DRN-5456097

The complaint

Mr D complains that Aviva Life & Pensions UK Limited has turned down claims he made on two life insurance policies.

What happened

In October 2017, Mr D and Mr C took out a life insurance policy through a broker. The policy was underwritten by Aviva and it offered them cover on standard terms. Subsequently, they took out a second life insurance policy through a broker which started in December 2019. During both sales Mr C was asked about his alcohol intake and whether he'd been advised to reduce his alcohol use. Mr C told the broker that he drank four glasses of wine per week and that he hadn't been advised to reduce his alcohol use.

Sadly, Mr C passed away in April 2024. So Mr D made claims on the life insurance policies.

Aviva asked for medical evidence from Mr C's GP to allow it to assess the claims. It noted that in 2015, Mr C's GP had recorded that Mr C was drinking up to two bottles of wine per night. The GP stated that they'd advised Mr C to reduce his alcohol intake.

So Aviva considered that Mr C hadn't correctly answered its questions when he applied for both policies. It said that if Mr C had told it that he'd been advised to cut down his alcohol intake, it wouldn't have offered him a life insurance policy until he'd been abstinent from alcohol for a period of two years. It was satisfied that the evidence showed Mr C had still been drinking alcohol in both October 2017 and December 2019.

On that basis, Aviva concluded that Mr C had made a careless, qualifying misrepresentation under relevant law when he applied for both policies. It turned down Mr D's claims, cancelled both policies from the start and refunded the premiums that'd been paid.

Mr D was very unhappy with Aviva's decision. In brief, he said he didn't recall the broker asking questions about alcohol intake and he didn't recall Aviva sending him and Mr C copies of their applications so they could check that correct information had been recorded. And he didn't think Aviva had applied the relevant law correctly.

Our investigator didn't think it had been unfair for Aviva to find that Mr C had made a qualifying misrepresentation under the relevant law. And she thought Aviva had acted fairly by treating the misrepresentation as careless. As Aviva had followed the legal remedy set out by the law, the investigator thought it had handled the claim fairly.

Mr D disagreed and so 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 Mr D, I don't think Aviva has treated him unfairly and I'll explain why.

First, I'd like to offer Mr D my sincere condolences for the sad loss of Mr C and I understand he's been through a very difficult time. I'd also like to reassure Mr D that while I've summarised the background to this complaint and his submissions to us, I've carefully considered all he's said and sent us.

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 regulatory principles, the relevant law, the available medical evidence and the policy documentation, to decide whether I think Aviva handled this 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 C took out the policies through a broker, he was asked a number of questions about his health and his circumstances. Aviva used this information to decide whether or not to insure Mr C and if so, on what terms. Aviva says that Mr C 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 these claims.

Aviva thinks Mr C failed to take reasonable care not to make a misrepresentation when he applied for the policies. So I've carefully considered the available evidence to decide whether I think this was a fair conclusion for Aviva 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. During both sales processes, Mr C was asked:

'Have you ever been advised by a health care professional or counsellor to reduce your alcohol use, see a specialist or attend a support group because of your alcohol use?'

Mr C answered 'no' to this question in both 2017 and 2019, although he did disclose that, on average, he drank four glasses of wine per week.

In my view, Aviva's question was clear and specific enough to have prompted Mr C to provide it with the information it wanted to know. So I think Mr C was asked a clear question about whether he'd ever been given medical advice to reduce his alcohol use. I understand Mr D believes Aviva had an opportunity to request Mr C's medical records before agreeing to offer cover. But while an insurer may sometimes request medical evidence at application stage, it isn't obliged to do so. And I don't think there was anything specific noted on either of Mr C's application forms which ought to have made Aviva aware that it might need more medical information.

Next, I need to consider whether I think Aviva has shown that Mr C didn't take reasonable care to answer its question. So I've turned to consider the available medical evidence to assess whether or not I think Aviva's provided sufficient evidence to demonstrate, on balance, that Mr C did answer its question incorrectly during both policy sales.

Mr C's GP completed a 'Medical Attendant Certificate' in June 2024. The form asked whether Mr C had had any history of excessive alcohol use. The GP answered 'yes' and stated that Mr C's level of alcohol consumption had first been noted to be above recommended limits in February 2015. The GP noted that Mr C had been given advice about alcohol consumption in February 2015 and that he was consuming 10-14 units per night.

I've looked too at Mr C's medical records. I can see that in February 2015, Mr C saw his GP with a 'stress-related problem'. The GP notes state that there was a '*recent increase in alcohol…drinks every night up to 2 bottles of wine'.* The notes say that Mr C and the GP discussed management of anxiety and insomnia and that '*the first step is to cut down on alcohol.'*

Based on the available medical evidence, I don't think it was unfair for Aviva to conclude that Mr C had been advised to reduce his alcohol use. This advice was given around two and a half years before Mr C applied for the first policy. And I don't think it was unreasonable for Aviva to have concluded that Mr C should have answered 'yes' to its question during both sales and that therefore, he had made a misrepresentation.

In order for Aviva to rely on the legal remedy available to it under CIDRA, it needs to show, on balance, that Mr C made a 'qualifying' misrepresentation. In other words, that it would have offered cover on different terms - or not at all - if it had been aware of all the facts.

Aviva has provided us with commercially sensitive, confidential underwriting evidence which shows that if Mr C had declared that he had been advised to reduce his alcohol use, it wouldn't have offered him life cover until he'd been alcohol-abstinent for a two-year period.

The applications Mr C completed with the broker show that in 2017 and 2019, he was drinking four glasses of wine per week on average. So I don't think Aviva acted unfairly when it concluded that Mr C hadn't been abstinent from alcohol for two years either in 2017 or 2019. Nor do I think it had any basis on which to highlight its underwriting requirements to Mr C in 2017 because it didn't know he'd previously been advised to reduce his alcohol use.

This means then that I think Aviva has shown that Mr C made qualifying misrepresentations under CIDRA in 2017 and in 2019 and that it's therefore entitled to rely on the remedy available to it under the Act. That's because I'm satisfied that if Mr C had told L&G about the alcohol advice he'd been given, it wouldn't have offered him either policy at those points in time.

Aviva has classified Mr C's misrepresentation as careless. In my view, that was a reasonable response from Aviva, as I don't think Mr C deliberately sought to mislead it. CIDRA says that in cases of careless misrepresentation, an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. If it wouldn't have offered cover, an insurer is entitled decline a claim, cancel the policy from inception and refund the premiums. As Aviva has followed the remedy set out in CIDRA, I don't think it's acted unfairly or unreasonably.

I appreciate Mr D doesn't recall being asked the relevant questions by the broker in either sale. But both application forms record that Mr C answered no to the alcohol reduction question. And I don't think it was unfair for Aviva to rely on the application information it was sent by the broker. Aviva has also provided us with evidence which shows that it sent Mr C

policy packs following both sales – including 'Personal Details Confirmation(s)'. These letters set out the questions Mr C was asked and the answers the brokers recorded. The letters stated:

'Please check all the information shown, especially any given on your behalf, and let us know if anything isn't correct. Please pay particular attention to the health and lifestyle information. You'll need to tell us if any of these details changed in the time between completing your initial application and when we confirmed cover will start.

It's important all the information shown here is correct. If anything's wrong, we may amend, or cancel the policy, or we may not pay a claim.'

While Mr D might not now remember these letters being received by Mr C, or being asked to check the policy details, I think Aviva's provided us with enough evidence to show, on balance, that confirmations were sent. And so I think Mr C had a reasonable opportunity to check that Aviva had been provided with accurate information.

Overall, despite my natural sympathy with Mr D's position, I don't think Aviva acted unfairly when it turned down his claims, cancelled the policies and refunded the premiums.

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 Mr D to accept or reject my decision before 3 June 2025.

Lisa Barham
Ombudsman