DRN-5557773

The complaint

Mrs M complains that Aviva Life & Pensions UK Limited has turned down a critical illness claim she made on a life and critical illness insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the main events.

In May 2019, Mrs M took out a life and critical illness insurance policy through a broker, which was underwritten by Aviva. Cover was offered on standard terms.

Unfortunately, in May 2023, following a routine screening, Mrs M was diagnosed with breast cancer. So she made a critical illness claim on the policy.

Aviva asked for medical evidence to allow it to assess Mrs M's claim. It noted that Mrs M had had a fibroadenoma in her left breast since 2008 and that in 2010, the histology had been confirmed as a fibroadenoma with focal epithelial hyperplasia. It also noted that in 2014, Mrs M had been referred for annual review. And in May 2015, she'd been seen by a breast clinic where the fibroadenoma had been noted.

Based on the available medical evidence, Aviva concluded that Mrs M hadn't answered all of its medical questions correctly when she took out the policy. It concluded that Mrs M had made a careless misrepresentation under the relevant law. It said that if she'd told it about the fibroadenoma when she applied for the policy, it would have applied an exclusion to her contract for breast cancer. So it turned down Mrs M's claim.

While Aviva initially also relied on incorrect medical information related to Mrs M's family history when it assessed the claim, it went on to confirm it had made a mistake and this was no longer a factor in its claims decision. Aviva also accepted it had made other mistakes in its handling of Mrs M's claim. It acknowledged that it hadn't communicated with her as well as it should have done and it'd also wrongly referred to her condition at times. So it offered to pay Mrs M £500 compensation.

Mrs M was unhappy with Aviva's position and she asked us to look into her complaint. In summary, she felt Aviva's questions hadn't been clear. She also felt that it was unfair for Aviva to turn down her claim, given the fibroadenoma had been stable for over a decade and posed no additional risk to her health. She didn't think Aviva had acted in line with its regulatory obligations. And she wasn't satisfied that it had provided evidence to support its position.

Our investigator didn't think Aviva had treated Mrs M unfairly. She thought it had been reasonable for Aviva to find that Mrs M had made a qualifying misrepresentation under the relevant law and to apply the relevant legal remedy. And she also thought that while Aviva had made mistakes in the way it handled the claim, the compensation of £500 it had already offered her was fair and reasonable.

Mrs M 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 sorry to disappoint Mrs M, I think Aviva has already made a fair offer to settle this complaint and I'll explain why.

I was sorry to hear about Mrs M's diagnosis and I appreciate she's been through a very difficult and worrying time. I do hope she's now making a good recovery. I'd also like to reassure Mrs M that while I've summarised the background to her complaint and her detailed submissions to us, I've carefully considered all she's said and sent us. In this decision though, I haven't commented on each specific point she's raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

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 law, the policy terms and the available evidence, to decide whether I think Aviva handled Mrs M'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 Mrs M took out the policy in May 2019, she was asked for information about herself and about her medical history. Aviva used this information to decide whether or not to insure Mrs M and if so, on what terms. Aviva says that Mrs M didn't correctly answer all of the questions she 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 Mrs M's claim.

Aviva thinks Mrs M failed to take reasonable care not to make a misrepresentation when she took out the policy. So I've considered 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. Aviva has provided us with a copy of the medical history questions Mrs M answered, on which it based its assessment of the risk. Aviva initially concluded that Mrs M incorrectly answered questions about her family's medical history (which seems to have been based on conflicting information given in the medical evidence it was sent). But it now accepts that Mrs M did answer questions about her family's medical history accurately. So I don't think I need to comment further on that

particular point, other than to say that I don't think Aviva initial conclusions were unreasonable given the contradictory medical evidence and that those initial conclusions no longer factor in its overall cover decision.

Therefore, I've set out below what I consider to be the relevant question:

'*Within the last four years **have you had**, or have you taken medication for, or been advised to take medication or have treatment for:*

***A lump**, growth, polyp or tumour of any kind, or a mole or freckle that has bled, itched, become painful, changed colour or increased in size, regardless of whether or not you have consulted a doctor?* (My emphasis added).

Mrs M answered 'no' to this question.

In my view, this question was asked in a clear and understandable way and ought to have prompted a reasonable consumer to realise what information Aviva wanted to know. While I appreciate Mrs M doesn't think the question was clear or unambiguous and that it didn't meet regulatory obligations, I don't agree. I think the question was asked in a clear, fair and not misleading way.

Aviva considers Mrs M answered this question inaccurately, so I've next looked at the available medical evidence to decide whether I think this was a fair conclusion for Aviva to draw.

Mrs M's medical records show that in 2008, she was diagnosed with a fibroadenoma in her left breast. In 2010, the histopathology was confirmed as fibroadenoma with focal epithelial hyperplasia. Mrs M was seen in a breast clinic in May 2015 – within the four years before she applied for the policy, where the fibroadenoma was noted. And by Mrs M's own account, while the fibroadenoma hadn't changed in size and had remained stable for many years, it was still present when she applied for the policy in 2019.

As such, I don't think it was unfair or unreasonable for Aviva to have concluded that Mrs M had had a lump in the four years before the policy was taken out – and indeed, which she still had at the time of policy application. As I've said above, I think the question was sufficiently clearly worded and made it clear enough that Mrs M ought to have disclosed a lump, even though she wasn't undergoing treatment for it. This means I don't think it was unfair for Aviva to have considered that Mrs M ought to have answered 'yes' to its question. And that therefore, she did make a misrepresentation when she applied for the policy.

So I now need to think about whether I'm satisfied Aviva has shown Mrs M's misrepresentation was a qualifying one. It's provided me with confidential underwriting evidence which shows that had Mrs M declared a fibroadenoma with focal epithelial hyperplasia, it would have offered her cover, but it would have excluded the following:

'Breast cancer (including carcinoma in situ or less advanced cancer of the breast) or any condition arising from or attributable to treatment for these conditions.'

I appreciate Mrs M would like to see Aviva's underwriting evidence, but it's commercially sensitive and therefore, I can't share it with her. I hope it reassures her to know that someone independent and impartial has carefully checked it. I'm aware too that Mrs M doesn't think her existing fibroadenoma put her at any higher risk of breast cancer and that therefore, Aviva's position is unreasonable. But we won't generally tell insurers what risks they should and shouldn't cover. It's for Aviva to decide which risks it isn't prepared to cover – so long as it exercises its commercial judgement fairly. As I'm satisfied it's shown it would

have applied the breast cancer exclusion to any person in the same situation as Mrs M, I think it has shown it hasn't singled her out in any way.

This means I think Aviva has shown Mrs M 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.

Aviva has told us that it classed Mrs M's misrepresentation as careless, rather than deliberate or reckless. In my view, that was a fair response from Aviva. That's because I don't think Mrs M deliberately sought to mislead Aviva in any way – I think it was reasonable for Aviva to conclude that she'd made a careless mistake.

CIDRA says that in the case of careless misrepresentation, an insurer is entitled to rewrite the policy as if it had had all of the information it wanted to know at the outset. If it would still have offered cover but on different terms, it's entitled to apply those terms retrospectively.

In this case, as I've explained, Aviva has shown that if it had known about Mrs M's fibroadenoma with focal epithelial hyperplasia at the time she applied for the policy, it would have applied an exclusion for critical illness claims related to breast cancer. Therefore, I'm satisfied it would have offered Mrs M cover on different terms. So I think Aviva was reasonably entitled to retrospectively add the exclusion to Mrs M's policy.

As Aviva would never have covered Mrs M for critical illness claims related to breast cancer, I don't think it was unreasonable for it to have turned down her claim. So whilst I sympathise with Mrs M's position, I find that Aviva has acted in line with CIDRA and therefore that it hasn't acted unfairly.

Claim handling

Aviva acknowledges that it didn't handle Mrs M's claim as well as it should have done. It accepts that it missed opportunities to communicate with her effectively – it didn't put its claim decision in writing in a timely manner, it didn't reopen Mrs M's complaint when it should have done, it wrongly referred to the histopathology of the fibroadenoma as a 'neoplasia' in some of its correspondence with her, and I think there were delays in its handling of the claim over the period of a few months. I don't doubt this caused Mrs M additional, unnecessary trouble, upset and worry at an already very difficult time for her. So I think it's appropriate for Aviva to pay Mrs M compensation to reflect the distress and inconvenience its claim handling errors caused her.

It's offered Mrs M £500 compensation. In my view, this is a fair, reasonable and proportionate award to reflect the likely impact of its failures to effectively communicate with Mrs M over the period of a few months, at a time when she'd received a worrying diagnosis and was undergoing treatment. So I find that Aviva has already made a fair offer to settle this complaint and that it must now pay Mrs M £500 compensation if it hasn't already done so.

My final decision

For the reasons I've given above, my final decision is that Aviva didn't act unfairly when it added an exclusion for breast cancer to Mrs M's policy and turned down her critical illness claim.

But I direct Aviva Insurance Limited to pay Mrs M the £500 compensation it's already offered her if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or

reject my decision before 12 June 2025.

Lisa Barham
Ombudsman