

## The complaint

Mr E complains that Aviva Life & Pensions UK Limited has turned down a critical illness claim he made on a group critical illness insurance policy.

## What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the main events.

Mr E is a beneficiary of his employer's group critical illness policy. This provides cover for a lump-sum benefit if a beneficiary is diagnosed with one of a specific list of defined critical illnesses.

In February 2023, Mr E made a critical illness claim on the policy for rheumatoid arthritis – one of the listed conditions covered by the contract.

Aviva considered the medical evidence provided by Mr E's treating rheumatologist, who I'll call Dr G. And it asked Dr G for further information about Mr E's particular condition. Having assessed the medical evidence, including with its Chief Medical Officer (CMO), Aviva didn't think Mr E had met the policy definition of rheumatoid arthritis. Instead, it concluded he'd been diagnosed with and treated for a different form of arthritis.

Mr E was unhappy with Aviva's decision. He provided a further letter from Dr G in support of his claim. In brief, Dr G said the division between rheumatoid arthritis and the form of arthritis Mr E had been diagnosed with was '*rather arbitrary*'. And Dr G said they were '*therefore, happy to accept a diagnosis of rheumatoid arthritis*' in Mr E's case.

Aviva's CMO reviewed Dr G's further evidence. But Aviva maintained its decision to turn down the claim. That's because it noted that Mr E had been under Dr G's care for four years and no diagnosis of rheumatoid arthritis had been made prior to the decline of the claim. It didn't think Dr G had explained why the diagnosis had changed and it wasn't persuaded a definite diagnosis of rheumatoid arthritis had been given.

Remaining unhappy with Aviva's stance, Mr E asked us to look into his complaint. He felt he'd evidenced that he had a valid claim on the policy. He didn't think Aviva had treated him fairly and he didn't consider the policy to be clearly drafted.

Our investigator didn't think Aviva had treated Mr E unfairly. She didn't think it had been unreasonable for Aviva to conclude that Mr E hadn't shown he met the policy definition of rheumatoid arthritis. And she thought the policy terms were sufficiently clear.

Mr E disagreed. In summary, he considered he'd provided evidence from a rheumatologist that he had a diagnosis of rheumatoid arthritis. He also referred to a link from the NHS which referred to difficulties in definitively diagnosing rheumatoid arthritis. On that basis, he considered the policy terms were fundamentally flawed. He stated that Dr G's earlier diagnosis had been based on medical inaccuracies which had now been corrected. He said he'd previously offered Aviva the opportunity for him to see another specialist but that it had

been prepared to rely on Dr G's evidence. He maintained that Aviva hadn't met its obligation to treat customers fairly. That's because he considered a layperson would assume that if a specialist had given a diagnosis, a critical illness claim would be met.

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, whilst I'm sorry to disappoint Mr E, I don't think it was unfair for Aviva to turn down his claim and I'll explain why.

First, I was sorry to hear about Mr E's long-term condition and it's clear he suffers from debilitating symptoms. I don't doubt what a worrying time this has been for Mr E. I'd also like to make it clear that while I've carefully considered all Mr E has said and sent us, this decision won't comment on each point he's raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

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

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr E's employer and Aviva. The policy says:

*'The level of cover you have chosen is shown on the policy schedule. If you have chosen Extended cover, this includes the critical illnesses and operations shown in Standard cover...No other critical illnesses or operations are covered.'*

Mr E's employer held extended cover, which includes rheumatoid arthritis among the listed critical illnesses. Rheumatoid arthritis (chronic and severe) is defined as follows:

***'A definite diagnosis of rheumatoid arthritis by a Consultant Rheumatologist:***

- *there must be morning stiffness in the affected joints lasting for at least one hour*
- *there must be arthritis of at least three joint groups, with soft tissue swelling or fluid observed by a physician*
- *the arthritis must involve at least the:*
  - *wrists or ankles*
  - *hands and fingers, or*
  - *feet and toes*
- *there must be symmetrical arthritis*
- *there must be radiographic changes typical of rheumatoid arthritis.'* (My emphasis added).

In my view, the policy terms and conditions clearly define rheumatoid arthritis for the purposes of this policy. I don't find the terms to be unclear or misleading and it wouldn't be appropriate for me to tell Aviva what risks it will and won't cover. I think the definition clearly

sets out Aviva's criteria for a claim to be met. And I also think the policy makes it very clear that a definite diagnosis of rheumatoid arthritis needs to be made in order for a claim to succeed.

It's a general principle of insurance that it's for a policyholder to provide enough evidence to show they have a valid claim on their policy. This means it's Mr E's responsibility to provide Aviva with enough medical evidence to show his claim met the policy definition of rheumatoid arthritis.

Having assessed the available medical evidence, Aviva's CMO didn't think Mr E had shown he met the policy definition. So I've looked closely at the available medical evidence to decide whether I think this was a fair conclusion for Aviva to draw. I must make it clear that I'm not a medical expert. It isn't for me to make clinical findings nor would it be appropriate for me to substitute specialist medical opinion for my own. Neither is it for me to tell an insurer to change its policy terms or procedures. Instead, my role here is to weigh-up the available medical evidence to decide whether I think Aviva handled Mr E's claim fairly.

I've been provided with copies of medical reports Dr G sent to Mr E's GP between 2019 and February 2023. In February 2019, Dr G provided a diagnosis of a type of arthritis and listed some of Mr E's symptoms. The report also stated that Mr E had begun a course of treatment for that type of arthritis a few weeks earlier. The report did not diagnose Mr E with rheumatoid arthritis. A follow-up letter a few weeks later repeated the same diagnosis of a different form of arthritis and stated that Mr E was tolerating the treatment well. Again, in June 2019, Dr G's referred to Mr E suffering from the same arthritis diagnosis.

Dr G continued to refer to the same diagnosis of a form of arthritis and the treatment Mr E had undergone for it in January and February 2020. There was no diagnosis made of rheumatoid arthritis.

And in January and February 2023, having reviewed Mr E further, Dr G repeated their earlier diagnosis, Mr E's symptoms and medications. No diagnosis was made of rheumatoid arthritis.

Aviva and Mr E accept that Aviva asked Dr G to confirm whether or not Mr E had a definite diagnosis of rheumatoid arthritis. Aviva notes that Dr G responded:

*'The (other arthritis) label is to include (Mr E's) other manifestations...He could have been diagnosed as rheumatoid arthritis [sic] if he did not have his other manifestations, so for the purpose of his claim a diagnosis of rheumatoid arthritis is appropriate.'*

In May 2023, Aviva's CMO reviewed the evidence but didn't think it showed that Mr E had a definite diagnosis of rheumatoid arthritis. And they referred to the fact that for a number of years, Dr G had elected not to diagnose Mr E with rheumatoid arthritis.

Subsequently, in June 2023, Mr E provided a further letter from Dr G in support of his claim. I've set out below what I consider to be the key sections:

*'I have labelled your condition as (a form of arthritis) since I saw you first in February 2019. The spine symptoms, iritis and HLA-B27 serves as clues. I take your point that you do have peripheral arthritis and you would also satisfy the criteria for rheumatoid arthritis.'*

*'The division between the two conditions is rather arbitrary since the peripheral arthropathy of (Mr E's diagnosis) could be very similar to rheumatoid. I am, therefore, happy to accept a diagnosis of rheumatoid arthritis in your case.'*

However, this new evidence didn't alter Aviva's decision.

I've considered all of the medical evidence very carefully, taking into account the expert opinions of Dr G and Aviva's CMO. In my view, it was appropriate for Aviva to ask for its CMO's clinical opinion on the medical evidence provided. I appreciate Dr G says they would be happy to 'accept' a diagnosis of rheumatoid arthritis and that there are real similarities between Mr E's symptoms and rheumatoid arthritis. I accept too that the NHS guidelines say rheumatoid arthritis can be difficult to diagnose. But I don't think it was unfair for Aviva to conclude that Dr G hadn't given a 'definite diagnosis' of rheumatoid arthritis, as required by the policy terms. Instead, it seems Dr G was prepared to accept Mr E's own interpretation of his condition.

And I also don't think it was unfair for Aviva to have further questions about Dr G's change in apparent diagnosis. That's because the medical evidence clearly shows that for around four years, up until February 2023, Mr E had been diagnosed with and treated for a different type of arthritis. Dr G hasn't explained why their diagnosis changed after the claim was declined. And I've seen no compelling medical evidence to indicate that Dr G's (and an earlier colleague's) diagnosis of a different form of arthritis was made in error or that any misdiagnosis was made.

On that basis, I don't think Aviva acted unfairly, unreasonably or failed to meet its regulatory obligations when it concluded that Mr E hadn't shown he met the policy definition of rheumatoid arthritis

It's open to Mr E to seek further medical opinion on his condition should he wish to do so, at his expense, and to send this to Aviva for its consideration. I'd expect Aviva to review any new medical evidence in line with the policy terms and its regulatory obligations. But I don't find it was unfair for Aviva to rely on the medical evidence Mr E provided to it and nor do I find that it ought reasonably to have appointed a further specialist to assess Mr E's condition.

Overall, I sympathise with Mr E's position and I recognise his strength of feeling about this matter. But I don't think Aviva treated Mr E unfairly or unreasonably when it turned down his claim.

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 14 June 2024.

Lisa Barham  
**Ombudsman**