DRN-3926019

The complaint

Mr L complains that Aviva Life & Pensions UK Limited has unreasonably refused a critical illness claim he made under his policy definition of 'heart attack'. He is now represented by a claims management company ('*CMC*') in pursuing his complaint.

What happened

I issued a provisional decision on this complaint on 12 January 2022.

In summary, I concluded that I proposed to uphold the complaint against Aviva, and I invited the parties to make any further submissions. I haven't repeated the background here, as it is known to the parties. However, a full copy of the findings set out in that provisional decision is provided in italics below.

Having reviewed everything carefully, I have reached a materially different view on the complaint. Subject to any additional evidence from the parties, I am currently of the view that this complaint ought to succeed. My reasons for that are summarised below.

Under the terms of Mr L's group scheme wording, it says:

> *"Heart attack - of specified severity*
>
> *Death of heart muscle, due to inadequate blood supply, that has resulted in all of the following evidence of acute myocardial infarction:*
>
> - *typical clinical symptoms (for example, characteristic chest pain)*
> - *the **characteristic rise [my emphasis]** of cardiac enzymes or Troponins*
> - *new characteristic electrocardiographic ['ECG'] changes **or other positive findings on diagnostic imaging tests [my emphasis]**.*
>
> *The evidence must show a definite acute myocardial infarction.*
>
> *The following are not covered:*
>
> - *other coronary syndromes*
> - *angina without myocardial infarction."*

In essence, Aviva's CMO refutes the medical information provided by Dr S and Dr K because, in the CMO's view, Mr L suffered from a 'small' NSTEMI without the required severity to amount to a heart attack under the policy wording. In stating that, he takes the view that the wording I've set out above specifies a severity.

It is right to note that the policy definition itself is entitled 'heart attack of a specified severity'. Not all instances of a listed condition will meet specific policy wording, because each definition goes on to give aspects of the wording which must be met in full for a valid claim payment. To give an example, most cancer definitions under critical illness policies set out how insurers will not pay claims for any type of cancer which is histologically classified as

pre-malignant, in-situ, having borderline malignancy or low malignant potential.

In the ABI Statement of Best Practice for Critical Illness Cover guidance (from 2011, the most proximate to when Mr L joined the employer's group scheme)), the 'model' wording does give wording entitled 'heart attack – of specified severity' as a guide for insurers to use. The difference in the model wording is that an insurer can also include specific levels of the rise of cardiac enzymes or Troponins with required thresholds for Troponin T or AccuTnI.

However, Aviva's policy wording issued to Mr L's employer includes no such thresholds. And it is that wording that I must measure the claim against. I therefore disagree with the requirement to infer severity where no such obligation is given in the policy terms. Instead, I need to determine if the information shows that a definite acute myocardial infarction (with certain specified features) took place as that is what the policy requires.

In my view, the medical evidence from Dr S confirms that the policy wording has been met.

On 10 August 2021, a claim assessor from Aviva noted that the information it had received thus far only referred to angina and coronary artery disease ('CAD') for which Mr L had undergone stenting via angioplasty. So, it wrote to Dr S with the full policy definition via email asking, "Dr S- From looking at the below criteria we require to be met for a Heart Attack, did [Mr L] have a Heart Attack?".

He replied:

> *"Hi [name]*
> *From their table*
> *Agree with*
> 1. *Typical clinical syndromes in other words ANGINA*
> 2. *Raised cardiac enzyme of 26*
> 3. *Positive diagnostic tests including CT coronary arteries and angiogram for which patient had stent*
>
> *Not sure how clearer I can make it"*

The assessor then replied the following day, noting:

> *"What I am struggling to see is if [Mr L] had any evidence of death of heart muscle (myocardial infarction), or was the presenting symptom angina and as a result of the angina he was found to have CAD and was stented (i.e. no myocardial infarction)?*
>
> *I apologise for the back and forth, I just need to be certain if [Mr L] had a myocardial infarction and showed death of heart muscle or if he had angina?"*

Dr S replied:

> *"Thanks for your email. The cardiac enzyme troponin was mildly raised at 26. This would suggest a small heart attack."*

I understand that acute coronary syndromes encompass a spectrum of conditions including NSTEMI. The policy wording specifically excludes any other type of ACS, such as angina. But Mr L's later two specialists have confirmed his diagnosis of NSTEMI – and this was also reflected on his discharge summary of 1 April 2021, which also said he'd had an NSTEMI.

Given that a qualified Consultant Cardiologist is saying in clear, unmistakeable terms that a patient has suffered from a myocardial infarction, I believe that aspect of the policy wording

is met. So, providing there is confirmation of the three types of satisfactory evidence, that being typical clinical symptoms, e.g. chest pain, new ECG changes or other positive findings on diagnostic imaging tests, and the characteristic rise of enzymes or troponins, then a claim ought to be payable.

Neither party disputes that Mr L had a recorded troponin level rise. However, the parties have different views on those levels because Mr L's troponins were only recorded as mildly elevated (and no other references were supplied thereafter). Aviva seeks to rely on the ABI guidance, which for the model wording says:

> *"The characteristic rise of cardiac enzymes or Troponins recorded at the following levels or higher;*
> *- Troponin T > 1.0 ng/ml*
> *- AccuTnI > 0.5 ng/ml or equivalent threshold with other Troponin I methods."*

*Mr L has explained that his view is a result between 0.04 and 0.39 ng/ml often indicates a problem with the heart so a reading of 32 (or 26) was clearly abnormal. But Mr L has conflated the measures – his reading was 26ng/**L**, not ng/**ml**. So, the recorded mild troponin rise did not meet the references required above.*

However, Mr L's policy wording specifically omits those measures. When providing critical illness cover the ABI guidance requires insurers offering these policies to include cover for cancer, heart attack and stroke as a minimum. Otherwise, insurers are free to decide on the conditions and exclusions applicable to their products.

The guidance also says at section 1.22:

> *"Insurers will be deemed to be using the model wording (for a condition or exclusion) where it is modified to provide at least equivalent cover in the following ways:*
>
> > *1.22.1 By using the model wording and showing separately the additional cover offered.*
> > ***1.22.2 By omitting a specific limitation or exclusion contained within the model wording for any condition or exclusion, while leaving the remaining words unchanged."***

That is what Aviva has done here – it has removed the limitation in respect of troponin levels for Mr L's policy wording. Aviva says this is to be fair to customers where some hospitals may record levels differently to others. However, it is the wording I have set out above that Mr L's claim should be measured against, and not the specific model troponin levels that Aviva decided to remove from Mr L's policy wording.

Though having no specified levels is prima facie more favourable, I do not believe it is fair for Aviva to rely on the omitted levels to refuse Mr L's claim by implying that only those levels can be indicative of a 'characteristic rise' in cardiac enzymes. My view is that the wording should be read as a characteristic rise being an increase of troponins as evidence of acute myocardial infarction – and this has been referenced by Mr S and the medical evidence.

Similarly, I do not agree with Aviva that is right to rely on only part of the wording relating to new characteristic ECG changes, as that wording sets out (as I have emphasised in bold above) that the heart attack definition can be met by 'other positive findings on diagnostic imaging tests'. Mr S told Aviva on 10 August 2021 that other diagnostic testing including CT scans and angiography confirmed the NSTEMI.

Finally, Dr S also confirmed that Mr L suffered from angina – meaning chest pain – as a

typical clinical symptom preceding the diagnosis of the NSTEMI.

It is entirely possible that two suitably qualified medical experts can reach different conclusions on review of the same set of medical facts. In scenarios such as these where two professionals give differing views, I'll decide which I think is the more reasonable on balance.

The view of Dr S, Mr L's treating Consultant Cardiologist is something I give more weight to; this is not merely based on a measure of his knowledge or experience over Aviva's CMO, it is also the case that as the attending Consultant and specialist in the relevant field, he was best placed to comment on his view as to whether Mr L had suffered from a definite myocardial infarction with the required evidentiary profile, since he was specifically asked to give his clinical assessment with reference to Mr L's policy wording.

I therefore believe that a claim ought to be paid.

The CMC said that Mr L accepted the provisional findings. Mr L reiterated that complete occlusion of his coronary arteries caused his heart attack – but Aviva had refused to accept this; instead it placed unfair reliance on his initial presumed diagnosis of unstable angina.

Aviva said:

- Mr L's sum assured under the group scheme is £50,000;
- it did not have any other evidence for this service to consider;
- but, it wanted this service to record that it disagreed with my outcome on the complaint;
- it remained of the view that while in some parts of Mr L's medical records there is reference to an NSTEMI, it does not believe that the required clinical threshold for a claim to be paid was met by the medical evidence;
- that the evidence references a 'small' heart attack is not the same as Mr L meeting the policy definition;
- it also remained of the view that the policy definition wording had not been satisfied in this case, because there has been no characteristic troponin rise, no diagnostic imaging showing death of heart muscle, no ECG changes and Mr L did not have typical pain (he only had it on exertion);
- nonetheless, it will respect the final decision outcome, if I do not change my view on the complaint.

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 thank the parties for responding promptly to my provisional findings. I also thank Aviva for the further comments regarding its stance on the claim.

However, these do not change my view on the complaint. This is because Aviva has reconfirmed its position, but it has not made any new, amended or supplementary arguments for me to consider.

I recognise that Aviva doesn't accept that the medical evidence meets the required policy wording threshold. However, as I have noted in my provisional findings, Mr L's policy wording specifically omits defined levels by which a claimant must evidence a particular threshold of cardiac enzyme or troponin rise. Instead, it requires a "*characteristic rise*". And

Dr S confirmed that a rise took place, consistent with his diagnosis of NSTEMI.

As I concluded above, the policy wording requires either new characteristic ECG changes *or* other positive findings on diagnostic imaging tests – and those were also confirmed as present by Dr S. So, the absence of ECG changes in the medical evidence is not sufficient for Aviva to have refused the claim.

Similarly, the policy wording requirement to satisfy the definition of heart attack includes "*typical clinical symptoms"*. Dr S was asked for his clinical assessment and he confirmed Mr L had experienced angina (chest pain) as a typical symptom of his heart attack.

The wording does not give a definitive qualification as to the measure or nature of any typical clinical symptom; I do not agree that because Mr L's chest pain worsened on exertion that it must be discounted as a symptom which satisfies that limb of the policy definition. Nor do I take the view that the wording should be interpreted more narrowly than is set out; it should be looked at as an objective measure, and Dr S has provided his view on that basis.

For clarity, I haven't upheld this complaint due to Dr S referencing a 'small' heart attack. I have upheld it because I consider the evidence from Dr S satisfied the requirements of Mr L's policy definition. As I said in my provisional findings, he was, as the treating specialist, best placed to give his view on whether Mr L had experienced a myocardial infarction.

Dr S was specifically asked to give his clinical assessment with reference to Mr L's policy wording, noting the required confirmation of acute myocardial infarction – and he set out in clear terms that all of the required bullet points had been satisfied; he did this by citing the relevant evidence. I therefore remain of the view that this claim should have been paid.

Putting things right

Aviva must pay Mr L's critical illness claim in full. It has confirmed the claim value is £50,000.

I also direct 8% simple interest to be paid, from February 2022. That is the date Aviva confirmed it rejected the claim, but for the reasons set out above I consider it was clear that the medical evidence satisfied the policy wording and the claim ought to have been met, following review of the evidence and confirmation from Dr S of Mr L's heart attack.

If Aviva considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr L may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

I uphold this complaint. Aviva Life & Pensions UK Limited must pay Mr L the redress I've set out above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 February 2023.

Jo Storey
Ombudsman