

## **The complaint**

Mrs K has complained that Scottish Friendly Assurance Society Limited declined the claim she made under a joint life policy.

## **What happened**

Mr and Mrs K took out life and critical illness cover in January 2018 for a term of five years. Very sadly Mr K passed away in March 2022. Mrs K then made a claim under the life policy. Scottish Friendly didn't pay the claim – it said that Mr K hadn't answered all the medical questions accurately at the application stage. It said it wouldn't have offered cover if the correct answers had been given.

Mrs K brought her complaint to our service. Our investigator didn't find that Scottish Friendly had done anything wrong. Mrs K appealed.

## **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.

Firstly I'd like to express my condolences to Mrs K for the loss of Mr K. I have no doubt that this has been a traumatic and very stressful time for her.

Firstly, I'm aware I've set out the background to this complaint in less detail than the parties and I've done so using my own words. I'm not going to respond to every point made by the parties. No discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I've fully reviewed the complete file. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Having done so, and although I'm sorry to bring Mrs K disappointing news, I agree with the conclusion reached by our investigator. I'll explain the reasons why.

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.

Scottish Friendly felt that Mr K failed to take reasonable care not to make a representation when answering some of the questions on the additional application form, so I've looked carefully at the questions asked and the answers given in the light of the medical evidence.

Mr K was asked whether he had been given advice to reduce his alcohol intake. He answered "yes", and as a result was asked further questions. These *included "Have you ever suffered from any physical health problems as a result of drinking?" and "Have you ever been told by your GP or a specialist that your liver function tests were abnormal?"*. To both these questions Mr K answered "no". However it is clear from his medical records that this was incorrect.

The medical records show several entries between November 2013 and April 2016 showing that Mr K had suffered physical health problems as a result of drinking – including shakiness and blackouts. I understand Mrs K's point that she would read the question as meaning issues which remain after the drinking has stopped. However I find that the question is clear – it didn't ask only about ongoing or long term problems - and the medical records show that the answer was incorrect.

In 2015 Mr K's GP had requested blood tests. These showed some elevation in the liver enzymes. Again, I do appreciate that his GP may not have been concerned about this, but as I'm satisfied that the result of the liver function test was "*elevated*" I don't find that Scottish Friendly was wrong to conclude this should have been disclosed. Our investigator invited Mr K to submit further evidence to show that Mr K hadn't been told the result of his liver test was abnormal, but nothing has been forthcoming.

Scottish Friendly has shown that had accurate answers been given at the application stage, it wouldn't have offered Mr K cover. For completeness it is fair to point out that Mr K did disclose he'd been advised to reduce his alcohol intake and he also made disclosures about his mental health. I can't share the underwriting evidence I've seen as it's commercially sensitive, but I'm satisfied that Mr K wouldn't have been given a policy had he answered *all* the questions asked correctly. This means I'm satisfied that Mr K made a qualifying misrepresentation under CIDRA.

Scottish Friendly has refunded all the premiums paid. It is bound to do that in cases of careless misrepresentation, and I find that's fair here and in line with the remedies available under CIDRA. I don't find there is anything to suggest that Mr K deliberately or recklessly answered the questions on the additional application form incorrectly (which would mean it wasn't obliged to return the premiums paid).

In all the circumstances I don't find that Scottish Friendly treated Mrs K unfairly, unreasonably, or contrary to law in declining her claim.

### **My final decision**

For the reasons set out above, and despite my natural sympathy, I don't uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 15 August 2023.

Lindsey Woloski  
**Ombudsman**