

The complaint

Mr and Mrs R are unhappy that Legal and General Assurance Society Limited have declined a claim they made on a life and critical illness policy.

What happened

Mr and Mrs R have a joint life and critical illness policy with Legal and General. Mr R claimed on the policy for the critical illness benefit, following a diagnosis of Parkinsons.

Legal and General declined the claim as they said Mr R hadn't accurately declared his medical history during the application process. They said, he had done so, they wouldn't have offered him this policy. Mr and Mrs R complained to Legal and General, but they maintained their decision was fair. However, they paid £250 compensation for service issues relating to the cancellation of the policies. Unhappy, Mr and Mrs R complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He was satisfied that Legal and General had fairly declined the claim and that the compensation offered was fair.

Mr and Mrs R didn't agree and asked an ombudsman to review their complaint. In summary, they said Mr R wasn't aware of the tests being done and that Legal and General had continued to ask Mr R questions, even when they'd been asked not to contact him. They also said that Legal and General had told their Financial Advisor Mr R would have been offered cover. So, the complaint was referred to me 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.

I'm sorry to read of the circumstances which led to Mr R making a claim. I can appreciate it's been a very difficult time for Mr and Mrs R. I have a lot of empathy with what they've said about the financial impact of Mr R's condition on their personal and financial circumstances.

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 say Mr R failed to take reasonable care not to make a misrepresentation when he was asked questions about his medical history. He was asked the following questions:

Apart from anything you've already told us about in this application, during the last 5 years have you seen a doctor, nurse or other health professional for:

- lupus, fibromyalgia, gout or any type of arthritis, neck, back, spine or joint trouble, for example rheumatoid arthritis, sciatica?
- Chest pain, palpitations or irregular heartbeat? paralysis, numbness, persistent tingling or pins and needles, tremor or facial pain other than dental pain? Memory loss, dizziness or balance problems.

Apart from anything you've already told us about in this application, during the last 12 months have you: been referred to or had any investigations in hospital, for example biopsy, scan, ECG?"

Mr R answered 'no' to those questions. Legal and General says he should have answered 'yes'. I think that was reasonable in the circumstances.

The policy was taken out in June 2020. Mr R's medical records demonstrate that:

- Mr R underwent various investigations for neurological symptoms in 2016 which included tingling, pins and needles, and muscular weakness. The investigations included an MRI and nerve conduction test.
- In 2020, shortly before the policy was taken out, Mr R had further neurological symptoms including leg weakness and twitching. Mr R was referred to neurology for review and this was outstanding at the time of the application.

I appreciate that Mr R says he wasn't aware of what was happening at the time. But I think it's reasonable to conclude that he was aware given that his GP referred him to a specialist for their input. I bear in mind that the symptoms reported were wide ranging and significant. I've considered what's most likely to have happened. On balance, I think it's unlikely Mr R was unaware of the referral.

Legal and General has provided evidence which shows that if Mr R had answered 'yes' to these questions he wouldn't have been offered this policy with critical illness cover. This means I'm satisfied Mr R's misrepresentation was a qualifying one.

I appreciate that Mrs R says that her financial advisor was told that cover would have been offered. But I'm satisfied that Legal and General have provided enough evidence to demonstrate that's not the case. I hope it reassures Mr and Mrs R to know that someone independent has reviewed the evidence in relation to this.

Legal and General have said Mr R's misrepresentation was deliberate or reckless. However, I note that they've refunded the premiums which is the remedy CIDRA sets out for careless misrepresentation. That goes beyond the remedy set out in CIDRA. So, even if I concluded Mr R's misrepresentation was careless, rather than deliberate or reckless, this wouldn't change the ultimate outcome here. I'll explain why.

In the circumstances, where Legal and General wouldn't have offered Mr R the policy, they

are entitled to decline the claim. In the event of deliberate and/or reckless misrepresentation they are entitled to keep the premiums. Where the misrepresentation is careless, they should refund the premiums. So, even if I concluded the misrepresentation was careless, Legal and General have applied the remedy set out in CIDRA.

Legal and General did offer £250 compensation for customer service issues related to miscommunication with Mr and Mrs R about the policy cancellation. I note that Legal and General have given Mrs R the option to contact them about her policy and will reinstate her cover if she wishes. I think that's fair and reasonable and that the £250 compensation fairly reflects the impact of the poor service they experienced.

In reaching that conclusion I've taken into account what Mrs R has said about Legal and General contacting Mr R. In the circumstances, I think it was reasonable for them to want to discuss the application with Mr R. And, in any event, I don't think it's central the outcome of the complaint as, even I accepted her representations on that point, I don't think any further compensation needs to be paid. I think a total of £250 is fair and reasonable in all the circumstances.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 6 January 2026.

Anna Wilshaw
Ombudsman