

The complaint

Mr S and the estate of Mrs S complain that Legal and General Assurance Society Limited declined a claim on a life insurance policy.

What happened

Mr and Mrs S took out a joint life insurance policy with Legal and General in 2016. In 2023 Mrs S sadly died and Mr S made a claim on the policy. The claim was declined because Legal and General said Mrs S hadn't accurately answered questions about her medical history, including her correct weight.

Mr S made a complaint to Legal and General. In their Final Response Letter Legal and General maintained their decision to decline the claim. They considered that this was a deliberate or reckless qualifying misrepresentation which entitled them to decline the claim and refund the premiums paid. However, they offered £350 compensation for failings in the customer service provided during the claims process, including avoidable delays. Mr S complained to the Financial Ombudsman Service.

Our investigator looked into what happened and obtained further clarification from Legal and General. They confirmed that had the medical questions been answered correctly they'd have declined cover and, even if they agreed the misrepresentation was careless, they had already agreed to refund the premiums. Our investigator thought that Legal and General had acted reasonably when declining the claim, based on the available medical evidence. However, she thought it was fair and reasonable to increase the total compensation to £500 to reflect the impact of the customer service on Mr S.

Legal and General ultimately accepted the investigator's recommendation. Mr S didn't agree and asked an ombudsman to review the complaint. In summary, he felt that the investigator had sided with Legal and General. He said he'd provided evidence that Legal and General would have offered a policy to Mrs S if she'd disclosed a higher weight. He said Legal and General's decision hadn't demonstrated they wouldn't have insured Mrs S and that they would have offered a policy if the correct weight had been entered. So, the complaint was referred to me to make a decision.

I asked our investigator to clarify some further points with the parties. Legal and General confirmed that they had ultimately declined the claim due to the deliberate or reckless disclosure in relation to weight alone. Our investigator also explained to Mr S that Legal and General would have offered Mrs S a policy if she'd accurately declared her weight but at a higher price. And the investigator explained that if I were to conclude the misrepresentation was deliberate or reckless Legal and General were entitled to decline the claim and not refund the premiums.

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 S failed to take reasonable care not to make a misrepresentation when she answered questions about her weight. I've looked at the questions Mrs S was asked in February 2016 when the policy was taken out. She was asked her weight and recorded it as 13 stone and said she was a size 16. There is a note in Mrs S's medical records which says that in February 2015 she had gained weight and was 18 stone 10 pounds. She was also advised about alcohol and weight gain. In late December 2015 her weight was recorded as 18 stone 8 pounds. There is no indication that Mrs S lost weight prior to the application a few months later. And, on the balance of probabilities, I think it's unlikely that she'd have lost over 5 stone in such a short period of time. So, I don't think Mrs S took reasonable care when answering the question.

Mr S says that he's spoken to Mrs S's GP and she wasn't told about her weight in December 2015 but I've seen no evidence to confirm that. Mr S has explained that Mrs S was an honest woman and she would have gone by her clothing size. He highlighted that Mrs S was an active woman and she may have weighed more due to muscle. I haven't found that explanation to be persuasive in the circumstances of this case. I think it's unlikely Mrs S would have underestimated her weight so significantly at the point of application, particularly when she'd been weighed twice within the previous year.

Legal and General has provided evidence of their underwriting criteria and comments from the underwriter. This shows that if Legal and General had been provided with Mrs S's correct weight they'd have charged Mrs S a higher premium. This means I'm satisfied Mrs S's misrepresentation was a qualifying one.

Legal and General has said Mrs S's misrepresentation was deliberate or reckless because, in summary, she'd recently been weighed by her GP prior to the application. And, they highlighted the significant difference between the weight recorded on the application and in the GP notes.

I agree that Mrs S's misrepresentation was most likely deliberate or reckless. She'd visited her GP shortly before the application was made and discussed putting on weight and feeling depressed. I think that suggests she was most likely aware of her weight prior to the application being completed. There's a significant difference between the weights recorded by the GP and the information in the application form. I think it was reasonable for Legal and General to conclude that was unlikely to be an oversight or error.

As I'm satisfied Mrs S's misrepresentation should be treated as 'deliberate' I've looked at the actions Legal and General can take in accordance with CIDRA. Where a qualifying misrepresentation is deliberate or reckless Legal and General are entitled to avoid the policy and keep the premiums. They can also decline the claim. In this case Legal and General

have agreed to refund the premiums, which goes beyond what they are required to do by CIDRA.

Mr S has argued that Legal and General would have offered the policy even if Mrs S had disclosed her weight. He says he wants to see evidence that Legal and General wouldn't have offered cover. But that's not Legal and General's current position. There's no longer any dispute about whether a policy would have been offered. Legal and General say that Mrs S would have been offered a policy but charged a higher premium. The key reason that Legal and General can decline the claim is because of the deliberate or reckless misrepresentation. As our investigator recently explained, as the classification of the misrepresentation isn't 'careless' there's no requirement for the claim to be settled proportionately. So, even if they would have offered cover at a higher premium, they are entitled to decline the claim.

I'm sorry that Mr S feels that the Financial Ombudsman Service hasn't considered his point of view and has sided with Legal and General. My role is to carry out an independent review of the evidence as the Financial Ombudsman Service is impartial. I hope it reassures Mr S to know that someone independent has reviewed the relevant evidence, including the underwriting information. I haven't simply accepted what Legal and General have said.

Customer Service

Legal and General accept that they didn't provide good customer service during the time that they were assessing the claim. There were some avoidable delays, and they could have explained their reasons for declining the claim more clearly. This caused confusion which I accept would have been worrying and upsetting for Mr S, particularly when he was already worried about his finances.

I think a total of £500 compensation fairly reflects the impact of this additional distress and inconvenience caused to Mr S. He and his representative had to call and chase the progress of the claim at an already difficult time for the family.

Putting things right

Legal and General needs to put things right by paying Mr S a total of £500 compensation if it hasn't done so already.

My final decision

I'm partly upholding this complaint and direct Legal and General Assurance Society Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and the estate of Mrs S to accept or reject my decision before 16 October 2024.

Anna Wilshaw
Ombudsman