

The complaint

Mr W has complained that Aviva Insurance Limited has added an exclusion to a private medical insurance policy.

What happened

Mr W took out the policy in December 2023 on a fully medically underwritten basis.

At that time Aviva added an exclusion for a sprained left knee. In January 2024 Mr W applied to have this exclusion removed. Upon reviewing information provided in support of that removal, Aviva noted that he had a medical history of osteoarthritis (OA). It therefore changed the exclusion to '*Osteoarthritis of both knee joints including related cartilage, supporting musculature and ligament disorders.*' It then later agreed to limit the exclusion to his left knee only.

Our investigator thought that Aviva had acted reasonably, in line with the policy terms and relevant regulation. Mr W disagrees and so the complaint has been forwarded to me for a 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.

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.

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.

Aviva thinks Mr W was careless when not declaring a pre-existing medical condition. So, it has applied the exclusion that it would have applied had the misrepresentation not happened. When considering whether someone has taken reasonable care, I need to consider how clear and specific the questions asked were.

During the application process, one of the questions asked was:

'Has any person named EVER had symptoms of or been diagnosed with any of the following problems...

n) Joint and spine degeneration, wear and tear, arthritis.'

His medical notes record that he'd had an MRI in 2001 that '*showed moderate OA*'.

He says that when he saw the consultant in 2001, he recalls being told that most people of his age would be showing signs of wear and tear in their joints. He says the subsequent issues have related to inflammation, until a self-inflicted sprained knee in October 2022.

Looking at the medical records, Mr W also had an x-ray in August 2016 showing that '*early OA changes are present*'. There's also a GP record from August 2017 saying '*OA left knee...*' Following his visit to A&E in October 2022 where he was diagnosed with a sprain, he was written to afterwards to say that a radiologist had reviewed his x-ray and identified '*early degenerative change*'.

I appreciate what Mr W has said about the condition not getting any worse in over 20 years and that he considers the references to OA to be circumstantial. He's very fit and active and has had no serious issues with his knee since the sprain in 2022. Nevertheless, his records show that he has been medically assessed as having mild OA and early degenerative changes in his left knee. Given this, I'm satisfied that he should have answered 'Yes' to the above question. Therefore, I consider it fair that Aviva has concluded he didn't take reasonable care when applying for the policy.

CIDRA says that an insurer is entitled to apply cover as if it had all of the information it wanted to know at the outset. Based on the underwriting evidence provided by Aviva, I'm satisfied that it would have excluded cover for '*Osteoarthritis of both knee joints including related cartilage, supporting musculature and ligament disorders*' had Mr W correctly disclosed his medical history. Therefore, I consider it was entitled to add the exclusion, and it has acted fairly in amending it to exclude his left knee only.

I'm sympathetic to Mr W's situation and understand how strongly he feels about the issue. However, I'm unable to conclude that Aviva has done anything significantly wrong. Overall, I'm satisfied that it has now correctly applied the exclusion that it would have applied had he declared the condition when taking out the policy. It follows that I do not uphold the complaint.

My final decision

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 October 2025.

Carole Clark
Ombudsman