

## **The complaint**

Mr J's complained that Aviva Life & Pensions UK Limited unfairly declined the claim he made after he'd suffered a heart attack and cancelled his policy.

## **What happened**

In 2021, with the help of a broker, Mr J applied to Aviva for a life and critical illness policy. As part of the application, he completed a health and lifestyle questionnaire. Aviva accepted the application and the cover started immediately.

In summer 2023, Mr J sadly suffered a heart attack. So he contacted Aviva to make a claim on his critical illness cover.

Aviva gathered medical evidence to help them assess the claim. They noted from this that Mr J hadn't told them during his application he'd been advised in the past to reduce his alcohol intake. Nor had he told them that he'd been diagnosed with haemochromatosis, for which he was treated with venesection (drawing of blood to reduce his iron levels). Aviva said, if they'd known this at the time Mr J had bought the policy, they wouldn't have offered it to him. So they declined his claim, cancelled the policy and refunded the premiums he'd paid.

Mr J complained. But Aviva didn't change their decision. So Mr J brought his 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. He was satisfied it was reasonable for them to say Mr J had misrepresented his health when he applied for the policy. And he said Aviva had dealt with the misrepresentation in line with the relevant law.

Mr J didn't agree with our investigator's view. So the matter's been passed to 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.

Having done that, I'm not upholding Mr J's complaint. I know that isn't the outcome he was hoping for. I hope it will help if I explain the reasons for my decision.

As our investigator explained, my role isn't to decide whether Mr J's claim should be paid. It's to decide whether Aviva's decision that it shouldn't be was made fairly and reasonably, in line with 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 J didn't answer two questions accurately. The first of these said:

*"Has a doctor, or other health or social worker, been concerned about your drinking or suggested that you cut down?"*

Mr J answered "no". Aviva say he should have answered "yes".

It's clear from the information he's sent us that Mr J's upset about what Aviva is implying here. I understand why that would be upsetting. But the question say "...concerned about your drinking or suggested that you cut down". I think that's two separate things. And it's clear from Aviva's notes they've looked at the question in the same way.

But it is the case that Mr J's medical records do include several records where staff at his GP's practice did advise him to reduce his alcohol consumption. So I think it's clear it was suggested to Mr J he should cut down. That means it's fair to say he didn't answer the question accurately and made a misrepresentation.

Aviva also say Mr J's haemochromatosis treatment meant he should also have answered "yes" to the question:

*"Apart from anything you've already told us about, within the last two years have you:*

...

*Been under follow-up with your GP surgery, a specialist, hospital or clinic, including reviews or check ups you have been asked to attend even if you didn't?"*

Mr J says he didn't because there was no need to declare blood donation. I've thought about this.

It's not clear why Mr J has equated blood donation with the venesection for his haemochromatosis. If he was advised to answer the question that way, that's an issue he may want to pursue with his adviser. But, regardless of what caused any misunderstanding on Mr J's part, his blood was taken at a specialist clinic to relieve haemochromatosis – not to donate to others. So I think it was reasonable for Aviva to say this should have been disclosed and Mr J made a second misrepresentation here.

And I'm satisfied that the misrepresentations were qualifying misrepresentations within the meaning of CIDRA, because Aviva have provided evidence to show that, had he answered "yes" to either question, they wouldn't have sold Mr J the policy.

Finally I've thought about the actions Aviva have taken following their decision there had been a misrepresentation. CIDRA sets out that, if an insurer decides a misrepresentation was deliberate or reckless, they can void the policy and keep the premiums which they've received. If the misrepresentation is careless, they should put the customer back in the position they would have been, if no misrepresentation had been made.

Aviva categorised Mr J's misrepresentation as reckless – so they were entitled to cancel the policy and keep the premiums he'd paid. But they have actually applied the remedy CIDRA says should apply to careless misrepresentations and have refunded the premiums. That's as much as I could ask them to do. And so, while I'm sorry my decision will disappoint Mr J, I don't think Aviva need to do any more to resolve his complaint.

### **My final decision**

For the reasons I've explained, I'm not upholding Mr J's complaint about Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 October 2025.

Helen Stacey  
**Ombudsman**