

## The complaint

Mr and Mrs C complained that Aviva Life & Pensions UK Limited declined a claim on their life and critical illness policy.

## What happened

In 2017, Mr and Mrs C took out a life and critical illness policy with Aviva. I was sorry to hear that last year Mr C was diagnosed with Human Immunodeficiency Virus (HIV). Mr and Mrs C raised a claim with Aviva but it was declined. Aviva told Mr and Mrs C that the definition for HIV in the policy terms and conditions hadn't been met. Mr and Mrs C were unhappy and so raised a complaint with Aviva.

Whilst Aviva upheld a customer service aspect, they didn't uphold their claim decline outcome. They confirmed they didn't agree the policy terms had been met. Mr and Mrs C were still unhappy and so brought the complaint to this service.

Our investigator didn't uphold Mr and Mrs C's complaint. They didn't think Aviva had unfairly declined Mr and Mrs C's claim. Mr and Mrs C appealed. They felt that Aviva were discriminating against Mr due to how he contracted HIV. 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 and Mrs C's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to Mr and Mrs C, I've reached the same outcome as our investigator.

At the outset I acknowledge that I've summarised their complaint in far less detail than Mr and Mrs C have, 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.

As a starting point, it's important to understand what the terms and conditions say:

***“HIV infection – caught from a blood transfusion, a physical assault or at work***

*Infection by Human Immunodeficiency Virus resulting from:*

- a blood transfusion given as part of medical treatment; or
- a physical assault; or
- an accident occurring during the course of performing normal duties of employment,

after the start of the policy and satisfying the following:

- the incident must have been reported to the appropriate authorities and have been investigated in accordance with the established procedures
- When HIV infection is caught through a physical assault or as a result of an incident occurring during the course of performing normal duties of employment, the incident must be supported by a negative HIV antibody test taken within five days of the incident
- There must be a further HIV test within 12 months confirming presence of HIV or antibodies to the virus.

The following are not covered:

- HIV infection resulting from any other means, including sexual activity or drug misuse.”

Whilst I’ve not seen any evidence which confirms the exact cause of Mr C’s contraction of HIV, Mr C believes it was during medical investigations and treatment whilst on holiday. Having seen the medical records, Mr C wasn’t treated with a blood transfusion.

As such, as Mr C hasn’t contracted HIV as a result of a blood transfusion, a physical assault or during an accident at work, Mr C hasn’t met the policy terms and conditions.

In response to our investigator’s outcome, Mr and Mrs C said that they believed Aviva’s treatment of the claim was discriminatory. They’ve provided an extract of a quotation from the National Aids Trust in 2018 which comments on The Association of British Insurers (ABI) removal of a definition. Mr and Mrs C believe the ABI removed the definition due to it being discriminatory.

Disability is a protected characteristic under the Equality Act 2010. Generally, a person must not be treated less favourably because of their disability, or a reason arising from it. But the Act allows businesses to discriminate on the grounds of disability when doing anything in connection with insurance business. There is an exception under the Equality Act 2010 in such circumstances. However, keeping in mind this service’s role, it’s not my place to conclude if Aviva has acted lawfully or not – this would only be for a court to decide.

The ABI provide insurers with minimum standards for what cover a critical illness policy needs to include. They also provide some model definitions for other conditions which insurers may want to cover. The most relevant guide at the time of Mr and Mrs C’s application was released in 2014. At this time, the ABI did have a model definition for HIV which is exactly what Aviva have used in their policy. **The ABI released updated guidance in 2018 and removed their model wording for HIV.** Whilst Mr and Mrs C believe this was due to it being discriminatory, there is no evidence to support this. The ABI state that the model wording was removed so that firms may adopt the wording they consider appropriate. The ABI also set out that due to medical advancements the severity of some conditions has changed to the point that they can no longer be considered “critical” in terms of life expectancy and uses HIV as a key example of this. I also note that in their current critical

illness policy, Aviva doesn't include cover for HIV. I don't say this to belittle or undermine Mr C's condition, what he's been through or how the condition may affect him in the future.

As set out above, I can't reach a finding on whether Mr C has been discriminated against, but I have thought about it in coming to my outcome. However, I'm satisfied that Aviva's wording is in line with the ABI's model wording from the time. So, I don't think Aviva's wording is unfair or unreasonable.

A critical illness policy doesn't cover every possible condition. Insurers can choose the conditions they cover, as long as they include the three core conditions, how many conditions they cover and the definitions for the conditions they cover. Some conditions have restrictions on severity, HIV has a restriction on how the condition is contracted. As I've said above, I've not seen any evidence which confirms exactly how Mr C contracted HIV, but this wasn't because of a blood transfusion, a physical assault or whilst at work. I appreciate that Mr and Mrs C think Aviva are discriminating against them and have provided different scenarios which they believe makes the claim outcome unfair. I've taken everything they've said into account, but I don't think Aviva has acted unreasonably in declining the claim as the terms haven't been met and I don't think their definition is unreasonable.

I'm very sorry that my decision doesn't bring Mr and Mrs C more welcome news at what I can see is a difficult time for them. But in all the circumstances I don't find that Aviva has treated Mr and Mrs C unfairly, unreasonably, or contrary to the policy terms and conditions 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 and Mrs C to accept or reject my decision before 18 April 2025.

Anthony Mullins  
**Ombudsman**