

## **complaint**

Miss C and Mr C are representing the estate of the late Mr P. They're complaining about Legal & General Assurance Society Limited because it declined to pay out on a policy covering Mr P's life.

## **background**

Mr P took out a level term life insurance policy in 2005. Sadly, he later died in 2014.

After considering the claim, Legal & General declined to pay out because it didn't think he accurately disclosed his medical history in his application. If it had known the relevant information, Legal & General said it wouldn't have covered him. It cancelled the policy and refunded all premiums paid.

Our adjudicator didn't recommend the complaint be upheld. She believed Mr P should have answered questions about his alcohol consumption differently. And if he had done, she was satisfied Legal & General wouldn't have covered him.

Miss C and Mr C disagreed, saying Mr P didn't drink the amounts being claimed and that the information on which Legal & General is relying is dated immediately after a holiday where he drank more than normal. She says the incident referred to was a one-off that Mr P would have forgotten about by the time he applied for the policy.

## **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 appreciate this is not the outcome Miss C is hoping for, but I'm not upholding this complaint.

The application for Mr P's policy included the following questions and answers:

Q. What is your average weekly consumption of alcohol'? (A unit of alcohol is equivalent to half a pint of beer, lager or cider, one standard glass of wine or a single measure of spirits.)  
A. *1-21 units*

Q. In the last 5 years has your average alcohol consumption ever been higher than your current average'?  
A. *No*

Q. Have you ever been medically advised to reduce your alcohol consumption'?  
A. *No*

It's impossible for me to say how much Mr P was drinking when he completed the application as there's no medical evidence about this. But just over a year earlier, his medical records show he went to hospital where tests found his liver functions were *deranged*. The notes record Mr P said he was drinking five pints per day and that he was told he should stop drinking and given an alcohol liaison appointment.

I appreciate Miss C says this came immediately after a holiday where Mr P drank more than usual and didn't regularly drink five pints per day. But there is other evidence that strongly

suggests Mr P was drinking more than 21 units per week in the period shortly before he took the policy. Most notably when he saw a local drug and alcohol team around four months after taking the policy, where it was recorded he'd been drinking up to 120 units per week habitually over the past five years.

Regardless of his level of consumption when completing the application, the medical evidence strongly suggests Mr P was drinking more than 21 units per week before that. And also that he'd been advised to stop drinking because of the results of his liver function tests.

I appreciate Miss C says some of the information she's received about this has been contradictory, but Legal & General has provided evidence from its underwriting guidance to show it wouldn't have covered Mr P straight away if these questions had been answered correctly. Instead, it would have contacted his GP for more information. It would then have found out about the results of the earlier liver function tests.

Once it had this information, Legal & General says it would have asked for further tests to see if the problem had been resolved. As there are no further results available and the medical evidence records he was still drinking after the policy started against previous advice to stop, I can't now reasonably say there was a time when Legal & General would have covered Mr P.

I think the application questions were sufficiently clear and that Mr P should have answered the second and third one differently. I understand Miss C's points about the difficulty of remembering everything, but his hospital visit was only a year before the application and I don't think it's likely he would have completely forgotten this.

I appreciate Mr P completed the application with an adviser and I can't really know what was discussed between them. But Legal & General has provided a copy of the application it says it sent to Mr P to check. And a copy of the declaration he signed confirming the answers were accurate. This document included a clear warning that failure to answer the questions correctly could lead to a claim being declined. Mr P did use the declaration to correct his address, but he didn't correct anything else. In the circumstances, I think Legal & General made reasonable efforts to make sure it had the right information on which to base its decision about whether to offer cover.

It's not appropriate for insurers to routinely ask questions about a consumer's medical history when a claim is made. They have the opportunity to do this before agreeing to provide cover. But in this case, alcohol was listed as one of the contributory factors to Mr P's death and I think it was reasonable for Legal & General to make the further enquiries it did.

Once it became aware the information in the application wasn't correct, Legal & General restored the position that would have existed if the application had been answered fully. Because it wouldn't have offered Mr P cover at all, it was entitled to decline the claim and cancel the policy.

**my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr C to accept or reject my decision before 2 November 2015.

Jim Biles  
**ombudsman**