DRN-6015818

The complaint

Mr C and Ms B complain that Aviva Life & Pensions UK Limited has turned down a critical illness claim Mr C made on a life insurance policy.

As Mr C brought the complaint to us, for ease, I've referred mainly to him.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

On 19 August 2019, Mr C applied for a life insurance policy, with critical illness cover, through a broker. During the sale, he declared existing medical conditions. Mr C requested a policy start date of 4 November 2019. Aviva agreed to offer Mr C life and critical illness cover.

Unfortunately, Mr C went on to be diagnosed with a schwannoma in 2023. And in March 2024, he made a critical illness claim on the policy.

Aviva obtained medical evidence so it could assess Mr C's claim. It noted that on 1 August 2019, Mr C had been referred to the Ear, Nose and Throat (ENT) department due to recurrent nasal symptoms. During the application process, Mr C had been asked whether he had been referred to hospital. But he hadn't told Aviva about his referral to ENT. Aviva said that if he'd done so, it would have postponed offering Mr C a policy until the outcome of those investigations was known. And the policy paperwork stated that Mr C needed to tell Aviva about any change in his medical conditions between the date of application and the policy start date in November 2019. Aviva noted a further, more rapid referral to ENT had been made in December 2019, when Mr C's GP noted he'd had a three-month history of hearing loss. Therefore, Aviva considered Mr C had been experiencing hearing loss between September and December 2019. So it thought Mr C should have told it about his change in symptoms ahead of the policy starting, too.

On that basis, Aviva concluded that Mr C had made a qualifying careless misrepresentation under relevant legislation. So it turned down his claim, cancelled the policy from the start and refunded the premiums he'd paid for the cover.

Mr C was very unhappy with Aviva's decision and he asked us to look into his complaint. In brief, he said that the referral hadn't been clearly communicated to him. While he said the GP had mentioned a referral, they'd also said it could take years and he'd received no follow-up confirmation that a referral had been made. He also disputed that he'd had a three-month history of hearing loss.

Our investigator didn't think Aviva had treated Mr C unfairly. Based on the available medical evidence, she thought he should have been prompted to tell Aviva about his ENT referral. And she was satisfied Aviva had provided enough evidence to show that if Mr C had declared the referral, it wouldn't have offered cover at that point. So she thought it had been reasonable for Aviva to conclude that Mr C had made a qualifying misrepresentation under

the law and to apply the legal remedy available to it.

Mr C disagreed and so the complaint's been passed to me to decide.

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 so, whilst I'm very sorry to disappoint Mr C, I don't find that Aviva has treated him unfairly and I'll explain why.

First, I'd like to say how sorry I was to hear about Mr C's diagnosis and about the impact his condition has had on his life. It's clear this has been a very difficult time for Mr C and Ms B. I'd also like to reassure Mr C that while I've summarised the background to his complaint and his submissions to us, I've carefully considered all that's been said and sent. In this decision though, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other considerations, such as regulatory principles, the relevant law, the available medical evidence and the policy documentation, to decide whether I think Aviva handled Mr C's claim fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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.

When Mr C took out the policy through a broker, he was asked a number of questions about his health and his circumstances. Aviva used this information to decide whether or not to insure Mr C and if so, on what terms. Aviva says that Mr C didn't correctly answer some of the questions he was asked during the application process for the policy. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply those principles to the circumstances of this claim.

Aviva thinks Mr C failed to take reasonable care not to make a misrepresentation when he applied for the policy. So I've considered the available evidence to decide whether I think this was a fair conclusion for Aviva to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer during the application process were. I've carefully considered the questions I believe to have been most relevant, although I appreciate Aviva considers other questions also apply to the circumstances of this complaint. Mr C was asked:

'*Apart from any conditions you've already told us about in this application, within the last two years have you:*

Been referred to, treated at or had any investigations at a hospital or clinic?'

Mr C answered 'yes' and was asked to advise the underlying condition. He answered, 'sore throat'.

Next, Mr C was asked

'Are you awaiting hospital referral, investigation or surgery for this condition?'

Mr C answered 'no'.

In my view, Aviva's questions were clear and specific enough to have prompted Mr C to provide it with the information it wanted to know. So next, I need to consider whether I think Aviva has shown that Mr C didn't take reasonable care to answer these questions. I've turned then to consider the available medical evidence to assess whether or not I think Aviva has provided sufficient evidence to demonstrate, on balance, that Mr C didn't answer the above questions accurately.

I've seen a copy of Mr C's medical records. I can see that on 1 August 2019 – 19 days before he applied for the policy – Mr C saw his GP with worsening symptoms, including recurring nasal symptoms and a chronic cough. Mr C was also advised to take a nasal spray. The notes also show that on the same day – 1 August 2019 – the GP referred Mr C to ENT. I've seen a copy of the referral letter which was also sent on 1 August 2019.

So the medical evidence indicates that Mr C had been experiencing nasal symptoms and a chronic cough prior to applying for the policy. But Mr C didn't tell Aviva about these symptoms. The evidence also shows that an ENT referral had been made. Aviva specifically asked about referrals and Mr C answered 'no' to this question.

Mr C said in his complaint form that while the GP had mentioned a referral to him, he'd been told this could take years and to consider seeking private treatment. He therefore felt that the referral hadn't been clearly communicated to him. I've considered this point carefully.

But I need to bear in mind that Mr C had seen the GP less than three weeks before applying for the policy and that a referral had been discussed. I think Mr C ought to have reasonably been aware that a referral was underway – even if it wasn't an urgent one – and to have therefore been prompted to declare this to Aviva. On that basis, I don't think it was unfair for Aviva to have relied on the medical evidence to conclude that Mr C had made a misrepresentation when he applied for the policy.

I've next gone on to consider whether I think Aviva has demonstrated that Mr C made a qualifying misrepresentation under CIDRA. It's provided us with confidential underwriting evidence which shows that if Mr C had told it about the August 2019 ENT referral, it would've postponed its cover decision. This means it wouldn't have agreed to offer Mr C a policy when it did. And given Mr C was given further referrals shortly after the policy began – including for hearing loss - Aviva has provided evidence it still wouldn't have been able to offer a policy.

And as such, the available evidence suggests that Mr C did make a qualifying misrepresentation under CIDRA. So I think Aviva is reasonably entitled to apply the relevant remedy available to it under the Act.

Aviva has categorised Mr C's misrepresentation as careless. I think that was reasonable in the circumstances, because I don't think he intentionally set out to mislead Aviva or that he answered its questions recklessly. CIDRA says that in cases of careless misrepresentation, an insurer may rewrite the policy as if it had all of the information it wanted to know. If it wouldn't have offered any cover, it's entitled to turn down a claim, void the policy and refund the premiums a policyholder has paid.

In this case, Aviva has declined Mr C's claim, voided his policy and refunded the premiums he paid for the contract. So I'm satisfied that Aviva's handled Mr C's claim fairly and reasonably and that it's acted in line with CIDRA. Therefore, I'm not telling Aviva to reinstate Mr C's policy or to pay his claim.

Overall, I sympathise with Mr C's position because I understand his ultimate diagnosis has had a real impact on his life and I'm sorry to cause him further upset. But based on all I've seen, I don't think Aviva has treated him unfairly. And so I'm not directing it to do anything more.

My final decision

For the reasons I've 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 Mr C and Ms B to accept or reject my decision before 13 February 2026.

Lisa Barham
Ombudsman