

Make life insurance part of your financial plan



BY JOHN BINGHAM

Life insurance should be a key element of everyone's financial plan, as it pays a sum of money to the beneficiaries of your policy, thus ensuring they are able to meet their financial commitments after your death.

Whether you have taken out a policy of life insurance yourself, or you benefit from a group policy taken out by your employer, you must always ensure that you disclose to the insurer, in any medical examination and in any written statements (including those made on any application form), every fact within your knowledge and belief that is material to the insurance (a "material fact"). Material facts are those that are relevant to an insurer's decision about whether they should offer you insurance and, if so, the terms.

Disclosure is very important. The risk of premature death differs from person to person, as various lifestyle factors impact life expectancy. Alcohol and tobacco consumption are common examples; they are key factors affecting mortality, with the amount and frequency of consumption increasing the chance of premature death. As such, your alcohol and tobacco consumption habits are clearly relevant to life insurance, and you are required to answer any questions about such consumption truthfully.

The consequences of a failure to disclose depend on the individual circumstances of each case. Section

12(2) of the Life Insurance Act 1978 (the "Act") provides that a failure to disclose, or misrepresentation of, a material fact, renders the contract voidable by the insurer. This means that the insurer can avoid paying the claim, should it discover that you were untruthful in statements made in connection with your application for insurance, or that you otherwise failed to comply with your duty of disclosure.

For example, you apply for life insurance, and state that you have not used any tobacco products within the previous 12 months. However, you are in fact a heavy cigarette smoker, and have been for many years. You are tragically killed in a motorcycle collision, and your spouse claims on your life insurance policy. The insurer appoints an investigator to investigate the claim; this is common practice in respect of life insurance claims, given the large insured sums and common exclusionary provisions (e.g. suicide). During the course of the investigation, your former boss unwittingly reveals that you regularly took 'smoke breaks'. In addition, a photograph turns up of you at the pub – obtained from your Facebook profile and date-stamped six months before you applied for insurance – a beer in one hand and a cigarette in the other. This may seem a little far-fetched, but such a scenario is far from uncommon in the context of life insurance claims management and litigation. The insurer denies the claim on the basis of your

misrepresentation, and your spouse and/or loved one is faced with a lengthy and costly legal battle with the insurer.

The Act recognises that the implications of a failure by the insured to comply with the duty of disclosure may cause severe hardship to his or her family, and that such hardship may be disproportionate to the prejudice sustained by the insurer as a result of a non-disclosure or misrepresentation. Section 13 of the Act attempts to bring about a fair balance between the interests of an insured and those of an insurer. If a contract of insurance has been in effect for two years during the lifetime of the person whose life is insured, a failure to disclose or a misrepresentation of a material fact will not, in the absence of fraud, render the contract voidable. This means that the insurer will not be able to rely on such non-disclosure or misrepresentation in order to deny liability. In the example provided above, whether the insurer would have a right to avoid the claim would depend on whether the contract of insurance had been in force for two years or more.

The importance of complying with your duty of disclosure when completing any application for insurance cannot be overstated. Non-disclosure or misrepresentation will almost certainly result in an insurer attempting to avoid liability for a claim and – even if your spouse is ultimately successful in court – the costly and lengthy litigation would not be a pleasant experience. In any event, it is uncommon for an insurer to refuse to provide cover based on ‘adverse’ disclosure. Generally, such a disclosure will simply invoke higher premiums, to reflect the additional risk exposure assumed by the insurer. It is often the case, however, that such an increase in premiums will only remain in effect while the insured continues to engage in the ‘risky’ activity. Often, for example, it will be possible to switch from ‘smoker’ to ‘non-smoker’ status after a certain period of time as a non-smoker (generally a year), with a consequent reduction in your premium payments from that point onwards.

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