

The complaint

The estate of Mr J complains that Legal and General Assurance Society Limited have declined a claim they made on Mr J's life insurance policy.

The estate is represented by Mrs J. Mrs J's daughter acts as her representative in the complaint, but I'll refer to submissions as being made by Mrs J.

What happened

Mrs J claimed on the late Mr J's life insurance following his death. The policy was taken out in 2014. The claim was declined because Legal and General said that Mr J had answered a question about his alcohol intake incorrectly. And they considered this to be careless qualifying misrepresentation, which entitled them to decline the claim, cancel the policy and refund the premiums.

Mrs J made a complaint to the Financial Ombudsman Service and our investigator didn't think it should be upheld. She thought Legal and General had acted reasonably, based on the questions Mr J was asked and the available medical information.

Mrs J didn't agree and asked an ombudsman to make a decision. In summary, she didn't think that the medical evidence supported that Mr J had been advised to reduce his alcohol intake. She felt that this was an assumption and noted that Legal and General hadn't asked Mr J what his alcohol intake was in units on the application form. So, I need 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 hear of the circumstances of this complaint. I empathise with what Mrs J has said and would like to offer my condolences to Mrs J and her family.

The relevant rules and industry guidelines say that Legal and General should handle claims promptly and fairly. And they shouldn't reject a claim unreasonably. I've also taken into account the relevant Code of Practice for managing claims for Life Insurance Products.

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 Mr J failed to take reasonable care not to make a misrepresentation when he answered questions about his alcohol intake on the application form.

Mr J was asked:

During a typical week, how many alcoholic drinks do you have? For example, a drink is a glass of wine or a glass or bottle of beer.

Mr J answered '14'.

Have you ever been told by a health professional that you should reduce the amount of alcohol you have because you were drinking too much?

Mr J answered 'no' to this question.

Legal and General have provided evidence from Mr J's medical history. There's a note from January 2010 which records Mr J's alcohol intake as 100 units per week. The more detailed note confirms this and there is a comment which says, 'patient advised about alcohol'.

I don't think it was unreasonable for Legal and General to conclude that Mr J was advised to reduce his alcohol consumption during this appointment. I accept that the notes don't specifically say that Mr J was advised to reduce his consumption. However, I don't think that's an unreasonable conclusion to draw in the circumstances.

The NHS recommends that people drink no more than 14 units of alcohol per week on a regular basis. Given that Mr J had disclosed that his alcohol intake was significantly higher, I think it's most likely that Mr J was told to reduce his intake. That would be consistent with NHS guidelines and other relevant guidance, such as the NICE (National Institute for Care and Excellence) guidelines.

I've also considered what I think is other relevant evidence from Mr J's medical records, although it post-dates the application. There's a further note from October 2018 which records Mr J's alcohol use as 100 units per week and says that it is over the recommended sensible limits. There's also a further note in June 2020 where alcohol intake is recorded as 60 units a week. A consultant's letter from July 2020 also records Mr J's consumption as 100 units per week. When he applied for the policy Mr J disclosed drinking 14 alcoholic drinks in a typical week (which amounts to 14 glasses of wine or beer).

I've taken into account the other information I've been provided with, including that Mr J led a normal life with a perfect attendance record at work. However, I don't think it was unreasonable for Legal and General to rely on the available medical information and draw the conclusions they did.

Legal and General has provided underwriting evidence which shows that if Mr J had accurately disclosed information about his alcohol intake, they wouldn't have offered him a policy. This means I'm satisfied that Mr J's misrepresentation was a qualifying one.

Legal and General has said Mr J's misrepresentation was careless. I agree that it was careless because I think it's most likely the misrepresentation result from insufficient care such as an oversight, a mistake or negligence.

As I'm satisfied that this was a careless misrepresentation, I've looked at the actions Legal and General can take in accordance with CIDRA. It says that if a policy wouldn't have been offered, they are entitled to avoid the policy and return the premiums paid. They are also entitled to treat the policy as though it never existed from the point of avoidance and not deal with any claims. That's what Legal and General have done. So, I think that's reasonable and in line with the remedy set out in CIDRA.

I know that my decision will come as a significant disappointment to Mrs J, and I'm sorry to hear about the financial impact this will have on her and her ability to retain the family home. However, having carefully reviewed all the evidence, I can't fairly conclude that Legal and General has acted unfairly in the circumstances of this case.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr J to accept or reject my decision before 29 December 2023.

Anna Wilshaw
Ombudsman