

RECENT FOS DECISIONS

What was that Question?

[Link to determination](#)**Facts**

The Applicant took out life and income protection policies with the financial services provider (FSP) and subsequently made a claim for income protection benefits (IP) following a reported disablement.

The FSP declined the claim and avoided the policies on the basis that the Applicant misrepresented his medical history in respect of a number of conditions and as a result it would not have issued the policies if it had known his true history.

One of the conditions the FSP considered the Applicant misrepresented was ulcerative colitis, a bowel disorder. Evidence of the FSP's underwriting practices shows IP cover would have ordinarily been refused where the Applicant had ulcerative colitis.

When applying for cover, the Applicant was asked 'Have you ever had symptoms of, been diagnosed with or treated for, or intended to seek medical advice for any of the following... hepatitis or any disorder of the liver, stomach, bowel, gallbladder or pancreas?' While there was no dispute that the Applicant previously had ulcerative colitis, the issue was that the Applicant answered 'no' before the relevant question was fully read out and the FSP's sales consultant (the consultant) did not repeat the question when he should have been aware that the Applicant answered prematurely.

Held

The FOS considered the recording of the relevant conversation between the sales consultant and the Applicant. The FOS ultimately determined that it was unclear if the Applicant actually heard 'bowel' or the rest

of the question when asked, and it was inconclusive if he provided a response in respect of that part of the question. At minimum, the FOS considered that the parties should have been aware that the Applicant answered prematurely and said 'sorry' midway through the question which suggested he was aware the sales consultant was still speaking when he initially answered. Despite this, the sales consultant did not repeat the question.

As a result, the FOS determined that it was difficult to conclude the Applicant necessarily made a misrepresentation in the circumstances and noted that section 27 of the ICA did not consider a misrepresentation had been made just because a person failed to answer a question.

The FSP had declined the claim based on misrepresentations in respect of two other conditions but the FOS ultimately determined that the FSP was not entitled to refuse the claim and avoid the policies as it could not be shown that it would have refused the cover if the misrepresentations were not made.

Implications

The case highlights the importance that FSP sales consultants receive adequate training to ensure they clearly read out every question to a person applying for cover and should there be any indication that a question has not been fully heard, that they are trained to repeat the question irrespective of whether they have been asked to do so or not.