DRN-5205394

Financial Ombudsman Service

The complaint

The estate of Mr H complains because Legal and General Assurance Society Limited (L&G) hasn't paid a claim under a life insurance policy.

What happened

Mr and Mrs H took out a decreasing life insurance policy with critical illness cover, provided by L&G, in January 2019.

Mr H was admitted to hospital in 2023 and, very sadly, subsequently passed away. Mrs H made a claim under the policy with L&G.

After requesting further information from Mr H's GP, the hospital and Mrs H, L&G said it thought Mr H had misrepresented the amount of alcohol he drank when the policy was taken out. L&G said it would never have offered Mr H a policy if it had known the extent of his alcohol consumption and so it cancelled the policy and refunded the premiums paid. L&G offered Mrs H £200 compensation (later increased to £300) for its delays in handling the claim.

After exhausting L&G's complaint process, Mrs H (acting in her capacity as the estate of Mr H), brought the matter to the attention of our service.

One of our investigators looked into what had happened. She said she didn't think L&G had acted fairly or reasonably in the circumstances and recommended that Mr H's life insurance claim should be paid. L&G didn't agree with our investigator's opinions, so the complaint was referred to me as the final stage in our process.

I made my provisional decision about the complaint in November 2024. In it, I said:

'I'm very sorry to hear about the sad circumstances surrounding this complaint and I'd like to offer Mrs H and her family my sincere condolences for their loss.

I appreciate Mrs H will be very disappointed with my provisional findings but I need to reach an independent and impartial outcome which is fair and reasonable to both parties based on the available evidence. And, based on that available evidence, I'm afraid I don't agree with the conclusions our investigator reached.

Industry rules set out by the regulator say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. The rules also say insurers must provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress. I've taken these rules into account when making my provisional decision.

I've also taken into account the relevant law (The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA')) and I've had regard to good industry practice about managing claims for misrepresentation and treating customers fairly (namely, the September 2019 Code of Practice set out by the Association of British Insurers ('ABI')), as well as what I think is fair and reasonable in all the circumstances.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care required is that of a reasonable consumer. If a consumer fails to do this, the insurer has certain remedies available to it provided the misrepresentation is - what CIDRA describes as – a 'qualifying misrepresentation'.

For a misrepresentation to be a qualifying one, the insurer must 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 a 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 thinks Mr H failed to take reasonable care not to make a misrepresentation because of how he answered the below question which was asked on his insurance policy application form in January 2019. I've underlined the answer Mr H gave.

> *'During a typical week, how many alcoholic drinks do you have?*
> *For example, a drink is a glass of wine or a glass or bottle of beer.*
>
> *<u>8</u>'.*

I'm satisfied that this question asked by L&G was clear and specific.

Next, I need to consider whether I think the medical evidence relied on by L&G shows that Mr H didn't take reasonable care to answer the question.

There are no contemporaneous medical records stating what Mr H's alcohol intake was at the time of the policy application in January 2019, so I have no way of knowing for certain how many alcoholic drinks Mr H was consuming on a typical week at that time. I therefore must base my decision on the available medical evidence provided by both parties to decide, on the balance of probabilities, what I think is more likely than not to have been the case.

I'm not a medical expert and it's not my role to reach my own medical opinions or to substitute expert medical opinion with my own. It's also not for me to make any assumptions based on the medical evidence provided, or to draw any inferences into what the medical records say. I've weighed up the available evidence which has been provided to decide whether I think L&G acted fairly and reasonably in the circumstances when taking the action it did.

The medical information request form completed by Mr H's GP says his alcohol consumption as at 1 February 2000 (so, around 19 years before applying for the policy) was 14 units per week. The form also says that, prior to applying for the policy in 2019, Mr H hadn't been given any advice to reduce his alcohol intake, hadn't been referred to alcohol services and didn't have any other alcohol related problems. But I think this information must be considered in the context of Mr H's statement in 2023 that he hadn't visited his GP for 27 years.

The notes from the day of Mr H's admission to hospital, around four years after the policy application, say 'his drinking has been going on for years' and that he was drinking 210 units of alcohol per week at that time. A note made by a different medic later the same morning says Mr H was drinking vodka 'heavily for several years – 1 bottle per day' and that he had a pre-existing medical history of 'alcohol excess (>200 units/week)'. Mr H's diagnostic impression was stated as 'Decompensating alcoholic liver disease'. Later that day, a third

medic recorded a new diagnosis of 'likely alcoholic liver cirrhosis' and said Mr H 'drank heavily for about 6 years, up to 1 bottle vodka a day'. A fourth medic later recorded '…background chronic alcohol intake for … 6 years'. Two days later, a further medic recorded a note of 'long term alcohol misuse'.

I've taken into account everything Mrs H has told us about the circumstances of Mr H's hospital admission and the environment in which these conversations took place. I understand Mrs H disputes some of the information that was recorded, has raised questions about the source of some of this information and says inaccurate notes were then copied onwards in Mr H's hospital records. Mrs H has also pointed to incorrect information set out elsewhere in the hospital records (as an example, one of the entries says the 2023 hospital admission was Mr H's second hospital presentation with these medical issues when in fact it was his first).

I've also given careful thought to what Mrs H has told us about the onset of Mr H's increased drinking from mid-2019 following health issues in their family, Mr H's job and shift patterns, possible genetic considerations and the fact that no diagnostic tests were carried out on Mr H. I note that Mr H's death certificate doesn't attribute a cause to his liver cirrhosis and Mrs H has sent us a number of medical papers relating to liver disorders, binge drinking and genetic dispositions.

However, L&G's Chief Medical Officer has provided extensive and detailed commentary about Mr H's case in response to some of the issues which Mrs H has raised. The Chief Medical Officer has said:

> *'From a medical perspective, cirrhosis does not develop rapidly from moderate or binge drinking over just a few years. The degree of liver damage seen in 2023 is far more consistent with chronic excessive alcohol consumption over many years.*
>
> *…*
>
> *Medical evidence suggests cirrhosis develops after long-term alcohol misuse, usually at levels exceeding 30-40 units per week for 10 years or more.*
>
> *…*
>
> *While the escalation in drinking in recent years would have worsened the customer's condition, it is very unlikely to have been the sole cause of his cirrhosis and liver failure… to reach this stage of advanced liver disease by 2023, including the complications of severe alcoholic hepatitis, encephalopathy and cirrhosis, would be widely recognised to be the culmination of several years of excessive drinking.'*

The Chief Medical Officer's conclusions were that:

> *'…heavy drinking over a period of approximately 4 years or so, including from May 2019 … is not consistent with the natural progression of liver disease, based on current research.*
>
> *While binge drinking can cause liver damage and acute alcoholic hepatitis, it is not typically associated with the advanced chronic condition of cirrhosis, unless chronic liver damage was already present, due to sustained alcohol misuse over a prolonged period.*
>
> *…*

There is no indication to suggest this individual would have deviated from the well-established progression of liver disease…. This supports the conclusion that the customer's alcohol consumption was significantly underreported at the time of the application…'

I want to make it clear that I think Mrs H's testimony has been consistent, and I'm not disputing her recollection of events. As Mrs H has correctly pointed out, it can't be definitively proven that Mr H didn't have any underlying liver issues. But this isn't something which L&G must prove in order to decline this claim. Instead, the issue for me to determine is what evidence I think is more persuasive – Mrs H's testimony or the content of Mr H's hospital notes and the opinion of its Chief Medical Officer.

Overall, I'm satisfied that the multiple entries made by a number of different medics on Mr H's hospital notes, referring to his condition in different terms, carry significant persuasive weight.

These hospital notes, when taken together with the expert medical opinion of L&G's Chief Medical Officer, mean I'm satisfied it's more likely than not that Mr H misrepresented the number of drinks he typically drank in a week to L&G when completing the policy application in 2019.

In 2019, Mr H told L&G he drank what L&G considers to be the equivalent of 16 units of alcohol on a typical week. L&G has provided underwriting evidence to our service which demonstrates it wouldn't have offered any life insurance cover to Mr H if he'd told it he'd been drinking more than 42 units of alcohol per week. Based on the content of Mr H's hospital records and L&G's Chief Medical Officer's commentary, I think it's likely Mr H was drinking more than 42 units of alcohol at the time. So, I'm satisfied that L&G wouldn't have offered him a policy.

This means I think L&G has demonstrated that Mr H made a 'qualifying misrepresentation' under CIDRA.

L&G said it was treating Mr H's misrepresentation as deliberate/reckless. This means that, under CIDRA, L&G is entitled to avoid the policy, refuse all claims and keep the premiums paid. In this case, L&G has instead refunded Mrs H the premiums that were paid for the policy.

L&G's actions in declining this claim are in line with both CIDRA and the relevant ABI Code so this means I don't think L&G has acted unfairly or unreasonably in the circumstances.

I can appreciate that L&G's enquiries into this claim, including requesting information from Mrs H herself, will have been difficult for Mrs H at what was already an unimaginably upsetting time for her and her family. However, I think these were reasonable enquiries which L&G was entitled to make at the times it did.

There were some avoidable delays on the part of L&G when progressing this claim, and I don't think it provided updates as regularly as it could have done. L&G also contacted Mrs H directly when it had been asked not to do so. L&G has already made an offer to pay the estate of Mr H £300 compensation for these failings and I think this offer is fair and reasonable in all the circumstances.

So, my provisional decision is that I don't intend to direct L&G to do anything more.'

L&G accepted my provisional decision. Mrs H didn't and provided additional comments.

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 sorry if the timing of my provisional decision caused further upset to Mrs H and her family, and I've thought very carefully about everything Mrs H has said in response to my findings.

I don't think Mrs H's testimony is the least relevant evidence. I'm not questioning her credibility or truthfulness, and I don't doubt that Mrs H knew the importance of completing the insurance application accurately. However, in order for an ombudsman to reach a decision about a complaint, it's inevitable that more persuasive weight needs to be given to the evidence provided by one of the parties. Unfortunately, this means the other party is likely to be disappointed with the outcome reached.

I understand Mrs H says Mr H had seen his GP in 2020 and 2022. I accept this means Mr H's comments at the hospital about not having seen his GP for 27 years can't be taken as accurate. But I don't think this affects the outcome of the complaint. The more recent GP visits don't seem to have captured any information about Mr H's alcohol intake at the time and the sole reference to alcohol in Mr H's GP records remains the entry relating to some 19 years before the policy was taken out.

I note the 2023 research paper which Mrs H has again referred to, as well as the recent television documentary which she has mentioned. But I'm afraid I simply don't think the evidence which Mrs H has provided carries as much persuasive weight as the content of Mr H's hospital records and the comments of L&G's Chief Medical Officer which relate specifically to Mr H's case.

Mrs H has said that heavy drinking is classed as more than 30 units per week, and L&G's Chief Medical Officer mentioned 30 units per week as the lower limit at which cirrhosis can develop. So, Mrs H has questioned how I can have reached the assumption that Mr H's alcohol intake was more than 42 units per week when the policy was taken out.

I've reached this conclusion on the balance of probabilities, taking into account what I think is more likely than not to have been the case. Overall, having considered the totality of the Chief Medical Officer's comments and the content of Mr H's hospital records, I think it's more likely than not that Mr H was drinking in excess of 42 units of alcohol per week in January 2019 rather than an amount less than this.

I know Mrs H disputes the factual accuracy of my provisional decision and will remain unhappy with my outcome. I'm sorry to disappoint her, but I won't be changing my findings.

L&G has already made an offer to pay Mrs H £300 compensation. Mrs H should contact L&G directly if she now wishes to accept this.

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 the estate of Mr H to accept or reject my decision before 13 January 2025.

Leah Nagle

Ombudsman