

## **The complaint**

Mr and Mrs C are unhappy that Aviva Insurance Limited declined a claim they made on their travel insurance policy.

## **What happened**

Mr and Mrs C took out a travel insurance policy with Aviva over the telephone. In 2023 he claimed on the policy after he became unwell whilst on holiday.

Aviva said Mr C answered the question it asked about his medical history incorrectly. And they considered this to be a careless qualifying misrepresentation, which entitled it to add an exclusion to the policy for angina.

Mr and Mrs C brought a complaint to the Financial Ombudsman Service and our investigator thought it shouldn't be upheld. He didn't think Mr C had taken reasonable care to disclose his medical history and that Aviva was entitled to classify this as a careless misrepresentation.

Mr and Mrs C don't agree with the investigator and have asked for an ombudsman's 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.

The relevant law in this case 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 thinks Mr and Mrs C failed to take reasonable care not to make a misrepresentation when he was asked questions about his medical history.

I've listened to the telephone call where Mr C took out the policy. He disclosed that he had been diagnosed with mild angina about three or four years ago but said he didn't take any specific medication for it.

Mr C's GP confirmed that he was diagnosed with angina in 2018. He was prescribed medication shortly after this diagnosis and had continued to take them. I've reviewed a letter from Mr C's consultant dated April 2018. This confirms that Mr C had experienced palpitations and that a coronary angiogram had been completed. The letter says:

For the time being, we will take a watching brief. I would very much appreciate it if you would add in simvastatin 40mg od to his current regime on a secondary prevention basis...

So, I think it's most likely Mr C was prescribed statins in relation to his angina following the investigations in 2018. Although Mr C mentioned taking statins, he said he wasn't taking any medication for angina. But I'm persuaded it is most likely he continued to take this medication as a preventative measure as the consultant recommended in 2018. I appreciate that Mr C's recollection is different, but I don't think it's unreasonable for Aviva to rely on the available medical evidence in support of their position.

Aviva has provided evidence of the relevant underwriting criteria which shows that Aviva would have applied an exclusion to the policy if Mr C had disclosed his medical history accurately. That means that angina, and any related conditions, would have been excluded. This means I'm satisfied Mr and Mrs C's misrepresentation was a qualifying one.

Aviva has said Mr and Mrs C's misrepresentation was careless, rather than deliberate or reckless. I agree that Mr and Mrs C's misrepresentation was careless. I don't think he intended to mislead Aviva, or that he deliberately gave them incorrect information. I think it's more likely Mr C didn't recall the specifics of what medication was prescribed to him for each of the conditions he declared.

As I'm satisfied Mr and Mrs C's misrepresentation should be treated as careless, I've looked at the actions Aviva can take in accordance with CIDRA. Aviva are entitled to add an exclusion to the policy from the point of misrepresentation and then assess any claim in line with this exclusion added.

Mr C was diagnosed with acute coronary syndrome when he was admitted to hospital whilst he was abroad and fitted with a stent. So, I don't think it was unreasonable for Aviva to apply the exclusion and decline the claim.

Taking into account all of the above I think Aviva has acted fairly and reasonably by applying the exclusion and declining the claim.

### **My final decision**

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 8 October 2024.

Anna Wilshaw  
**Ombudsman**