



The complaint

Mr H complains about Aviva Insurance Limited's decision to apply a chronic condition exclusion under his private medical insurance policy.

What happened

Mr H holds private medical insurance cover with Aviva.

In May 2022, Mr H was told by Aviva that it considered his peripheral arterial disease to be chronic, and that it wouldn't cover any claims for this after the policy renewal in January 2023.

Mr H brought a complaint to this Service. He said Aviva had previously applied a cardiovascular exclusion, and this Service had concluded that Aviva was wrong to do so. He thought Aviva had effectively reimposed this exclusion, but under the chronic condition clause.

Our investigator didn't recommend the complaint be upheld. He concluded that it had been reasonable for Aviva to apply the chronic condition exclusion when it did.

Mr H didn't accept our investigator's findings, and so the matter has been passed to me for 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.

I've looked at Mr H's previous complaint with this Service. I see that Mr H had switched to the Aviva policy from another insurer. After Mr H made a claim, Aviva thought he hadn't disclosed all his relevant medical history when taking out the policy. Aviva said if it had known the information, it would have applied an exclusion for Mr H's cardiovascular system. Aviva therefore applied a personal exclusion to the policy retrospectively.

Our investigator considered the complaint in 2019. After doing so, she concluded that Mr H had not misrepresented information about his health when taking out the policy. She therefore recommended that Aviva remove the exclusion and pay the claim. Aviva accepted our investigator's findings, and the complaint was resolved.

Mr H's current complaint is unrelated to the above. Aviva has not applied a personal exclusion due to misrepresentation. Instead, it has applied the chronic condition exclusion which forms part of the policy terms. I'm satisfied it is entitled to do this.

The policy says:

'We do not cover treatment of a chronic condition. Including:

- *regular planned check ups for a chronic condition where you are likely to need treatment*
- *expected deterioration of a chronic condition which needs regular consultations, diagnostic tests or treatment from a specialist.*

BUT:

- *we do cover unexpected acute flare-ups of a chronic condition until your condition is re-stabilised...*

The policy defines 'chronic condition' as:

'...a disease, illness or injury that has one or more of the following characteristics:

- it needs ongoing or long-term monitoring through consultations, examinations, check-ups and/or tests*
- it needs ongoing or long term control or relief of symptoms*
- it requires your rehabilitation or for you to be specially trained to cope with it*
- it continues indefinitely*
- it has no known cure*
- it comes back or is likely to come back.'*

Mr H accepts that his condition has one or more of the characteristics listed in the above definition of a chronic condition. So it isn't in dispute that his condition is chronic, as defined by the policy.

However, Mr H says that Aviva carried on with his policy knowing that his condition was chronic, without limiting or excluding claims until 2022. He has questioned what claims or developments in his health resulted in Aviva concluding in 2022 that his condition was chronic.

It seems that Aviva decided in 2022 that Mr H's condition had become chronic based on his claims history for that condition. As Mr H points out, Aviva could have applied the exclusion prior to this, perhaps even when his first claim was made. Often, it's a matter of judgment for an insurer to decide when a condition has become chronic, taking into account the condition as well as the claims history. However, it seems to me that Mr H has benefitted from Aviva not applying the exclusion previously, as he has had claims paid which may have otherwise been turned down.

I therefore find that it was reasonable for Aviva to apply the chronic condition exclusion. It gave Mr H sufficient notice of its intention to withdraw cover, as I'd expect.

Mr H has commented on Aviva's treatment of acute flare-ups. The policy says that Aviva covers unexpected acute flare-ups of a chronic condition. In other words, if Mr H experiences an acute flare-up, but this is not unexpected for his condition, then this would not be covered. If Mr H has a flare-up of his condition and is unsure if it would be covered, he should contact Aviva directly.

My final decision

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 H to accept or reject my decision before 15 August 2023.

Chantelle Hurn-Ryan
Ombudsman