

complaint

Mrs S is complaining about Aviva Life Services UK Limited's decision to decline her claim on a life insurance policy following her late husband's death.

background

In 2011, Mr and Mrs S took out a mortgage. In March of the same year, they applied for a life insurance policy to repay it if either of them died before the end of the term. The policy was set up to cover both their lives and was arranged through an independent adviser.

Aviva issued its acceptance terms to Mr and Mrs S on 18 May and says it emailed these to their adviser the following day. It says the adviser then called on 25 May when it faxed the terms again. Aviva says it then heard nothing further until the adviser contacted it on 8 June to say the policy should start from that date.

Sadly, Mr S passed away in 2014. Mrs S claimed on the policy, but Aviva refused to pay out saying it hadn't been given information about Mr S's health before the policy started. If it had the relevant information, Aviva said it wouldn't have covered Mr S. It then cancelled the policy and said it would refund all premiums paid.

I previously issued my provisional decision explaining why I didn't think this complaint should be upheld in respect of the main issue being raised. An extract is attached and forms part of this decision.

Mrs S disagrees, raising the following key points:

- the information she and Mr S received about the protection promise wasn't clear and they thought they had continuous cover from the date of their application;
- Aviva didn't make it clear to them when the protection promise ended;
- she questions whether they needed to provide Aviva with further information about his health given what they knew about his symptoms at the time; and
- whether Aviva really would have postponed cover at a time when the symptoms weren't necessarily thought to be serious.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including Mrs S's response to my provisional decision, my conclusions haven't changed.

Mrs S has made a number of points about how the application was handled by the adviser, including the fact it was delayed because the wrong form was filled out, the fact cover wasn't started straight away although they asked for this and their mortgage was already in place, and the way the protection promise was described. These are all issues that will need to be dealt with separately as part of her complaint about the adviser.

In terms of Aviva's role in the events, I'm satisfied its letter of 8 April 2011 made it clear how the protection promise worked and that it would end once it reached a decision on the application. Aviva's letter to Mr and Mrs S dated 18 May 2011 (which it says was emailed to the adviser the following day) clearly set out the application had been accepted. It also explained Aviva was waiting for confirmation of the start date before putting the cover in

place. Mrs S says they didn't realise they were without cover from this point and thinks Aviva should have spelt out that the protection promise was ending, but I think Aviva's overall correspondence is sufficiently clear and I don't think it was responsible for any misunderstanding that occurred. I'm also satisfied Aviva communicated its decision promptly.

Once Aviva issued its decision on their application, it was for Mr and Mrs S and/or their adviser to confirm whether they still wanted to proceed and on what date they wanted cover to start.

I've read Mrs S's comments about her husband's symptoms when he first became ill and I appreciate they didn't know or suspect the diagnosis that came later before the policy started. But Aviva's letter of 18 May 2011 said they needed to tell it if they had sought medical advice or had any tests or investigations. It didn't say they should only mention things they thought might be serious. As I understand it, Mr S went to a doctor on 4 June about various symptoms he'd been experiencing for a number of days. He was admitted to hospital on the same day where he underwent tests. This all took place before the adviser confirmed the policy was to start on 8 June. I think it's clear from Aviva's letter that it would have wanted to know about this.

In terms of what it would have done if it had known about Mr S's problems, Aviva has provided underwriting evidence to show it would have postponed cover. And that's entirely consistent with my experience of how insurers react in this situation. While the symptoms may not have seemed serious straight away, insurers don't normally offer cover until outstanding investigations are concluded. And once the diagnosis was made, I'm satisfied Aviva wouldn't have offered him a 20-year life insurance policy.

I understand the circumstances and timings of this complaint are extremely unfortunate and I fully appreciate Mr and Mrs S would have had other things on their mind at the time. But I still believe Aviva was entitled to know about any changes to Mr S's health before the policy started. And that if it had known, it wouldn't have offered cover. There's no suggestion Mr and Mrs S tried to mislead Aviva in any way, which is why the mis-representation has been classed as *careless*.

I realise this is not the outcome Mrs S was hoping for and that my decision leaves her in a difficult position. But for the reasons I've explained, I don't think I can reasonably say Aviva has acted unfairly. I note Mrs S has referred to a decision on another complaint published on our website involving similar issues, but the circumstances of that case are different and I must treat each complaint on its own individual merits.

Finally, I agree Aviva should have paid back the premiums when it originally said it would and that it made an error in not doing so. That's why I'm instructing Aviva to pay this amount now, with interest to compensate Mrs S for not having use of the money sooner. The interest may be subject to income tax. But if it deducts tax, Aviva should provide a certificate so Mrs S can reclaim any overpaid tax from HM Revenue & Customs if she's entitled to do so.

my final decision

My final decision is that I don't uphold the main aspects of Mrs S's complaint for the reasons set out above.

But I am instructing Aviva Life Services UK Limited to refund the premiums paid on the policy in full as it previously said it would. To this, it should also add simple interest at the rate of 8% per year from the date it decided to cancel the policy to the date the refund is paid. If it deducts tax from the interest, Aviva should send Mrs S a tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 15 February 2016.

Jim Biles
ombudsman

extract from provisional decision:

my provisional findings

When a consumer doesn't provide relevant information to an insurer before a policy starts, this is known as a *mis-representation*. Industry guidance commonly recognises three types of mis-representation – *deliberate/reckless*, *careless* and *innocent*. An insurer is allowed to take action depending on the type of mis-representation.

In this case, there's no suggestion the information in the original application from March 2011 (and received by Aviva on 8 April 2011) was wrong. Instead, the problems stem from changes to Mr S's health between the date of the application and the date the policy started. Before I decide whether the action Aviva took was fair, I need to look at whether it was right to say Mr and Mrs S needed to tell it about those changes.

Aviva needed to make further enquiries about Mr S's health before accepting the application. But on 18 May 2011, it accepted and sent Mr and Mrs S a copy of the acceptance terms. The letter set out what they needed to do next as follows:

Please tell us of any changes to this information occurring right up until the date your policy starts. This includes any changes after the date of this letter and before your policy starts. They might affect your terms and benefits, and we may need to delay the start of your policy while we make further enquiries.

In particular, you must tell us if, since completing your application form, you have:

- had any physical or mental illness*
- sought medical or other advice including self-referrals about your physical or mental health*
- had any tests or investigations*
- suffered any symptoms for which you have not yet consulted a doctor, or*
- used recreational drugs (such as cocaine or heroin)*

. . . .

Please tell us even if you think the changes may be unimportant, as we still need to decide whether they are significant.

If you haven't given us all the information we requested, or the information was inaccurate, or you haven't told us of any changes since completing your application form, we may not pay out if there is a claim, and we may cancel your policy.

What information we need to start the policy

- Date of Commencement*

Your next steps

We hope that you will decide to take out this policy. If so, please let us know the date you wish the policy to start before 15.09.2011.

The warning about the need to tell Aviva of any changes to Mr S's health before the policy started was repeated in its letter of 8 June 2011 confirming the policy had started on that date.

As I understand it, Mr S went to a doctor on 4 June 2011 about various symptoms he'd been experiencing for a number of days. He was admitted to hospital on the same day where he underwent tests. Sadly, he was diagnosed with a very serious illness shortly after. If Aviva had been told about the hospital admission, it says it wouldn't have offered cover until the test results were known and would then have declined cover when the diagnosis was made.

I think the warnings Aviva gave Mr and Mrs S about the need to tell it regarding changes to their health were clear. So I agree there has been a mis-representation.

For me to say this was an innocent mis-representation and that the claim should be paid, I'd have to be satisfied Mr and Mrs S wouldn't have thought the information was relevant to Aviva. I appreciate Mr S's illness hadn't been diagnosed when the policy started, but he had sought advice and undergone tests and Aviva specifically said it wanted to know that sort of information. So I think Mr and Mrs S should have understood this was information was relevant. As a result, I don't believe I can reasonably say the mis-representation was innocent. Instead, I think Aviva was correct to class the mis-representation as careless.

In cases of careless mis-representation, the appropriate remedy is to put things back to where they'd be if the insurer had known the relevant information at the start. In this case, Aviva says it wouldn't have offered cover until after the results of Mr S's tests were known and then declined cover entirely. It's provided evidence from its underwriters to confirm this and the approach is consistent with my experience of how insurers handle this kind of situation.

From reading Mrs S's comments, it appears there may have been some confusion caused by Aviva's *protection promise*, which was explained in a letter to Mr and Mrs S dated 8 April 2011. I think this makes it clear the promise wasn't the same as the policy being applied for. It was simply an agreement to pay out if either of them died between the application being received and Aviva reaching a decision about whether it was willing to offer cover. It didn't mean the policy had started early and it didn't mean Mr and Mrs S didn't have to tell Aviva about any changes to their health. The letter explained:

Once you've received a decision on your application from Aviva (or three months have expired from the date of this letter if earlier) then the special terms of the Protection Promise will no longer apply.

The promise ended when Aviva issued its acceptance terms on 18 May 2011.

On balance, and while I appreciate this leaves Mrs S in a very difficult position, I think Aviva was entitled to decline the claim and cancel the policy for the reasons I've explained.

The timing of the events at the heart of this complaint is very unfortunate and I understand why Mrs S now thinks the policy should have started sooner. But ultimately, I don't think Aviva was responsible for setting the start date. The application it received said cover was not to start straight away and its letter of 18 May 2011 was clear that it was waiting to be told when to start the policy. It was then for Mr and Mrs S and their adviser to decide a date and tell Aviva.

Mrs S has said there was no reason to delay the start and that she told the adviser this at the time. If she has concerns about this issue, they'd need to be addressed as part of a complaint about the adviser. I understand Mrs S has already started the process of complaining about the adviser and she should let our adjudicator know if she now wants to take that further.

In response to Mrs S's claim, Aviva said it would refund the premiums paid into the policy but I understand it hasn't done that yet. To compensate Mrs S for the delay in receiving this money, I currently propose to tell Aviva to pay the money now and add interest.

my provisional decision

My provisional decision is that I don't currently intend to uphold the main aspects of Mrs S's complaint for the reasons set out above.

But I do currently propose to instruct Aviva Life Services UK Limited to refund the premiums paid on the policy in full as it previously said it would. To this, it should also add simple interest at the rate of

8% per year to compensate Mrs S for the delay. Interest should be applied from the date Aviva decided to cancel the policy to the date the refund is paid. If it deducts tax from the interest, Aviva should send Mrs S a tax deduction certificate so she can reclaim any overpaid tax from HM Revenue and Customs if she's eligible to do so.