

## **The complaint**

Mr A is unhappy that Legal and General Assurance Society Limited declined a claim he made on a life and critical illness insurance policy.

## **What happened**

Mr A and his late wife, Mrs A, had a joint life and critical illness insurance policy. Mrs A was diagnosed with lung cancer and has since sadly died. Mr A claimed on their joint policy.

Legal and General declined the claim on the basis that Mrs A hadn't accurately disclosed her medical history. They said that had she done so they wouldn't have offered her a policy. Mr A complained to Legal and General but they maintained their decision was fair. Unhappy, Mr A complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He thought that Legal and General had acted reasonably bearing in mind the available medical evidence. Mr A didn't agree and asked an ombudsman to review the complaint. In summary, he says that Mrs A didn't misrepresent her medical history.

## **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 rules and industry guidelines say that Legal and General have a responsibility to handle claims promptly and fairly. And, they shouldn't reject a claim unreasonably. I've also considered the relevant industry code of conduct. I've also taken into account the relevant Code of Practice issued by the Association of British Insurers.

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 A failed to take reasonable care not to make a misrepresentation when she answered questions about her medical history. Mrs A was asked:

*“During the last months have you had any of the following?*

*- a cough that’s lasted 3 weeks or more”.*

Mrs A answered ‘no’ to this question when she completed the application form in late July 2017. Legal and General say Mrs A should have answered ‘yes’.

I’ve looked at the available medical evidence. A few weeks after the application was made Mrs A attended an appointment with her GP. The notes from the appointment say that she’d had a cough for four months. In September 2017 Mrs A attended the accident and emergency department and the notes say that she’d had a cough for three to four months. She was diagnosed with pleural effusion and then lung cancer.

Mr A says that the cough referred to in the GP notes shortly after the policy was taken out was related to hayfever. He highlighted that Mrs A was prescribed an inhaler and antihistamines, which are common treatments for hayfever.

I’ve taken into account that Mrs A’s GP completed a report in May 2018 saying that she hadn’t experienced any related or linked conditions. However, I think it’s reasonable to rely on the medical records from 2017 which refer to the cough. And, I think it’s reasonable to place more weight on the contemporary notes as I think they most likely reflect the symptoms Mrs A reported at the relevant times. I’ve considered Mr A’s testimony and his representations that the cough was mild and intermittent. However, I don’t think that’s reflected in the available medical evidence.

I think Mrs A should have answered ‘yes’ to the question, regardless of what the cause of the cough was. Based on the available evidence I think it’s reasonable for Legal and General to conclude that she most likely she had a cough which had lasted more than three weeks at the point of application.

Legal and General has provided evidence of their underwriting criteria. This information shows that Mrs A’s application would have initially been postponed and then, following receipt of further medical evidence, would have been declined. This information is commercially sensitive and therefore can’t be shared with Mr A. However, I hope it reassures him to know that someone independent has reviewed it.

This means I’m satisfied Mrs A’s misrepresentation was a qualifying one. Legal and General has said Mrs A’s misrepresentation was careless. I agree Mrs A’s misrepresentation was careless. I don’t think she deliberately misled Legal and General. I think it’s more likely it was an oversight that was unintentional.

As I’m satisfied Mrs A’s misrepresentation should be treated as careless I’ve looked at the actions Legal and General can take in accordance with CIDRA. In such circumstances CIDRA says that they can decline the claim, cancel the policy and refund the premiums. That’s what Legal and General have done and so I’m satisfied that they have acted fairly and in line with the relevant legislation.

I don’t think it is fair and reasonable to uphold this complaint. I have a lot of empathy for Mr A’s circumstances but I don’t think Legal and General have acted unfairly. So, I’m not directing Legal and General to pay the claim or compensation for distress and inconvenience.

### **My final decision**

I’m not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 August 2024.

Anna Wilshaw  
**Ombudsman**