

## **The complaint**

Mrs M's complained – in her capacity as executor of her late husband, Mr M's estate – that Aviva Life & Pensions UK Limited have unfairly refused to pay the estate the full value of Mr M's life insurance policy.

## **What happened**

Mr M bought a life insurance policy from Aviva in 2015. It had a term of 24 years and was to pay a lump sum of £150,000 in the event of his death.

Mr M sadly died in autumn 2024. Mrs M lodged a claim on his estate's behalf for payment of the sum assured to be made. But, when they reviewed the available information, Aviva noted his application had included his correct day and month of birth. But the year was wrong and Mr M was actually nine years older than he'd stated in his application.

Aviva said that, had Mr M provided the right birth year, they wouldn't have sold him the policy, because the policy terms required the policy to end before the policyholder's 70<sup>th</sup> birthday. Mr M would have been over 70 at the end of the 24 year term. So Aviva said they would consider making a proportionate settlement of a little under £58,000, based on reducing the policy term to when it would have ended before Mr M's 70<sup>th</sup> birthday and the premiums he'd paid.

Mrs M complained to Aviva. She said that a clerical error had been made, in that her year of birth, rather than Mr M's, have been entered on the application and there had been no intent to deceive Aviva. And she said that she and Mr M had contacted Aviva in 2022 and had passed security providing his correct date of birth. She said, had Aviva brought the error to their attention then, they would have had the chance to make amendments or get alternative cover at that point.

Aviva didn't change their decision. They explained to Mrs M how they'd recalculated Mr M's cover. And they acknowledged their failure not to notice the error in 2022 had caused Mrs M stress – for which they offered her £450 compensation.

Mrs M didn't think that resolved the estate's complaint and brought it to the Financial Ombudsman Service. Our investigator reviewed the information provided by both parties and concluded Aviva didn't need to do more than they'd offered to resolve the complaint. He said that Aviva had dealt with the issue more generously than they have to under the relevant law. So he couldn't say that was unfair. And he thought £450 was a fair amount of compensation for what had happened.

Mrs M told us the estate didn't agree with the investigator's view. So I've been asked 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 don't think Aviva need to do more than they've offered to resolve the estate's complaint. I know this isn't the outcome Mrs M was hoping for and I'm sorry about that. I hope it will help if I explain the reasons for my decision.

Mrs M has shared some detail about her circumstances so I understand why she's made this complaint. But it isn't my role to decide whether the estate's claim should be paid. Rather, I have to decide whether the decision Aviva has made was fair and reasonable, based on the evidence available, the policy terms and 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.

In this case, Aviva say Mr M didn't provide his correct date of birth. Mrs M doesn't dispute that's the case. And I've seen the application which was completed with the wrong year. So I'm satisfied a misrepresentation has been made.

And I'm satisfied that's a qualifying misrepresentation as defined by CIDRA because the policy terms show Aviva wouldn't have offered the policy if they'd known Mr M's true date of birth. They say:

*"If the date of birth of any Life Insured has been incorrectly stated, we will amend the Benefits having regard to the true date of birth. **If the true date of birth is such that, had it been known to us at the time the Plan was proposed for, the Life Insured would have fallen outside of the prescribed age limits to be eligible for the Plan, then the Plan cannot continue.** In such circumstances, the Plan would need to be cancelled with no Benefits payable and the Payments would be refunded, without interest."*

The key facts document says the plan must end before a policyholder's 70<sup>th</sup> birthday. Mr M's policy would have ended after this. So I'm satisfied that he wouldn't have been eligible for the policy, had he provided the right date of birth.

The section of the policy quoted above sets out what Aviva will do if they find someone falls outside the age limits for the policy. I've noted Mrs M's comment that Mr M didn't intentionally misrepresent his age. I understand why she'd want to make that point. But the term mirrors the remedy set out in CIDRA for when someone makes a careless misrepresentation. Careless misrepresentation covers a wide range of circumstances, from understandable oversight or an inadvertent mistake to serious negligence. It doesn't require Mr M to have acted intentionally.

The policy allows for the cancellation of the policy and the refund of the premiums. This mirrors the remedy set out in CIDRA where a misrepresentation is judged to be careless. I appreciate Aviva haven't made any refund. But I think that's fair at this point, because

they've said they will consider a claim even though Mr M didn't disclose his age accurately and – if they decide the claim is otherwise valid – they'll pay a proportionate settlement. While I understand that would be less than Mrs M is hoping for, it will, if paid, be considerably more than the value of the refunded premiums would be. So I can't say that's not fair.

Finally, I've thought about the estate's complaint that Aviva were made aware of Mr M's true date of birth in 2022, but took no action at that point.

Generally, if we think a business has done something wrong, we look to put the customer back in the position they would have been in, had the business done everything right. In this instance, Aviva couldn't have done anything before 2022, as this was the first point they were alerted to Mr M's true date of birth. Aviva have acknowledged they could have done more in 2022 and offered £450 compensation. Mrs M has said this deprived Mr M of the chance to buy a different policy.

I've thought carefully about this. But I can't direct compensation be paid for what might have happened – only what did. While I've no reason to doubt what Mrs M had said, any new application Mr M might have made would have been subject to underwriting, based on his health in 2022. So I can't say whether he would have been able to get cover then – either at a premium he was prepared to pay, or at all. That means I can't direct Aviva to pay compensation at a level linked to his cover.

What I can say they should pay compensation for is the opportunity Mr M lost to make an application then. I think £450 is a reasonable sum for that lost opportunity. I understand this hasn't been paid to date and I can see that Aviva invited Mrs M in their final response letter to provide her bank details so payment could be made. I think it's now fair Aviva pay this. But I don't think they need to do any more than that to resolve the estate's complaint.

### **My final decision**

For the reasons I've explained, I'm directing Aviva Life & Pensions UK Limited to pay the £450 compensation they've previously offered to resolve the complaint Mrs M's made on behalf of the late Mr M's estate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 23 October 2025.

Helen Stacey  
**Ombudsman**