

The complaint

Mr L and Miss S complain that Aviva Life & Pensions UK Limited have unfairly declined a claim Miss S made on their joint life and critical insurance policy.

What happened

On 19 October 2022 Mr L and Miss S took out a joint life and critical illness policy which was due to commence on 28 October 2022. On 24 October 2022 Miss S consulted her GP with a five day history of pins and needles in her legs. In 2023 Miss S was diagnosed with Multiple Sclerosis (MS) and claimed on the policy.

Aviva declined the claim and so Miss S made a complaint. In their final response letter Aviva said it was clear that Miss S was experiencing symptoms of persistent pins and needles at the time of the application. They also said she hadn't notified them of any changes to her health following her application and prior to the policy commencing. Aviva considered this to be a careless qualifying misrepresentation which entitled it to refund Miss S her premiums and decline the claim. Miss S didn't agree and complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. In summary, he concluded Aviva had acted reasonably based on the medical evidence and had fairly concluded Miss S had made a careless misrepresentation when the policy was taken out.

Miss S asked an ombudsman to review the complaint. She said that the omission wasn't malicious and she'd attributed the sensation to a running injury. So, the complaint was referred to me 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.

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. I've also considered the relevant Code of Practice issued by the Association of British Insurers.

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.

Aviva thinks Miss S failed to take reasonable care not to make a misrepresentation when she answered questions about her medical history.

I've looked at the questions Miss S was asked at the point the policy was taken out. She was asked:

“Have you ever had:

...Blurred or double vision, numbness, loss of feeling or muscle power, balance problems, tremor, or persistent pins and needles, dizziness or facial pain serious enough to seek medical advice?”

“Apart from anything you've already told us about:

...Are you currently experiencing anything that you might go to your doctor about?”

Miss S answered 'No' to both those questions. I'm satisfied that it was reasonable for Aviva to conclude that Miss S had not taken reasonable care when answering the questions. Miss S's GP notes indicate that she consulted her GP on 24 October and had been experiencing symptoms for the previous 5 days (which would mean her symptoms started on the 19 October).

In any event Miss S was also sent a summary of her answers which was prepared on the 28 October 2022. This was entitled 'Personal details confirmation' and under the heading, 'what you need to do' it says:

Please check all the information shown, especially any given on your behalf, and let us know if anything isn't correct. Please pay particular attention to the health and lifestyle information. You'll need to tell us if any of these details changed in the time between completing your initial application and when we confirmed cover will start.

It's important all the information shown here is correct. If anything's wrong, we may amend, or cancel the policy, or we may not pay a claim.

- If you need to change any of the information, please contact us or your financial adviser within 14 days. We'll then send you new versions of any documents you might need.
- If all the information is correct, please keep this document safe for your records.

Miss S didn't provide Aviva with an update about her GP consultation and the symptoms she was experiencing. I appreciate that she attributed the symptoms to a running injury, and that there was no diagnosis or significant concern for her health at that point in time. However, I think the policy documentation made it sufficiently clear that she needed to let Aviva know if there were any changes since she'd applied for the policy.

Aviva has provided evidence of their underwriting criteria which shows that Aviva would have ultimately declined to offer Miss S cover. This means I'm satisfied Miss S's misrepresentation was a qualifying one.

Aviva has said Miss S's misrepresentation was careless. I agree that the misrepresentation was careless. I accept that Miss S wasn't acting, as she described it, maliciously. I think it's more likely she didn't take sufficient care when reviewing the documentation and the information she'd provided.

As I'm satisfied Miss S's misrepresentation should be treated as careless, I've looked at the actions Aviva can take in accordance with CIDRA. Aviva have acted in line with CIDRA by voiding Miss S's cover, refunding her share of the premiums and declining the claim.

I think Aviva have acted fairly and reasonably in all the circumstances. So, I'm not upholding Miss S's complaint.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss S to accept or reject my decision before 1 October 2024.

Anna Wilshaw
Ombudsman