DRN-5954569

The complaint

The estate of Mr H complains that Legal and General Assurance Society Limited avoided his life insurance policy and refused to pay a claim.

The estate is represented by Mrs H.

What happened

The background to this complaint is well known to the parties, so I won't repeat all the details here. In brief summary, in June 2020, Mr H took out life insurance with L&G.

Most unfortunately, in November 2023, Mr H died unexpectedly. Mrs H subsequently claimed on the policy. But L&G said Mr H hadn't given full and accurate information during the application process. L&G considered this to be a qualifying misrepresentation, saying had Mr H answered correctly, it would not have offered cover at all.

L&G considered Mr H had deliberately or recklessly misrepresented his circumstances on application. It refused to pay the claim, cancelled the policy but refunded the premiums paid.

Mrs H complained, but L&G maintained its stance. So on behalf of the estate, Mrs H came to the Financial Ombudsman Service. Our investigator didn't uphold the complaint, so Mrs H asked for an ombudsman to review everything and issue a final 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.

Having done so, I'm not upholding this complaint. I know this will be very unwelcome news for Mrs H and I'm sorry about that. I appreciate Mrs H has experienced a difficult and challenging time since Mr H's death and I offer my condolences for her loss.

I'll explain my reasons, focusing on the points and evidence I think are material to the outcome of the complaint. So if I don't mention something specifically, it's not because I haven't read and thought about it. Rather, I don't consider it changes things.

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.

When applying for the policy, L&G said Mr H failed to take reasonable care not to make a misrepresentation when he answered *'no'* to the following questions:

> *'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?*
>
> *'Have you ever been given medication to help reduce the amount of alcohol you drink or been referred to or been seen by an alcohol specialist?'*

L&G relied on entries in Mr H's medical records – obtained for the purposes of assessing his claim – which it says showed he should've answered these questions differently. I've reviewed the medical evidence provided.

I can see that Mr H attended a GP appointment in December 2005. Following the consultation he was referred to a specialist outpatients alcohol service. In the referral letter to the Alcohol Problems Clinic (APC), his GP notes:

> *'[Mr H] has a long history of alcohol problems. He has told me that he binge drinks spirits and vodka. He is now motivated to stop and is looking for advice. In the first instance, I have advised him to see a counsellor.'*

I've seen evidence that, over 2006 and 2007, Mr H attended an initial assessment and seven review appointments, before being discharged from the clinic in March 2008. In the follow-up letters from the APC doctor to Mr H's GP, there are references to Mr H being encouraged to reduce his intake to minimal levels or to abstain altogether, and receiving educational information about the impact of binge drinking.

Mr H was again referred to the APC in August 2010. Amongst other things, the follow-up letter from the clinic to Mr H's GP notes the following:

> *'At assessment [Mr H] was breathalysed and registered zero. He did not have any sign of alcohol withdrawal e.g. sweating or shaking.*
>
> *'Mr H stated his problem with alcohol is that he binge drinks infrequently. He stated that his last binge was around one month ago when he drank for 3-4 days in a row. He denies previous DTs or seizures, however admits to being physically unwell at times when he has been binge drinking.*
>
> *'[Mr H] stated that he does not wish for total abstinence from alcohol at this time. He still wishes to have a social drink on occasion.*
>
> *'As Mr H does not wish for total abstinence at this time he was given information to contact the [name of service] for one-to-one counselling and education on preventing his binge drinking.'*

Having reviewed the documents, I think it was reasonable for L&G to rely on the medical evidence to conclude that Mr H didn't make a full disclosure of his health and lifestyle circumstances on application. I don't think L&G acted unfairly here.

Mrs H has questioned how the policy was sold and whether the questions were asked in a way that was clear, fair and not misleading. I'm aware Mrs H was expecting to receive a recording of a sales call, but was later told the policy was sold online.

From what I've seen, I'm satisfied the policy was sold online, direct to the customer. I've not seen any record of any telephone contact between Mr H and L&G as part of the sales process. I have seen evidence that Mr H applied for the policy, was accepted and received sales documentation on the same day. Part of the documentation was a statement of demands and needs, indicating that this was a non-advised sale. So Mr H was responsible for ensuring the policy met his needs.

I haven't seen any evidence that an independent broker was involved. I should also point out that, even if one were, any concerns Mrs H has about the sale would need to be raised directly with them and not with L&G.

Mr H was also sent a personal details document, which included a copy of the questions asked during the application process and the answers he'd given. Mr H agreed to the *Declaration,* confirming, amongst other things, that the information given in the application was provided truthfully and accurately. And that the information provided would form part of the legal relationship between him and L&G and if found to be incorrect might mean that a claim is not paid or the policy is amended or cancelled.

Ultimately, Mr H was responsible for answering questions accurately. I'm satisfied the questions asked in the application process were clear and unambiguous. And that when Mr H applied for the policy, he should've answered the alcohol questions differently. So I think Mr H failed to take reasonable care when taking out the policy.

L&G has said that had Mr H answered the alcohol questions accurately, it would have declined to offer cover. I've seen evidence from its confidential underwriting manuals and guidance, showing that either of the questions cited would've resulted in cover being declined. I'm satisfied full medical disclosure would've made a difference to L&G's decision, so Mr H's misrepresentation was a qualifying one.

Mrs H has argued that L&G's blanket exclusion for positive answers to the alcohol questions is manifestly unfair. But ultimately, an insurer is entitled to determine which risks it is and isn't prepared to offer cover for.

L&G considered Mr H's misrepresentation to be deliberate or reckless, meaning he either knew, or must have known, that the information given was both incorrect and relevant to the insurer, or he acted without any care as to whether it was either correct or relevant to the insurer.

Mrs H feels that Mr H may not have considered the alcohol questions relevant to him as he was not an alcoholic and his issues with binge drinking were some 10-15 years prior to applying for the policy, since when he had worked in a responsible job requiring high standards of conduct and health. She also suggested Mr H could've thought contact with the APC was a voluntary referral for guidance and not treatment.

The Association of British Insurers publishes industry guidance on managing claims involving misrepresentation. Regarding lifestyle information, such as alcohol consumption, its code of practice notes that since lifestyle information is usually more familiar and easier for customers to understand, it follows there should be a particularly credible and convincing explanation for clearly evidenced misrepresentation not to be classified as deliberate or reckless. I don't think that's the case here. I consider L&G's categorisation was fair, given the number of years – on and off – during which Mr H was involved with the APC. It seems

unlikely to me that these contacts, often at times of stress or crisis, could be easily forgotten or overlooked.

CIDRA sets out the actions an insurer can take in cases of misrepresentation. In the circumstances of Mr H's misrepresentation, L&G was entitled to cancel the policy and keep the premiums. However, it confirmed to Mrs H that it would return the premiums paid. I understand this has happened, although it's not something I could require L&G to do.

Mrs H also feels L&G's decision is unfair as Mr H's cause of death was not related to alcohol use. I can understand Mrs H's upset and frustration about this. But CIDRA is clear about the actions an insurer can take when there is evidence of misrepresentation, regardless of whether the cause of death is related to the nature of the misrepresentation.

Given this, I don't think L&G needs to do anything more in respect of this complaint. Once again, I'm sorry to send disappointing news to Mrs H.

My final decision

For the reasons given above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 30 December 2025.

Jo Chilvers
Ombudsman