

The complaint

Ms J is unhappy that AIG Life Limited proportionately settled a claim made under a joint life term assurance plan she had with Mr W ('the policy'), after Mr W sadly died.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

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, AIG) 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.

AIG says Mr W failed to take reasonable care when applying for the policy, in particular when answering a question about his smoking history. If he'd answered the question correctly, it says the policy still would've been offered but it would've cost more. So, it's paid the life benefit due under the policy in proportion to the premium Ms J and Mr W paid (compared to what AIG says they should've paid).

I have a lot of empathy for the situation Ms J finds herself in and I know she'll be very disappointed, but I'm satisfied AIG has acted fairly and reasonably when doing this. I'll explain why.

When applying for the policy Mr W was asked a number of questions including about his lifestyle. That included the following question:

Which of the following best describes you:

Options – Have never smoked, smoked occasionally or socially only, Ex smoker: last smoked or used nicotine products over 5 years ago, Ex smoker: last smoked or used nicotine products 1-5 years ago, Ex smoker: last smoked or used nicotine products within the last year, Current regular smoker.

It's reflected that Mr W answered: Ex smoker: last smoked or used nicotine products 1-5 years ago.

AIG has concluded that the answers to this question was incorrect. It says Mr W should've answered: Ex smoker: last smoked or used nicotine products within the last year. I'm persuaded that it's acted fairly and reasonably by concluding that because Mr W's medical records reflect that:

- In September 2018 (around 11 months before applying for the policy) he was a cigarette smoker, smoking "8" and "smoking cessation advice given".
- In June 2019 (so around two months before applying for the policy) he was a "user of electronic cigarette" and cigarette smoking is recorded as "0/day".

Ms J says that Mr W honestly answered the smoking question, and he was unfortunate that the dates given were out by a few weeks. She also says that she never saw him smoke or smell smoke on him.

However, I'm satisfied that the smoking question and options given were clear and AIG has fairly relied on the contemporaneous medical records at the time when concluding that Mr W answered the question incorrectly.

I'm satisfied that the answer to this question mattered to AIG. It's given us underwriting information which supports that it would've charged more for the policy had Mr W said he'd smoked within the year leading up to applying for the policy. I'm persuaded by this evidence.

AIG has concluded that Mr W's misrepresentation was careless rather than deliberately or recklessly made. I'm satisfied that's fair and reasonable.

I've looked at the actions AIG can take in line with CIDRA. It's entitled to act as it would've done had Mr W answered the smoking question correctly. As I'm satisfied AIG would've charged more for the policy, I think it's acted fairly and reasonably by paying a reduced life benefit under the policy in proportion to the premiums Ms J and Mr W paid (compared with the premiums they would've paid).

I don't think AIG needs to do anything more.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 13 November 2024.

David Curtis-Johnson
Ombudsman