

## **The complaint**

Mrs H has complained that Aviva Life & Pensions UK Limited has declined a critical illness claim.

## **What happened**

The background to this complaint is well known to the parties. In summary in June 2023 Mrs H applied for a decreasing term life and critical illness policy for a term of 18 years. The initial sum assured was £48,000.

In July 2024 Mrs H was unfortunately diagnosed with breast cancer and started a claim. Aviva declined her claim, it said she had misrepresented her medical history when taking out the policy in that she hadn't disclosed raised blood sugar/pre-diabetes. Aviva cancelled the critical illness cover and refunded the premiums and adjusted the life cover in accordance with what it would have cost had the medical questions been answered accurately.

Unhappy Mrs H referred her complaint here. Our investigator didn't recommend that it be upheld. She didn't find that Mrs H had taken reasonable care when answering the question regarding her blood sugar. She was satisfied that Aviva had acted in accordance with the legislation in returning the premium paid for the critical illness cover and adjusting the life cover.

Mrs H appealed. She is represented but for ease of reading I will just refer to the representations as being made by Mrs H. Mrs H said that the 'pre-diabetic' terminology had not been used in discussions with her GP and that she was unaware that she had raised blood sugar. She also said that Aviva had not dealt with her claim in a timely manner or kept her updated as to its progress.

Our investigator considered the service provided but didn't find that overall Aviva had caused delays.

As no agreement has been reached the case has been passed to me to determine.

## **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'd like to reassure Mrs H that whilst I've summarised the background to this complaint, I've carefully considered all that has been sent to us. I'm very sorry to hear about the circumstances that led to Mrs H needing to make a claim and I don't doubt how upsetting and worrying the situation has been for her. In this decision though I haven't commented on each submission, rather I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.

The relevant regulator's rules say that insurers mustn't turn down claims unreasonably. So

I've considered, amongst other things, the law, regulatory guidance, the policy terms and good industry practice to decide whether I think Aviva treated Mrs H fairly. Having done so I agree with the conclusion reached by our investigator. I'll explain why.

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 take reasonable care, 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 thinks Mrs H failed to take reasonable care not to make a misrepresentation when answering a medical question asked on the application form. The question asked:

*Have you ever had:*

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

Mrs H answered negatively to this question. However her medical records show that she has raised blood sugar on more than one occasion, and her GP confirmed that she was in the prediabetic ranges since 18 May 2021 with HbA1c ranges between 42-45. I haven't disregarded her testimony that she is not a 'medical person' and wasn't aware of the meaning of the reference to HbA1C in her notes. She said too that she had no recollection of a discussion about high blood sugar. As far as she was aware she said that she was having routine 'over 40s' reviews to discuss her lifestyle.

But on balance I find it more likely than not that she would have at been made aware of having raised blood sugar for which she was under review. Her medical notes record blood tests over a period of time with high levels recorded in May 2021 and March 2023.

I note there is an entry in Mrs H's GP notes from an appointment in June 2021 where Mrs H was treated over the phone due to Covid-19. The appointment was to discuss recent blood results. I find it was reasonable to assume that she would have been told the reason for the tests.

An entry in her GP records from 12 May 2023 says that the GP had tried to ring Mrs H to discuss HbA1c as it was again in pre-diabetic range. They noted that there was no answer but if she called back to rebook to discuss with (practice nurse). It is not clear if the discussion went ahead.

However the next month Mrs H took out the policy (although I understand she had previously had critical illness cover). I can accept Mrs H may not have been told she was pre-diabetic, but I don't find that it was unreasonable for Aviva to conclude that she failed to take reasonable care when answering the question with regard to raised blood sugar.

Accordingly I've considered what Aviva would have done had the questions been answered positively. I can't share the underwriting evidence as it is commercially sensitive. But I'm

satisfied that had Mrs H indicated 'Yes' Aviva wouldn't have offered critical illness cover. It would have offered life cover but at a higher premium. This means that there was a qualifying misrepresentation under CIDRA. Aviva has treated the misrepresentation as careless – and I find that is fair. There is nothing to suggested that Mrs H deliberately or recklessly answered the question incorrectly. The actions that Aviva has taken by cancelling the critical illness cover and adjusting the premium for the life cover are in accordance with CIDRA and in the circumstances I find those actions were fair.

Mrs H has also complained about the service that she received., she felt that there were delays in reviewing her claim. I do understand that this was a very worrying time for Mrs H and she would have been anxious to have a speedy response to her claim. I can see that from the time she submitted her claim to being told it had been declined was over six months. But Aviva needed to assess the claim and to do so required information from Mrs H's GP surgery. Once in receipt of that information it made a further request which again took some time to come. Overall, I don't find that there were excessive delays on the part of Aviva in assessing Mrs H's claim.

I am sorry that my decision doesn't bring Mrs H welcome news.

### **My final decision**

For the reasons given above my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 11 December 2025.

Lindsey Woloski  
**Ombudsman**