

The complaint

Mrs G has complained that Aviva Life & Pensions UK Limited ("Aviva") cancelled the life policy she held jointly with her late husband, because they said Mr G hadn't completed the health and lifestyle questions accurately when they bought it. And they declined Mrs G's claim following Mr G's death.

What happened

In May 2018, Mr and Mrs G bought a joint life and critical illness policy. They each answered a number of medical, health and lifestyle questions. Based on the answers they gave, Aviva offered immediate cover.

In November 2020, Mr G was very sadly killed in an accident. Aviva were notified and sent claim forms to Mrs G. Because of the circumstances of Mr G's death, the coroner had completed a report. Aviva obtained a copy.

The report confirmed Mr G had died of injuries sustained in the accident. But it also recorded the presence of cocaine in his blood. This led Aviva to make enquiries with Mr G's GP.

The GP records Aviva received showed Mr G had an appointment in early February 2019 because he wanted help in relation to his cocaine use. The locum doctor he saw recorded that he'd been using the drug daily for six months in the previous year, but that had reduced, and Mr G hadn't used it at all for two weeks before the appointment.

On the basis of this information, Aviva said Mr G hadn't answered the application questions accurately. They said, if they'd known about his cocaine use, they wouldn't have offered him the policy.

Aviva confirmed that, because of this, they wouldn't accept the claim. They cancelled the policy and refunded the premiums paid to Mrs G.

Mrs G complained about Aviva's decision. Aviva considered the complaint but didn't change their conclusion. They said Mr G had been asked a clear question about using recreational drugs and, if they'd been aware of his cocaine use, they wouldn't have offered him cover. And that cancelling the policy was in line with the ABI's Code of Best Practice for Misrepresentation and Treating Customers Fairly and the relevant legislation.

Mrs G wasn't satisfied with Aviva's conclusion and brought her complaint to us. Once it was allocated, an investigator asked Aviva to provide information to help them consider the complaint. When Aviva replied, they acknowledged that they had delayed in administering the claim and offered Mrs G £300 compensation for those delays. Mrs G rejected the offer and said she wanted us to review the complaint.

Our investigator did this and concluded Aviva didn't need to do more than they'd already offered to resolve the complaint. She recommended Mrs G accept the £300 offered for delays.

She said it was fair for Aviva to review Mr G's medical records, having been alerted by the coroner's report to the presence of cocaine. And she thought the conclusion Aviva drew from his GP's records that he was using it at the time he applied for the policy was reasonable. So she was satisfied there had been a misrepresentation within the meaning of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and that Aviva had dealt with that in line with CIDRA.

Mrs G didn't agree with our investigator's view. So I've been asked to make a decision.

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 that, I'm upholding Mrs G's complaint – but only to the extent of the delays Aviva have identified. I don't think they need to do anything more in relation to their decision not to pay the claim. I know this will distress Mrs G and I'm sorry about that. I'll explain my reasons.

I can see Mrs G has said she doesn't understand why Aviva have looked at Mr G's cocaine use, because that wasn't what caused his death. That's true. But Aviva's decision isn't related to the cause of death. It's about the fact they say that, if they'd known Mr G used cocaine, they'd never have offered him cover. They say he misrepresented the true position.

The relevant law in cases of misrepresentation is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies, provided the misrepresentation is what CIDRA describes as a "qualifying misrepresentation". For it to be a qualifying misrepresentation, the insurer has to show it would have offered the policy on different terms - or not at all - if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Aviva say that, in his application, Mr G was asked:

"During the last 5 years, have you used any of the following:

(Recreational drugs (other than cannabis), for example cocaine, ecstasy, heroin etc.), (Stimulants, sedatives, tranquillisers or anabolic steroids that have not been prescribed by a doctor), (Methadone)"

They said Mr G failed to take reasonable care when he answered "no" to this question. He should have answered "yes" because his GP's notes indicate he was regularly using cocaine at the time.

The GP's note for an appointment in early February 2019 – nine months after Mr and Mrs G applied for the policy - says:

"Nondependent cocaine abuse hx [history] cocaine use past year – used daily 6/12, now only weekend use."

Mrs G has said this doesn't show her late husband was using cocaine at the time of the application. She supplied a copy of a letter her surgery provided following Mr G's death, which confirmed he had an appointment in February 2019 about "*cocaine abuse over the previous year*". The GP subsequently sent a letter asking the reader to disregard "*over the previous year*".

I've thought carefully about this. And the evidence I find most persuasive is the contemporaneous note of the appointment, which I've set out above. I think it's clear that refers to use dating back over the previous year, ie, to February 2018. I think it's unfair to say this note should be displaced by the later, corrected, letter - which was written by another doctor at the practice, not the one who saw Mr G.

It follows that I'm satisfied Mr G didn't take reasonable care answering the questions in the application form and made a misrepresentation. Aviva have shown that, if he'd answered "yes" to the question above, they'd have declined cover at that time. So I'm satisfied there was a qualifying misrepresentation.

CIDRA sets out what steps a business should take in relation to a qualifying misrepresentation, depending on whether it's careless, reckless, or deliberate. Aviva have treated the misrepresentation as careless, cancelled the policy and returned the premiums. I think that's fair here. I appreciate that Mrs G may not have known Mr G's answers were inaccurate. But this was a joint policy. So it's fair for Aviva to base their decisions on the answers he gave.

And, while I don't think Aviva need to do anything different in relation to the claim being declined and the policy cancelled, I can see they identified some periods of delay in reaching that conclusion. They've offered Mrs G £300 compensation for this. I think this is fair for the delays Aviva have identified and they should now pay Mrs G this sum.

My final decision

For the reasons I've explained, I'm upholding the complaint Mrs G has made against Aviva Life & Pensions UK Limited and directing Aviva to pay her £300 for their delays in processing her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and the estate of Mr G to accept or reject my decision before 9 February 2023.

Helen Stacey
Ombudsman