

The complaint

Mrs C is unhappy that Legal and General Assurance Society Limited declined a claim made on a term assurance policy she held jointly with her husband, Mr C ('the policy') after he sadly died.

Although Mrs C is being represented in this complaint, for ease, I've referred to her throughout.

What happened

Mr and Mrs C applied for the policy in 2016. When doing so, they were individually asked a number of questions – including about their lifestyle, health and medical history. Based on the answers given, Legal and General offered the policy to Mr and Mrs C.

After Mr C's death in 2022, Mrs C made a claim on the policy which was ultimately declined by Legal and General. That's because it said Mr C had misrepresented his weekly alcohol consumption when applying for the policy and he hadn't said that he'd been advised to reduce his alcohol intake by a medical professional.

Legal and General says if he'd answered questions about those issues correctly, it wouldn't have offered the policy. Legal and General also ended up cancelling the policy and refunding the policy premiums to Mrs C.

Mrs C complained to Legal and General and after it maintained its position, she brought a complaint a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and didn't think Legal and General had acted unfairly by declining the claim, ultimately cancelling the policy and refunding the premiums.

Mrs C disagreed so her complaint has been passed to me to consider everything afresh and decide.

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.

That includes the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection 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. 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 (in this case Legal and General) 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 says Mr C failed to take reasonable care not to make a misrepresentation when answering questions to do with his alcohol consumption. And although it says he may have answered other questions incorrectly, it was the misrepresentation to do with his alcohol consumption, and the advice he received about that, which resulted in the policy being cancelled and claim declined.

I have a lot of empathy for the situation Mrs C finds herself in and I know she'll be very disappointed but, overall, I think Legal and General has acted fairly and reasonably by declining the claim and cancelling the policy. I've set out my reasons below.

Did Mr C make a qualifying misrepresentation?

When applying for the policy, Mr and Mrs C were asked a number of questions including:

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

Mr C answered: '20'.

I'll refer to this as 'the alcohol intake question'.

He was also asked:

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 C answered: 'No'.

I'll refer to this as 'the alcohol advice question'.

I've taken into account Mrs C points about the alcohol intake question not being clear and specific. But I'm satisfied that both of these questions are clear.

When reviewing the claim against Mr C's GP medical report and medical records, Legal and General concluded that he'd misrepresented his answers at the time.

Mrs C says that although there are two entries in Mr C's GP records from late 2015 – so shortly before the policy was applied for – reflecting that Mr C was drinking 70 units of alcohol per week, the alcohol intake question didn't ask how many units he was drinking or how large each glass of wine was.

I don't think I need to make a finding on this issue because, even if I was minded to find that Mr C didn't misrepresent his answer to the alcohol intake question, I'm satisfied Legal and General has fairly and reasonably concluded that Mr C misrepresented his answer to the alcohol advice question.

Mr C's GP completed a form for Legal and General dated August 2022. It's reflected that they answered 'yes' to the question about whether prior to 2016, Mr C had been advised to reduce alcohol.

The GP records also reflect that in November 2015 Mr C was drinking 70 units per week and "alcohol intake above recommended sensible limits".

It's further reflected in December 2015 that Mr C "still drinks 70 units per week – no real interest to change his habit – aware of effects to mental and physical health..."

When assessing the claim, Legal and General asked Mrs C why Mr C might've answered the alcohol question in the way that he did. It's reflected that she didn't know why Mr C didn't tell Legal and General that he'd been advised to reduce his alcohol intake. She said she didn't know he'd received that advice.

Overall, I think Legal and General has reasonably concluded that the totality of the medical evidence received reflects that, on the balance of probabilities, Mr C had been advised by a medical professional to reduce his alcohol intake. And Mr C ought to have answered 'yes' to the alcohol advice question.

I've gone on to consider whether Legal and General has fairly concluded that by answering the alcohol advice question incorrectly Mr C's misrepresentation amounted to a qualifying misrepresentation under CIDRA. And I'm satisfied it has.

Legal and General has provided underwriting guidance showing that given the alcohol intake Mr C did declare, if he'd answered the alcohol advice question correctly, it still wouldn't have offered the policy to Mr and Mrs C. So, I'm satisfied the answer to the alcohol advice question mattered to Legal and General.

Declining the claim and cancelling the policy

Legal and General concluded that Mr C's misrepresentation was deliberate or reckless. Taking into account the date of the medical evidence and the proximity to the date of the policy application, I'm satisfied that Legal and General has fairly concluded that Mr C's misrepresentation was deliberately or recklessly made.

I've looked at the actions Legal and General can take in line with CIDRA. Under this legislation it's entitled to cancel the policy and doesn't have to pay any claims as it can treat the policy as if it never existed. That's what Legal and General has done here, and I don't think it's acted unfairly and unreasonably in the circumstances of this complaint by doing so.

Legal and General could've also chosen to keep the premiums paid for the policy. It didn't do that; it's offered to reimburse Mrs C for the monthly premiums paid for the policy. I think Legal and General acted fairly by doing this.

Even if I'm wrong on this point, I'm satisfied that the misrepresentation was, at the least, carelessly made. And I've seen evidence from Legal and General, that given Mr C's alcohol intake, if he'd answered the alcohol advice question correctly, it wouldn't have offered the policy according to its underwriting criteria.

I've taken into account all other points made by Mrs C including what's said about the cause of death being unrelated to his alcohol assumption. Even if that's the case (which I make no finding on), I don't think that's relevant in the circumstances of this case. I'm satisfied that the policy wouldn't have been in place at the time of Mr C's death if he's answered the alcohol

advice question correctly. That's because Legal and General wouldn't have offered the policy in the first place.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 1 May 2024.

David Curtis-Johnson
Ombudsman