

The complaint

Mrs G is unhappy that Aviva Insurance Limited has declined a claim she made on her private medical insurance policy.

What happened

Mrs G is a member of a group private medical insurance policy. She joined the scheme in 2019 and was asked to complete some questions about her medical history.

Mrs G made a claim on the policy. Aviva declined the claim on the basis that Mrs G hadn't answered some of the questions about her medical history accurately and, had she done so, they'd have added an exclusion to the policy. Mrs G complained to Aviva but they maintained their decision was fair.

Our investigator looked into what happened and didn't uphold the complaint. He thought that Aviva had reasonably relied on the available medical evidence to decline the claim and apply the exclusion. Mrs G asked an ombudsman to review her complaint. In summary, she says she wasn't sent for any diagnostic tests or prescribed any medication for the condition. And she highlighted she'd not had any return visits to the doctor regarding this medical problem until mid-2023. So, I need to make a 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 rules and industry guidelines say that Aviva has a responsibility to handle claims promptly and fairly. I have also considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I think this is relevant law.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer. 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 (in this case Aviva) 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 several 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.

During the application process Mrs G was asked:

Has anyone consulted with a specialist or been admitted to hospital in the 5 years prior to the start date? (other than for conditions already listed).

Has any person named ever suffered from any of the following problems (other than for conditions already listed)...

m) joint and bone problems, fractures, tendon and ligament problems, gout, bunions, osteoporosis?

n) joint and spine degeneration, wear & tear, arthritis?

Mrs G answers didn't disclose any information about her knee problems in response to these questions.

I think it was reasonable for Aviva to conclude that Mrs G failed to take reasonable care when answering these questions and that she should have disclosed information about knee problems. The medical evidence provided during the claims process indicates that:

- Mrs G had a history of knee problems in 2015
- A clinical diagnosis of osteoarthritis was made in April 2015
- Mrs G saw her GP in November 2016. She'd been seeing an osteopath for a while who said the issue was osteoarthritis. Mrs G was using a gel before walking which helped. There was a discussion noted in the records about physiotherapy and a knee replacement, which Mrs G declined at the time.
- In September 2023 Mrs G's consultant knee surgeon stated Mrs G had been aware of niggles in her knee for a number of years but her symptoms had worsened since May that year.

Mrs G says that she wasn't diagnosed or sent for x-rays and scans. But, in the circumstances of this case, I'm not persuaded by Mrs G's representations. Mrs G was asked if she'd consulted with a specialist, had ever had any joint problems or degeneration (including wear and tear and arthritis). Given that Mrs G had been consulting with her GP and visiting an osteopath about her knees I think she ought reasonably to have disclosed this information.

I think this information mattered to Aviva. They've provided underwriting information which demonstrates that had this information been disclosed they'd have applied an exclusion to the policy when Mrs G joined the scheme for osteoarthritis in both knee joints. So, I'm persuaded this was a qualifying misrepresentation.

Aviva didn't dispute our investigator's conclusion that Mrs G's misrepresentation was careless rather than reckless or deliberate. I think the misrepresentation was careless as I don't think Mrs G deliberately tried to mislead Aviva.

CIDRA says that where a misrepresentation is careless Aviva can add an exclusion to the policy from the point of misrepresentation and then assess any claim in line with this exclusion added to the policy. That's what Aviva have done in Mrs G's and so I'm satisfied they've acted fairly, and in line with the relevant law. That means I think it was fair for Aviva to add the exclusion and decline 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 G to accept or

reject my decision before 18 December 2024.

Anna Wilshaw
Ombudsman