DRN-5076842

The complaint

Mr and Mrs W complain that Aviva Insurance Limited (Aviva) has unfairly refused to meet a claim made on their private medical insurance policy.

What happened

The background of this complaint is well known so I won't go into too much detail here. But in summary:

- Mr and Mrs W transferred their private medical insurance policy (PMI) to Aviva in October 2023. They used a broker to help them do this. The method used meant that the new policy was provided on the same terms and conditions as the old. The old policy excluded cover for Mrs W's right knee.

- In April 2024 they contacted Aviva as Mrs W was having problems with her left knee. Aviva agreed to consider a claim for diagnosis and treatment.

- Aviva considered the claim in line with the policy terms and conditions. It said it need not meet the claim as there was an exclusion that applied to Mrs W's claim.

- Mr and Mrs W disputed this, as their paperwork only excluded cover for the right knee only.

- Aviva said its underwriting policy was that if cover was excluded for one weight bearing limb – in this case Mrs W's right knee – then the left would also have been excluded. It did agree that it hadn't said that specifically when Mr and Mrs W transferred their policy.

- Aviva also said that Mr and Mrs W hadn't declared all the relevant information when they transferred their policy. Aviva said if they had, cover for Mrs W's left knee would have been excluded.

- Aviva said that was because it didn't think Mr and Mrs W took enough care when answering questions during the transfer process, and referred to remedies available under the Consumer insurance (Disclosure and Representations) Act 2012 (CIDRA). It said that because a question about whether either she or Mr W had experienced symptoms, consultations, tests and treatment for any medical condition in the previous 12 months was answered" no". A few months later, when the claim was first made, Mrs W said she'd had problems with her knee for about two years, and referral letter from her GP said she'd had pain for at least a year.

- Mr and Mrs W said the GP made a mistake in his letter, but Aviva didn't change its position.

- Aviva acknowledged that it hadn't communicated properly about the exclusion and sent Mr and Mrs W £200 to make up for this.

- Mr and Mrs W paid over £18,000 for Mrs W's treatment, and remained unhappy that Aviva won't meet the claim. They asked us to review the complaint.

Our investigator considered all the information provided by both parties.

She noted the following:

- That, whilst she didn't discount Mr and Mrs W's opinion that her GP made a mistake when referring Mrs W for treatment, it was reasonable for Aviva to accept this. And she listened to a call that Mrs W took part in in March 2024 where she told a representative from Aviva that the problem with her left knee had been ongoing for about two years. Both of those things meant Mrs W had had problems in the 12 months before the policy transferred to Aviva.

- Based on this she thought Mr and Mrs W hadn't taken enough care when answering a question on their application form about any symptoms treatment etc in the previous 12 months. She thought that Mr and Mrs W should have answered "yes" to this question.

- She'd seen Aviva's underwriting criteria and accepted that, if Aviva had known about the problems Mrs W was having with her left knee, cover for that joint would have been excluded. She acknowledged Mr W's argument that Aviva was changing cover retrospectively, but thought that the remedies available under CIDRA allowed it to do that.

- She noted that Mr and Mrs W were aware that the claim wasn't authorised – and there was no guarantee it would be – well before they decided to pay for Mrs W's treatment.

- She agreed that Aviva hadn't communicated very well about the cover Mr and Mrs W had, but she also thought the £200 compensation Aviva paid was sufficient.

Mr and Mrs W have accepted our investigators view, saying they have nothing more to add. But they don't think the £200 compensation is enough to make up for their time and inconvenience.

I've been asked to decide this complaint.

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.

Our investigator provided a thorough analysis of why she thought Aviva had fairly excluded cover for Mrs W's left knee, even though it had done that retrospectively. I've set out a summary of her points above. As Mr and Mrs W have said they have nothing more to add, I see no reason to repeat her arguments as it won't add anything to my decision.

The only remaining issue is the level of compensation Aviva sent Mr and Mrs W. Aviva has acknowledged it initially sent paperwork that only excluded Mrs W's right knee. And when it sent a letter it wasn't clear about any changes it had made. That must have caused some confusion for Mr and Mrs W. I agree with our investigator when she says compensation of £200 was appropriate here, as it's in line with amounts this service normally awards in such circumstances. If Mr and Mrs W had been led to believe Mrs W's treatment *was* covered, the compensation might have been higher. But I'm satisfied that Mr and Mrs W knew that the

claim hadn’t been agreed right at the start of the claim, nor were they told it might be.

It follows that I’m not going to uphold this complaint.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs W and Mr W to accept or reject my decision before 11 March 2025.

Susan Peters
Ombudsman