

The complaint

Mrs D's complained – in her capacity as executor of her late husband's estate – that Aviva Life & Pensions UK Limited unfairly declined the claim she made after Mr D died and cancelled the policy.

What happened

Mr D applied to Aviva for a life and critical illness in early 2021. As part of the application, he completed a health and lifestyle questionnaire, in which he gave his weight as 20 stone. Aviva added a rating to the policy to reflect his Body Mass Index (BMI) and the policy started.

In 2023, Mr D was very sadly diagnosed with cancer. This progressed and, by the end of 2024, he had a terminal diagnosis. He contacted Aviva to make a terminal illness claim but passed away just a couple of weeks later. Mrs D then pursued a life claim on behalf of his estate.

Aviva gathered medical evidence to help them assess the claim. Having considered that, they decided to decline the estate's claim, cancel the policy and refund the premiums. They said his medical records showed Mr D had weighed 25 stone about two months after his application – so the information on his application couldn't have been accurate. And he'd failed to advise them he'd been diagnosed with sleep apnoea.

Mrs D complained to Aviva about their decision. She challenged the accuracy of Mr D's records and submitted it was possible he'd put on that much weight in the two month period. She challenged the relevance of Mr D's weight when he'd died of cancer, not as a result of any weight related issue. And she complained that Aviva only referred to Mr D's sleep apnoea after she'd challenged their claim decision.

Aviva didn't change their claim decision. So Mrs D brought the estate's complaint to the Financial Ombudsman Service.

Our investigator reviewed the information provided by both parties and concluded Aviva didn't need to do anything different to resolve the complaint. He was satisfied it was reasonable for them to have concluded Mr D's submission that he weighed 20 stone when he applied for the policy wasn't accurate. And Aviva had dealt with that misrepresentation in line with the relevant law.

Mrs D told us the estate didn't agree with the investigator's view. So I've been asked 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 the estate's complaint. I know Mrs D will find my decision distressing and I'm sorry about that. I hope it will help if I set out the reasons I've made it.

As our investigator explained, we need to decide if an insurer has dealt with a claim fairly, having regard to 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 D didn't provide accurate information about his weight and his sleep apnoea diagnosis. While they mentioned both issues, they didn't investigate the sleep apnoea. So, like our investigator, I've focused on the question about Mr D's weight.

I don't think there's any scope to misunderstand what was being asked here, as Aviva's question simply says "*What is your weight?*" So I've considered the information about Mr D's weight in his records in relation to his statement he weighed 20 stone.

Mr D applied for the policy in mid-February 2021. There's no record of his weight at that precise time. But his records do record the following weights:

- 129 kg (20st 4lb) in October 2007
- 133.356 kg (20st 13lb) in September 2016
- 146 kg (22st 13lb) in September 2018
- 158 kg (24st 12lb) on 30 April 2021

I'm satisfied from this that Mr D's records hadn't shown him weighing 20st for many years.

I've also considered the detail of the entry dated 30 April 2021. Mrs D has pointed out that Mr D's consultation on that date was by telephone – so he wasn't weighed by a medical professional, but provided the information about his weight himself. And she's said it is possible for Mr D to have put on a substantial amount of weight in just a couple of months. I've thought about this.

I'm not persuaded the fact that Mr D provided his weight over the telephone means the information was unreliable. In response to a query from Aviva, Mr D's GP surgery confirmed that he contacted them via their "Ask my GP" service, which copies a patient's query into their notes as the patient has written it.

Mr D didn't just provide his weight (which he gave as 25st). He also said he was the heaviest he'd ever been and that he'd put on three stone over the previous 15 months. And the reason he contacted the doctor was to request a prescription for weight loss medication. I think that's consistent with the weights recorded in his records.

I'm not an expert. So I can't say whether it's possible to have put on almost five stone in less than three months. Mrs D says it is. But she's not provided any evidence to support that. By contrast, Aviva have provided an opinion from their Chief Medical Officer, who said

"It is not physiologically possible to gain 5 stone in weight in 3 months."

I find this persuasive and consistent with the medical records. So, overall I think it was reasonable for Aviva to conclude Mr D misrepresented his weight in his application.

And I'm satisfied it's fair to say that was a qualifying misrepresentation, because Aviva have provided evidence to show that they would have declined any application from somebody of Mr D's height who weighed more than 20st.

The remedy CIDRA sets out depends on whether Aviva decides the misrepresentation is deliberate or reckless, or is careless. If they decide it's deliberate or reckless, Aviva can decline the claim, cancel the policy, and keep the premiums paid. But if it's careless, they should put the customer in the position they would have been in, if there had been no misrepresentation.

Aviva haven't said how they've categorised the misrepresentation. But they've applied the remedy for careless misrepresentation by cancelling the policy and refunding the premiums. I think that's fair.

I do recognise that Mrs D was hoping for a different outcome. But I can only say Aviva should do something more to resolve the complaint if I think they've not dealt fairly with the estate's claim. I don't think that's happened here. And so, for the reasons I've explained, I don't think Aviva need to do any more to resolve matters.

My final decision

For the reasons I've explained, I'm not upholding the complaint Mrs D's made about Aviva Life & Pensions UK Limited in her capacity as executor of the late Mr D's estate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr D to accept or reject my decision before 9 December 2025.

Helen Stacey
Ombudsman