DRN-3696150

The complaint

Mr N complained that Aviva Life & Pensions UK Limited ("Aviva") declined his terminal illness benefit claim.

Mr N is represented in making this complaint but, for ease, I'll refer to all actions and comments as those of Mr N.

What happened

Mr N took out a level term Life Assurance policy with Aviva in October 2011. The policy included terminal illness benefit, was for a term of 19 years and had a sum assured of £200,000.

Mr N was, unfortunately, diagnosed with stage 4 lung cancer in mid-2020. He submitted a terminal illness benefit claim to Aviva in October 2021.

Aviva declined the claim in December 2021. It said the medical report from Mr N's Consultant confirmed his advanced cancer diagnosis along with his current treatment plan. It said the most recent scan showed a response to treatment and the current plan was for treatment to continue. Aviva said it was not medically supported that Mr N's life expectancy was less than 12 months, as required under the terms of the policy.

Mr N asked Aviva to look again at his claim in February 2022 and to consider what the outcome might have been if he had contacted it when he was first diagnosed. He said that he felt too unwell, both physically and emotionally to submit a claim at that time. Mr N said he believes his condition met the policy definition then.

Aviva reconsidered the claim. It told Mr N in March 2022 that if he had contacted it when he was first diagnosed in 2020, it would likely have determined then that there were treatment options available that may have elongated his life expectancy. On that basis, it said it would have turned down the claim back then and awaited the outcome of such treatment.

Aviva said it considered the February 2022 report from Mr N's Oncologist. It said the report indicated Mr N had responded better than expected to treatment, his life expectancy was better than average and his Oncologist felt he was likely to continue to do well in terms of halting the cancer's progress. So Aviva declined his claim based on his current life expectancy.

Aviva advised Mr N of the circumstances under which a future claim could be considered. It also explained that terminal illness benefit was an acceleration of the death benefit payable when it was satisfied that death was expected in the following twelve months.

Mr N was unhappy with what Aviva said and brought his complaint to this Service. Our Investigator didn't uphold his complaint. Mr N didn't agree with what our Investigator said, so this came 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 first of all want to explain what cover is provided by Mr N's policy. It is a life assurance policy and these policies are designed to pay out as and when a policy holder passes away, as long as this happens while the policy is still in force. But insurers recognise that a policy holder who has been diagnosed as terminally ill often benefits from having the life assurance payment made to them in advance of their death. And in this way they have the opportunity to, for instance, settle their financial affairs. This advance payment of the death benefit is called terminal illness benefit.

When a consumer submits a terminal illness benefit claim, it's usual for insurers to not just assess whether a consumer is terminally ill, but to also look to only settle claims when it is expected that the policyholder will pass away during the policy term. This is why insurers often have a term in life assurance policies that says they won't settle terminal illness benefit claims until the policy holder has been diagnosed as having less than 12 months to live. The relevant term in Mr N's policy is:

"Terminal illness Benefit will be payable where, other than within the eighteen months prior to the End date, the Life Insured is diagnosed as suffering from an advanced or rapidly progressing and incurable condition (the "Terminal illness") such that the life expectancy of the Life Insured is no greater than 12 months from the date the condition is notified to us by the Planholder."

I've looked at whether Mr N has met the policy definition. Mr N has, sadly, been diagnosed with stage four lung cancer. It's clear Mr N has a condition that can be treated but not cured and so he has a terminal illness. So Aviva's focus in assessing his claim has been on whether or not Mr N's life expectancy is less than 12 months. Mr N first submitted a claim to Aviva in October 2021, so I think Aviva acted fairly and in line with the policy terms when it decided to assess his life expectancy from that point in time.

Aviva's Chief Medical Officer (CMO) said, in December 2021, that Mr N was doing far better than the average patient, had a very good response to treatment and was on track to achieve a durable response. The CMO concluded that until treatment is required to be stopped, life expectancy is very likely to be greater than 12 months.

The report provided by Mr N's Oncologist to Aviva at the end of November 2021 provided details of the two year treatment programme Mr N began around June 2020. He spoke about a positive response to treatment, such as there being no significant toxicity from the treatment and that tumour related symptoms had improved. Mr N's Oncologist said the median overall survival for patients on Mr N's treatment plan was 17.2 months.

What this means is that neither the CMO nor Mr N's Oncologist put Mr N's life expectancy at less than 12 months at the point in time the claim was made in October 2021. So I'm satisfied Aviva acted fairly and in line with the policy terms when it declined Mr N's claim in December 2021.

Following the decline, Aviva looked at how it might have assessed Mr N's claim if he had made it when he was first diagnosed in mid-2020. This was at Mr N's request as he thought he would have been given a prognosis of less than 12 months if he had submitted a claim when he was first diagnosed.

I've seen a letter from his Oncologist dated February 2022 and he said that if he had been asked to estimate Mr N's life expectancy prior to starting his triple combination chemo-immunotherapy back in April / May 2020, then his prognosis would have been estimated at no greater than 12 months. He then highlighted Mr N's good progress during treatment.

The key issue here is that although Mr N's Oncologist has stated that his prognosis would have been estimated at less than 12 months prior to treatment, if Aviva had been assessing a claim from him at that stage, it wouldn't have solely relied on a statement such as that one. It would have been reasonable for it to consider what treatment might be offered when someone is first diagnosed and to consider what impact the treatment might have on any initial prognosis. This is because any treatment is likely to have a direct impact on the prognosis.

When it considered Mr N's claim retrospectively, Aviva said it would have turned down the claim back then and awaited the outcome of such treatment and I'm satisfied this is most likely what it would have done, and that it would have been fair for it to deal with the claim in this way. So I'm satisfied Aviva acted fairly when it turned down Mr N's retrospective claim.

I have a great deal of sympathy for Mr N and I appreciate that my decision will disappoint him. But as I said earlier his policy provides life cover only. If Aviva is going to make an advance payment of that life cover, it is allowed to take reasonable steps to ensure Mr N's condition fully meets the policy terms.

I note that Aviva has let Mr N know of the circumstances under which a further terminal illness benefit claim could be made in the future.

My final decision

It's my final decision that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 10 October 2022.

Martina Ryan
Ombudsman