

The complaint

Miss T has complained that Aviva Protection UK Limited unfairly declined her critical illness claim and cancelled her policy.

Miss T has been supported in her complaint by a claims management company (CMC). References in this decision to comments and submissions made by Miss T include those made by the CMC on her behalf.

What happened

Miss T bought a life and critical illness policy in 2021. She initially applied in March. The answers she gave to the medical questionnaire prompted Aviva to obtain a GP's report. Due to the time it took to obtain this, Aviva told Miss T she'd need to complete a fresh application. Aviva accepted the second application and the policy started in June.

Miss T's health has sadly declined since she bought the policy. So, in 2023, she made a claim.

Aviva investigated but declined the claim. They said that Miss T hadn't provided accurate information about her weight when she re-applied for the policy. Nor had she disclosed she'd been referred to a consultant for gastrointestinal investigation. Aviva said that, if they'd had the information they wouldn't have offered Miss T cover. So they cancelled her policy and refunded her premiums.

Miss T complained, but Aviva didn't change their decision. So Miss T brought her complaint to the Financial Ombudsman Service.

Our investigator reviewed the information provided by both parties and concluded Aviva didn't need to do anything differently to resolve the complaint. She said Aviva's conclusion that Miss T had made a misrepresentation in her application was reasonable. And she was satisfied they'd addressed that in line with the relevant legislation.

Miss T didn't agree with the investigator's view. So the matter's been passed to me to make 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.

Having done that, I'm not upholding Miss T's complaint. I know she'll be disappointed by my decision and I'm sorry about that. I hope it will help if I explain the reasons why I've made it.

Aviva declined Miss T's claim and cancelled her policy because they say she made a misrepresentation. Where an insurer thinks a misrepresentation has been made, we expect them to address that in line with the relevant law.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). 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.

Aviva say Miss T misrepresented her health in her application because she said she weighed a stone more than her medical records show was the case. And she answered “no” to the questions:

“Have you received or been advised to have any medical investigations, scans or blood tests in the last 5 years?”

“Have you been referred to, or been to see, any medical practitioner other than your GP in the last 5 years?”

Aviva say Miss T’s referral to a consultant for gastrointestinal investigations means she should have answered “yes”.

I accept Miss T made a number of health disclosures when she first applied for the policy in March. Those led Aviva to obtain a medical report before they’d offer cover. But the application “timed out” before it could be completed. So Miss T made a fresh application in June. She provided the same answers to the medical questionnaire as she had in March.

But, in May, Miss T consulted her GP about gastrointestinal issues and recent weight loss. Her GP referred her to a consultant that time and said in the referral letter that Miss T had a BMI of 16 – which equated to her weighing about a stone less than she’d said on her application. And she didn’t tell them about her GP consultation, or the referral for investigations. I’ve thought carefully about this.

Miss T says she didn’t disclose this information because she was going through a difficult personal time, which drew her focus from the application. And she says that she was told the investigations were related to irritable bowel syndrome – which she’d previously disclosed. She’s also suggested the record of her BMI as 16 isn’t accurate. She said she had disclosed to Aviva she’d suffered from an eating disorder in the past, but her weight had been stable at a higher level than this for a number of years.

I’ve reviewed Miss T’s medical records. The statement that she had a BMI of 16 is clear and unambiguous. But the records suggest that it may be a typographical error, because the records of her weight from around this time indicate her BMI would be higher than this.

But, even if that’s so, I do think Miss T made a misrepresentation by answering “no” to the questions set out above. That may have been the right answer in March. But the medical records show that wasn’t the case by the time she re-applied in June.

I understand from the submissions made that her medical questionnaire was re-submitted by her financial adviser. But Aviva wrote to Miss T at the end of June 2021. Their letter said:

“Please make sure that all the information you have provided us with was accurate and complete on 29/06/2021 . If you have given us any information on the telephone after this date, please make sure that this information is also accurate and complete.

If you find that there is any inaccurate or missing information, please call us or contact [IFA]. Alternatively, please complete the enclosed Amendment Form and send it to us...

...

It is your responsibility to make sure that your information is complete and accurate. If it isn't, it could mean we won't pay out on a claim in the future.”

Miss T didn't notify Aviva of the changes. I think it's clear she should have done, because the application asked about any investigations or referrals. And at the time they were made, it wasn't clear whether they related to a condition Miss T had disclosed. For that reason, I think she made a misrepresentation.

And I'm satisfied that was a qualifying misrepresentation because Aviva have provided evidence to demonstrate that they wouldn't have offered Miss T the policy if she'd answered “yes” to those questions. I can't share that information because it's commercially sensitive. But it does confirm that Miss T wouldn't have been offered cover due to her outstanding investigations.

I appreciate Miss T believes that, if she'd disclosed the investigations, Aviva would have deferred cover – so she should receive proportionate settlement. I understand why she'd say this. But Aviva's documentation shows this isn't the case, and they wouldn't have offered cover. So I can't say they've acted unfairly here.

Finally I've thought about the remedy Aviva have applied. CIDRA sets out different remedies, depending on whether the misrepresentation is deliberate or reckless, or is careless. If it's deliberate or reckless, an insurer is entitled to cancel the policy and keep the premiums they've received. But, if it was reckless, the insurer should have put their customer in the position they'd have been in had no misrepresentation been made.

Aviva haven't categorised Miss T's misrepresentation. But they've treated it as careless and put her back in the position she would have been had she disclosed the investigations by cancelling the policy and refunding the premiums she'd paid. I think that's fair. And so I don't think they need to do any more to resolve Miss T's complaint.

My final decision

For the reasons I've explained, I'm not upholding Miss T's complaint about Aviva Protection UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 13 November 2025.

Helen Stacey
Ombudsman