

The complaint

Miss L complains that Aviva Insurance Limited declined her claim against a private medical insurance policy.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Miss L was a beneficiary of a private medical insurance policy underwritten by Aviva. The first policy was taken out in 2017 and was on a moratorium basis, which means that it didn't cover pre-existing medical conditions Miss L had in the five years before the policy began until she had been a member for two years in a row and had two years in a row trouble-free from that condition. The renewal date of the policy was in March each year.

In May 2023, Miss L contacted Aviva about a claim for treatment of endometriosis. Aviva declined the claim. It said that endometriosis is a chronic condition and therefore treatment for it is excluded in the policy.

Miss L didn't think that was fair. She said that she had treatment for endometriosis in 2010 and had neither symptoms nor medical intervention until just before the claim in 2023. Miss L says that her policy provides cover for unexpected flare-ups of a chronic condition. She says that Aviva's handling of her claim has caused her unnecessary stress. Miss L wants Aviva to authorise her claim for an unexpected flare-up of a chronic condition or refund all the premiums she has paid.

In response to Miss L's complaint, Aviva maintained its position in relation to Miss L's claim but apologised for service issues. It said that the policy doesn't cover chronic conditions. Aviva referred to NHS guidance about endometriosis and said that it's a chronic condition and that flare-ups are expected, not unexpected.

In August 2023, the policyholder cancelled the policy. Miss L says that the policy was cancelled as after her claim was declined she had no confidence or trust in Aviva and thought that paying further premiums was a waste of money.

One of our investigators looked at what had happened. She said that it isn't in dispute that endometriosis is a chronic condition. The investigator said that the issue is whether Miss L's claim related to an expected deterioration of her endometriosis, which isn't covered by the policy, or an unexpected, acute flare-up, which is covered by the policy.

The investigator asked Aviva about any medical evidence it had relied on to come to its decision. Aviva referred the investigator to the NHS website about endometriosis. The investigator said that there was nothing to show that there can't be unexpected flare-ups of endometriosis. She said that without medical evidence Aviva can't currently determine whether Miss L is suffering from an unexpected, acute flare-up or an expected deterioration. The investigator recommended that Aviva obtain Miss L's medical records and any other medical evidence it reasonably requires to assess her claim.

Aviva responded to say that as the policy was now cancelled, even if it followed the investigator's recommendation about obtaining Miss L's medical records and assessing her claim, it wouldn't be able to provide any benefit to Miss L. It said that whilst an individual's own medical history should be the basis for any assessment in the majority of claims, it's sometimes appropriate to rely on medical evidence that's widely accepted in order to assess a condition. Aviva referred to medical information which said that endometriosis is a progressive disease and some patients may have progressive symptoms. It said that a chronic and progressive disease will only have expected flare-ups, not unexpected ones.

Aviva said that whether Miss L had other issues with her endometriosis before or since 2010 isn't relevant here as a disease which has no cure and is progressive will, by definition, have expected flare-ups, not unexpected ones, regardless of the time frame involved.

Miss L asked that an ombudsman consider her complaint, so it was passed to me to decide.

In this decision, I'm dealing with Aviva's decision to decline Miss L's claim. I'm not dealing with Miss L's concerns about the sale of the policy as Aviva wasn't responsible for that. If Miss L wishes to complain about the sale of the policy she should contact the business who advised on the sale in the first instance.

My provisional decision

On 8 April 2024, I sent both parties my provisional decision in this case in which I indicated that I intended to uphold the complaint for additional reasons and with a different outcome than had been suggested before. I said:

- *'Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. In general terms, insurers can decide what risks they wish to cover. The policy in this case doesn't cover chronic conditions but does cover unexpected, acute flare-ups of a chronic condition until the condition is re-stabilised.'*
- *I think it's common ground that endometriosis is a chronic condition, as defined by the policy. The central question for me to decide is whether Aviva acted fairly and reasonably in declining Miss L's claim on the basis that flare-ups are an expected part of endometriosis.*
- *The NHS website says that endometriosis is a long-term condition and whilst there are treatments, there's no cure. It also says that the symptoms of endometriosis vary; some women are badly affected by the condition while others don't have any noticeable symptoms. Endometriosis UK's website says that not everyone with endometriosis experiences symptoms.*
- *I've considered the information provided in the links to which Aviva has referred. The link to the information provided by the Mayo clinic confirms that whilst endometriosis is a progressive condition '...for some patients, it doesn't ever progress to the point that we would need to do any treatment...'. And the link to World Health Organization includes reference to the fact that some people with endometriosis don't have any symptoms and that '...symptoms are variable and*

broad...'. I think that information supports a conclusion that it's fair and reasonable to consider Miss L's claim based on her medical history.

- I don't think that Aviva acted fairly and reasonably in declining Miss L's claim on the basis that flare-ups are expected in endometriosis. Based on the information on the websites I've referred to above, it appears that it's possible to have endometriosis but no noticeable symptoms. So, it's not the case that flare-ups are inevitable or expected in every case of endometriosis.*
- Miss L says that she had treatment for endometriosis in 2010 and had neither symptoms nor medical intervention until just before the claim in 2023. So, Miss L says that she's been symptom free for 13 years. In the particular circumstances here, I think it would have been fair and reasonable for Aviva to have obtained medical information about Miss L, so that it could establish whether the symptoms which led to her claim were an unexpected, acute flare-up or expected deterioration in her case. So, I don't think that Aviva acted fairly or reasonably in its handling of Miss L's claim. I think that Aviva's actions meant that Miss L lost the opportunity to have her claim considered fairly.*
- If Aviva had considered Miss L's claim fairly and considered her medical information it's not known whether it would have authorised the claim or not. Events have moved on and Miss L's cover has now been cancelled. It remains for me to consider what Aviva should do to put matters right.*
- There's no basis on which I can fairly direct Aviva to refund all the premiums Miss L paid as she had the benefit of cover and could have made other claims.*
- I've noted the reasons Miss L has referred to which led to the cancellation of the policy - she lost confidence in Aviva - but I don't think I can fairly hold Aviva responsible for the fact that the policy is now cancelled.*
- Aviva's actions meant that Miss L lost the opportunity to have her claim considered fairly. That caused her distress and inconvenience at an already stressful time. Miss L's symptoms have got worse and she's currently pursuing treatment in the NHS, where there are long waiting lists for the treatment she needs. As I've said, it's not apparent whether proper consideration of Miss L's claim would have led to its authorisation, so compensation isn't based on the fact that Miss L is now pursuing treatment in the NHS. But I think that Aviva should compensate Miss L for the distress and inconvenience it caused her by not considering her claim properly.*
- I think a fair outcome in this case would be for Aviva to pay Miss L compensation of £500 in relation to her distress and inconvenience. In reaching that view, I've taken into account the nature, extent and duration of Miss L's distress and inconvenience arising as a result of Aviva's handling of her claim.'*

Responses to my provisional decision

We didn't receive a response from Miss L. Aviva accepted my provisional 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.

Neither Miss L nor Aviva has provided any fresh information or evidence in response to my provisional decision. I therefore find no basis on which to depart from my earlier conclusions. For the reasons I've explained, I don't think that Aviva acted fairly and reasonably in declining Miss L's claim.

Putting things right

In order to put things right, Aviva should pay Miss L compensation of £500 in relation to her distress and inconvenience.

My final decision

My final decision is that I uphold this complaint. Aviva Insurance Limited should now take the step I've indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 28 May 2024.

Louise Povey
Ombudsman