

## **The complaint**

Mrs T is unhappy with Aviva Insurance Limited because it declined her claim and added an exclusion to her policy.

## **What happened**

Mrs T arranged to switch insurers to Aviva in August 2020. As part of the switch, she was asked questions about her medical history. Mrs T said she answered everything to the best of her knowledge, however, when she came to make a claim in July 2021 it was declined because Aviva said she'd not answered the questions accurately. Aviva also applied an exclusion to her policy for anything related to osteoarthritis of both hips.

Mrs T needed an operation for a hip replacement; however, Aviva declined the claim because Mrs T had early onset arthritis. Aviva said when it asked Mrs T whether she'd suffered symptoms 12 months' prior to taking the policy, she said 'no' when she should've said 'yes'. Aviva said Mrs T told it that she'd suffered with symptoms for around one year meaning her symptoms would've outdated the start of Aviva's policy. Aviva also highlighted that Mrs T had been diagnosed with early onset arthritis following an X-ray in 2018.

Our investigator said Aviva had treated Mrs T unfairly by declining her claim and adding the medical exclusion to her policy. He highlighted Mrs T was unsure of the exact date her symptoms began and that she'd referred to lockdown dates as chronological waypoints. He said Aviva didn't effectively do enough to hone in on when her symptoms began exactly and that it misinterpreted which lockdown she'd referred to. He said, on that basis, Aviva had unfairly applied CIDRA and that it should reassess her claim. He also said Mrs T's X-ray was in 2018 and that he was satisfied she'd remained symptom free in the 12 months' prior to taking the policy out and so there was nothing for her to declare.

Aviva disagreed. It reiterated its arguments and said the declination and the exclusion still stands because it believes Mrs T was experiencing symptoms in the 12 months before she took the policy. And so, it's for me to make a final 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 so, I've decided to uphold it for many of the reasons already explained by our investigator. Aviva hasn't done enough to persuade me Mrs T was suffering with symptoms 12 months before she took the policy out. I therefore agree with our investigator that it has both declined her claim and added the exclusion unfairly. I'll explain why.

To be clear, the question asked by Aviva in August 2020 was;

*“Have you or any person to be covered by this policy experienced symptoms, or had any consultations, tests or treatment in the past 12- months, or do you currently have appointments planned with a GP, specialist or a hospital in the future”*

Mrs T answered 'no' to the question and I've not seen any persuasive medical evidence that successfully challenges the answer she gave. It's not in dispute Mrs T had an X-ray in 2018 and that early onset arthritis was given. I know this because Mrs T shared this information. Aviva also appear to accept that. But because this was in 2018 Aviva's questioning won't identify this. And so, I don't think Mrs T answered this question inaccurately.

But it's Mrs T's claim call she made in July 2021 that's caused controversy here, because when asked by Aviva about when her symptoms for her hip problems began, she eventually concedes she'd been experiencing symptoms for around a year. And if that were the case, then it would mean she'd suffered possibly with symptoms for a few weeks prior to the call where she answered 'no' to the earlier question about previous symptoms experienced.

Having listened to the claims call between Mrs T and Aviva, I think it's clear she struggled to remember the exact dates to the questions she was asked. I say that because Mrs T said so during the conversation. I also note she explained her symptoms had progressed since lockdown and that Aviva took this to mean since March 2020 – according to its claims notes. However, that wasn't the case, according to Mrs T and I'm persuaded by her testimony. I should highlight there were three official lockdowns in the UK. The first being March 2020 and the second being January 2021. When Mrs T called six months later in July 2021, she subsequently explained she was referring to the second lockdown in January as the point her symptoms were progressing and not the first, which Aviva had assumed.

I thought this an important point to highlight because I think it demonstrates Aviva's carelessness to hone the relevant dates before taking the decision to decline her claim and add the policy exclusion. Further, I note Aviva didn't request a copy of Mrs T's medical records, or indeed point her to any of the medical evidence she might need to help it verify her claim, which I thought would've been helpful given its obligation under the Insurance Conduct of Business Source Book (ICOBS). This says insurers must give reasonable and fair guidance to its customers when attempting to make a claim.

It's clear from listening to that call Mrs T was unable to remember the exact details surrounding her hip problems, and considering the date she gave for her symptoms narrowly made her claim declinable, I think Aviva should've done more than it did to help her evidence her claim by, at the very least, telling her what medical evidence she should source to help support her claim. I note Mrs T said she'd not suffered with symptoms, or sought medical advice about her hip problems in the 12 months before taking her policy and I've not seen any medical evidence that suggests she has and so I'm persuaded Aviva has treated her unfairly by declining her claim and adding the medical exclusion. Therefore, Aviva must reconsider her claim in line with the remaining policy terms and remove the exclusion because I'm satisfied it's applied the terms of CIDRA unfairly in the circumstances.

### **My final decision**

I'm upholding Mrs T's complaint for the reasons I've explained. Aviva Insurance Limited should now reconsider the claim fairly and remove the medical exclusion applied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 10 January 2023.

Scott Slade  
**Ombudsman**