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Alcohol Problems and Insurance: Addressing the Problems

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1. Summary

This paper identifies some of the ways in which the harmful use of alcohol causes problems for insurance firms, their customers and third-party claimants. These problems arise across multiple product lines and at various stages of insurance product life cycles, from product conception and design to claims management. They may therefore be regarded as a species of insurance risk.

Ways in which the industry seeks to reduce these problems are also discussed. Some suggestions are made as to how the problem can be addressed and as to issues for further research.

2. Introduction

Alcohol misuse is the biggest risk factor for death, ill-health and disability among 15-49 year-olds in the UK. It is the fifth biggest risk factor across all ages.[1] It is also linked to behavioural problems such as drink driving, family problems and crime.[2] It gives rise to multiple claims against a wide range of different kinds of insurance cover whether the claimant be the policyholder, beneficiary or a third party claimant in, for instance, a road traffic accident. It is also a reason for declining cover or loading premiums when people apply for a number of insurance products, and for rejecting claims which are alcohol-related.

Insurers usually prefer not to provide cover for alcohol-related losses, or to people who have alcohol problems, or have had recent alcohol problems and are therefore at risk of relapse. Some of those having had problems and having caused alcohol-related losses in the past may be "alcoholics",[3] whether active or in recovery.[4] Others may just have had a one-off binge leading to the insurable event, or be at an early stage of their progression to full blown

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1 Burton, R. et al. (2016). "The Public Health Burden of Alcohol and the Effectiveness and Cost-Effectiveness of Alcohol Control Policies: An Evidence Review." Published by HM Government.

2 Ibidem.

3 Although the word is no longer used scientifically – "alcohol use disorder" ("AUD") is the expression used in the Diagnostic and Statistical Manual of Mental Disorders (DSM V) published by the American Psychiatric Association. A person is diagnosed with AUD when they meet at least 2 of the diagnostic criteria. AUD may be mild, moderate or severe. AUD replaces the earlier concepts of alcohol abuse and alcohol dependence, which are still used under the alternative classification regime – the International Classification of Diseases (ICD) – published by the World Health Organisation.

4 When an alcoholic has stopped drinking he or she is usually referred to as "recovering" because alcohol use disorder in its most serious form, like most other non-contagious diseases, is not curable.

alcoholism. Even small concentrations of alcohol in the blood can significantly affect the risk of accidents[5] and probably also other insurance risks such as professional negligence.

This article discusses how alcohol problems affect insurance cover and what lessons may be learned. It also touches on problems with other drugs. The main focus is on consumer insurance. It argues that substance misuse, and in particular alcohol misuse, should be viewed as an insurance risk in its own right, with common themes affecting a range of insurance products and stages in the product cycle. Attempts by insurers to exclude cover for losses caused by substance misuse often give rise to more problems than they solve. More research is needed into those problems.

3. Drinking behaviour

Heavy drinkers are accident prone and may commit other acts of negligence or engage in deliberately dangerous or dishonest behaviour when they are under the influence of alcohol. These incidents may occur in safety-critical environments, such as roads or public spaces. Or they may arise in business-critical situations, such as where a lawyer gives negligent advice to a client.[6] Even when they are not under the influence, the behaviour and cognition of heavy drinkers may be affected by the medium or long-term effects of their addiction.[7] More often than not there are psychiatric co-morbidities running alongside full-blown alcohol dependence (without necessarily being the cause or the effect). These include depression, anxiety and long-term memory loss (Wernicke-Korsakoff's syndrome – "wet brain").[8] Such conditions complicate treatment for alcohol problems and sometimes lead to self-destructive behaviour, self-harm and suicide.[9]

Heavy drinkers also develop physical illnesses which may be the direct effect of their drinking (e.g. alcoholic cirrhosis of the liver) or linked to their drinking by something more complex than simple causality (e.g. type 2 diabetes). Any of these can lead to death from a variety of causes, but more often to a significant deterioration in quality of life and inability to work.

Although alcohol is a depressant drug it can sometimes release inhibitions, leading to aggressive and anti-social behaviour.[10]

The cognitive functioning of the heavy drinker is affected. Apart from "wet brain" arising in the most serious cases, alcoholics will routinely have alcoholic amnesia or "blackouts". That is to say they have periods following binges which they cannot remember. During these periods they may have committed serious acts such as killing someone

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[5] Tsai, Y. C. et al. (2019) "The effect of lowering the legal blood alcohol concentration limit on driving under the influence (DUI) in southern Taiwan: a cross-sectional retrospective analysis." BMJ Open. 2019 Apr 20;9(4).

[6] See Goodliffe, J (2018) "Disciplinary proceedings affecting addicted lawyers and how they impact insurers" BILA Journal #131.

[7] Braillon, A (2018) "Alcohol consumption and cognitive decline: the elephant in the room?" The Lancet, May 2018, page 3216.

[8] See "Physical and mental health effects" (2017), fact sheet published by the Institute of Alcohol Studies.

[9] "Alcoholism and Co-occurring Disorders" National Institute on Alcohol Abuse and Alcoholism No. 14 PH 302 October 1991.

[10] Hendler, RA et al.(2013) "Stimulant and sedative effects of alcohol" Curr Top Behav Neurosci. 2013;13:489-509.

on the road, or arson. They may try, consciously or unconsciously, to reconstruct their memory to make up for such gaps.[11] Apart from this there may be cognitive bias[12] which distorts their memory.[13]

The behavioural side of such symptoms is that the alcoholic will often be in "denial".[14] He or she may, for instance, blame all their problems on everything except their addiction. Or they may deny that their drinking has had any negative consequences. Their denial may extend to their psychiatric conditions which are co-morbid with their alcoholism. All this will make it difficult for them, among other things, to make appropriate disclosures to their insurers.

If they accept that they have an alcohol problem, they may deny that they can change and recover. Dr. Dominique Lannes, hepatologist and medical director at French reinsurer SCOR,[15] has described denial more bluntly:

> "It should be recognised that alcoholics are usually dishonest about their actual alcohol intake. When completing a medical questionnaire they are quite likely to either deny or under-estimate their alcohol intake".[16]

Alcoholics can be accomplished liars, since they usually believe in the truth of their own fabrications. This suggests that there are many insurance claims where the insurance company might have been in a position to refuse payment, had not the alcoholic claimant or assured succeeded in concealing material facts, in breach of the rules on misrepresentation discussed below.[17] Ways of doing this include not telling their doctors about their drinking problem and ensuring that their doctors are not told when they are admitted to the accident and emergency department of a hospital.[18] General practitioners express hesitancy in recording drug and alcohol-related problems in electronic patient records for fear of adverse consequences for the patient or for the patient-physician relationship.[19]

Denial is further reinforced because of the stigma which applies to the condition.[20] Even people who are decades into recovery from drinking and/or mental health problems may continue to have difficulty obtaining insurance

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[11] More reliably they may be helped to reconstruct their memory through memory-focused cognitive therapy. See Marsden, J et al. (2018) "Memory-Focused Cognitive Therapy for Cocaine Use Disorder: Theory, Procedures and Preliminary Evidence From an External Pilot Randomised Controlled Trial." EBioMedicine. 2018 Mar;29:177-189.

[12] Boffo, M (2019) "Cognitive Bias Modification for Behaviour Change in Alcohol and Smoking Addiction: Bayesian Meta-Analysis of Individual Participant Data." Neuropsychol Rev. 2019 Mar;29(1):52-78.

[13] Wiers C E et al. (2017) "Comparing Three Cognitive Biases for Alcohol Cues in Alcohol Dependence" Alcohol and Alcoholism, 2017, 52(2) 242–248.

[14] See Dare, P A S and Derigne, L, (2010) "Denial in alcohol and other drug use disorders: a critique of theory" Addiction Research and Theory, 18:2, 181 – 193.

[15] Reinsurance is the practice whereby insurers, acting as "cedants", transfer portions of their risk portfolios to reinsurers to reduce the likelihood of paying a large obligation resulting from an insurance claim.

[16] "Alcoholism and life insurance" (2002) – SCOR newsletter March 2002.

[17] See section 5.1 below.

[18] Unless, of course, they are proposing to make an insurance claim arising out of their accident. The sensitivity of A&E patients relating to who finds out about the outcome of their blood tests is discussed by Csipke, E. Touquet, R. et al. (2007) "Use of blood alcohol concentration in resuscitation room patients" Emerg. Med. J. 2007;24;535-538.

[19] Davies-Kershaw H et al. (2018), "Factors influencing recording of drug misuse in primary care: a qualitative study of GPs in England." Br J Gen Pract. 2018;68:e234-e244.

[20] Schomerus, G (2011) "The stigma of alcohol dependence compared with other mental disorders: a review of population studies", Alcohol and Alcoholism. 2011 Mar-Apr;46(2):105-12.

cover.[21] They may lie on proposal forms because they believe, rightly or wrongly, that they will not get insurance, or insurance at an affordable price, unless they do. They may continue to do this even when they are in full recovery from their condition.

At a national level, successive governments have reduced the resources for treating people with alcohol problems and have declined to adopt what have been proved to be the most effective harm reduction strategies.[22] They can do this because they know they will not face political problems.[23]

The family, friends and co-workers of the alcoholic may also be affected by denial and stigma. In one case a man failed to disclose to the insurer providing him with life insurance[24] that he had a drinking problem. When he died his estate's claim against the insurer failed. The judge, Mr. Justice Lindsay, commented of his daughter:

> "I cannot regard her evidence as reliable; it may be that she allowed an understandable wish to protect her father's memory to outweigh a respect for the truth."[25]

Sometimes, however, individual members of the drinker's family may be able to detach, develop resilience and take a more realistic view, as may the alcoholic, if and when he or she begins to recover and "come out of denial".[26]

3.1 Factors influencing drinking behaviour

Factors related to drinking behaviour include very stressful environments, such as wars and involvement in combat,[27] being harassed,[28] being isolated,[29] living or working in a heavy drinking culture[30] and the price and availability of alcohol.[31]

Even climate change seems to be a factor. A major insurer in Australia studying the impact of climate change on its business pinpointed a correlation between heat waves in Western Sydney and an increase in alcohol consumption;

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[21] See, for instance, the material on insurance on the web sites of the charities "Rethink" and "Mind". Also Goodliffe, J (2008) "Insurance issues for people with health problems", Complinet Insurance, 10 April 2008 http://www.articles.jgoodliffe.co.uk/articles/rethink.pdf (accessed 8 October 2020).

[22] See section 3.3 below.

[23] Drummond, C (2017) "Cuts to addiction services are a false economy" The BMJ opinion May 2017.

[24] Life ***insurance*** is usually insurance for a limited period of say 5 years during which a claim may or may not arise. Life ***assurance*** is taken out for the whole of the life of the assured, so a claim is bound to arise. Nothing turns on this distinction in this article so I use "insurance" to refer to both types of cover.

[25] *Mundi v Lincoln Insurance* [2005] EWHC 2678 at para 58. This case did not go to FOS, probably because it was outside the then financial limit of FOS's jurisdiction.

[26] The process of recovery is well described in Humphreys, K. et al. (2016) "Edwards' Treatment of Drinking Problems A Guide for the Helping Professions", 6th edition, 2016.

[27] Vest, B.M. (2018) "What drives the relationship between combat and alcohol problems in soldiers? The roles of perception and marriage? Soc Psychiatry Psychiatr Epidemiol. 2018 Apr;53(4):413-420.

[28] Marchand, A, (2008) "Alcohol use and misuse: what are the contributions of occupation and work organisation conditions?" BMC Public Health." 2008 Sep 24;8:333.

[29] Gibson, KW, Flying Solo (2003): "A Survival Guide for the Solo and Small Firm Lawyer," 4th edition, 2003, page 548

[30] Lui PP, Zamboanga BL (2018), "A Critical Review and Meta-Analysis of the Associations Between Acculturation and Alcohol Use Outcomes Among Hispanic Americans." Alcohol Clin Exp Res. 2018 Oct;42(10):1841-1862; Beioley, K, (2020) "Law firm alcohol culture is damaging mental health," Financial Times, 6 January 2020

[31] Rice, P. and Drummond, C (2012) "The price of a drink: the potential of alcohol minimum unit pricing as a public health measure in the UK The British Journal of Psychiatry" (2012) 201 169-171.

leading to a spike in break-in activity during those periods, and ultimately resulting in a higher number of home owner insurance claim.[32] The Victorian Black Saturday bush fires also resulted in elevated rates of heavy drinking.[33]

3.2 How others are affected

Other people are affected by the drinker's behaviour, including insurers who have provided them with cover and third-party claimants on that cover.

Most importantly perhaps this extends to children, whose long-term development may be adversely affected by being brought up in a family where heavy drinking and/or drug taking is the norm.[34] Of all people affected by the problem of addiction they are least able to protect themselves and most likely to suffer adverse consequences.

They may become addicts themselves or develop other mental health or behavioural problems, unless they acquire the resilience to put their difficult childhood behind them.[35] A range of resources support these children, including, in England, the Family Drug and Alcohol Courts which help families affected by alcohol and drugs to resolve their problems.[36]

If these children follow the example of their parents, their lives may be unhappy and unfulfilled and they may, among other things, generate or be the subject of a variety of insurance claims.

If, on the other hand, they do develop resilience, then, as one incidental effect, they are more likely to have happy and fulfilled lives and to do worthwhile things. These could include taking out multiple insurance policies and contributing to a pension scheme or buying an annuity. So the insurance industry has a stake in their well being.

3.3 Alcohol harm reduction strategies

The World Health Organisation has recommended[37] the following categories of measures, the effectiveness of which is verified by the scientific literature:

- alcohol control legislation and licensing systems,
- prohibition on selling (including effective sanctions for breach):
- to those under-age for purchasing alcohol, and
- to someone who is intoxicated,
- high rates of taxation on alcohol,

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[32] International Association of Insurance Supervisors, Issues Paper on Climate Change Risks to the Insurance Sector, July 2018

[33] Bryant, R A et al (2014) "Psychological outcomes following the Victorian Black Saturday bush fires" Australian & New Zealand Journal of Psychiatry 2014, Vol. 48(7) 634 –643.

[34] Harwin, J et al. (2010) "Children affected by Parental Alcohol Problems", published by drugsandalcohol.ie.

[35] Velleman, R and Orford, J (2001) "Risk and Resilience: Adults Who Were the Children of Problem Drinkers" Routledge.

[36] See the website for the Family Drug and Alcohol Courts https://fdac.org.uk/ (accessed 8 October 2020).

[37] WHO expert committee on problems related to alcohol consumption. Second Report, Geneva, 2007.

- drink driving counter measures,
- assessment and brief intervention[38] within primary health services,
- treatment policies to ensure access to treatment interventions and community services for people with alcohol use disorders.

More recently evidence has emerged in favour of minimum pricing for alcohol[39], as adopted in Scotland and more recently in Wales.

4. The Regulatory environment for insurance

The UK regulatory regime for insurance often addresses problems arising from or related to addictive behaviour. For those unfamiliar with the UK insurance market I describe briefly how it is regulated. This is key to understanding alcohol as a risk factor in insurance.

4.1 The Financial Conduct Authority

In the UK the Financial Conduct Authority (FCA) regulates the conduct of financial services business, including insurance. The emphasis of the regulatory regime is on fairness to customers. The FCA does not usually have the power,[40] where fairness is respected, (i) to require insurers to cover specific risks or (ii) to remove specific exclusions which are fairly and clearly explained to the consumer.[41]

The position is different in some continental European jurisdictions. In Italy, for instance, the regulatory regime requires insurers to provide cover to drivers who have been convicted of drunk-driving. The cover must be provided on specified terms, whether the motor insurers want to provide it or not.[42]

None of this, as we shall see, prevents the courts and the Financial Ombudsman Service (FOS) from "*contra-proferentem*"[43] interpretation of exclusions. These interpretations often stretch the literal wording of the policy, or

[38] Brief interventions are those practices that aim to identify a real or potential alcohol problem and motivate an individual to do something about it.

[39] O'Donnell, A et al. (2019) "Immediate impact of minimum unit pricing on alcohol purchases in Scotland: controlled interrupted time series analysis for 2015-18" British Medical Journal 2019;366:l5274.

[40] Financial Services and Markets Act 2000 sections 1B to 1G.

[41] Section 64 Consumer Rights Act 2015. There are some exceptions to (ii) in compulsory insurance such as motor. Exceptions may also arise (at least until Brexit is given full effect) where mandatory clauses are required to be inserted into contracts by EU legislation.

[42] See Goodliffe, J (2009) "Rules on discrimination against foreign insurers", Insurance Day 5 June 2009. The rule in question relieves the pressure on the Italian Insurance Guarantee Fund which, among other things, pays out the victims of uninsured drivers.

[43] *Contra proferentem* interpretation may stretch the meaning of the words in a contract to produce the outcome desired by the judge or ombudsman concerned. Such interpretations rely partly on section 69 of the Consumer Rights Act 2015 which says: "if a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail."

its application to the facts, in order to achieve what FOS (or less frequently a judge) considers to be a fair and reasonable outcome, such as rejecting an insurer's defence to an alcohol related claim.[44]

The FCA has many calls on its resources and tends to prioritise initiatives which have maximum support from e.g. Parliament, government, non-governmental organisations, effective pressure groups and European institutions. In the USA there is a healthy "recovery advocacy movement"[45] that supports the interests of people in recovery from addiction. There is nothing equivalent to this in the UK, mainly because alcohol misuse is so heavily stigmatised. Recovering alcoholics usually insist on maintaining anonymity.

4.2 Financial Ombudsman Service

FOS, which has a complement of about 140 ombudsmen, determines disputes between firms regulated by the FCA and their consumer and small business customers, with a view to achieving a "fair and reasonable outcome".[46] The regulated firms include insurance companies, banks (some of whom sell insurance, among other activities) insurance brokers and financial advisers. The limit to FOS's financial jurisdiction in relation to any claim is £350,000. Larger claims are dealt with in the civil courts.

FOS may sometimes depart from legal rules.[47] There is no right of appeal from its decisions, although it may occasionally be challenged by way of judicial review on the grounds that, for instance, it has exceeded its powers.[48] Apart from this a complainant has the right to reject an ombudsman's determination with which he/she is not satisfied and bring the same claim again in the civil courts.

Insurers commonly allege misrepresentation as a defence to claims in which alcohol is a factor. Often their defences are defeated. Sometimes this may be because FOS procedures do not include rigorous mechanisms for testing claimant evidence which apply in the civil courts. These include formal disclosure of documents and cross-examination of witnesses with a view to exposing fraud. So assertions by the claimant, as to the level of his or her drinking, for instance, will often be accepted at face value.[49]

5. How is the drinker treated in standard insurance policies?

As mentioned above insurers usually seek to exclude from coverage problems arising from alcohol misuse or in relation to people who are or have been addicted. They may do this by a narrow or artificial definition of the cover, by exclusion clauses, by appropriate questions on the proposal/ application form for the cover, by rigorous examination of claims and by defending claims before FOS or the courts. Or, if all else fails and in the case of a

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[44] The FCA can also take action against contractual terms which it considers to be unfair (section 70 of the Consumer Rights Act 2015), although it has not done so in any alcohol related cases.

[45] White, W.L (2007) "The new recovery advocacy movement in America" Addiction,102, 696–703.

[46] Financial Services and Markets Act 2000, section 228.

[47] Such as the rules on quantification and remoteness of damages and the rules of evidence.

[48] As in *R (Aviva Life & Pensions (UK) Ltd) v Financial Ombudsman Service* [2017] Lloyd's Rep. IR 404.

[49] I carried out a full survey of misrepresentation cases involving alcohol in my article "How insurers avoid, or fail to avoid, covering alcohol problems" BILA Journal #128 (see section 12). I could find only one case where the ombudsman found "fraud" to be proved This was before the Consumer Insurance (Disclosure and Representations) Act 2012 came into force, but when Ombudsman practice was in line with the rules ultimately applied under the 2012 Act.

general insurance product such as motor insurance, they may just decline cover or load the premium when the insurance is renewed after a year.

Here it should be noted that some insurers are up front about what they do and do not cover.[50] Others tend to highlight what they cover but make what they do not cover difficult to find – until the insured has bought the cover and is provided with a copy of the policy.[51] What is and is not covered should all be clearly detailed in the "Insurance Product Information Document" (IPID). This is required to set out "the main exclusions".[52] But some firms providing, for instance, private medical insurance or personal accident insurance exclude alcohol problems from coverage but do not mention this in the IPID.[53] This issue is discussed in more detail below.

5.1 Telling the insurer the truth (or not)

5.1.1 Introduction

A private individual taking out certain types of insurance may be required to make a health declaration in his or her proposal form. This is the case in, among others, life insurance, motor insurance, critical illness insurance, medical insurance, travel insurance and accident insurance. Life insurance seems to be the most problematical of these products, perhaps because it provides for the largest benefits.

In life insurance and critical illness insurance the declaration will cover, among other things, smoking and drinking. At least one insurer, Scottish Widows, has prepared an "Alcohol information questionnaire[54]" to be completed by applicants in addition to the ordinary proposal form". Suicide within the first year will usually be excluded but covered thereafter[55]. Deaths due to alcohol and drug misuse will also usually be excluded from the cover (whether the initial declaration was truthful or not).

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[50] I will be illustrating this point in more detail in a separate article.

[51] Surprisingly, this practice seems to be encouraged by the regulator on the basis that the applicant should not be overburdened with information. In 2005 it indicated that firms should consider omitting reference in policy summaries to the fact that loss or treatment as a result of misuse of drugs or alcohol is excluded from the cover.

[52] See annex 3 section 2.1(4) to chapter 4 of the FCA's Insurance Conduct of Business Sourcebook (ICOBS)

[53] By way of example of this proposition the IPID for the Chubb personal accident insurance policy does not mention alcohol under the heading "What is not insured" (see https://www.trusttheguild.com/downloads/pdf/insurance/GOCW%20Personal%20Accident%20Insurance%20IPID%20and%20Guidance.pdf (accessed 4 October 2020), but accidents under the influence of alcohol are excluded in clause 12(a)(ii) of the policy conditions for the same product (see https://www.chubb.com/au-en/_assets/documents/chubb-personal-accident-insurance-product-disclosure-statement.pdf (accessed 4 October 2020).

[54] The questionnaire asks applicants how much beer, wine and spirits they drink. Should they then volunteer how much cider they drink? Probably not, since the questionnaire would be construed contra *proferentem*.

[55] This seems to be a convention among life insurers. There is no legal rule to that effect.

5.1.2 The rules on misrepresentation

The person taking out the life insurance may fail to disclose a drinking problem when asked about it in the proposal form. Even if he or she is in recovery and not "in denial" they may conclude that if they reveal their past or present condition cover will be declined because they are, in effect, uninsurable. So they might as well (to their way of thinking) cover things up. They might get away with it.

If the insurer then finds out that there has been a misrepresentation, the legal consequences depend[56] on whether the misrepresentation is treated as either:

- deliberate or reckless, or
- careless.

Under the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"), s.5(2), a misrepresentation is regarded as deliberate or reckless if the consumer—

(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

Unless the contrary is shown, there is a presumption -

(a) that the consumer had the knowledge of a reasonable consumer, and

(b) that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.[57]

Ombudsmen nearly always hold misrepresentations to be careless rather than deliberate or reckless.[58] Their procedures, which do not provide for cross-examination of witnesses and disclosure of documents make it difficult to challenge the claimant's honesty except when there is a "smoking gun".[59]

Another factor is that a higher standard of proof is usually applied in civil proceedings and by Ombudsmen to allegations involving criminal behaviour such as deliberate misrepresentation.[60]

In the rare cases where the misrepresentation is held to be deliberate or reckless, the insurer may avoid the contract and keep any premiums paid unless that would be unfair to the consumer.[61]

Where the misrepresentation is held to be careless, the outcome depends on whether the insurer would have provided any cover, if the misrepresentation had not been made to it at the time that the policy was taken out. If the answer is yes, the terms of the cover will be adjusted to reflect what might have been those terms, which would have

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[56] See the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), s.5(1).

[57] CIDRA, s.5(5).

[58] See footnote 49 above.

[59] Such as where a claimant on an accident policy asserts that he or she is totally disabled and is then filmed playing hockey by the insurance company.

[60] This is fully discussed in Hjalmarsson, J (2016) "Fraudulent insurance claims: legal definition and judicial consequences" PhD thesis available online at https://eprints.soton.ac.uk/397148/1/Final%2520PhD%2520thesis%2520-%2520Johanna%2520Hjalmarsson.pdf (accessed 4 October 2020).

[61] CIDRA Sch 1 para 2.

applied following a full disclosure. If the insurer would have charged a higher premium, any claim payable is reduced proportionately.[62]

If the insurer would not, following such a conjectural full disclosure, have given cover on any terms, the cover may be avoided. In that event the insurer must return the premiums. The fact that the insured's death (if it happens) may ultimately be unrelated to their undeclared drinking is irrelevant.

The Law Commissions[63] at one time recommended that in consumer life insurance, insurers should be prevented from relying on a negligent misrepresentation after the policy had been in force for five years.[64] "Non-contestability" periods of this sort are applied in Australia, New Zealand and many US states. However, this recommendation was ultimately dropped.

Non-disclosure would not normally, however, be an issue when an employer takes out life insurance, medical, or accident insurance as a benefit for its workforce. In that event there would not be any declaration as to the health and lifestyle of individual employees, but there might be exclusions for insurable events, such as illness and death, caused by alcohol misuse. Insurers may however be willing to cover alcohol problems in such policies for an increased premium.

5.1.3 A typical case on misrepresentation about alcohol

A typical case illustrates the FOS approach to misrepresentation issues.

A woman[65] completed a proposal for life insurance in 2002 and died a few years later. FOS held that she had been entitled to answer "No" to the question "Do you consume alcoholic drinks?" when she had recently stopped drinking and had started attending Alcoholics Anonymous meetings.

It did not accept, however, that she had been entitled to answer "No" to the questions "Are you currently receiving any medical treatment or attention?" and "Have you ever sought or been given medical advice to reduce the level of your drinking?"

The lawyers representing the woman's estate had sought to justify these answers on the basis that her doctor did not consider that her drinking problem was medical. She had been advised not to reduce her drinking, but to stop altogether. FOS therefore concluded that the insurers' refusal to pay on the life insurance had been justified. Among other things this illustrates the proposition that dishonesty and denial sometimes continue into recovery.

5.1.4 Failure by firm to provide information to applicant?

There is an alternative perspective on the failure of people to provide accurate information about alcohol and drug use when taking out insurance policies. In 2006 the then UK insurance regulator carried out an investigation into

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[62] CIDRA 2012, Sch 1, para. 7.

[63] The Law Commission of England and Wales and the Law Commission of Scotland. The Law Commissions make recommendations for reform of the law which are then usually implemented by changes to legislation.

[64] "Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured" (2007) Law Commission Consultation Paper No 182; proposal 12.23

[65] Ombudsman News" April 2007, issue 61.

critical illness insurance. It was concerned at the number of people whose claims were rejected because their health declarations were incorrect. It stated in its report:[66]

"The other main reason [apart from customers not understanding the nature of the product] why claims are rejected is that customers do not fully disclose information about their medical history. We know that there are cases where customers deliberately mislead the insurer, but in most cases, consumers simply do not understand what is required of them. The fact that dishonest consumers think they can hide information and still make a claim shows how little they understand their obligations and the consequences of not disclosing. This, in turn, is a telling indicator of how effectively firms explain about the need to disclose relevant information."

Is this the fault of the insurer? Or do some people understand or remember what they want to understand or remember, particularly when they are cognitively impaired or determined to "beat" the system?

In any event the regulator subsequently tightened its rules. Now firms selling long term insurance products such as critical illness insurance on a non-advised basis generally stick to a carefully prepared script or algorithm complying with the FCA's rules[67]. Their conversation with the customer is recorded. This makes it more difficult for the customer to claim that their lack of understanding can be blamed on the firm selling the insurance policy. In addition, under CIDRA, s.5(5) it is presumed that the proposer "had the knowledge of a reasonable consumer".

There may, nevertheless be a build-up of policies which have gone through the more heavily regulated selling regime, but are nonetheless likely ultimately to be avoided for misrepresentation, because heavy drinkers continue to tell untruths however well things are explained to them.

5.1.5 Discussion

The rules on selling life insurance to people with drinking problems must sometimes cause considerable hardship. They have two stages at which their drinking may prevent them from recovering the policy amount. The first stage is the proposal, which must be full and honest. The second stage is when they make a claim which may raise the additional issue[68] as to whether harmful alcohol use caused the death.

Breadwinners who have developed serious alcohol problems will face rapid deterioration of their life style. They may have lost their jobs and remortgaged their property. Their insurance policy may be their only significant asset. If it does not pay out on their death the financial consequences for their families may be severe.

There are no easy solutions to this problem, although there are instances of good practice which may reduce it a little. These include:

- insurers retyping the proposal form[69] and sending it back to the applicant for checking,
- encouraging the applicant's doctor and/or spouse to help with the application form,
- encouraging people to read the guidance on misrepresentation issues published by the Association of British Insurers,[70]

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[66] This report has now disappeared from the Internet.

[67] Chapter 6 of the FCA's Insurance Conduct of Business Sourcebook

[68] highlighted by the clause from the Legal and General policy cited above.

[69] Which will often have been completed on the internet from a smart phone.

- the emergence of a sub-set of financial advisers who specialise in helping people in recovery from addiction or mental illness and the willingness of some specialised insurers to provide them with cover.

Firms selling travel insurance are now required to signpost customers to specialised firms willing to cover people with difficult pre-existing conditions.[71] It is to be hoped that this rule will be extended to other insurance products.

In very high value cases (such as insurance policies taken out on the lives of footballers or judges) the applicant may be asked to undergo a medical examination or to undergo blood tests to determine, among other things, whether they have a history of heavy drinking.[72] These tests have become more specific and sensitive over recent years.

Dr Dominique Lannes[73] suggests that this be applied more widely. If it were, many alcoholics might be discouraged from applying for long term insurance at all. However, the tests are perhaps unlikely to be applied on a wider scale, given the heavy competition in the retail insurance market. Insurers and their intermediaries are expected to arrange insurance cover as quickly and easily as possible.

Apart from this there are some life insurance policies that do not require the applicant to complete a health declaration, but they are usually expensive and provide limited cover.

6. Problems in product design

In this section I identify how problems in product design sometimes arise when insurers cover or seek to exclude alcohol-related health problems. This is usually because the insurers have not fully thought through the practical implications and inherent contradictions of the cover, on the one hand, and the exclusions on the other.

Here "moral hazard" is a key concept. This is defined in Investopaedia as follows:

"Moral hazard occurs when there is asymmetric information between two parties and a change in the behaviour of one party occurs after an agreement between the two parties is reached. Asymmetric information refers to any situation where one party to a transaction has greater material knowledge than the other party."

So a person taking out life insurance may conceal their addiction to alcohol and their intention to take their own life. His or her knowledge that their family may benefit from the cover is a causative factor in his suicide. A person who is addicted to alcohol may take out medical insurance in the hope that it will cover the cost of treatment. Moral hazard generally increases the possibility of loss or may intensify the severity of loss.

6.1 Insurance of suicide

Alcohol is a major risk factor for suicide.[74]

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[70] https://www.abi.org.uk/globalassets/files/publications/public/protection/abi-code-practice-on-misrepresentation-and-claims-sept-2019.pdf (accessed 8 October 2020).

[71] ICOBS 6A.4.

[72] See Dr Dominique Lannes' paper referred to at footnote 16 above. See also Jastrzębsk, I et al (2016) "Biomarkers of alcohol misuse: recent advances and future prospects" Gastroenterology Rev 2016; 11 (2): 78–89.

[73] See section ??? above.

[74] Kulk, N (2018) "Alcohol policy should be central to suicide prevention policy" published on the Blog of the Institute of Alcohol Studies.

At one time attempted suicide was a crime. As long ago as the 1920s, or earlier, life insurance policies typically covered (and still usually cover) suicide after the policy had been in force for a year. The House of Lords, however, in *Beresford v Royal Insurance Co Ltd*[75], held that the estate of the insured could not recover in respect of the suicide of the insured, as suicide was an unlawful act and that it was against public policy that the insured's estate should benefit from the insured's unlawful act under the principle that no action can be based on a disreputable cause.[76] In *Beresford* the deceased had taken his life minutes before a premium on the policy was due for payment, because he could not afford to pay it and if he did not pay it the policy would lapse. In addition, there is a general principle of insurance law that the loss must be fortuitous and not be deliberately caused by the insured.[77] Attempted suicide is no longer a crime, so suicide cover in life insurance is now valid.[78]

The cover provided for suicide within life insurance in the United Kingdom may create a moral hazard.[79] This is because it may be taken out by someone who is intending to commit suicide and who conceals that intention when applying for the insurance. "The state of a man's mind is as much a fact as the state of his digestion".[80]

These suicide clauses have led to a number of determinations by FOS[81] in cases where people have taken out life cover, waited just over a year and then committed suicide. This is then followed up by a claim on the insurance by their estate. These people usually commit suicide partly at least in order to provide for their dependants.

Suicide can be a rational act,[82] but in most cases people who take their lives are addicted to alcohol or other substances, or suffering from depression, or more frequently both.[83] The experience of FOS recorded in determinations of individual complaints, verifies this. All FOS determinations since 2013 are online minus any material which might indicate the identity of the claimants. A number of references to these determinations are contained in this article.[84]

The outcome of these cases has turned on whether the insurer is allowed to refer back and rely on the original proposal form and compare it with the medical evidence as to the insured's medical condition when he made the proposal. The argument in favour of doing this is that people who commit suicide are usually addicted to alcohol or other substances and/or mentally unwell. So the likelihood is that if the applicant took out the policy in, say, May 2019 and killed himself in June 2020, he or she already had a problem when the policy was taken out, which was not

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75 [1938] AC 586.

76 In Latin *"ex turpi causa non oritur actio*".

77 *British and Foreign Marine Insurance Ltd v Gaunt* [1921] AC 41.

78 Suicide Act 1960, section 1.

79 See section 0 above.

80 A quote from Lord Justice Bowen in *Edgington v Fitzmaurice* (1885) 29 Ch D 459.

81 The determinations in question are listed in Goodliffe, J (2015) "Insurance of suicide", Insurance Day, 16 April 2015. They date from 2011 to 2013. There is also a full discussion of these cases in section 14 of Goodliffe (2015) "How insurers avoid, or fail to avoid covering alcohol problems" BILA Journal #128. I have been unable to find any similar cases decided since then.

82 Gramaglia et al. (2019) "Rational Suicide in Late Life: A Systematic Review of the Literature" Medicina (Kaunas). 2019 Oct; 55(10): 656.

83 See, for instance, Sher, L (2009) "Effect of acute alcohol use on the lethality of suicide attempts in patients with mood disorders." J Psychiatr Res. 2009 Jul;43(10):901-5.

84 The database is at https://www.financial-ombudsman.org.uk/data-insight/ombudsman-decisions (accessed 8 October 2020).

disclosed on the medical questionnaire. The insurer may[85] be able to verify this by getting access to the applicant's medical records.

Some ombudsmen have allowed insurers to do this, leading to rejection of the insurance claim. Others regard it as a fishing expedition and refuse to allow it.[86] There is no binding ruling in the courts on this point.

In some other countries the exclusion for suicide sometimes applies over a longer period. This usually leads to fewer suicides, perhaps because the assured has more time to recover from his or her suicidal ideation[87] before killing themselves. It is to be hoped that UK insurers have given or will give some thought to this issue. Where a depressed and alcohol dependent individual thinks that his or her estate will gain from their suicide, that may affect their ability to recover from their condition, in the same way that a personal injury claimant may not want to recover until he or she has settled their claim.[88]

Insurers could perhaps include on life insurance proposal forms a question "Do you intend to commit suicide, or are you contemplating suicide?" If the proposer then answered "no" untruthfully, the insurer could probably[89] refuse to pay out on a suicide. However, the insurer could only take this action if it could prove that the proposer had given an untruthful answer.

That would usually be difficult as people intending to commit suicide do not usually document that fact. This is not, however, necessarily a good reason for not asking the question. If insurers did ask the question and the answer was "yes" that would doubtless lead to cover being denied, possibly combined with a suggestion that the applicant seek medical advice.

6.2 Critical illness policies

Critical illness policies are often sold with life insurance, or on their own. They provide benefits where the assured suffers one of a defined list of illnesses. These are usually serious, chronic illnesses, such as certain cancers and multiple scelerosis. Claims on these policies are often rejected because the claimant has not made a truthful disclosure about their drinking or smoking when applying for the policy.

The Aviva[90] critical illness policy closely defines illnesses usually associated with alcohol misuse. These definitions exclude cases where alcohol is a factor. For instance, there are exclusions for "liver failure,[91] cardiac arrest, cardiomyopathy or coma secondary to alcohol or drug abuse" and generally "sickness or injury as a result of drug or alcohol intake". So claims may be rejected because the alcohol related illness is excluded from cover even if the disclosure when the policy was taken out was truthful.

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85 "May" because as noted above alcoholics often conceal their condition from their doctors;. See footnote 19 above.

86 See Goodliffe, J (2015) "How insurers avoid, or fail to avoid, covering alcohol problems", #128 BILA Journal page 15.

87 Paul S.F. Yip et al. (2014) "A study on the effect of exclusion period on the suicidal risk among the insured" Social Science & Medicine Volume 110, June 2014, Pages 26-30

88 Ryan, C et al (2012) "Compensation Neurosis: A Too Quickly Forgotten Concept?" Journal of the American Academy of Psychiatry and the Law Online September 2012, 40 (3) 390-398;

89 See section 5.1 above.

90 The largest UK based insurance group.

91 Alcohol misuse is only one of several causes of liver failure.

Such terms are typical within the industry. However at least one leading insurer, Scottish Widows,[92] has broken ranks and removed the alcohol exclusions in its standalone critical illness cover.[93] It may have considered that they were more trouble than they were worth and that it could charge larger premiums for better quality cover.

As noted above,[94] however, Scottish Widows does require a health declaration from applicants and has a special "alcohol information questionnaire"[95] which asks for information, but only covers the previous 5 years. So the questionnaire would not normally be a problem for an otherwise healthy alcoholic who is 5 years or more sober, or possibly a little less than that. This is arguably more reasonable (and consistent with the regulatory duty of firms to be fair with their customers) than most insurance questionnaires which are usually unlimited in time and therefore needlessly burdensome. Presumably if Scottish Widows considers that the drinking information gives rise to an undue risk it will decline cover, load the premium or impose conditions.

Scottish Widows has not highlighted what it has done in its marketing material or treated it as a selling point. It would doubtless not wish positively to attract business from people at one time affected by alcohol related illnesses. This approach is typical among the small number of insurers who provide cover for some alcohol related losses which other insurers do not usually cover.

As noted above[96] the regulator at one time took the view that when applicants gave incomplete or untruthful information when applying for critical illness cover, the problem was at least partly due to regulated firms not giving them full information about the policy and their duty to make a full disclosure.

6.3 Private medical insurance (PMI)

6.3.1 The National Health Service and the PMI market

In the UK the National Health Service treats people for most of their health needs. The purposes of PMI include giving people earlier appointments for treatment in more pleasant surroundings with closer consultant involvement and with less likelihood of being infected by "superbugs". Sometimes, also, PMI may help to make it possible to get treatment which is not available or difficult to arrange on the NHS. Treatment (particularly on an inpatient basis) for alcohol use disorder is in this category.

Apart from these points, alcohol treatment services within the NHS in England have been run down over the last few years.[97] Most NHS treatment centres have been closed down,[98] leaving many people with the only option of being referred by the NHS to the less effective charitable or voluntary sector. Often local authorities will pay for initial

[92] A member of the Lloyds Banking Group, which was rescued by the UK government during the 2007 financial crisis.

[93] But not, it seems, in its critical illness product designed to be sold with life insurance, perhaps because that would create inconsistencies between the two forms of cover.

[94] See footnote 53 above.

[95] Other insurers probably have something equivalent too but do not necessarily put it online.

[96] See "failure to provide information", above.

[97] See footnote 23 above.

[98] Roberts, E and Drummond, C (2019) "Alcohol related hospital admissions: locking the door after the horse has bolted" BMJ Opinion 30 July 2019. They report "Specialist community drug and alcohol services in England have experienced real term funding cuts of over £100 million, an average of 30% per service, since the implementation of the Health and Social Care Act in 2012 and cuts to the government's public health funding to local authorities. What we've been left with is a fragmented system of care."

physical detoxification from addictive substances, but not longer-term treatment. Specialist posts in the addiction field have been reduced. Contracts for treatment services now have to be re-tendered every 3 years. Day, E et al. comment:[99]

"The need to compete to win a new contract possibly drew vital resources away from the clinical 'front line' and distracted otherwise motivated clinicians from their research role. As substance use disorders have come to be understood as chronic illnesses that require a chronic disease management model, so continuity of treatment provision becomes more important.[100] In a review of the evidence base for "Recovery Oriented Systems of Care", White highlights stability in terms of funding, organisational ownership and workforce as a key measure of quality."[101]

So there is an opportunity for treatment financed by PMI to step into the gap. The main focus in private hospitals may be on treating people who can afford to pay, or with insurance cover, but private hospitals do take on some NHS patients, although not, following the recent cuts, for addiction treatment.[102]

The Financial Services Authority[103] published a paper in December 2005 about preparing policy summaries for private medical insurance, payment protection insurance and travel insurance. These summaries are supposed to tell people in simple terms what cover they are buying. The FSA indicated that firms should consider omitting reference to the fact that loss or treatment as a result of misuse of drugs or alcohol is excluded from the cover.

The paper has now disappeared. Why did the FSA publish it? Perhaps it thought, wrongly, that all policies excluded this risk, or that no-one was interested in whether the risk was excluded or not.[104]

Most of the industry duly complied with the FSA guidance. As a result, it was often quite difficult to find out whether alcohol and drugs are covered or not in specific UK PMI policies and most people do not realise the implications when it is not covered. So in this context the moral hazard may be created by the insurers and their intermediaries.

Since the FSA's guidance in 2005 the rules have changed following the transposition of the Insurance Distribution Directive (EU) 2016/97 ("IDD"). This requires the insurer or its intermediary to provide an "Insurance product information document" ("IPID"). The IPID must set out the "main exclusions" where claims cannot be made"[105] but some insurers, relying no doubt on the FSA guidance, continue to omit any reference to substance misuse problems in the IPID.[106]

Most firms do not cover alcohol and drugs in PMI for a variety of reasons such as:

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[99] Day, E et al. (2018) *A pilot feasibility randomised controlled trial of an adjunct brief social networking intervention in opiate substitution treatment services*, BMC Psychiatry (2018) 18:8.

[100] Starrels JL, et al. (2013) Can substance use disorders be managed using the chronic care model? Review and recommendations from a NIDA consensus group. Public Health Rev. 2013;35(2):8.

[101] White WL. (2008) Recovery management and recovery-oriented systems of care:scientific rationale and promising practices. Northeast Addiction Technology Transfer Center: Pittsburgh; 2008.

[102] The position appears to be otherwise in Scotland. See the web site of the Castle Craig treatment centre. https://castlecraig.co.uk/admissions/costs-funding (accessed 8 October 2020).

[103] The predecessor to the FCA as insurance regulator.

[104] See Goodliffe, J "Policy summary: throwing the baby out with the bathwater", Complinet, 13 December 2005.

[105] See article 20(8)(d) of the IDD and ICOBS 6 annex 3 para 2,1R(4)

REASON	COMMENT
The moral hazard[107] arising from the fact that at, least according to some theories of addiction and prevailing stigma, the drinker is in control of how much he or she drinks and may be taking out insurance to cover an existing problem.	Any moral hazard can be minimised by good underwriting using similar tools to those created by Scottish Widows for critical illness insurance. "Impaired control" is part of the definition of the dependence syndrome under ICD-10. Another possibility is to defer coverage for alcohol problems until the second or third year of the policy.
Alcohol dependence is a chronic condition, and PMI does not usually cover such conditions.	Some people recover quickly from alcohol dependence, without medical help, or following a "brief intervention", whereas others go on drinking until they die. Some PMI policies cover certain types of treatments to help other chronic conditions, such as cancer.
The effectiveness of treatment for alcohol dependence (particularly residential treatment) is not universally accepted.	See below.

The general effectiveness of alcohol treatment, whether residential or not, is supported by a study commissioned by the National Treatment Agency for Substance Misuse[108]. A more recent systematic review found moderate quality evidence for the effectiveness of residential treatment in improving outcomes across a number of substance use and life domains.[109] It is also arguably significant that the medical profession in London has set up its own resource[110] for treating sick doctors, i.e. mostly those affected by addiction and other mental health problems. It apparently concluded that ordinary treatment on the NHS or within the voluntary sector was not good enough. It mostly sends the addicted doctors to Clouds House, a private treatment centre.

So there seems to be a need for treatment which is no longer fully supported by the National Health Service and an opportunity for insurers of which most of them are not taking advantage.

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[106] See footnote 53 above.

[107] See section 0 above.

[108] Raitrick, D et al. (2006) "Review of the effectiveness of treatment for alcohol problems" London: National Treatment Agency for Substance Misuse.

[109] De Andrade, D. et al,(2019) "The effectiveness of residential treatment services for individuals with substance use disorders: a systematic review." Drug and Alcohol Dependence 201 (2019) 227–235.

[110] Stephenson, J, (2009) "The Practitioner Health Programme" BMJ 2009; 338

Some insurers are fully upfront about whether they do or do not cover alcohol related problems. Most PMI policies do not cover treatment for physical or mental problems caused by alcohol and drug misuse or treatment for that misuse itself. The Aviva PMI policy, for instance, says:

> "We do not cover treatment for addictions (such as alcohol addiction or drug addiction) or substance abuse (such as alcohol abuse or solvent abuse), or treatment of any illness or injury ***needed directly or indirectly*** as a result of any such abuse or addiction." [emphasis supplied]

The Exeter Friendly Society exclusion is even wider:

> "What isn't covered: treatment ***that arises from or is in any way connected with*** excess alcohol intake or drug or substance abuse." [emphasis supplied]

At least one insurer, however, BUPA,[111] does cover alcohol misuse in some of their PMI policies. As in the context of critical illness cover discussed above, it does not usually advertise the fact. Other insurers may sometimes cover it in group insurance taken out for the benefit of a larger company and its workforce.[112]

The logic of this is that the moral hazard that may apply when someone insures themselves against the consequences of their own drinking does not apply or is diluted where insurance is taken out for a larger group of mostly healthy people.

6.3.2 Problems arising from PMI wordings

The exclusion from PMI cover of treatment for alcohol problems or treatment caused or related to alcohol consumption is problematical.

First, addiction problems are closely linked to mental and physical health problems. A recent study[113] estimated that more than one third of people diagnosed with mental disorders abuse psychoactive substances (especially alcohol) or are dependent on them. Among alcohol-dependent patients 37% suffer from other mental disorders. Alcohol use disorder is, among other things, associated with increased risk of:

- mood disorders - more than three times higher,
- depression - almost four times higher,
- bipolar disorder - more than six times higher,
- anxiety disorders in general - more than twice,
- generalised anxiety disorder - more than four times higher,
- panic disorders - almost double,
- post-traumatic stress disorder - more than twice.

[111] Scottish Widows does not write PMI. Cigna's retail PMI used to cover alcohol problems, but its web site now indicates that it only covers employers.

[112] Sometimes cover for alcohol and drug problems is provided only for the most senior employees.

[113] Klimkiewicz, A et al. (2015) "Co-morbidity of alcohol dependence with other psychiatric disorders. Part I. Epidemiology of dual diagnosis" Psychiatr. Pol. 2015; 49(2): 265–275.

If the Exeter Friendly Society exclusion clause is applied literally, cover for these health problems would be excluded in a very high proportion of cases where alcohol is a factor. This is likely to take people by surprise at the claims stage. By all appearances most of the insurance industry understates the importance of substance addiction as a health factor when selling PMI.

The UK Association of British Insurers has published an18-page guide entitled "Are you buying PMI?".[114] There is only a brief reference to treatment for "drug abuse" being excluded, no reference more specifically to alcohol abuse and no reference to the common exclusion of cover for mental and physical conditions ***related*** to alcohol or drug abuse. The Money Advice Service,[115] set up by the UK government and paid for by the financial services industry, makes no mention of alcohol or drugs as an issue in relation to any insurance product including PMI.

There is no specific indication on the FOS web site as to how alcohol exclusion clauses are interpreted in PMI cases. However, in a travel insurance case[116] an ombudsman, Claire Marchant-Williams, applied a narrow interpretation to a very wide and vague alcohol exclusion clause which used the expression "alcohol abuse" without defining it.

In the USA, by contrast, the Affordable Care Act now sponsors insurance plans for sale on an online platform called the Health Insurance Marketplace. These medical insurance plans include addiction treatment coverage. Alcohol use disorder is not treated as a pre-existing condition.[117]

6.3.3 A case on health cover

One FOS determination[118] demonstrates how it approaches clauses excluding cover for alcohol problems, although the product in question was not PMI. It concerns a policy[119] issued by Axa[120] excluding "treatment of or treatment which arises from or is in any way connected with alcohol abuse...".

Mrs B, the wife of the policyholder, Mr. B, was admitted to hospital. Axa declined to pay under the policy having been informed by the hospital that her symptoms could be related to her alcohol consumption. The Ombudsman, Claire Marchant-Williams, upheld the policyholder's claim against Axa for the following reasons:

- the expression "alcohol abuse" was vague and undefined,
- it had not been established that Mrs B's illness was solely because of her alcohol consumption,
- the medical evidence surrounding Mrs B's admittance into hospital in July 2018 did not ***conclusively*** state that she was suffering from an alcohol related illness.

This determination does not help those seeking cover for alcohol treatment as such. It is open to criticism. For instance, the policy did not require Axa to prove that the medical condition was ***solely*** caused by Mrs. B's drinking.

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[114] https://www.abi.org.uk/globalassets/files/publications/public/health/2017/08/abi_bro3887_pmi_health_guide_v4.pdf (accessed 8 October 2020).

[115] moneyadviceservice.org.uk (accessed 8 October 2020).

[116] https://www.financial-ombudsman.org.uk/files/257184/DRN6785665.pdf (accessed 8 October 2020).

[117] Abraham, AJ (2017) et al. "The Affordable Care Act Transformation of Substance Use Disorder Treatment" Am J Public Health. 2017 January; 107(1): 31–32. The Affordable Care Act is currently under challenge in the US Supreme Court.

[118] Ref: DRN6785665

[119] It is not clear whether the policy was PMI or travel insurance.

[120] A French insurance group with a large operation in the UK.

Nor was it necessary that there should be "conclusive" evidence. Proof on the balance of probabilities[121] should have been enough.

The Ombudsman could, however, possibly have taken the view that the clause was unfair within the meaning of section 62 of the Consumer Rights Act 2015 and therefore that it was not binding on the insured[122]. One of the grounds on which an exclusion may be treated as unfair under the 2015 Act is where it is "a term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract."

A consumer arguably has no real opportunity of learning about the exclusion if the marketing environment is calculated, as it appears to be, to put him or her off the scent. As noted above[123] the ABI and the Money Advice Service do not warn people about the exclusion. Where "main" exclusions are covered in the IPID[124], which is a daunting document in its own right, why should people be expected to look for further exclusions elsewhere? In many cases the IPID does not even alert them to the fact that the list of exclusions is non-exhaustive. All this is arguably inconsistent with the duty of firms to treat customers fairly under the FCA's Principle for Businesses no 6.

Apart from this Axa should probably have used in its policy either of the expressions "alcohol use disorder" or "harmful use of alcohol" instead of "alcohol abuse". The former is derived from the Diagnostic and Statistical Manual and the latter from the International Classification of Diseases.[125]

6.3.4 Fraudulent diagnoses

A number of medical practitioners help patients whose PMI covers condition A but excludes condition B to take advantage of PMI cover by giving a diagnosis of A rather than a diagnosis of B, which would otherwise be clinically appropriate.

This device, which is a species of insurance fraud,[126] helps the patient to get treated privately, although there is a danger of the treatment following the fraudulent diagnosis and being for the wrong condition.

CRIF Decisions Solutions Ltd, who develop projects to combat healthcare insurance fraud in Europe have published a report "the evolution of healthcare insurance fraud" which describes "falsifying diagnoses" as one of the main instances of healthcare fraud. The leading medical insurer CIGNA states:[127]

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[121] The test that applies in civil proceedings in common law countries such as the UK and USA.

[122] Nor, in that event, could the insurer have relied on a fairer redrafting of the clause. See *Banco Español de Crédito SA v Camino* Case C-618/10. There is a precedent for this. At one time some general insurance contracts used sometimes to exclude cover for "consequential loss". The Financial Services Authority took the view that this was unfair and that exclusions of this kind should be more specific in wording.

[123] See section 6.3.2 above.

[124] See section 5 above

[125] See footnote 3 above for the meaning of DSM and ICD.

[126] For which the doctor, if found out, might be disciplined by the General Medical Council. See Peck, S and Mackenna, L, (2017) "Fraud in healthcare, a worldwide concern" HealthManagement.org vol 17, issue 2, 2017

[127] https://www.cigna.com/reportfraud/ (accessed 8 October 2020).

> "Health care fraud is a crime. It's committed when a dishonest provider or consumer intentionally submits, or causes someone else to submit, false or misleading information for use in determining the amount of health care benefits payable."

The evidence as to the existence of these practices does not yet analyse how it applies to specific conditions. So in the present state of knowledge one can only speculate as to how much private treatment for alcohol problems (under policies that exclude such treatment) is obtained through the provision of misleading information to insurers as to the patient's underlying condition.

6.3.5 Discussion

Research over the last 30 years into the treatment of mental health problems and addiction has sought to bring the two fields together and develop integrated therapies.

Medical insurance in the UK, on the other hand, has developed in an opposite direction. It fails to take advantage of the obvious opportunities created by the government's policy of running down alcohol treatment services and creates distinctions which are inconsistent with clinical practice.

Many PMI policies provide very poor value. When a claim is made on them, the insurer may claw back the cost by increasing the premium for the following year by the amount of that cost.[128] As a result, PMI policies do not attract enough new healthy policyholders.

6.4 Accident insurance

Accident insurance provides cover against accidents, as legally defined. *In Dhak v Insurance Co. of North America*[129] the Court of Appeal held that a woman who was so drunk that she choked to death on her own vomit had sustained a "bodily injury" but had not had an accident. As a result, the claim of the beneficiaries on her policy was rejected.[130]

Such policies often contain exclusions for injury sustained by deliberate exposure to danger. These exclusions tend to be narrowly construed in the courts. *In Marcel Beller Ltd v Hayden*[131] His Honour Judge Edgar Fay Q.C held that a person whose blood alcohol content was 261mg per ml while he was driving a motor car, was not deliberately exposing himself to exceptional danger for the purpose of a claim on his personal accident policy.

In Morley v United Friendly Society[132] the deceased, who had had 4 to 6 pints of beer, stepped on the rear bumper of a slowly moving car driven by his fiancée. He fell off, sustaining injuries from which he died. Lord Justice Neill in the Court of Appeal held that this was not "wilful exposure to needless peril" for the purpose of a claim on an accident insurance policy.

The Aviva accident policy contains an exclusion for:

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[128] Walters, B (2020) "Viewpoint: PMI claims loadings: absurd, unfair, soul-sapping" Health Insurance and Protection , 24 June 2020

[129] [1996] 1 W.L.R. 936

[130] The same principle would doubtless apply to other typical ways in which alcoholics die, such as alcohol poisoning, delirium tremens and postural asphyxia.

[131] [1978] 1 QB 694

> "consumption of alcohol to an extent that the insured person suffers mental or physical impairment which causes the accident or results in the insured person doing something they would not normally do without the influence of alcohol."

This is quite astutely drafted and might well meet the concern of ombudsmen that such clauses are usually too vague. Less well drafted clauses are often interpreted *contra proferentem*[133] by FOS. *B v Friends Life limited*[134] illustrates this and the fact that some ombudsmen are highly "claimant orientated".

It was a claim by Miss B for benefit under accident insurance cover. This excluded cover for injuries related to "alcohol abuse". The ombudsman, Doug Mansell, noted that alcohol abuse was not defined within the policy terms and conditions.

Miss B had an accident. She was taken to the A & E department of a hospital. There she passed out briefly. Miss B was found to have abnormal liver function. Miss B's brother is said to have informed the hospital that she was a heavy drinker. She was seen to have the 'shakes' (or "delirium tremens", an alcohol withdrawal symptom).

She was visited by the alcohol liaison team who considered she was exhibiting signs of breakthrough withdrawal symptoms.[135] They prescribed Librium.

Although some of the hospital notes referred to Miss B as having had an "intoxicated" mechanical fall, the ombudsman considered they were not consistent and appeared to be open to question. It did not appear to him that any of the clinical tests that were undertaken indicated there was an excessive level of alcohol in Miss B's system. No blood tests had been carried out.

Miss B's brother attended the hospital and was recorded as having been questioned about Miss B's alcohol consumption. He suggested she was a heavy drinker. However, the Ombudsman was not persuaded that these comments could be simply taken at face value: "They are subjective and it is not clear what he considered to be 'heavy' alcohol consumption. This is a value judgment that may well differ from one person to another".

In any event the brother subsequently denied having made the comments.

The ombudsman concluded:

> "In considering this case I am mindful that Miss B suffered a serious head injury as a result of the fall, and this had an effect on such matters as her consciousness. She was recorded as suffering a seizure after she was admitted onto the ward. Therefore, I consider that the symptoms resulting from the blow to her head could have been misinterpreted as being caused by alcohol."

FOS has some 140 ombudsmen. Not all of them would have adopted this approach. A legally qualified ombudsman in particular might have decided the case on the balance of probabilities[136] and not substituted their own diagnosis for that of a specialist medical practitioner.

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[132] [1993] 1 WLR 996

[133] See footnote 43 above.

[134] DRN2043764

[135] Any symptom that 'breaks through' and manifests itself, despite adequate management

[136] See footnote 121 above.

6.5 Travel insurance

Travel insurance provides cover against illness and injury sustained on holiday. Alcohol issues seem to arise here more often than in any other area of insurance.

There is also cover for other losses, including cancellation. Unlike the position with accident insurance, there is no requirement that any injury should involve an "accident".

A medical declaration is generally required before the insurance is taken out. Depending on what is disclosed this may result in declining cover, loading the premium or applying special conditions. In the case of Admiral Travel Insurance matters to be disclosed in the medical declaration include "any psychiatric or psychological conditions, such as anxiety or depression" but do not mention substance use.

This was probably a mistake, which the *contra proferentem* rule would probably prevent Admiral from rectifying by a wide interpretation of " psychiatric conditions". However in any event the policy treats the following as "deliberate, harmful or reckless acts" which exclude any claim:

drinking so much alcohol that it impairs your physical ability or judgement, suffering any illness due to alcohol, drugs or solvents.

This is an ill drafted provision for a variety of reasons. First alcohol can impair judgment without usually causing problems for someone on holiday in a low risk environment. Secondly having a bit too much to drink at a stag party can hardly be described as a "deliberate harmful or reckless act". One of the purposes of many holiday destinations in Europe is to host drinking parties and generally let people drink more cheap alcohol than they would usually do. Insurers must be aware of this.

FOS has published some summaries[137] of travel insurance claims where the question at issue was whether the policyholder's accident was caused by excessive drinking. These turned on whether there was medical or other evidence of heavy drinking. In one of these cases the policyholder might have been drinking heavily but he did not go to hospital until the day after the accident. So the alcohol did not show up in the tests.

Other cases, however, suggest that the Ombudsman newsletter understates the degree to which individual ombudsmen differ in their approach on this issue. In a case[138] where the claimant had had an accident after 9 drinks, the Ombudsman, Timothy Bailey, commented:

> "This amount of intake (if accurate) is high. However, spaced over several hours this is not an exceptional intake for many people out socialising – nor one that could be unexpected by an insurer offering insurance to someone of Mr C's age when on holiday." So there was no breach of the policy. Taking into account the level of alcohol in Mr C's blood, I consider it likely that the risk of a mishap happening would have been higher than usual. However, although it is more likely that a mishap would happen, the insurer has not shown that the level of alcohol intake was probably the actual cause of the accident. It has not shown that the accident would not have happened even if Mr C had drunk a moderate amount or even no alcohol at all."

By contrast a Mr. J[139] had an accident after what he described as "a couple of drinks, but nothing silly". The Ombudsman, Joe Scott, accepted this statement but commented:

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[137] in issue 143, January 2018, of "Ombudsman News"

[138] *Mr B v Mapfre Asistencia 2015*

> "But that doesn't mean that his judgment wasn't clouded by drinking. And it seems unlikely that Mr J would have put himself in a position to fall and injure himself as he did, if he hadn't been drinking. So it seems that alcohol did significantly "influence" Mr J's behaviour. In other words if he hadn't been drinking it's unlikely that he would have fallen from a height in the way he did and injured himself. So I think it was reasonable for HCC to turn down his claim."

In Australia differences such as these between Ombudsmen are usually resolved by a panel of ombudsmen.[140]

6.6 Income protection policies

An income protection policy protects people against loss of income due to unemployment, illness or accident. Where one of those risks is linked to alcohol consumption, coverage questions may arise. Issues also arise as to whether a full declaration of pre-existing conditions has been made on application for the policy.

In a FOS determination[141] Mr. N applied for an income protection policy in 2006. He was required to answer the question: "Do you currently have or have you ever had … mental illness that has required hospital treatment or referral to a psychiatrist?"

Mr. N answered "no" to the question, even though he had consulted a psychiatrist in 1988. He said that he had forgotten this. When he made a claim in 2015, the insurer, LV, avoided the policy and the Ombudsman, Jade Alexander, accepted that it would not have offered Mr N an income protection policy on any terms, i.e. if his answer to the question it had asked him about his mental health had been answered more accurately.

So even 18 years without seeing a psychiatrist was not enough to make Mr. N insurable, at least with LV. This seems a little harsh. But if Mr. N had consulted a specialist broker he might perhaps have found an insurer willing to quote for the income protection policy, albeit at a loaded premium.

6.7 The Equality Act 2010

Section 29 of the Equality Act 2010 requires insurers not to discriminate against applicants for insurance by reference to the protected characteristics under the Act. These include mental impairment. Paragraph 21(1) of Schedule 3 of the Act says:

> "It is not a contravention of section 29, so far as relating to disability discrimination, to do anything in connection with insurance business if—
>
> (a) that thing is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it is reasonable to rely, and
>
> (b) it is reasonable to do that thing."

So Mr. N could have, but did not, challenge LV on this point by requiring LV to demonstrate that it had information which satisfied these requirements. If on the other hand he had been an alcoholic rather than mentally impaired, he could not have used the same procedure, as alcohol use disorder is not a "disability" under the 2010 Act.[142]

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[139] In *J v HCC International Insurance Company Plc* ref DRN7855944

[140] See footnote 86 above

[141] *N v LV* Ref: DRN2681845

Because conditions like depression are, like alcoholism, usually treated as "incurable", it would probably not have been difficult for the insurer, LV, to provide requested information satisfying the requirements of section 29. FOS' database of determinations suggests that no policyholder has yet been able to challenge an insurer successfully on this point.

6.7 Annuities

Under an annuity contract the annuitant pays a capital sum and in return receives an income, usually for life. The amount of the income is based partly on the life expectancy of the annuitant.

In "enhanced" annuities the insurer may pay a higher annuity where the annuitant had a serious health condition. This could be alcoholism. So the leading financial adviser, Hargreaves, obviously knowledgeable about the problem of denial, wrote an article in the Times headed "Don't lie about your drinking, it [i.e. telling the truth] could boost your annuity".[143] In a sense this suggests that denial can be penetrated when the alcoholic feels safe about being honest.

In *L v St. James's Place Wealth Management Plc*[144] L had applied for an annuity and declared heavy drinking and other possibly related medical conditions. These helped him to get an enhanced annuity rate for a low life expectancy. He died very shortly afterwards.

His son complained that the financial adviser should have realised L had very little time to live and advised against purchasing an annuity. The claim was rejected by Ombudsman Venetia Trayhurn.

6.8 Group pension schemes

Group pension funds are often run by life insurance companies. When a member of such a scheme has a drinking problem he or she will often be dismissed or made redundant. They typically cannot rely on the Equality Act 2010 to challenge the dismissal, because addiction to alcohol or non-prescribed drugs is not treated as an impairment under the Act.[145]

Despite the dismissal the alcoholic will usually be ineligible for early retirement under the group pension scheme because he or she is not regarded as "permanently disabled". The argument is that they should be able to recover from their condition and return to gainful employment by stopping drinking and accepting help.

How addictive conditions are treated depends on the wording of the relevant pension scheme. *In Stafford v Armed Forces Pension Scheme*[146] the employee who had lost his job suffered from alcohol problems and depression. The case fell to be determined under the Army Pension Warrant Act 1977 and turned on which condition was the "principal invalidating condition" (PIC). It was held that alcohol was the PIC and accordingly the employee did not qualify for a service pension. The Pension Ombudsman[147] upheld this decision.

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142 Equality Act 2010 (Disability) Regulations 2010, regulation 3.

143 30 June 2018.

144 DRN4832671.

145 The Equality Act 2010 (Disability) Regulations 2010 (SI 2010/2128). This rule applies unless there is a further condition, such as depression, which does qualify as an impairment.

146 30 October 2008.

147 The Pensions Ombudsman operates entirely separately from FOS.

By contrast in *X v Albright & Wilson Pension Fund*[148] the Trustees of an occupational pension fund had refused Mr. X an ill health pension. They had not considered whether alcohol dependence qualified as ill health in its own right. Charlie Gordon, the deputy Pensions Ombudsman, referred the case back to the Trustees. He remarked:

> "The issue of drug and alcohol dependency is complex, and I can appreciate that it might appear unjust to continue payment of a pension that effectively fuels a person's addiction. And where the condition is, on the face of it, at least to some extent, self-imposed. Nonetheless the Trustees must consider each ill health application appropriately and I have seen no evidence that demonstrates that the Trustees properly considered, and against what criteria, whether such conditions might themselves properly be regarded as ill health. I have also seen no evidence that the Trustees had any regard whatsoever for Mr X's contention that he was no longer alcohol dependent."

7 Insurance services for ex drinkers

Despite all the difficulties that people with drinking problems face when making insurance claims, there are intermediaries that are willing to help them. One of these, the "Insurance Surgery", specialises in, among other things, life insurance, critical illness and income protection. It says:

"There are certain circumstances where having a history or even current problems with alcohol can cause issues with being accepted for life insurance. It is generally only in more severe cases … where cover will be declined as it is not viewed as severe enough to decline in most cases. A history of drug abuse or dependency is more likely to cause insurance providers to decline cover owing to the additional risks relating to drug habits."

There are, in particular, right ways and wrong ways of presenting a medical declaration for an insurance policy. The proposer must be honest and forthcoming in answering questions, whilst being positive about him or herself. The experience of going through addiction and recovery can be a painful but maturing experience.

8. The Association of British Insurers

The Association of British Insurers (ABI) is running an initiative on mental health in conjunction with a number of mental health charities, such as Mind, Money and Mental Health and Mind. The emphasis is on encouraging people to take out insurance against the possibility of having mental health problems. The initiative does not seem to cover alcohol and street drugs.

There is a very informative page on the ABI web site[149] with suggestions on how to deal with insurers when mental health issues arise. The ABI make clear that they regard the addictions as mental health issues, even though its current initiative is narrower in scope.

The ABI says:

> "When you are applying for insurance it's vital you are open and honest. A tiny percentage of insurance claims are declined each year but the main reason is issues of non-disclosure at the application stage, for example omitting to say you are taking medication."

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[148] 22 May 2007.

[149] https://www.abi.org.uk/products-and-issues/choosing-the-right-insurance/health-insurance/mental-health/#Challenges (accessed 8 October 2020).

This is doubtless right, but people are also sometimes refused insurance on the grounds that their medical condition presents too high a risk. The case of *Mr. N v LV (above)* demonstrates that.

In *D v Royal London Mutual Insurance Society Limited*[150], Mr. D applied for a life policy in April 2009. He was a recovering alcoholic who was no longer drinking. He was, however, under the care of a consultant. He was also being prescribed medication to treat alcohol abuse and depression. He committed suicide in December 2010 having clearly waited for the suicide exclusion clause to expire.

He interpreted the proposal form as only requiring him to give a six months' medical history. This seems to have followed discussions with his independent financial adviser. According to the ombudsman, Melissa Collett:

> "this was a mistaken interpretation on his part, given my findings above that the questions are much more wide-ranging and some of them specifically give a five year time frame for responses."

The ombudsman also noted that if Mr. D had made a full disclosure, he would probably have been uninsurable, either by Royal London or by any other life insurer. She continued: "he may have been insurable in subsequent years, if he maintained his abstinence."

9. Other products e.g. professional negligence cover

Addictive behaviour may cause problems for insurers in relation to other insurance products, but the evidence of that fact may not be as obvious as it is in, for instance, life assurance.

So if a professional such as a lawyer were to be so addicted to alcohol that he or she was drinking several bottles of whisky a day, one would expect that fact to be of interest to the insurer in assessing the risk of providing insurance cover. In practice that does not seem to be the case. There are no published judgments in the UK courts where insurers have sought to avoid professional negligence cover because a lawyer or other professional has failed to disclose a health problem, much less an addiction.

This is partly because denial and stigma[151] tend to be strongest at the top end of the social scale and weakest for people who have nothing to lose.

Secondly although the link between drinking and mortality and morbidity is scientifically well established[152], the link between drinking and professional negligence is not, even though in a sense it is obvious. A drunken lawyer, or a lawyer in blackout or with a hangover, would surely not perform as effectively as a sober one.

Another factor is that professional indemnity cover is usually taken out at firm level. Often there is no corporate knowledge that solicitor X is an alcoholic, although perhaps there ought to be. So there may be nothing to disclose. Furthermore, insurance law is concerned with the proximate cause of the loss – so in professional indemnity this would be a determination of whether the financial loss to a third party was caused by the negligent advice. This does not require an investigation into the underlying reasons for the negligence.

An insurer who wanted to make lawyer alcoholism more obviously a problem for their firm could perhaps do so by requiring the firm to make a declaration as to the mental health and sobriety of each individual partner or associate.

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[150] Case Ref: DRN9543312.

[151] See section 3 "Drinking behaviour" above.

[152] See, for instance, the World Health Organisation (2018) factsheet on alcohol https://www.who.int/news-room/fact-sheets/detail/alcohol (accessed 8 October 2020).

A PhD student in psychology is, therefore, more likely to study the behaviour of street drug addicts, than that of addicted professional people.

This is partly because many professionals will generally not co-operate with researchers into addiction behaviour. So, for instance, Krill et al. (2006) published a study on "the prevalence of substance use and other mental health concerns among American attorneys"[153].

Their work was described as "utterly worthless" by Velleman and Lapinski (2006)[154], because it did not apply a suitable sampling method. Krill (2006a)[155] responded by pointing out that the most appropriate sampling methods were ruled out because US state bar associations who took part in the study, no doubt prompted by their members, were unwilling to provide their membership lists. So Krill et al. had to make do with the best available samples, which did not benefit from any element of randomness and may therefore have been biased.

10. Further research and projects

Insurers might be expected to gain from further scientific research in the field of alcohol-related health and behavioural problems and knock-on effects.

Actuaries are business professionals, usually working in insurance, who deal with the measurement and management of risk and uncertainty. These risks can affect both sides of the balance sheet and require, among other things, valuation skills in relation to matters which are very difficult to value such as how much loss is caused by alcoholics who make fraudulent claims on insurance companies and get away with it and what proportion of the damages pay out for accidents on the road is due to drinking by the victim, the driver or both.

Actuaries could perhaps apply their skills to estimating the total cost of alcohol misuse for the insurance industry or within composite[156] insurance groups like Aviva, Axa and LV. Although alcohol misuse is generally a cost, in some cases it may benefit the industry, where an insurer is able to avoid payment of an alcohol related claim or payment of an annuity comes to an end when the annuitant dies of cirrhosis of the liver.

Other possible research projects might include:

- determining the extent to which insurance fraud is linked with substance misuse and what can be done about it,
- what might encourage people in recovery from substance misuse to be more honest when applying for insurance,

[153] J Addict Med Jan-Feb 2016;10(1):46-52

[154] "Statistics Failures Make Lawyer Addiction Estimates Worthless" J Addict Med Jul-Aug 2016;10(4):286-7

[155] "Author's Response to Statistics Failures Make Lawyer Addiction Estimates Worthless" J Addict Med Jul-Aug 2016;10(4):287

[156] A composite insurance company or group will cover general insurance risks, like motor or accident insurance, where the policy is renewed every year as well as life and other long term insurance risks where the policy may be in place for decades.

- are people who have insurance cover for treatment for alcohol problems more likely to get treated and do they get a better service than those whose treatment is paid for on the NHS? If an alcoholic has PMI which covers alcohol problems is he or she more likely to seek help and achieve sobriety?
- what is the link, if any, between substance misuse and professional negligence, in, for instance, the legal and medical professions or in investment management, share trading or insurance underwriting?
- what helps children in families affected by substance misuse to develop long term resilience and lead fulfilled lives? How does that process benefit, if at all, the insurance industry, and how can the insurance industry support the process?

11. Conclusion

Problems arising from addictive behaviour are an insurance risk in their own right, overlapping with morbidity, mortality and underwriting risk. They deserve study by lawyers and insurance practitioners and by leading organisations in the UK insurance industry, such as the Association of the British Insurers, the British Insurance Brokers' Association, and the Financial Conduct Authority.

These organisations could enter into a dialogue with the scientific community, charities in the alcohol field and with people in recovery with a view to reducing problems. This dialogue may, of course, already be taking place, in which case it would be good to see evidence of that fact.

In the longer term insurers could work on the concept of addiction problems as an opportunity as well as a risk. There are signs that this is beginning to happen. Just as this article was due to go to press, I discovered that the leading PMI insurer, Axa had decided to start providing some cover for alcohol treatment in some of their policies[157].

Insurers could support evidence-based measures for reducing addiction problems, as they already do in relation to other problems such as climate change.

Insurers are experts in risk management. So politicians might take notice of their views.

Some universities and colleges have leading reputations not only in the field of insurance law and healthcare law, but also in the field of addiction studies. In that event the relevant departments could start communicating with each other (most probably do not), or, if they are already doing so, they could publish the outcome of their dialogue.

[157] Sawers, D (2020) "AXA now offers some cover for UKAT addiction treatment" Health Insurance and Protection 27 August 2020