

The complaint

The estate of Mr N has complained that Aviva Life & Pensions UK Limited has declined a claim under a life insurance policy.

What happened

In September 2020 Mr N purchased a life insurance policy provided by Aviva.

In December 2022 Mr N sadly passed away. Towards the end of 2023 Aviva was made aware Mr N had died and considered a claim under the policy.

Mr N's estate was unhappy with the length of time it was taking for Aviva to consider the claim. In February 2024 Aviva apologised for any additional stress caused and awarded £250 compensation.

In April 2024 Aviva declined the claim. Aviva said that it believed Mr N hadn't answered all of the application questions correctly and had he done so they wouldn't have offered the policy. It advised it would be avoiding the policy and declining the claim.

Aviva refunded the premiums Mr N had paid towards the policy.

The estate of Mr N didn't think this was reasonable and so raised a complaint. Aviva issued a final response to the complaint maintaining its decision to avoid the policy and decline the claim. Unhappy, the estate of Mr N referred the complaint here.

Our investigator didn't recommend that it be upheld, he didn't think that Aviva had acted unreasonably when it avoided the policy and declined the claim. He said this as he thought that Mr N should have given a different answer to the question asked at the application stage about whether he had used recreational drugs in the last five years.

Ms J, on behalf of the estate appealed. She said that there was no evidence of drug abuse before the policy was taken out, and when she cleared out Mr N's property there were no drugs there. She added that Mr N was awaiting an ADHD assessment. Ms J said that although highly intelligent, Mr N had most of the personality traits of ADHD. She said that one of these is impulsive behaviour and as amphetamines apparently have an opposite effect on an ADHD brain, he may well have only just started taking them to self-medicate when he spoke to the doctor about his concerns.

As no agreement has been reached the matter has been passed to me to determine.

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.

Although I've summarised the background to this complaint no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. I was sorry to read of the circumstances here and the untimely passing of Mr N. I recognise that the estate of Mr N will be very disappointed my decision, but I agree with the conclusion reached by our investigator. I'll explain why.

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 N failed to take reasonable care when answering the following questions when applying for his policy:

Q. In the last 5 years have you used:

• Recreational drugs? Any stimulants, sedatives, tranquilisers or anabolic steroids not prescribed by a doctor? {Methadone?}

His GP records show that in January 2021 Mr N was recorded as having a history of drug dependence. This was approximately four months after the policy commenced.

Records show Mr N was taking GBL, crystal meth and cannabis on a regular basis. However there is nothing in the medical records to confirm that Mr N had used recreational drugs in the five years before he took the policy out.

Nevertheless Aviva's Chief Medical Officer has said, and I summarise, that it is unlikely that someone who hadn't previously used drugs would escalate to taking the quantity a mixture of drugs noted in the GP records in a period of four to five months. The Chief Medical Officer has many years' experience of providing care in this field of medicine. He believes it's much more likely that Mr N had been taking drugs recreationally for a longer period than this. I haven't disregarded the representations of Ms J, in particular that she found no drugs at Mr N's address. But I find the medical officer's evidence to be persuasive.

So I don't think it was unreasonable for Aviva to conclude that Mr N answered this question incorrectly.

Mr N disclosed that he had a diagnosis of obsessive compulsive anxiety disorder, and was asked a related question:

• Is your condition related to alcohol, recreational drugs or substance use?

But like our investigator I'm not persuaded that Aviva has shown that this diagnosis was related to drugs or substance abuse.

So I've gone on to consider what Aviva would have done had Mr N answered the first question above positively. Aviva has shown by underwriting evidence that had he done so it would not have offered cover. So I'm satisfied that this was a qualifying misrepresentation. Although I fully accept that Mr N's death was entirely unrelated to drug use, the fact remains that had the 'use of drugs' question been answered positively, he wouldn't have been offered the policy at all.

Aviva has offered a premium refund, which suggests that they are treating the misrepresentation as careless rather than deliberate. I think that is fair. Aviva's actions are therefore in accordance with CIDRA.

Ms J has advised this service that the estate hasn't received the premium refund and compensation offered by Aviva – as they didn't wish to accept it at the time. Following my decision the estate can contact Aviva directly in this regard.

I'm very sorry that my decision doesn't bring the estate welcome news.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr N to accept or reject my decision before 10 March 2025.

Lindsey Woloski
Ombudsman