

The complaint

Mrs and Mr M complain that Aviva Insurance Limited declined their private medical insurance claim and won't refund the policy premiums.

What happened

Mrs and Mr M had private medical insured by Aviva and its predecessor for many years. In November 2021 Mr M called Aviva as Mrs M wanted to make a claim for a back problem. During the call Mr M told Aviva that they lived abroad.

Aviva declined the claim. It said Mrs and Mr M weren't covered by the policy as they didn't meet the policy definition of 'member' because they lived abroad. Aviva cancelled the policy and refunded the policy premium from 30 November 2021 when Mrs and Mr M had told it they lived abroad. Aviva wouldn't refund the full policy premiums as under the policy terms Mrs and Mr M needed to tell it about changes in their circumstances as soon as possible and they hadn't done so.

Mrs and Mr M complained to us. They said in 1996 they told Aviva's predecessor they planned to spend time abroad and cover was agreed but Aviva said it had no record of that agreement. Mrs and Mr M want Aviva to refund all the policy premiums or for the insurance cover to continue when they are in the UK.

Our investigator recommended Aviva refund the premiums from the date the policy definition of 'member' changed in 2017 to the date of the policy cancellation in 2021. But as Mrs and Mr M had been given sufficient notice of the definition change and didn't contact Aviva it didn't need to pay interest on the refund.

Mrs and Mr M accepted our investigator's recommendation. Aviva didn't accept and wants an ombudsman's decision. In summary it added:

- Our investigator had said if Mrs and Mr M had contacted Aviva immediately after the change in policy definition in 2017 it's likely Aviva would have cancelled the policy then but that was a hypothetical scenario.
- It sold the annual policies on the information it had on the assumption it was exposed to risk and that Mrs and Mr M lived at the UK address they gave. It was only in 2021 that Mrs and Mr M told it they didn't live in the UK.
- For the policy renewals in 2017 and 2018 the policy definition of 'member' had changed so that Mrs and Mr M had to permanently live in the UK. But for the policy renewals in 2019 and 2020 the definition changed again so that a 'member' had to live in the UK for six months or more each year. Aviva asked whether Mrs and Mr M had shown they didn't reside in the UK for 6 months or more after the renewals in 2019 and 2020.

What I've decided – and why

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

I've taken into account the relevant industry rules and good practice. I've also taken into account the terms and conditions that applied throughout the time the policy was in force and the notifications Aviva sent to Mrs and Mr M before the policy terms and conditions about the definition of a 'member' changed.

I have to decide whether Aviva acted fairly and reasonably and I don't think it did. I think Aviva needs to refund the policy premiums to Mrs and Mr M as our investigator recommended. So I partly uphold the complaint. I'll explain why.

The policy was an annual contract of insurance which could be renewed if both parties agreed. Aviva could decide what risks it wanted to insure and it could also alter the terms and conditions of the policy at renewal. It needed to make sure that important changes to the policy terms and conditions were highlighted to Mrs and Mr M.

Aviva said the policy terms and conditions relevant for the policy renewal in May 2017 saw the introduction of a UK residency requirement. The four page flyer headed 'policy update' Aviva sent to Mrs and Mr M for that renewal said:

'Who can be a member?

We have made a change to condition '1. Who can be a member?'. Members must permanently live in the UK to be covered on the policy'.

At the policy renewal in May 2018 the policy definition of 'member' remained the same as the 2017 policy definition.

At the policy renewal in May 2019 there was another change in the policy definition of 'member'. The four page flyer headed 'policy update' sent to Mrs and Mr M for that renewal said:

'Changes to conditions

Who can be a member

We've updated the 'Who can be a member' condition to clarify who is eligible to be covered under Healthier Solutions. We have clarified that members must live in the UK for 6 months or more of each year'.

At the policy renewal in May 2020 the policy definition of 'member' remained the same as the 2019 policy definition.

At the policy renewal in May 2021 there was another change to the policy definition of 'member'. The four page 'policy update' flyer sent to Mrs and Mr M for that renewal said:

'Changes to policy

conditions

Who can be a member

The terms have been updated to make it clearer as to what the residency requirements are for a person to be eligible to be covered under the policy. Members must lawfully reside in the UK and intend to continue to reside in the UK for the duration of the policy year. If this changes, then we may need to cancel your cover as it may not be lawful for us to continue to cover you and if this is the case then any cancellation will be effective from the time your circumstances changed...'.

Mrs and Mr M told us that since before 2017 they have lived in the UK for less than three months a year. That's supported by the information Mr M gave Aviva in the November 2021 call when he told Aviva he and his wife lived abroad. Aviva's final response letter says in the call Mr M told it he aimed to spend less than three months a year in the UK otherwise he would be subject to UK tax. I accept what Mr M's said about he and his wife living in the UK

for less than three months a year. That means as from the 2017 policy renewal they haven't met any of the three different policy definitions of 'member' from 2017 to 2021.

I think Aviva gave Mrs and Mr M clear information about the changes in the policy definition of 'member' and the relevant policies are clear that Mrs and Mr M should have told Aviva about any change in their circumstances. It wasn't until 2021 that they told Aviva they didn't live in the UK.

But the important point is that as from the 2017 policy renewal Mrs and Mr M didn't meet the policy definitions to be an eligible 'member' of the policy and, as they weren't eligible for cover under the policy, from that date Aviva carried no risk of them making a successful claim. From the 2017 policy renewal Mrs and Mr M were paying premiums for a policy which was never going to cover them. In the circumstances I think the fair and reasonable outcome is for Aviva to refund to Mrs and Mr M the premiums they paid from the date of the 2017 policy renewal to the date the 2021 policy was cancelled. Aviva has already refunded any premiums Mrs and Mr M paid for cover after the date of cancellation.

As I think Mrs and Mr M were given clear information that they needed to tell Aviva about a change in their circumstances and didn't I can't reasonably require Aviva to pay interest on the premiums I'm saying it must refund.

Aviva has said it's hypothetical as to whether it would have cancelled the policy at the 2017 renewal if it had known Mrs and Mr M no longer met the policy definition of 'member'. Given that Aviva cancelled the policy as soon as it knew in 2021 that Mrs and Mr M didn't meet the definition of 'member' I think it's highly likely it would have cancelled the policy if it had known in 2017. But even if Aviva wouldn't have done so my decision remains the same for the above reasons.

Putting things right

Aviva must refund to Mrs and Mr M the policy premiums they paid from the date of the 2017 policy renewal to the date of the policy cancellation in 2021.

My final decision

I partly uphold this complaint and require Aviva Insurance Limited to refund to Mrs and Mr M the policy premiums they paid from the date of the 2017 policy renewal to the date of the policy cancellation in 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 24 February 2023.

Nicola Sisk

Ombudsman