DRN-5977075

The complaint

Ms M and Ms W as trustees of the Mr M Trust are unhappy that Aviva Protection UK Limited have proportionately settled a claim they made on life insurance policies and the service they received.

What happened

The trustees of the Mr M Trust claimed on the late Mr M's life insurance policies when he sadly died. This complaint concerns two of the three policies he held. Aviva accepted there was a valid claim on the policies but said that they couldn't settle the claims in full.

The trustees complained to Aviva but they maintained their decision was fair. They said Mr M hadn't accurately declared his medical history when taking out the policy and, had he done so, they'd have charged a higher premium. Unhappy, the trustees complained to the Financial Ombudsman Service.

Our investigator looked into what happened and partly upheld the complaint. In summary, he said that Aviva had fairly settled the claim. However, he thought that Aviva should pay 8% simple interest on the settlement of the two policies related to this complaint as there were delays.

The trustees didn't agree and asked an ombudsman to review the complaint. In summary they said Aviva didn't act in line with the industry code of practice, the proportionate settlement was unfair and that the service failures led to more significant delays and impact that those identified by the investigator.

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'm very sorry to read of the circumstances which caused the trustees to claim on the policies. I have a great deal of empathy for the circumstances they've described and I can appreciate that it must have been a very difficult time for the trustees, and other family members who were impacted by Mr M's death.

The proportionate settlement of the claim

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. I've also taken into account the relevant industry code of practice.

Aviva thinks Mr M failed to take reasonable care not to make a misrepresentation when he answered questions about his medical history during the application process in October 2020. I've considered the questions Mr M was asked during the application process. They included the following questions:

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

  (You do not need to tell us about contraception prescriptions, cold sores, ear syringing, hayfever, holiday jabs, tonsilitis, wisdom teeth or regular well-man/woman checks where all the results were all normal. You also do not need to tell us about normal pregnancies and childbirth but you must let us know about pregnancies with complications including but not limited to high blood pressure and sugar and/or protein in your urine).

- Have you been referred to, or been to see, any medical practitioner other than your GP in the last 5 years?

  (Examples can include but are not limited to all visits to your GP, a hospital doctor, consultant, psychiatrist, therapist or other visit to a clinic or Accident and Emergency).

Aviva says Mr M ought to have answered 'yes' to these questions, but he answered 'no'.

I've looked at the available medical evidence, which includes a coroner's report and Mr M's GP records. I'm persuaded he ought to have answered 'yes' to the above questions. I say that because:

- In September 2019 Mr M had blood tests which confirmed he had raised cholesterol

- In November 2019 Mr M was diagnosed with hypercholesterolemia (the medical term for high cholesterol) and referred to a lipid clinic

- In June a letter from the treating hospital confirmed the latest cholesterol reading (which had reduced) and that Mr M was to attend in a few months time for a follow up appointment.

I've taken into account the representations from the trustees. But, I'm not persuaded that Aviva acted unreasonably. I say that because:

- I think Mr M was asked clear questions about his previous health. I appreciate his cholesterol levels did reduce. But, the questions included a requirement to disclose information about blood tests, referrals and investigations.

- I think that a diagnosis of high cholesterol, a referral to a lipid clinic and monitoring of the condition were significant enough health events to disclose in response to those questions. I don't think the fact the levels of cholesterol had returned to within the normal range negated the need to disclose the information the questions asked. I'm also not persuaded that it's reasonable to conclude Aviva didn't want to know about

resolved issues, as the questions specifically asked about investigations, referrals and blood tests.

- I'm satisfied that Aviva did reasonably ask for information from Mr M's GP despite the death being considered spontaneous and there were no apparent conditions related to death. However, the initial information from the GP, which said that there was no apparent conditions related to death, did disclose raised cholesterol shortly before the policy was taken out. I don't think it was unreasonable for Aviva to ask for more information about this. I appreciate that other insurers didn't take this course of action, but that's a commercial decision they are entitled to take. I'm not persuaded, on the facts of this case, that Aviva were looking for reasons to decline the claim.

Aviva has provided underwriting evidence which shows that if Mr M had answered 'yes' then he would have been asked more detailed questions about the medical information he'd disclosed. Whilst Aviva would have still offered the policies this would have led to an increase in the premiums charged. This means I'm satisfied Mr M's misrepresentation was a qualifying one as it was relevant to how much Aviva would have charged for the policies. Underwriting information is commercially sensitive and so it can't be disclosed to the trustees. However, I hope it reassures them to know that someone independent has reviewed that evidence.

I appreciate that the trustees have said that Mr M's death was unrelated to the non-disclosed condition. But the condition still needed to be disclosed as part of the application process because it was relevant to Aviva's decision to offer the policy, and at what price. That's because it's relevant to the risk Aviva were prepared to accept under the policy and this is clear from the underwriting information I've seen.

Aviva has treated Mr M's misrepresentation as 'careless'. I think that's fair as there's no evidence Mr M sought to deliberately mislead Aviva about his health. I think it's more likely he didn't appreciate the significance of his recent medical history to Aviva. As I'm satisfied Mr M's misrepresentation should be treated as careless I've looked at the actions Aviva can take in accordance with CIDRA.

In circumstances where Aviva would have charged a higher premium, and there's a claim, they are entitled to settle the claim proportionately. That's what they've done in the circumstances of this case. The settlement has been calculated in line with the proportion of the premium Mr M would have paid had he accurately disclosed the relevant medical history. I fully appreciate how disappointing this will be for the trustees but I'm satisfied this is in line with the remedy set out in CIDRA and is fair and reasonable.

Delays and claims handling

The relevant rules and industry guidelines say that Aviva has a responsibility to handle claims promptly and fairly.

The trustees highlighted that Aviva had accepted there were delays during the claim process and offered £150 compensation. Our investigator considered that award as part of a separate complaint in relation to the other policy.

The trustees also pointed out that the policy terms say that interest will be paid if the claim isn't settled after eight weeks. I've looked at the relevant term. It says:

> If we start paying the benefit any later than eight weeks after we receive all the information we need, we will pay interest on the overdue amount from the date

payment should have started. This will be at the Bank of England base rate at the time.

Our investigator recommended that Aviva pay 8% simple interest on the settlement for a period of eight weeks to reflect the delays. I think that's fair and reasonable for the reasons I'll go on to explain.

It's clear, and accepted by Aviva, that there were avoidable delays – that included, for example, delays in requesting information and taking action when information had been received. This meant the claim wasn't settled as quickly as it could have been.

However, the term doesn't specify that the claim will be settled within 8 weeks, it refers to the point at which all the information needed is received. It's difficult to say, in the circumstances of this case, precisely what point Aviva would have been able to settle the claim because there was a combination of factors which had a cumulative impact. But I think eight weeks is, on the balance of probabilities, a fair reflection of the overall accumulated delays.

I have a great deal of empathy with how difficult a time it was for the trustees, and Mr M's family, having to deal with the claim at an incredibly upsetting and worrying time. However, I do have to balance that with the fact that there was a legitimate issue with the settlement of the claim and that did need to be resolved before the settlement could be made. So, in the circumstances, I think the payment of interest over an eight week period sufficiently reflects that the trustees didn't have access to the settlement as soon as they ought to.

Putting things right

Aviva needs to put things right by paying 8% simple interest on the settlement amounts for a period of eight weeks.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell the trustees how much it's taken off. It should also give the trustees a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm partly upholding this complaint and direct Aviva Protection UK Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Ms W as trustees of the Mr M Trust to accept or reject my decision before 24 December 2025.

Anna Wilshaw
Ombudsman