

## **The complaint**

Mr K's complained that Aviva Protection UK Limited have unfairly declined the claim he made on his life insurance policy following his diagnosis with a terminal condition.

## **What happened**

In summer 2018, Mr K applied for an instant life insurance policy from an insurer I'll call G. Based on the information Mr K provided, G accepted Mr K's application and the policy started. G has since transferred the policy to Aviva.

In autumn 2024, Mr K was diagnosed with cancer. A few months later, his doctors very sadly told him his condition was terminal and he had a life expectancy of six to nine months. His policy provides that the policy benefit may be paid where someone's life expectancy is less than 12 months. So Mr K contacted Aviva to make a claim.

Aviva declined the claim. They said Mr K had answered "no" to questions about his blood pressure and chronic pulmonary obstruction disease (COPD) when, based on his medical records, he should have answered "yes". And they noted some historic discussions about his alcohol intake. Aviva said that, if Mr K had answered those questions as his records showed he should have, they wouldn't have offered him a policy. So they also cancelled it and refunded the premiums Mr K had paid.

Mr K complained. He said he'd not been diagnosed with COPD, but his GP had indicated it was borderline. Medication had been prescribed as a precaution and any record that showed he had the condition was inaccurate. Aviva didn't change their decision and said they could only base their decision on Mr K's medical records. But they did offer Mr K £50 compensation for not calling him back as they should have done.

Mr K wasn't satisfied with Aviva's response and 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 Mr K's medical records showed he should have answered the questions about his blood pressure and COPD differently and Aviva had dealt with that in line with the relevant law.

Mr K didn't agree with our investigator's view. So the complaint's been passed to me 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 Mr K's complaint. I know he'll be very disappointed by my decision and I'm sorry about that. I hope it will help if I explain my reasons for making it. I'll do so, focusing on the points and evidence I consider to be key 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.

Aviva declined Mr K's claim because they said he'd not answered their medical questions accurately and made a misrepresentation. So I have to decide whether that conclusion was reasonable and whether they've dealt with the misrepresentation in line with the relevant law. Only if I decide they haven't can I say Aviva should do something different.

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 K's medical records show he should have answered "yes" to the following questions:

*"In the last 5 years have you:*

*Q - Had, or been treated for raised blood pressure, raised cholesterol or diabetes?*

*You need to tell us about:*

*- Any raised blood pressure or cholesterol readings (whether or not you needed treatment or follow-up) including where these have since returned to normal*

*- Any diabetes or raised blood sugar levels*

*Q - Been prescribed any medication, treatment or counselling for a month or more?*

*You need to tell us about any prescription even if you did not take the medication. Please tell us the name of the condition not the name of the treatment prescribed.*

*- Depression, anxiety, stress and other mental health conditions*

*- Asthma, bronchitis or breathing problems in your sleep (including inhaler treatment)*

*- blood disorders such as anaemia*

*Q - Been advised to have or had any medical investigations, scans or tests? You need to tell us about any investigations, scans and tests unless these are purely in relation to pregnancy or joint pain. Some things people commonly tell us about here are:*

*- Blood tests*

*- ECG, Echocardiogram or other heart investigations*

*- CT, MRI, ultrasound or other scans*

*- chest Xray*

*- Internal camera investigations (e.g. endoscopy or colonoscopy)”*

In relation to his blood pressure, Mr K has said that most of his readings were normal and he wasn't prescribed medication on the occasions it was high. I accept that's the case. But the question asks whether he has had any raised readings – whether or not he needed treatment. His medical records show he had. So I'm satisfied he didn't answer this question accurately.

Aviva also say Mr K should have told them about the investigation of possible COPD. Mr K is adamant he doesn't have that condition. I've considered this carefully.

I accept Mr K's position is that he doesn't have COPD. But the relevant question doesn't say that Mr K needed to have been diagnosed with the condition – it asks if he'd had investigations or tests. His records clearly show that he had had those investigations – and that he was prescribed medication to aid his breathing. So I think it's reasonable to say this information should have been disclosed.

While I appreciate Mr K says his medical records are wrong, that's not a decision I can make. There are systems in place to allow patients to have inaccurate records amended or marked as challenged. While I appreciate the efforts Mr K has made to provide information to disprove the accuracy of his records, I can't see he's asked his GP to amend them. In the circumstances, I can't say that Aviva's reliance on the records to conclude Mr K made a misrepresentation was unreasonable.

And I'm satisfied that he made a qualifying misrepresentation within the meaning of CIDRA. Aviva have evidenced that this was an instant life insurance policy. That means that – unlike other life insurance products - answering “yes” to any question would have led to the application being declined. So, while Mr K may be right that other policies would have provided him with cover if he'd answered the questions differently, this one wouldn't.

Finally in relation to the claim decision, I've thought about the remedy Aviva applied. This varies, depending on whether the misrepresentation is deliberate or reckless, or is careless. If it's deliberate or reckless, CIDRA allows an insurer to decline any claim, cancel the policy and keep the premiums that have been paid. If it's careless, the insurer should do what they would have done, if no misrepresentation had been made.

Aviva haven't said how they've categorised Mr K's misrepresentation. But they've applied the remedy applicable to a careless misrepresentation. I think that's fair. Because they would never have offered the policy if Mr K had answered the questions accurately, CIDRA allows them to cancel it and refund the premiums. That's what they've done. I think that's reasonable.

Finally, I've noted that Aviva offered Mr K £50 compensation in respect of not dealing with call backs as they should have. I can't see that Mr K has commented on this aspect of the matter, so I assume he has no issue with the amount offered. For the sake of completeness, I agree with our investigator that this is a reasonable amount for Aviva to pay Mr K for their shortcomings in this respect and, if they haven't already paid this, they should now do so. But I don't think they need to do more than that to resolve Mr K's complaint.

### **My final decision**

For the reasons I've explained, I don't think Aviva Protection UK Limited need to do any more than pay the £50 compensation previously offered to Mr K to resolve his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 13 March 2026.

Helen Stacey  
**Ombudsman**