

The complaint

The estate of Mr T has complained that Legal and General Assurance Society Limited declined a claim on Mr T's life insurance policy. The estate is represented by Mrs K.

What happened

Mr T took out a life insurance policy in January 2021. He completed an application form which asked several medical questions. One of those questions was:

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?

You may ignore being told by a health professional that you should reduce the amount of alcohol you have because you were drinking too much, provided it was only on one occasion and before age 25.

Before any terms were offered to Mr T L&G wrote to his GP who responded that there had been one incident of Mr T being advised to reduce his alcohol intake following a hospital admission in 2018.

Mr T sadly died in November 2021. Following the receipt of information from the Coroner's office L&G obtained further medical information from Mr T's GP. This confirmed that there had been three incidents where Mr T had become intoxicated, admitted to hospital and given advice to reduce his alcohol intake – 2017, 2018 and 2019.

L&G disregarded the 2018 event, as it knew about it. But in the light of the two other entries, it felt that Mr T had made a deliberate representation. Accordingly, it cancelled Mr T's policy and offered to refund the premiums he had paid.

Unhappy, Mrs K brought the complaint to this service on behalf of the estate. She said that she was not aware how her late husband had answered the questions as he was a very private person.

Our investigator found that Mr T had made a misrepresentation when applying for this insurance policy. But they felt that because L&G had made enquiries from Mr T's GP at the time and offered Mr T a policy anyway it had waived its right to rely on that misrepresentation. He recommended that L&G should pay the claim with interest.

L&G didn't agree. It said that there had been a qualifying misrepresentation at the application stage. It didn't consider the fact that it had taken the GP's comment into account to be relevant to this.

As no agreement was reached, the matter has been passed to me to review. I issued a provisional decision on 19 February 2024. I said as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and although I recognise the estate of Mr T will be very disappointed by my provisional findings, I don't intend to uphold this complaint. I'll explain 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.

L&G says that Mr T failed to take reasonable care when answering the question set out above – which concerned whether Mr T had ever been advised to reduce the amount of alcohol he had because he was drinking too much. It is clear that Mr T did make a misrepresentation here when he answered 'no' to this question. I say this because Mr T's GP had confirmed there was one incidence of such advice being given in 2018. But L&G considered this and its underwriters confirmed that this could be viewed as a one-off and cover could be offered.

I'm satisfied that was fair. The evidence provided by the GP referred to one incident only, although the GP had been asked for details of any advice given to reduce alcohol consumption. I find it was reasonable for L&G to rely on the GP's report. I'm not persuaded that it should have made further enquiries of either Mr T or the GP at this stage. And in relying on the report, I don't find L&G waived its right to subsequently treat the misrepresentation as qualifying.

Further evidence following Mr T's untimely passing showed that there had been three occasions when Mr T had been given such advice. Even ignoring the 2018 incident, L&G has shown that it wouldn't have offered cover to Mr T if the question has been answered correctly. So the misrepresentation, which occurred before the contract was entered into, was a qualifying one. L&G felt the misrepresentation was deliberate or reckless. This meant it wasn't obliged to pay the claim and could treat the policy as if it never existed. But L&G anyway offered to refund the premium paid. I think this was fair.

I was sorry to read about the tragic circumstances of Mr T death. I do recognise that the misrepresentation had nothing to do with Mrs K, and I'm sorry that my provisional findings bring very unwelcome news for the estate.

My provisional decision was that I wasn't minded to uphold the complaint. I advised the parties that I would look at any more comments and evidence received, but unless that information changed my mind my final decision was likely to be along the lines of my provisional decision.

L&G advised that it had nothing further to add. The estate of Mr T didn't respond.

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.

As there have been no further representations or information provided, I see no reason to depart from my provisional findings, which I adopt here.

My final decision

For the reasons given my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr T to accept or reject my decision before 18 April 2024

Lindsey Woloski
Ombudsman