DRN-4594355

The complaint

Mrs B and the estate of Mr B complain about Aviva Life & Pensions UK Limited's decision to decline a claim under the critical illness benefit of Mr and Mrs B's life insurance policy.

What happened

The details of this complaint are well known to both parties, so I'll give just a brief summary here.

In December 2002, Mr and Mrs B took out life insurance with Aviva. Their policy included critical illness benefit. The policy term was 20 years.

In October 2022, Mr B consulted his GP about a lump in his throat. I understand the GP thought the likely diagnosis was globus and advice was given.

In January 2023, Mr B returned to his surgery with ongoing symptoms. After this consultation, he was referred for further investigations.

In February 2023, Mr B was diagnosed with oesophageal cancer. Very sadly, Mr B died in October 2023.

But in March 2023, Mr B had contacted Aviva about a claim for critical illness under his policy. The policy had expired in December 2022, but Mr B explained that the symptoms had been present whilst the policy was still live. Mr B had letters supporting his assertion from the GP he saw in January 2023 and from his consultant oncologist.

Aviva reviewed the case but declined to pay the claim, as Mr B's diagnosis was after the policy had expired. Mr B appealed the decision but Aviva maintained its stance, issuing a final response letter in April 2023.

Mr and Mrs B brought the complaint to the Financial Ombudsman Service. Our investigator didn't uphold the complaint. She thought Aviva was entitled to decline the claim as the policy terms clearly stated that critical illness benefit wouldn't become payable until diagnosis.

Mrs B disagreed, so the complaint has come to me for a final decision. Mrs B says Aviva's decision is unfair as Mr B clearly had cancer before the policy expired. And had his cancer been picked up by the first GP he saw, he would likely have been diagnosed before the policy expired. Mrs B also says the policy terms don't specify that a diagnosis has to be made within the life of the policy.

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.

Having done so, I'm not upholding this complaint. I recognise my decision will be significant and unwelcome news for Mrs B and I'm sorry about that. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

Mr and Mrs B's policy included the following terms:

> *'The amount of Critical Illness Benefit payable will be the amount that would have been payable on death had death occurred at the time the Life Assured…is diagnosed as having a Critical Illness.'*
>
> *'Critical Illness means the Life Assured has, to the satisfaction of the Company's medical advisor, been diagnosed as suffering from one or more of the following [diseases or events].'*

I think these terms make it clear that it's diagnosis which triggers confirmation of a critical illness, as defined in the policy, and determines when a claim becomes payable.

I accept the evidence of Mr B's oncologist, that the symptoms Mr B reported in October 2022 were most likely linked to his cancer. But the insured event of a critical illness is not triggered when symptoms first manifest - only upon diagnosis.

I also accept it's possible that had Mr B's first presentation of symptoms prompted a GP referral in October 2022, his diagnosis might have been made before the policy expired. But the GP didn't consider that necessary at the time. And I don't think it would be fair to expect Aviva to accept a claim on what might have happened in different circumstances.

Finally, I also accept the policy terms don't specifically say that diagnosis has to be made within the life of the policy. But again, I don't think it would be reasonable to expect Aviva to accept a claim where the critical illness is diagnosed after the policy expired.

No insurer provides unlimited indemnity. Cover is provided in exchange for a premium, with an insurer's liability ending when the policy expires and premiums cease. I can appreciate the point Mrs B makes and why she makes it. But I think it's generally understood that claims are only considered for insured events, as defined in the terms, that happen within the life of the policy.

I acknowledge the timing in this complaint is extremely unfortunate and that this is a very frustrating and disappointing situation for Mrs B. But there was no insured event within the life of the policy. So I don't think Aviva acted unreasonably in declining Mr B's claim.

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 Mrs B and the estate of Mr B to accept or reject my decision before 5 March 2024.

Jo Chilvers
Ombudsman