

The complaint

Mr and Mrs G complain that Aviva Insurance Limited has turned down a claim they made on a personal private medical insurance policy.

What happened

In February 2021, Mr and Mrs G took out a personal private medical insurance policy on a moratorium basis.

Subsequently, in September 2021, Mr and Mrs G made a claim on the policy. That's because Mr G had been referred to a consultant cardiologist by his GP to investigate symptoms of shortness of breath and chest heaviness. While Mr G ultimately underwent valve replacement surgery on the NHS, Mr and Mrs G incurred private consultation and diagnostic costs.

Aviva obtained medical evidence from Mr G's GP and consultant cardiologist. It ultimately turned down the claim. It noted that in October 2020, Mr G had undergone an ECG in his GP's surgery (albeit while attending for an unrelated matter) and had been referred to a cardiologist. So it concluded that the ECG and referral constituted advice which was related to Mr G's condition in 2021. And therefore, it said the claim fell within the scope of the moratorium and was excluded from cover.

Mr and Mrs G were unhappy with Aviva's decision and they asked us to look into their complaint.

Our investigator thought Mr and Mrs G's complaint should be upheld. He considered the available medical evidence. Both Mr G's GP and consultant cardiologist provided evidence in support of the claim. The GP stated that he'd only carried out an ECG in the surgery and referred Mr G to cardiology for an echocardiogram because he had little information about a heart murmur Mr G had been diagnosed with many years before. That referral had been withdrawn and Mr G hadn't undergone an echocardiogram until September 2021. And the consultant said that while Mr G had been noted to have a stenotic valve in 2007, it hadn't been clinically stenotic. There was no evidence to suggest that Mr G had experienced any symptoms of stenosis since.

So the investigator didn't think there was enough medical evidence to show either that Mr G's referral to cardiology in October 2020 due to his previous heart murmur, nor the previous sclerotic valve which had been found in 2007, were related to the clinical stenosis which was identified and treated in September 2021. This meant the investigator didn't think it was fair for Aviva to rely on the moratorium clause to turn down Mr G's claim. He recommended that Aviva should settle the claim and add interest to the settlement.

Aviva disagreed. It maintained that the heart murmur which Mr G had discussed with his GP in October 2020 was a pre-existing medical condition and an ECG was done at that time. While an echocardiogram hadn't taken place at this point, Mr G had been referred for one. It maintained that Mr G had received advice and tests related to his heart murmur in the five years before the policy was taken out.

Its medical director also reviewed the claim. They stated that Mr G had been diagnosed with a sclerotic aortic valve as a young man, but he'd ultimately been lost to follow-up. However, they noted Mr G had always continued to ask for antibiotics if he underwent dental treatment, so he'd known this stenosis was significant. This condition had been discussed with the GP in October 2020 and the GP had referred Mr G to cardiology as he was concerned this hadn't been followed-up. So the medical director thought Mr G's sclerotic aortic valve had been discussed with the GP three months before the policy was taken out. Shortly after this, Mr G had become increasingly unwell. Aviva was satisfied therefore that the claim was caught by the moratorium.

The complaint's been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think it was fair for Aviva to turn down this claim and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr and Mrs G's policy and the available medical evidence, to decide whether Aviva handled this claim fairly.

First, I've considered the policy terms and conditions, as these form the basis of the contract between Mr and Mrs G and Aviva. It's common ground that this policy was underwritten on a moratorium basis. The policy terms set out how the moratorium applies to claims and states:

'We do not cover treatment of any pre-existing condition, or any related condition, if you had:

- *symptoms of*
- *medication for*
- *diagnostic tests for*
- *treatment for, or*
- *advice about*

that condition in the five years before you joined the policy.

However, we will cover a pre-existing condition if you do not have:

- *medication for*
- *diagnostic tests for*
- *treatment for, or*
- *advice about*

that condition during a continuous two year period after you join the policy.'

Aviva considered all of the available medical evidence and decided that Mr G's claim was excluded by the terms of the moratorium clause. It considered that his condition was related to pre-existing medical conditions he'd experienced in the five years before he took out the policy. So I've carefully considered the available medical evidence to decide whether this was a fair conclusion for Aviva to draw and whether it's shown, on balance, that the claim is excluded by the moratorium.

Mr G accepts that he was diagnosed with a heart murmur several years ago. Medical notes from 2007 state that Mr G had an 'innocent' heart murmur. It's also agreed between both parties that Mr G underwent an ECG at his GP's surgery in October 2020 and was referred for an echocardiogram by his GP at this point. So I acknowledge he *did* undergo testing only a few months before the policy was taken out. However, what isn't agreed is the reason why an ECG was carried out, why a referral was made and whether this was either the condition causing the claim or related to Mr G's ultimate diagnosis.

Aviva says that at the appointment in October 2020, Mr G discussed a diagnosis of a sclerotic aortic valve he'd received previously with the GP. It says this had led the GP to request a referral for an echocardiogram, as the condition hadn't been followed up for a number of years.

The GP's notes from Mr G's appointment dated 2 October 2020 *don't* refer to Mr G discussing a diagnosis of sclerotic aortic valve with the GP. The records of this appointment show that Mr G had consulted the GP due to a foreign body which was trapped in his finger and had been for some months. The notes say that Mr G had thought he was on the urgent NHS list to prevent this area from becoming infected due to a heart murmur. Mr G mentioned that he was required to take antibiotics before dental procedures. The GP stated:

'I have no records on his murmur and have referred for an up to date echo.'

I've noted too that the record states that one of the 'interventions' was *'heart murmur – functional and undiagnosed.'*

There is simply no reference at all to any discussion about Mr G having a sclerotic aortic valve in the contemporaneous record of the GP appointment. And I don't agree that the evidence indicates that the GP carried out an ECG and referred Mr G to cardiology because of any concerns about a sclerotic aortic valve. On the contrary, in the GP's letter dated 30 November 2021, Mr G's GP said:

'In Mr G's notes it was coded that he had a heart murmur in 2007, which was described as innocent. No further follow-up appears to have been arranged from this, as there is (sic) no documents or letters available on both computer systems....He was seen in October 2020 due to a swelling over his finger. On review, it was highlighted that he had a murmur and due to the lack of information from his notes a referral was made to the local Cardiology department to investigate this...The Cardiology department responded to that referral and planned for routine investigations for an echocardiogram. Unfortunately, this was never undertaken and the referral was eventually withdrawn, once an echo was undertaken during his admission in October 2021.'

In my view, the GP's evidence is not indicative either that Mr G was referred to cardiology because of concerns about a sclerotic aortic valve, or because he'd sought GP advice about any symptoms or concerns about his heart murmur. Instead, the evidence clearly supports a conclusion that Mr G had actually sought advice about the swelling in his finger. And that the ECG and cardiology referral were simply undertaken because the GP had no records of Mr G's long-standing heart murmur. I agree with our investigator that it seems neither fair nor reasonable to conclude that this claim should be excluded because the GP held a lack of information about Mr G's heart murmur.

I haven't seen sufficient evidence either to indicate that Mr G's ultimate diagnosis with stenosis of his aortic valve was related to his heart murmur. I've looked carefully at the letter provided by Mr G's consultant cardiologist dated 9 November 2021. There's no suggestion in that letter that Mr G's ultimate diagnosis was related to heart murmur.

The consultant acknowledges that during a 2007 assessment of Mr G's heart murmur, his aortic valve had been found to be sclerotic. But importantly, he stated:

'Indeed, there is no record of him having been documented to have significant valve disease when assessed in 2007 and there is no record of valvular disease in his primary care record, nor in the correspondence from his cardiologist who assessed him for the murmur. As I noted in my letter, the aortic valve was found to be sclerotic at that time but was not considered to be clinically stenotic. This valve has become functionally stenotic in the interim. However, I can see no mention of clinical concern or recommendation for further action regarding the valve mentioned in the records I have reviewed from that time.'

So it seems to me that there's no medical evidence from either Mr G's GP or his consultant cardiologist which indicates that Mr G was suffering from symptoms of valvular stenosis in the five years before the policy began. Similarly, there's no compelling medical evidence from Mr G's treating doctors that he received treatment, advice, medication or diagnostic treatment for a sclerotic aortic valve or stenosis in the five years before the policy was taken out. In my view, the terms of the moratorium haven't been satisfied. As such then, I'm not persuaded that Aviva has reasonably and fairly demonstrated, on balance, that this condition is excluded by the terms of the moratorium or is related to an excluded condition.

Overall, having carefully reviewed the available medical evidence, I don't think it was fair for Aviva to conclude that Mr G's claim was excluded by the moratorium clause. I don't find it's shown, on balance, that Mr G's condition isn't covered by the remaining terms of the policy. And so I find that the fair and reasonable outcome to this complaint is for Aviva to now settle Mr G's claim, in line with the remaining terms and conditions of the policy.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct Aviva Insurance Limited to settle Mr and Mrs G's claim, in line with the remaining terms and conditions of the policy. Aviva must add interest to the settlement at an annual rate of 8% simple from the date Mr and Mrs G paid the consultation and diagnostic costs until the date of settlement.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs G how much it's taken off. It should also give Mr and Mrs G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 16 November 2022.

Lisa Barham
Ombudsman