

## **The complaint**

Mrs K is unhappy that Aviva Life & Pensions UK Limited declined a claim made under a group critical illness policy ('the policy').

## **What happened**

Unfortunately, in 2022, Mrs K was diagnosed with multiple sclerosis (MS) and a claim was made under the policy.

Aviva ultimately declined the claim. Relying on the terms of the policy, it said she'd been diagnosed with a critical illness within two years from the joining the policy and she'd experienced symptoms of MS prior to the joining the policy.

Unhappy, Mrs K brought a complaint to the Financial Ombudsman Service.

Our investigator looked into what had happened and didn't uphold her complaint. Mrs K disagreed so her complaint has been passed to me to consider everything afresh and 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.

Aviva has an obligation to handle insurance claims fairly and promptly. And it mustn't unreasonably decline a claim.

I have a lot of empathy for Mrs K's situation, but for reasons I'll go on to explain, I think Aviva has acted fairly and reasonably by declining her claim.

The policy terms and conditions say (at page 20):

We will not pay claims if the member or child has had an associated condition prior to the date they joined your policy (whether this was insured with us or another insurer)

However, it goes on to say that:

...if a member or child does not suffer the critical illness or undergo an operation during the first two years from the date they joined your policy (whether this was insured with us or another insurer) we will not exclude claims due to an associated condition.

Associated condition is defined under the policy as:

Any symptom, condition, illness, injury, disease or treatment which is either:

- recognised by reasonable specialist medical opinion to be related to the

occurrence of a critical illness or operation, or

- is listed in the "associated conditions" column of the critical illness/operation table which begins on page 4.

Later in my decision, I'll address the issue of Aviva having initially used a different joining date (to the one it ultimately used to assess the claim for critical illness benefit) to decline the claim. And why I think it was fair for it to do so at that time.

However, based on the more recently accepted joining date of September 2021, I still think Aviva has fairly concluded that Mrs K had symptoms which are recognised by reasonable specialist opinion as being related to the occurrence of MS.

I'm not a medical expert so I've considered the available medical evidence when reaching this decision.

### **Joining date of September 2021**

In July 2022, Mrs K's consultant neurologist reported: "looking back she feels that she may have had back pain, twitching of her right thigh, pins and needles and tingling in both legs, fatigue, unsteadiness leading to a fall in January and urinary urgency. Some of the symptoms have been present for a few months and others for a few years".

And in January 2023 a different consultant neurologist reported that "she has also been a bit unsteady for a few years if she closes her eyes..."

Mrs K's treating medical practitioner also completed a medical report for Aviva dated January 2023. In answer to the question: 'does the patient have a current clinical impairment of motor or sensory function?', it's reflected: "Ataxia on closing eyes since a few years..."

Although, the term "few years" can be interpreted differently, I think it's reasonable to assume that it means two or more years, otherwise I think the medical professionals would've used the term along the lines of "one year" rather than a few years. And although this is a self-reported symptom, I don't think Aviva has unreasonably taken it into account when assessing the claim.

So, at the very least, I'm satisfied that Aviva has fairly concluded that Mrs K was experiencing unsteadiness (when closing her eyes) before joining the policy. As both consultant neurologists have mentioned this symptom in the reports I've seen, I'm satisfied that they consider it relevant to the possible diagnosis of MS at the time the reports were written.

Further, Aviva's Chief Medical Officer (CMO) was asked about the symptom of feeling unsteady when closing her eyes for a few years and whether this is associated with the subsequent diagnosis of MS. The CMO responded:

Reference to a 'few years' history of imbalance on eye closure is relevant as loss of visual input requires the dorsal column to focus on proprioception from the feet i.e., knowing where you are in space. In the absence of any other explanation this would be considered a possible association [of MS]...Removal of vision can uncover a brain level issue (i.e. demyelination/neurodegeneration). As this was a persistent issue for 'years' I think we can reasonably say this was the herald sign of then undiagnosed MS. As I say, no alternative explanation has been provided other than MS...

Mrs K says dizziness could've been connected to other conditions including headaches/migraines – which she was experiencing regularly. That is possible but I'm not

persuaded the medical evidence supports that this symptom was due to other medical conditions listed on the NHS website. Further, it's unsteadiness that's mentioned in the reports referred to above, not necessarily dizziness. However, if it was dizziness that Mrs K had been experiencing before joining the policy, I think it's important to note that "vertigo/ (dizziness)" is a stipulated associated condition of MS named in the policy terms and conditions. So, if it was dizziness she was experiencing rather than unsteadiness (when eyes were closed), then I think it would've been fair of Aviva to have regarded this as associated condition in any event.

Considering the available medical evidence, and in the absence of any medical evidence contradicting the CMO's conclusion, I'm satisfied that Aviva has fairly concluded that the symptom of feeling unsteady when closing her eyes, was an associated condition of a critical illness as it's recognised by reasonable specialist medical opinion to be related to the occurrence of MS.

### **Joining date of March 2022**

I'm satisfied Aviva initially concluded that Mrs K's policy joining date was March 2022. That's based on email correspondence I've seen from May 2022 (from the insurance intermediary to Aviva) that the company director of the policyholder had asked for cover under the policy to begin on the date of claim notification and not the start date for employment.

And, based on the medical records, I'm satisfied that Aviva initially considered the medical evidence before that date and as Mrs K had symptoms which amounted to associated conditions as specifically listed for MS in the policy terms and conditions, I think Aviva reasonably declined the claim on that basis.

Once Aviva was notified that other employees who were beneficiaries under the policy had had their joining dates put back to September 2021, I'm satisfied Aviva promptly agreed to treat Mrs K similarly and re-assessed her claim by requesting medical evidence going back a reasonable period before that date and upon receipt of the same, fairly reassessed her claim. For reasons set out fully above, I'm satisfied its decision to ultimately decline the claim based on the revised joining date and the medical evidence, was fair and reasonable.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 13 February 2024.

David Curtis-Johnson  
**Ombudsman**