

The complaint

Mr A is unhappy with Aviva Life & Pensions UK Limited's decision not to pay his claim and to unwind his policy.

What happened

Mr A had joint life insurance for him and his wife (Mrs A) with Aviva. The policy was set up in October 2020 through a third-party. Sadly, Mrs A passed away in April 2024 from bilateral pulmonary thromboembolism, deep vein thrombosis, type two diabetes and hypertension. Mr A made a claim in May 2024.

Mr A said Aviva, instead of paying his claim, decided to unwind the policy back to inception and returned the premiums paid. He explained Aviva had unfairly decided Mrs A had misrepresented her medical history. Mr A said Mrs A suffered with gestational diabetes that had resolved following the birth of their child in 2015. He also said this was shared with Aviva at the time they applied for the policy and so he'd like it to reinstate the cover and pay the claim.

Aviva said it asked a clear question at the point of sale and that whilst it didn't think Mrs A deliberately answered incorrectly, it said she ought to have taken more care and answered it differently. Aviva said had it known the full extent of Mrs A's medical history, particularly her type two diabetes, it wouldn't have offered the policy. It said for these reasons, it chose to unwind the policy and return the premiums paid.

Our investigator didn't uphold this complaint. She agreed the question asked by Aviva was clear and that it should have been answered differently. She said although Mrs A declared her gestational diabetes, that wasn't an accurate response as Mrs A had been diagnosed with type two diabetes in 2008 and prescribed tablet medication to help manage the condition. She also noted Mrs A was recommended to take insulin medication when she was pregnant. Our investigator's opinion was that Aviva had shown a qualifying misrepresentation had taken place and that Aviva was entitled to take the remedial action it had under CIDRA.

Mr A, unhappy with this, asked for an ombudsman to consider his complaint. In summary, Mr A said;

- Mrs A didn't have type two diabetes, or take regular medication for it, as it was only present at the time she was carrying their children. Mr A said Mrs A's diabetes had been in remission since around 2008.
- It's unfair to categorise the non-disclosure as careless, rather, reasonable care was taken as gestational diabetes had been disclosed.
- Aviva hasn't assessed Mrs A's medical records from around the time they took the policy between 2016 – 2020 which he feels is most relevant. He said Mrs A was unaware of her type two diabetes and that the medical records show there was no recent diagnosis or evidence of medication being prescribed or treatment being

provided.

- The question asked by Aviva about this was unclear and ambiguous. He said there were too many conditions listed within the question that made it difficult to understand what information was relevant. He also said there was no timeframe provided within the question, further adding to the confusion. He noted it should have specified within a lifetime, 10 years or another specific period. Mr A said CIDRA says questions must be clear and specific and says that wasn't the case here.
- Aviva's position that it wouldn't have offered the policy is hypothetical and speculative and it's not enough to say it would have asked follow up questions, it must show this through underwriting evidence.
- Aviva took too long to reach an answer on his claim.

And so, it's now for me to make a final 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 was sorry to learn of the circumstances that gave rise to this complaint. I'd like to offer my condolences to Mr A and his family at what must be a very difficult time.

I've decided not to uphold this complaint for similar reasons explained by our investigator. The medical evidence shows that Mrs A was diagnosed with type two diabetes in 2008 and I'm persuaded that this should have been declared to Aviva as part of the health screening questionnaire. The medical evidence also shows that although Mrs A opted not to take her medication, this was against medical advice at the time. And so, whilst Mr A said her diabetes was in remission and it was just Mrs A's gestational diabetes needed declaring, there's no evidence to support that from a medical standpoint. It's for these reasons I think Aviva, when it discovered the full extent of Mrs A's medical history, was entitled to decline the claim, unwind the policy and return the premiums. I'll explain why.

The relevant law that applies in this case comes from the Consumer Insurance Disclosure and Representations Act 2012 (CIDRA). This law, in summary, says consumers must take reasonable care not to make a misrepresentation when taking out an insurance policy.

If a misrepresentation occurs, then CIDRA sets out the action Aviva can take had it known all the facts at the time the policy was sold. CIDRA also puts the onus on Aviva to ask clear and specific questions so it can get a better understanding of a consumer's circumstances so it can offer a suitable policy. Aviva asked;

"Have you ever had:

Diabetes, pre-diabetes, Impaired glucose tolerance (IGT), raised blood sugar or sugar in the urine?"

Mrs A answered 'yes' to this question, which prompted follow up questions;

"Which of the following best describes your condition?"

Answer given: Sugar in urine during pregnancy, cleared after pregnancy (gestational diabetes).

“Is this condition current?”

Answer: No.

“Are you currently diabetic?”

Answer: No

I should start by saying I find the original question asked by Aviva to be clear and non-misleading. I know Mr A said the inclusion of other medical conditions made it difficult to follow, but this is a fairly typical question and standard approach taken by insurers when screening consumers. I also think the medical conditions listed in the question are linked to each other and aimed at understanding whether the applicant has ever had diabetes or raised blood sugars. I note Mr A's comments about Aviva not specifying a timeframe to make the consideration easier, but the question asked *have you ever had* and so this isn't a question with a limited review window. Aviva wanted to know whether Mrs A had ever had these conditions and so I would not expect it to ask the question in the way Mr A suggested.

Mrs A's medical records show that during pregnancy, her type two diabetes, usually controlled by tablet medication, needed to be controlled by insulin and this was recommended by her GP in 2009. And so, I can see why she may have thought it necessary to disclose that but there were other, more relevant responses she had to choose from which I think would have described her condition more accurately. The other options were *type one diabetes, type two diabetes or late/maturity onset diabetes*.

I've reviewed Mrs A's medical records, and I can see she was diagnosed with type two diabetes in 2008. I acknowledge Mr A's argument that Mrs A didn't identify as someone suffering with diabetes. There's no evidence to show Mrs A was ever told her diabetes was in remission. But there are several entries which highlight how her GP was concerned about her diabetes and its poor management.

In May 2016 – four years before taking the policy – Mrs A admitted to the GP she'd not been taking her medication for around 10 months. This was also the case in April 2013, where it was noted Mrs A had been forgetting to take her tablet medication. She asked to be referred to the diabetes clinic urgently, where it was decided she needed to go back on her insulin medication to try and stabilise her condition. I should also note Mrs A was nursing her child at this point and was no longer pregnant. So, although I can see Mrs A suffered with diabetes that needed to be controlled with insulin during pregnancy, the evidence shows me she suffered with diabetes from 2008 when she was diagnosed and throughout her medical history. And although Mrs A didn't always take her medication, that wasn't because she was cured, or her diabetes was in remission like Mr A stated.

Mr A argued there were no medical records showing Mrs A was actively suffering with her type two diabetes and so she reasonably thought there was no need to disclose this at the time of sale in 2020. But I'm less persuaded by that given her medical records show the GP and the diabetic clinic were actively trying to contact Mrs A during that time. The notes show in November 2019, the GP noted Mrs A hadn't had a blood test or glucose test since 2016 and was actively trying to reach her to discuss that. Similarly, the diabetic retinal screening service had also been actively trying to reach Mrs A around that time. Mrs A also failed to attend other diabetes-related appointments in January and September 2018. This was the same in October and December 2016 and again in March 2017.

The medical notes show letters were also sent to Mrs A notifying her of failed appointments.

Mrs A attended a diabetes retinal screening appointment with a consultant specialist in July 2023. Although this is three years after the policy inception, it was noted that Mrs A had disclosed she had been living with diabetes for nine years – albeit she said this was diet

controlled and that she wasn't taking any medication at that time. I think this further persuades me that Mrs A was aware of her condition.

It's for all these reasons, I'm persuaded Mrs A ought reasonably to have declared that when asked by Aviva in 2020. Aviva said this was a careless misrepresentation, the lesser categorisation within CIDRA and I agree with that. But what makes this a qualifying misrepresentation is that Aviva has shown it would have done something differently had this been known to it at the time they took the policy.

Aviva said had it known the facts about Mrs A's diabetes and the full extent of her poor management of the condition, it wouldn't have offered the policy. Mr A's rejected Aviva's position, but I have to say I'm persuaded by it. I say that because Aviva has shared its underwriting criteria and it shows that whilst it would have carefully considered the application, it would not have offered a policy because Mrs A hadn't attended regular appointments and her overall management of it was poor.

Aviva said had Mrs A disclosed her type two diabetes, it would have asked for her latest HbA1c reading – this provides an average of blood sugar levels over a two – three-month period. As Mr A highlighted, Mrs A hadn't attended appointments in the run up to taking the policy in 2020, I think it's most likely she wouldn't have been able to provide this information. Aviva said, therefore, it would have requested to see her medical records and its underwriters would have taken a closer look to see if they could manually underwrite Mrs A. The underwriters have subsequently now seen those records and have said Aviva would not have offered cover in the circumstances. They said;

“The GP report indicates that type 2 diabetes was diagnosed in 2008. It also shows a long pre-application history of poor control, poor compliance with treatment and failure to attend reviews”

It's because Aviva has shown it would have done something differently, that this is a qualifying misrepresentation. CIDRA says that to remedy this, Aviva is entitled to cancel the policy from inception and must return the premiums. As that's the action it's taken on this case, there's nothing more it needs to do in respect of this complaint.

Mr A said Aviva took too long to assess his claim and I understand why he says that. He made his claim in May 2024 and the answer to it didn't come until February 2025. But I've not seen any evidence of unnecessary delays on Aviva's part. The evidence suggests the delays stem from issues with the GP practice. When Mr A made his claim, Aviva requested the GP complete a health questionnaire about Mrs A's medical history – this is standard practice to help Aviva validate a potential claim. The GP returned the form in June 2024 and disclosed that Mrs A suffered with type two diabetes. As this was unknown to Aviva at the time, it asked the GP to provide more medical information about this so it could better understand her health.

The GP didn't respond to this request for almost two and a half months and when Aviva received this information on 26 September 2024, it was incomplete as it simply said she'd been diagnosed with diabetes in 2008. Aviva asked the GP to provide more information and again this took another month and the information was still not enough. The GP had provided medical records dating back to 2022 and Aviva needed to see all of Mrs A's medical records from 2008 when she was initially diagnosed with type two diabetes. The information it needed was eventually received some four months later in February 2025.

So, whilst I agree there were delays here, I don't think it'd be fair to hold Aviva responsible as this was beyond Aviva's reasonable control. Aviva said it regularly chased the GP throughout that time and kept Mr A up to date as often as it could. I'm satisfied that when

Aviva received all the evidence it had asked for, it assessed the claim in good time and gave its answer in February 2025

My final decision

For the reasons I've explained, I've decided not to uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 December 2025.

Scott Slade
Ombudsman