DRN-5335101

The complaint

The estate of Mr T and Ms D, as trustee of the T Trust, complain about Aviva Protection UK Limited's decision to turn down a critical illness claim Mr T made on a term assurance with critical illness policy. They also complain about Aviva's decision to cancel the policy, together with a term assurance policy.

Aviva Protection UK Limited was formerly known as AIG Life Limited. So for ease of reading, I'll refer to AIG throughout this decision.

What happened

In May 2022, Mr T took out two policies through a broker I'll call W to replace existing cover. The first policy provided term assurance with critical illness cover and the second policy provided term assurance.

Unfortunately, in early 2023, Mr T was diagnosed with cancer. So he made a critical illness claim on the relevant policy.

AIG asked for medical information to allow it to assess Mr T's claim. It noted that Mr T had declared that he suffered from anxiety, diverticulosis and that he also had osteoarthritis. But the medical evidence showed that in January 2022, Mr T had been drinking around 80 units of alcohol per week for two-three months and had been drinking excessively for the previous two and half years. The GP notes also showed that Mr T had been using a non-prescription drug twice a week for the previous six months. The GP had directed Mr T to organisations which could provide alcohol and drug support. The following GP entry a few weeks later showed Mr T had stopped drinking.

Based on the medical evidence, AIG didn't think Mr T had answered all of its medical questions correctly when he applied for the policies. And it said that if he had declared that he'd reduced his alcohol intake and the drug use at the time of sale, it wouldn't have offered him cover at that point. So it concluded that Mr T had made a deliberate or reckless qualifying misrepresentation under the relevant law. It turned down Mr T's critical illness claim and it cancelled both policies from the start, although it refunded the premiums Mr T had paid.

Ms D and the estate of Mr T were very unhappy with AIG's decision and they asked us to look into this complaint.

Our investigator didn't think AIG had treated Mr T unfairly. She thought it had been reasonable for AIG to find that Mr T had made a qualifying misrepresentation under the relevant law. She noted that while AIG was legally entitled to keep the premiums Mr T had paid for the policies, it had refunded them.

Ms D and the estate of Mr T disagreed. In brief, Ms D said Mr T had answered AIG's questions accurately, based on his understanding of them.

The complaint's been passed to me to decide.

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.

Having done so, whilst I'm very sorry to disappoint Ms D and the executors of Mr T's estate, I don't think AIG has handled this claim unfairly and I'll explain why.

First, I'd like to offer Ms D and Mr T's family my sincere condolences for the sad loss of Mr T. It's clear that they've been through a very difficult and upsetting time and I'm sorry to cause them further upset.

I must also make it clear that this decision will only consider AIG's handling of Mr T's claim and the actions it took. That's because AIG wasn't responsible for the sale of the policy. AIG's role was to assess and decide the critical illness claim in line with the contract terms and based on the information which had been passed on to it at the time of policy sale. Mr T's estate has made a separate complaint about the way W sold the policy to Mr T, which will be considered in due course.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as industry principles, the law, the policy terms and the available evidence, to decide whether I think AIG handled Mr T's claim fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). 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.

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.

When Mr T took out the policies in May 2022, he was asked information about himself and about his medical history. AIG used this information to decide whether or not to insure Mr T and if so, on what terms. AIG says that Mr T didn't correctly answer the questions he was asked during the application process. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mr T's claim.

AIG thinks Mr T failed to take reasonable care not to make a misrepresentation when he took out the policy. So I've considered whether I think this was a fair conclusion for AIG to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. AIG has provided us with a copy of the medical history questions Mr T answered, on which it based its assessment of the risk. I've set out below what I consider to be the relevant questions:

'In the last 10 years have you reduced the amount of alcohol you drink for any of the following reasons:

- *You were advised to by a medical professional*
- *Alcohol was causing or contributing to health problems*
- *Alcohol impacted your work or ability to carry out day to day activities*
- *You have had alcohol dependency, alcohol addiction or alcoholism.*

Have you taken any non-prescription drugs in the last 10 years? (e.g. cannabis, ecstasy, cocaine, heroin, anabolic steroids)

(You do not need to disclose medication bought from a chemist without the need for a prescription).'

The application information W provided to AIG stated that the answer to both of these questions was 'No'. And AIG has also provided evidence that a copy of the application questions and answers was sent to Mr T at the correct address when the policy started. It's also provided a copy of an amendment form it sent Mr T at the same time. This form stated that if any of the information on the application form was wrong or incomplete, Mr T should complete the form and send it back to AIG so it could reconsider the application. It doesn't seem that Mr T filled out the form or got in touch with AIG to indicate that the answers W had recorded on the application form were wrong. So I don't think it was unfair or unreasonable for AIG to rely on the answers given on the application form, either when it set-up the policies or when it assessed Mr T's critical illness claim.

In my view, AIG's questions were asked in a clear and understandable way and ought to have prompted a reasonable consumer to realise what information AIG wanted to know. AIG considers Mr T answered these questions inaccurately, so I've next looked at the available medical evidence to decide whether I think this was a fair conclusion for AIG to draw.

Mr T's GP provided AIG with copies of Mr T's medical records. These show that in early January 2022, around four and a half months before he applied for the policy, Mr T had visited the GP because he'd been low in mood and anxious. The GP noted that Mr T was drinking too much and using non-prescription drugs. The notes say that Mr T had been drinking around 80 units of alcohol per week at least for around three to six months, but that he'd been drinking excessively for around two and a half years and that he got drunk almost every night. And the notes also say that Mr T took a non-prescription drug twice a week. The GP sign-posted Mr T to an organisation which provided drug and alcohol support.

It's clear from the GP notes dated a few weeks later that Mr T had quickly been able to turn things around. But I don't think it was unreasonable for AIG to have concluded that Mr T ought to have answered 'yes' to its question about whether or not he'd reduced his intake of alcohol in the past 10 years for one of the listed reasons. That's because the GP does seem to have referred Mr T on to an organisation which provided support, which I think indicates Mr T was most likely advised to cut down or stop drinking.

Even if I'm wrong on this point though, I also think the GP's records make it very clear that Mr T had taken non-prescription drugs twice a week and had been doing so only a few months before he took out the policies. So I think the answer to this question should have been 'yes'.

So I now need to think about whether I'm satisfied AIG has shown Mr T's misrepresentation was a qualifying one. It's provided me with confidential underwriting evidence which shows that had Mr T declared his non-prescription drug use, it would have delayed offering Mr T a policy for at least three years and most likely for five years. And it said had it been aware of

Mr T's alcohol reduction, taken together with the drug use, its underwriters would have declined to offer Mr T cover.

It seems to me that even if I don't take into account the alcohol reduction question, AIG wouldn't have offered Mr T the insurance policies when it did. And sadly, Mr T had been diagnosed with cancer before AIG's policy postponement period of three to five years had expired.

This means I think AIG has shown Mr T made a qualifying misrepresentation under CIDRA. And so I think it's reasonable for AIG to apply the relevant remedy available to it under the Act.

AIG classed Mr T's misrepresentation as deliberate or reckless. Based on the proximity of Mr T's recorded drug use prior to the sale of the policies, I don't think this was unfair. Under CIDRA, that means that AIG was entitled to turn down the critical illness claim, cancel both policies from the start and retain the premiums Mr T had paid. However, in this case, while AIG turned down the claim and cancelled both policies, it refunded the premiums Mr T had paid for the cover. Given AIG did more than it was required to under the law, I think it acted reasonably in the circumstances.

Overall, whilst I'm very sorry to cause Ms D and the executors of Mr T's estate further upset and disappointment when they've already been through a very difficult time, I don't think AIG handled this claim unfairly. So it follows that I'm not telling AIG to do anything more

My final decision

For the reasons I've given above, 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 T and Ms D as Trustee of the T Trust to accept or reject my decision before 11 April 2025.

Lisa Barham
Ombudsman