

The complaint

Mr F complains because Legal and General Assurance Society Limited (Legal & General) refused to consider terminal illness claims under his term assurance policies.

Mr F's complaint has been brought to us by a representative. For ease, I have referred to Mr F only throughout this decision but all references to Mr F's submissions include those made by his representative.

What happened

Mr F and the late Mrs F held two term assurance policies with Legal & General. Both policies provided for the payment of a terminal illness benefit in certain circumstances.

Mr F says he tried to make a claim with Legal & General in 2020 when Mrs F received a cancer diagnosis but was told that he couldn't. Mr F tried to claim again in 2023 but was told that the terminal illness cover under both policies had expired. Very sadly, Mrs F subsequently passed away.

Unhappy, Mr F complained to Legal & General before bringing the matter to the attention of our service.

One of our investigators looked into what had happened but she didn't uphold Mr F's complaint. Mr F didn't agree with our investigator's opinions so the complaint was referred to me to make a decision as the final stage in our process. I issued my provisional decision about Mr F's complaint in May 2024. In it I said:

'I'm very sorry to hear about the sad circumstances surrounding this complaint, and I'd like to offer Mr F my sincere condolences for his loss.

When making my provisional decision, I've taken into account relevant industry rules and guidance, including that set out by the Association of British Insurers. I note that Mr F has referenced Consumer Duty principles but these don't apply to complaints about events which happened before 31 July 2023 so the Consumer Duty isn't a relevant consideration in these circumstances.

Under the rules which govern our service, we have no power to investigate a complaint issue unless the business involved has first been given the opportunity to consider and respond to the matter directly. Mr F has said, if the exclusions surrounding terminal illness cover had been properly explained to him, he'd never have taken out these policies. But Mr F hasn't complained directly to Legal & General about the sale of these policies. So, this provisional decision is limited to considering the issues which Mr F did complain directly to Legal & General about – and that is its refusal to consider claims under the policies.

As is common with the terminal illness cover section of many term assurance policies, Mr F's policies only provided a benefit if a terminal illness (as defined by the policies) was diagnosed at least 18 months before the expiry date of the policies. These policies expired in May 2023 and July 2023 respectively. When Mr F contacted Legal & General to enquire

about making a claim in March 2023, both policies were due to expire in less than 18 months. This means that the terminal illness cover under these policies was no longer operative. So, I don't think Legal & General acted unfairly or unreasonably by refusing to consider a claim in 2023 or by failing to send Mr F any claim forms – there were no longer any section of the policies in force which Legal & General could consider a claim under. Mr F was told this during a call with Legal & General on 10 May 2023.

Legal & General says it has no record of receiving any contact from Mr F about making a claim in 2020. In its final response letter to Mr F's complaint dated 13 June 2023, Legal & General said it would consider any evidence that Mr F could provide that showed Mrs F was terminally ill (as defined by the policies) in 2020. I don't think Legal & General needed to send Mr F claim forms to enable him to do this. It was open to Mr F to send any additional evidence directly to Legal & General for it to consider.

Mr F has since provided evidence to our service, which has been shared with Legal & General as is required under our rules. I've carefully considered all the information that has been sent to us, but I don't think this evidence demonstrates that there was a valid claim under these policies in 2020 either.

The policies define a terminal illness as follows:

'...an advanced or rapidly progressing incurable disease where, in the opinion of an attending Consultant and our Chief Medical Officer, the life expectancy is no greater than 12 months.'

I understand that Mrs F was in receipt of Department for Work and Pensions payments relating to a terminal illness since 2020. And I also understand that Mrs F's medical records state that palliative chemotherapy commenced in 2020. But what's relevant here is the policy criteria for the payment of a terminal illness benefit, and not what criteria apply for a state benefit payment to be made. In reaching my provisional decision, it's not for me to make assumptions based on the medical evidence or to substitute expert medical opinion with my own. I can only rely on the available medical information, and I'd expect Legal & General to do the same. In order for a terminal illness payment to be made under these policies, a consultant needs to confirm that an insured person has a life expectancy of no greater than 12 months. I've seen no evidence from Mrs F's attending consultant confirming that this was the case in 2020.

Mr F has said it's immaterial how long Mrs F eventually lived for, but this isn't the reason why the claim hasn't been paid. If Mr F does wish to present further evidence from Mrs F's consultant about her condition in 2020, then it's open to him to send this directly to Legal & General to consider.

Mr F had to chase a call-backs from Legal & General on a number of occasions in March 2023 but, overall, I'm satisfied that Legal & General provided the general level of service which I'd expect to Mr F.

I anticipate that Mr F will be unhappy with my provisional findings, and I'm sorry to disappoint him, but I don't think Legal & General have acted unfairly or unreasonably in the circumstances based on the evidence that's currently available to me. So, I don't intend to direct Legal & General to do anything further.'

Legal & General replied to my provisional decision and said it had nothing further to add. Mr F didn't respond.

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.

As neither party has provided any new evidence or additional information, I see no reason to change my provisional findings.

My final decision

My final decision is that I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 July 2024.

Leah Nagle
Ombudsman