

The complaint

Mr C complained that Aviva Life & Pensions UK Limited declined a claim and avoided his life and critical illness policies.

What happened

Mr C took out two policies with Aviva in January 2023. One policy covered him solely for life assurance and the other solely for critical illness insurance. I was sorry to hear that Mr C was then diagnosed with cancer in February 2023. Mr C raised a claim with Aviva. Aviva declined Mr C's claim as they believed he misrepresented during his policy application. Aviva also avoided the policy but refunded Mr C all premiums paid.

Mr C was unhappy as he said he'd answered the questions correctly. Mr C raised a complaint with Aviva. Aviva didn't uphold Mr C's complaint. They didn't agree they'd incorrectly declined the claim. Mr C was still unhappy and so brought the complaint to this service.

Our investigator didn't uphold the complaint. They didn't think Aviva had done anything wrong by declining the claim or avoiding the policy. Mr C appealed. He maintained that he hadn't answered any questions incorrectly. He also said the questions have since been changed and so felt they were unfit and unclear. As no agreement could be reached, the complaint has been passed to me to make a final 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.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether Aviva acted in line with these requirements when it declined to settle Mr C's claim.

At the outset I acknowledge that I've summarised his complaint in far less detail than Mr C has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

I'm very sorry to hear about Mr C's health and prognosis. I wish him all the best with his future treatment and time with his family.

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 C failed to take reasonable care when he answered the following questions:

"Apart from any conditions you've already told us about in this application, within the last two years have you:

- *Been under follow-up with your GP surgery, a specialist, hospital, or clinic, including reviews or check-ups you have been asked to attend even if you didn't?*
- *Had, or been advised to have medical investigations (even if you didn't attend, or haven't attended yet)? This includes a blood test, biopsy, Ultrasound, x-ray, CT, MRI, other scan, or a scope (internal camera).*

Apart from anything you've already told us about:

- *Are you waiting for the results of any test or investigation?*
- *In the last three months have you had any of these symptoms, even if you have not consulted a doctor? Unexplained weight loss, a lump, growth or cyst, bleeding from the bowels or change in bowel habit, blood in your urine, a persistent cough lasting more than three weeks, a mole or skin blemish which has changed."*

Mr C applied and was accepted for the policy on 28 January 2023. Aviva has provided me with Mr C's medical records. These show the following:

- 6 January 2023 – Phone consultation with his GP. Discussed constipation.
- 19 January 2023 – Phone consultation with his GP. Struggling with ongoing stomach cramps, constipation, straining and fresh blood when wiping. Feels urge to defecate. Rabbit like stools. Blood and stool tests agreed.
- 26 January 2023 – Phone consultation with his GP. Informed there was visible blood when stool taken so faecal immunochemical test was inaccurate. Awaiting for faecal calprotectin results. Advised the test would probably need repeating once bleeding stops.
- 31 January 2023 – Phone consultation with his GP. Confirms faecal calprotectin results were received back today. Urgent gastroenterology referral to be completed.

Based on the questions asked, the answers given and the medical information, I do agree that Mr C misrepresented during his application. I think the questions are clear in what they want to know and so I don't think Mr C took reasonable care when answering the questions.

Aviva have provided me with a statement from an underwriter and the relevant parts of their

underwriting manual. Based on what I've seen, Aviva would have postponed the application until tests had been completed and once a diagnosis was given, Aviva wouldn't have offered Mr C either policy. As a result, I think Mr C's misrepresentation would be a qualifying misrepresentation under CIDRA.

Whilst I haven't seen the category of misrepresentation applied by Aviva, as they've avoided the policies but refunded the premiums, this is in line with a careless misrepresentation under CIDRA. This is the lowest level of misrepresentation. Based on the reasons above, I don't think the actions taken by Aviva are unfair or unreasonable in the circumstances.

In response to our investigator's view, Mr C raised that Aviva has since changed how they phrase the questions and didn't think the questions he'd been asked were clear or fit for purpose. I don't agree with Mr C. Whilst Aviva may have changed how the questions are phrased, which an insurer may do from time to time, I don't think this means the questions are unclear or not fit for purpose. I think the questions are clear on what they want to know. Mr C told Aviva that he didn't think some of the information was relevant based on the circumstances, but it isn't Mr C's decision as to what is and isn't relevant. I think there was information Mr C should have disclosed based on the questions he was asked but didn't.

Mr C also raised that he answered the questions to the best of his knowledge. I don't agree. Mr C has told Aviva that prior to his application, all test results had been received. However, this isn't what Mr C's medical records say. They confirm that two days prior to the application he was informed that the stool test would need to be redone due to fresh blood in the sample. Even if the test results had been completed, which I don't agree they had been, Mr C was still asked about any medical investigations in the last two years and didn't disclose either the blood or stool tests.

I'm very sorry that my decision doesn't bring Mr C more welcome news at what I can see is a very difficult time for him. But in all the circumstances I don't find that Aviva has treated Mr C unfairly, unreasonably, or contrary to law in declining the claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint. I don't require Aviva Life & Pensions UK Limited to do anything further.

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

Anthony Mullins
Ombudsman