

The complaint

Mrs C's complained that Aviva Life & Pensions UK Limited dealt with her unfairly when they proportionately reduced the settlement she received following a claim.

What happened

Mrs C bought a life and critical illness cover policy from Aviva in late 2023. The policy provided decreasing cover over the term, with a starting cover amount of £257,495.

Just under a year later, Mrs C was diagnosed with a form of multiple sclerosis. So she submitted a critical illness claim to Aviva.

As part of their assessment of the claim, Aviva obtained and reviewed Mrs C's medical records and compared the information they contained with what she'd told them in her application. They noted that, shortly before her application, Mrs C's GP had recorded her weight as almost two stones heavier than the weight she'd declared on the application.

Aviva said, if they'd have known this, they would have charged Mrs C a higher premium for her policy. They said she'd only paid 67% of the premium they would have charged – so they only had to pay the same proportion of the settlement. They paid Mrs C £170,731.07.

Mrs C complained about Aviva's decision. Aviva didn't change the substance. But they did accept they'd not used the right details of Mrs C's height – which meant they'd not correctly calculated the proportionate settlement. So they paid Mrs C a further £32,937 plus interest.

Mrs C wasn't satisfied with Aviva's response and brought her complaint to the Financial Ombudsman Service. She told us she felt Aviva had asked her leading questions and wasn't happy at the inference she'd not provided honest answers in her application.

Our investigator reviewed the information provided by both parties and concluded Aviva didn't need to do any more to resolve the complaint. She was satisfied that Aviva had dealt with the claim fairly and in line with the relevant law.

Mrs C didn't agree with our investigator's view. So I've been asked 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.

Having done that, I'm not upholding Mrs C's complaint. I know this isn't the outcome she was hoping for and I'm sorry about that. I hope it will help if I explain the reasons for my decision.

My role isn't to decide a claim. It's to decide if the claim decision Aviva reached is fair, reasonable and 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 says Mrs C didn't take reasonable care when declaring her weight. They say her GP records show that she weighed almost two stone more than she said she did in her application. I've considered this.

The GP records are clear that Mrs C's weight was recorded in 2022 and 2023 as at least 1½ stone more than the weight she put in her application. I've noted that Aviva didn't just rely on her answer to conclude Mrs C made a misrepresentation but called her to ask her about why she'd answered the questions as she had. I think that was fair.

I've listened to the call Aviva made. I don't think the caller asked Mrs C leading questions. Mrs C told the caller she didn't weigh herself at the time she applied and would have guessed her weight – which she said had always been within half a stone of the weight she'd provided.

I've thought carefully about this. I understand weight does fluctuate. But I can't reasonably say Aviva should have attributed a difference of 1½-2 stone between what Mrs C declared and what her GP records show she weighed for at least a year before her application to fluctuation. And, while I appreciate the effort Mrs C has made to provide additional records of her weight, these all date from at least 10 years before she bought the policy. So I'm not persuaded they show what she declared in her application was accurate. And that means I think it was fair for Aviva to conclude she made a misrepresentation in her application.

And I'm satisfied that was a qualifying misrepresentation as defined by CIDRA, because Aviva has provided evidence to show that, if Mrs C had given an accurate weight, they wouldn't sold her the policy on the terms they did, but would have charged her a higher premium.

Finally, I've thought about the remedy Aviva have applied. The appropriate remedy depends on whether they categorise the misrepresentation as deliberate or reckless, or as careless. If it's deliberate or reckless, CIDRA allows an insurer to decline any claim, cancel the policy and keep the premiums a customer has paid. But, if they decide a misrepresentation is careless, the insurer should do what it would have done if no misrepresentation had been made.

Mrs C is unhappy that Aviva have implied she's been dishonest. But Aviva have said they don't believe she deliberately gave inaccurate information. And they've applied the remedy applicable to careless misrepresentation, by making a proportionate settlement, based on the premium they actually received as a percentage of the premium they should have been paid.

I think that's fair. And I hope it will be of some comfort to Mrs C to know that the Association of British Insurers' code of practice on misrepresentation says that careless misrepresentation:

“...includes anything from an understandable oversight, or an inadvertent mistake, to serious negligence.”

So I don't think Aviva treating it this way brings Mrs C's integrity into question. But, for the reasons I've explained, I'm satisfied they have dealt with her as CIDRA requires. And so they don't need to do any more to resolve her complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 7 January 2026.

Helen Stacey
Ombudsman