

The complaint

Miss E complains that Scottish Equitable Plc trading as AEGON Scottish Equitable ('Aegon') declined a claim she made on a joint life insurance policy she held with Mr R.

What happened

Mr R sadly died unexpectedly in early 2023. Miss E claimed on the joint life insurance policy they held together. The claim was declined on the basis that Mr R had incorrectly answered a question about his alcohol intake during the application process. Aegon considered this to be a careless qualifying misrepresentation, which entitled them to cancel the policy and return the premiums. They also offered Miss E an alternative policy, so she wasn't left without cover.

Miss E made a complaint to the Financial Ombudsman Service. Our investigator didn't think the complaint should be upheld. He thought Aegon had acted fairly, based on the available medical evidence.

Miss E didn't agree. She said, in summary, that the information about Mr R's alcohol intake was wrong. She was also unhappy that Aegon had indicated Mr R's death was linked to his alcohol use. So, she's asked for an ombudsman to review the complaint.

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 and the financial impact on Miss E. I appreciate it's been a very distressing and worrying time for her. I empathise with what Miss E has said and would like to offer my condolences to her.

The relevant rules and industry guidelines say that Aegon 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.

Aegon thinks Mr R failed to take reasonable care not to make a misrepresentation when he answered questions about his alcohol intake.

He was asked:

Have you ever been advised to reduce or stop your alcohol consumption by a doctor, nurse or other medical professional?

Including: A referral for specialist support such as an alcohol dependence unit or Alcoholics Anonymous.

Mr R answered 'no'.

I've looked at the available medical evidence and the relevant notes. They refer to 'major acute alcohol intoxication in alcoholism' in 1999. A further note in 2004 again referred to Mr R's alcohol intake and that he'd stopped alcohol two weeks before. In 2005 his alcohol consumption was recorded as 40 units per week. There is also a note in February 2012 which says:

Alcohol units per week (Ub173) up to 84 units per week. Concern expressed re alcohol intake but patient not concerned and feels this is OK. Information leaflets given and blood taken to check LFT...

Alcohol consumption counselling (XaKAC) – discussed alcohol intake. Information leaflets given and blood taken for LFT patient refused further intervention...

The notes also record the following:

How often do you have a drink containing alcohol? Four or more times a week

How many drinks containing alcohol do you have on a typical day when you are drinking? 7 to 9

How often do you have six or more standard drinks on one occasion? Daily or almost daily

There is a further note in 2019 which says that alcohol intake was 25 units per week.

I've taken into account the more recent letter from Mr R's GP and what Miss E has said about the notes being wrong. I think it's fair for Aegon to rely on the contemporary medical evidence as that's what is recorded at the time. And I note there are a number of previous references to Mr R's alcohol consumption. I've also considered if it's most likely that the reference to 84 units was incorrect. However, that information is consistent with the more detailed follow up questions about Mr R's alcohol consumption. I also note that the practitioner ordered a liver function test. So, on the basis of the evidence that's available, I think Aegon fairly concluded Mr R was advised to reduce his alcohol intake. I appreciate that Mr R's alcohol consumption may have reduced prior to the application being made. But he still needed to ensure he answered the questions accurately.

Aegon has provided evidence that if Mr R had answered 'yes' to the question about whether he'd been advised to reduce his alcohol consumption they wouldn't have offered Mr R a

policy. This would have been based on his medical history and the fact that his application form confirmed he still drank alcohol.

This means I'm satisfied Mr R's misrepresentation was a qualifying one. Aegon has said that Mr R's misrepresentation was careless. I agree that it was because I don't think Mr R deliberately mislead Aegon. I think it's more likely that this was an inadvertent mistake on his behalf, particularly bearing in mind that the advice was given several years before the application was made.

As I'm satisfied Mr R's misrepresentation should be treated as careless, I've looked at the actions Aegon 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 Aegon have done. So, I think that's reasonable and in line with the remedy set out in CIDRA. Aegon also made an offer to Miss E to set up a new policy in her name so that she didn't lose her cover, as she was also covered by the policy. I think that was fair and reasonable.

Finally, I've considered what Miss E has said about comments Aegon made about how Mr R died which she found disrespectful. She felt Aegon should pay compensation for this. Miss E told our investigator that these comments were made verbally and early on in the claims process. Having reviewed the available calls I didn't find any evidence of a comment of this nature being made. And, whilst I can understand why it was upsetting to Miss E, I don't think it was unreasonable for Aegon to explain that there can be a link between alcohol and heart conditions in their other correspondence. I think this was explained within the context of its relevance of the risk they are prepared to cover when considering an application for life insurance.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 2 January 2024.

Anna Wilshaw
Ombudsman