

complaint

Miss K is the representative of the estate of the late Mr W and is being assisted with her complaint by a family member. She's complaining about The Prudential Assurance Company Limited because it didn't pay out on Mr W's life insurance policy following his death.

background

In 2007, Mr W took out a term life insurance policy with Prudential. He arranged it through an independent financial adviser (IFA).

Sadly, Mr W died in 2015. But Prudential didn't pay out because it said Mr W hadn't disclosed important information in his application. If he had done, Prudential said it wouldn't have offered him cover. So it said it would cancel the policy and refund the premiums paid.

Our adjudicator didn't recommend the complaint be upheld for much the same reasons.

Miss K's representative disagreed, making the following key points:

- The IFA that sold the policy wasn't authorised and Prudential shouldn't have accepted business from it.
- Prudential accepted Mr W's application even though one of the alcohol questions wasn't completed. It's not fair to accept the application on this basis and then decline the claim based on his alcohol consumption.
- Mr W died of natural causes that weren't related to the issues he didn't disclose.
- Prudential acted against industry guidance that says it shouldn't ask for a policyholder's medical history when a claim is made unless it has reasonable grounds to suspect relevant information wasn't disclosed in the application.
- There was no reason for Prudential to contact the coroner's office when it did.
- Industry guidance also says cancelling a policy is reserved for the most serious cases of mis-representation. She doesn't think Mr W's situation falls into that category.
- The adjudicator hasn't confirmed that Prudential wouldn't have offered cover if it had known the relevant parts of Mr W's medical history.
- Prudential didn't investigate the complaint properly or respond to all points raised by Miss K.

my findings

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 agree with the adjudicator's conclusions for much the same reasons. I'm not upholding this complaint. I won't attempt to address every point made by Miss K's representative in the rest of this decision. I'll instead concentrate on what I think are the key issues.

I've looked into the status of the IFA. Our records, which I searched using its unique reference number, show it was authorised at the time of sale and still is today – although it's had a number of different trading names since. I can see there have been other brokers with similar names that seem to be unrelated and that may explain any confusion.

It's true Prudential accepted an application with one of the alcohol-related questions (about whether he'd ever exceeded his declared weekly intake or been advised to reduce it) not answered and I am surprised at that. If that was the only question that wasn't answered correctly, I'd be very sympathetic to the argument that it had chance to investigate that further at the time and should now honour the policy.

Instead, Prudential has referred to a number of other questions it thinks should have been answered differently. These particularly include Mr W's declared average weekly alcohol consumption, history of mental illness (including anxiety, depression, stress, or nervous breakdown), and investigations/tests or any form of medical attention at a hospital for a condition not declared elsewhere in the application. Mr W answered no to all of these.

In my view, the questions were clear. Mr W appears to have signed the declaration section of the application, which warned inaccurate answers may lead to a claim not being paid, saying the information was correct.

A review of Mr W's medical history shows that in the five years before the policy, he had a history of mental health issues, for which his GP referred him to a psychiatrist, combined with excessive drinking and dependence on medication. At the start of 2007, only a few months before the policy started, he was admitted to hospital as an emergency with severe abdominal pain and vomiting. The notes said he was drinking heavily at that time.

After considering this information carefully, I think it shows Mr W should have answered some of the application questions differently. Particularly those about a history of mental illness and hospital treatment. When a consumer hasn't given the insurer relevant information in response to a clear question, this is known as a *mis-representation*. Industry guidance commonly recognises three types of mis-representation – *deliberate/reckless*, *careless* and *innocent*. An insurer is allowed to take action depending on the type of mis-representation.

In this case, given Mr W's problems had been going on for some time and were still recent at the time of application, I don't think I can reasonably say the misrepresentation was *innocent*. In cases of *deliberate/reckless* mis-representation an insurer is entitled to cancel the policy. In cases of *careless* mis-representation the aim of any action is to restore the position that would have existed if it had been given the right information. This could lead to the insurer paying out a reduced sum (if it would still have given cover but on less favourable terms) or cancelling the policy (if it wouldn't have offered cover at all).

If Mr W had provided accurate answers, Prudential says it would have requested his medical records before agreeing to cover him. And that's consistent with what I'd expect an insurer to do in that situation.

Prudential then says that, after reviewing his medical records, it wouldn't have offered Mr W cover and it's provided evidence from its underwriting guidance to support this. Again, this approach is consistent to what I'd expect to see from an insurer in response to an applicant with a recent and ongoing history of drug and alcohol issues without evidence these had been resolved, normally demonstrated by a sustained period of abstinence.

If Prudential wouldn't have offered Mr W cover at all, industry guidance entitles it to cancel the policy whether the mis-representation is viewed as deliberate or just careless. I appreciate this is not the outcome Miss K was hoping for, but on balance I think Prudential was entitled to decline the claim for the reasons it gave.

I've noted the concerns of Miss K's representative about how Prudential found the information it did. But I'm satisfied it acted reasonably in the circumstances. The original coroner's certificate said the cause of death was yet to be ascertained, which meant Prudential would have been entitled to wait for the final verdict before deciding whether to pay. Instead, it contacted the coroner's office to find out more information that could have resulted in the claim being paid much sooner. Instead, the answers it received gave it reasonable grounds to suspect there may have been a mis-representation and led to the request for Mr W's medical records.

Miss K's representative appears to believe Prudential should have just waited for the coroner's final verdict on the cause of death before taking any action on the claim. But I don't necessarily agree with that and it could just as easily have been accused of delaying payment if it had done that. Even if I did agree that Prudential should have waited, I'd still have to consider whether it's really fair to expect it to pay on a policy it would never have offered, if Mr W had answered the application questions as he should have.

my final decision

My final decision is that I don't uphold this complaint. I think Prudential was entitled to decline the claim and cancel the policy. If it hasn't already done so, I'd expect it to now arrange for a refund of the premiums paid as previously stated.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 22 April 2016.

Jim Biles
ombudsman