

The complaint

The estate of Ms W has complained that Legal and General Assurance Society Limited (L&G) declined a claim under the late Ms W's life insurance policy.

What happened

Ms W took out a life insurance policy in 2017. Very sadly she passed away in September 2022. The estate claimed on her life insurance policy. L&G declined the claim and voided the policy. It said that Ms W hadn't answered the questions correctly at the application stage. Had she done, L&G said it wouldn't have offered her a policy.

Our investigator didn't find that L&G had done anything wrong, so they didn't recommend that the complaint be upheld.

Miss W on behalf of the estate appealed. She made the following points:

- Ms W wasn't diagnosed with COPD until she passed away
- Ms W did disclose her alcohol intake when taking out the policy
- All the time Ms W had the policy she was working – firstly managing heavy machinery and latterly as a carer. Neither job she would have been able to do if she had a problem with alcohol

Miss W also said that she felt more evidence was needed and was contacting Ms W's surgery. The investigator advised that any new evidence would need to be seen by L&G but gave Miss W more time to send in any further submissions.

No further submissions were made, but as no agreement has been reached the matter has been passed to me to decide.

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.

I'm aware I've summarised the background and some sensitive medical details - no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I've reviewed the complete file and considered the representations made after our investigator's view. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I recognise that the estate will be very disappointed by my decision but for the following reasons I agree with the conclusion reached by our investigator. 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 has said that Ms W failed to take reasonable care not to make a misrepresentation when taking out the policy. I should point out that L&G didn't sell the policy to Ms W – it was sold through a financial adviser who in turn passed the application to L&G. L&G underwrites the policy, and this complaint concerns its decision to decline the claim – not the sale of the policy. Ms W was asked several medical questions, including whether she had ever been asked to reduce her alcohol intake as she had been drinking too much. She said 'no'. Ms W's medical records show that this answer was incorrect, she had been given such advice in 2014.

Ms W was also asked if during the last two years she had seen a doctor, nurse or other health professional for any condition affecting her lungs or breathing, for example asthma, emphysema, sleep apnoea, sarcoidosis. Ms W's medical records show that she had been diagnosed with asthma, but she answered 'no' to this question.

L&G has provided underwriting evidence to show that had Ms W answered the first question above correctly it wouldn't have offered her a policy at all. So I'm satisfied that the misrepresentation was a qualifying one. L&G has said that the misrepresentation was deliberate or reckless, but it has refunded the premiums that Ms W paid. Miss W believes that Ms W probably gave an incorrect answer to the alcohol advice question through embarrassment, I've thought about that, but I don't find the classification was incorrect. In any event refunding the premiums paid in these circumstances accords with the remedy for a careless misrepresentation – so I find in all the circumstances L&G's actions were fair.

I do appreciate what a difficult time this has been for Miss W and offer my condolences. I understand that she feels Ms W's reputation has been called into question – but I don't find this is so. It is not disputed that Ms W *did* disclose that she drank alcohol two or three times a month and, on those occasions, might have five glasses of wine. But she didn't say, in answer to a clear question, that she had been told to reduce the amount of alcohol she drank. It is that incorrect answer that is key. This is not to say that Ms W didn't hold down a responsible job or that she had a problem with alcohol. But the answer recorded was incorrect and made a difference to whether cover would have been offered or not.

I note Miss W's comment regarding COPD, and that Ms W was open about her asthma. But Ms W answered 'no' to the question regarding 'lungs or breathing' which specifically named asthma. L&G have shown that this alone wouldn't have meant a policy wasn't offered, but the premiums would have been higher. However cover wouldn't have been offered because of the incorrect answer to the alcohol question alone.

Ms W has indicated that she would challenge the accuracy of the medical records, and it is open to her to do so. But I don't conclude it was unreasonable for L&G to rely on them when reaching the conclusion that it did.

I note that Ms W, on behalf of the estate, has also complained about the service she received, including the call when Miss W was told that the claim was declined. I haven't seen or heard anything untoward in my consideration of the file, but I should point out that I can't award compensation to the estate for any impact incurred when making a claim on behalf of the estate. So I won't make any finding in this regard.

I am sorry to bring Miss W and the estate such unwelcome news, but in all the circumstances I don't find that L&G treated the estate unfairly or unreasonably by declining the claim. It follows that I don't require L&G to make any payment to the estate of Ms W.

My final decision

For the reasons given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms W to accept or reject my decision before 17 May 2024.

Lindsey Woloski
Ombudsman