so I'm satisfied it's fairly concluded that the cost of any such medical opinion would need to be met by Ms M.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Ms T to accept or reject my decision before 22 May 2024.

David Curtis-Johnson
Ombudsman