DRN-5812393

The complaint

Mrs S is unhappy that Aviva Life & Pensions UK Limited proportionally settled a claim she made on her life insurance policy which included critical illness cover.

What happened

Mrs S claimed on her life insurance policy following a diagnosis of breast cancer. The claim was proportionately settled as Aviva said she'd failed to accurately declare her medical history when the policy was taken out.

Mrs S complained to Aviva but they maintained their decision was fair. They said they'd have deferred her application, then offered a policy but at a higher price. Unhappy, Mrs S complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. She was satisfied Aviva had acted fairly, and in line with the relevant legislation, when proportionately settling the claim.

Mrs S didn't agree and asked an ombudsman to review the complaint. In summary, she didn't think the questions asked by Aviva were sufficiently clear and, given the timeline of events, she didn't think she was required to disclose the relevant medical conditions. She also highlighted that the policy was cancelled and reinstated in 2022. So, the complaint was 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.

I'm sorry to read of the circumstances which led to Mrs S claiming on her policy. I have a lot of empathy with the circumstances and understand how disappointing it would be for her not to receive the full settlement she was expecting.

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 says Mrs S failed to take reasonable care when asking questions about her medical

history. The policy was applied for, via a third party, in March 2017. She was asked the following questions and answered 'no' to all of them:

- "Have you ever had:

  Cancer, Hodgkins disease, lymphoma, leukaemia, melanoma, or a cyst or tumour of the brain or spine?"

- "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?"

- "Apart from any conditions you've already told us about in this application, within the last two years have you:

  Been referred to, treated at or had any investigations at a hospital or clinic?"

- "Apart from any conditions, scans, tests or investigations you've already told us about in this application are you currently:

  Waiting for the results of any test or investigation?"

Mrs S' medical records demonstrate that:

- Between September 2013 and April 2016 she had a number of scans which showed cysts in her breasts.

- In March 2017, shortly before the application, she was referred to the breast clinic for a painful lump in her breast. Later that month cysts were found and aspirated.

- In 2010 Mrs S was diagnosed with STUMP (Smooth Muscle Tumor of Uncertain Malignant Potential) and required regular checks on a six monthly basis. These checks continued until at least May 2015. Mrs S says she was discharged in November 2015.

Based on the information contained in Mrs S' medical records I'm satisfied Mrs S ought to have disclosed the painful lump, the cysts and the ongoing checks in relation to STUMP in response to the above questions.

The painful lump was located shortly before the application and led to treatment, as it was aspirated. Mrs S also had an ongoing referral and/or investigations for STUMP within the relevant timeframe set out in the questions. And she'd had a number of appointments for investigations in relation to cysts during recent years.

I'm satisfied that the questions were adequately clear. I've considered what Mrs S said about the question not referring specifically to cysts. But I haven't found her representations on this point to be persuasive in the circumstances of this case. I think the cysts ought reasonably to have been disclosed in response to the questions asked. And, in any event, even if I accepted her argument about the history of cysts, she'd had a recent referral for a painful lump on her breast which ought to have been disclosed in response to the other questions.

I've also considered what Mrs S has said about her broker processing the application at a later date, following her discovery of the lump. However, that's not something Aviva is responsible for. They are entitled to rely on the information presented to them when making a decision about cover.

Mrs S was also sent a form in early April 2017 which set out the answers she'd given and asked her to check the information. I appreciate that, by that time, Mrs S had received treatment for the lump, which turned out to be a cyst, but I still think this ought to have prompted her to check this with Aviva.

Aviva has provided underwriting evidence that if Mrs S had disclosed the conditions I've outlined above they would have deferred her application. At a later date, they would have been able to offer cover, but at a higher price. So, I'm satisfied Mrs S' misrepresentation was a qualifying one.

I don't think that Aviva ought to have done anything differently when the policy was cancelled and reinstated. I wouldn't have expected Aviva to check Mrs S' full medical history and any disclosures made at the point of sale. The circumstances around the cancellation and reinstatement were unconnected. And I don't think there was anything, based on the evidence I've been provided with, that ought reasonably to have alerted Aviva to there being a potential misrepresentation at the point of sale.

Aviva have classified Mrs S' misrepresentation as 'careless' as they've settled the claim proportionately. I think that's reasonable as I don't think Mrs S intended to mislead Aviva. I think it's more likely she overlooked the significance of some of her medical history. So, I've looked at the actions Aviva can take in line with CIDRA.

In such circumstances, where a higher premium would have been charged, Aviva is entitled to proportionately settle the claim. That's what they've done in Mrs S' case. I'm therefore satisfied they've acted in line with the relevant legislation when not paying the claim in full. I think it's therefore fair and reasonable for Aviva to proportionately settle the claim.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 8 December 2025.

Anna Wilshaw
Ombudsman