

The complaint

Mr L's complained that Aviva Protection UK Limited unfairly declined his critical illness claim and cancelled his policy because they said he'd made a misrepresentation in his application.

What happened

In summer 2023, Mr L bought a life and critical illness policy from a company I'll call A. he did so using a broker. The policy has since transferred to Aviva.

In late 2024, Mr L sadly suffered a stroke. So he made a claim on the policy. Aviva declined the claim because they said Mr L had failed to disclose he'd had an echocardiogram (ECG) in 2019 which had identified an issue with his heart.

Aviva acknowledged Mr L had disclosed other health issues in his application. But they said that, if he'd disclosed the ECG, his medical records would have been reviewed before any cover was offered. And the issue the ECG identified would have meant A would never have offered him critical illness cover. So, as well as declining the claim, they cancelled Mr L's policy and refunded the premiums he'd paid.

Mr L complained to Aviva. He said he'd told the broker he'd had an ECG, but the broker hadn't passed the information on to A. And he said his GP had never told him about the issue with his heart – so he couldn't have disclosed it. Aviva didn't change their claim decision. So Mr L 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 different to resolve the complaint. He was satisfied that A hadn't received accurate information about Mr L's health as the ECG should have been disclosed. He accepted Mr L didn't know the result. But he said the question required disclosure of the fact he'd had a test. He noted that A had sent Mr L a copy of the answers given to them for checking and Mr L hadn't made any changes. And he was satisfied that Aviva had dealt with the misrepresentation in line with the relevant law.

Mr L 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 Mr L's complaint. I know this isn't the outcome he hoped for and I'm sorry about that. I hope it will help if I explain the reasons for my decision. I'll do so, focusing on the points and evidence I consider material to my decision. So if I don't mention something in particular, it's not because I haven't thought about it. Rather, it doesn't change the outcome of the complaint.

While I note Mr L's concerns about the broker who dealt with his purchase of the policy, I'm only dealing in this decision with the complaint he's made about Aviva. And, as our

investigator did, I'll focus on whether Aviva's decision was fair, reasonable and in line with 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 L made a misrepresentation because he answered "no" to the question:

"Have you received or been advised to have any medical investigations, scans or blood tests in the last 5 years?"

Aviva say the question should have been answered "yes" because of the ECG Mr L had in 2019. I've thought about this.

Mr L says Aviva acted unfairly because they relied on information about a heart condition he didn't know about to say he made a misrepresentation. I don't agree that's the case. The application includes a number of questions relating to the heart, all of which Mr L answered "no". Aviva haven't suggested any of these answers was wrong. Their decision was based only on the answer to the question above. I think that's fair.

I accept Mr L told the broker about the ECG. But, as our investigator explained, it's ultimately Mr L's responsibility to make sure the information provided was accurate. This is evidenced by the welcome pack Mr L was sent. This enclosed a copy of the application and the answers which were given. And the covering letter includes the following:

"Please make sure that all the information you have provided us with was accurate and complete on [application date]. If you have given us any information on the telephone after this date, please make sure that this information is also accurate and complete.

If you find that there is any inaccurate or missing information, please call us or contact [broker]. Alternatively, please complete the enclosed Amendment Form and send it to us....

It is your responsibility to make sure that your information is complete and accurate. If it isn't, it could mean we won't pay out on a claim in the future."

I think that makes it clear Mr L shouldn't simply have assumed his broker accurately recorded the information he gave them – and the possible consequences of not doing so. I accept Mr L didn't know the ECG showed any issues of concern. But that isn't what the question asked – it asked whether he'd had investigations. He had. So I think it's reasonable to say that not disclosing he'd had an ECG was a misrepresentation.

And I'm satisfied that was a qualifying misrepresentation as defined by CIDRA, because Aviva has shown that, if they'd known about it, they would have contacted Mr L's GP for more information before deciding whether to offer him a policy. And they've provided evidence that the weighting they would have applied to the condition it revealed - coupled

with the weighting applied for the other health issues he declared - meant they wouldn't have offered him critical illness cover.

Finally, I've thought about the remedy Aviva applied to the misrepresentation. CIDRA sets out different remedies, depending on whether an insurer decides the misrepresentation is deliberate/reckless, or is careless. If it's deliberate or reckless, CIDRA allows an insurer to decline any claim, cancel the policy and keep all the premiums a customer has paid.

Mr L has said Aviva accept he's not lied or acted dishonestly. I agree. But a qualifying misrepresentation can also be made carelessly. If an insurer thinks that has happened, CIDRA sets out that they should deal with the policy as they would have done if no misrepresentation had been made.

In this case, Aviva have evidenced that they wouldn't have offered Mr L critical illness cover if they'd had accurate information about his health issues. In these circumstances, CIDRA allows them to cancel the policy. But it says they must refund the premiums Mr L has paid.

I can see that Aviva made the required refund at the time they declined Mr L's claim. So I'm satisfied they've dealt with him as CIDRA sets out. And I don't think they need to do any more to resolve his complaint.

My final decision

For the reasons I've explained, I'm not upholding Mr L's complaint about Aviva Protection UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 8 January 2026.

Helen Stacey
Ombudsman