

## The complaint

The estate of Mrs M has complained that Aviva Life & Pensions UK Limited declined a terminal illness claim.

## What happened

Mrs M had a life assurance policy with Aviva. It started on 8 July 2003 for a term of 20 years – the expiry date was 8 July 2023. Very sadly Mrs M passed away in March 2024.

The policy included terminal illness benefit. This is defined in the policy as: *an advanced or rapidly progressing incurable illness where, in the opinion of an attending consultant and our Chief Medical Officer, the life expectancy is no greater than 12 months.*

Aviva declined the claim. It said that the terms and conditions of the policy stated that the criteria must be met at least 18 months before the policy expiry date. Aviva said that the medical evidence didn't support this conclusion as Mrs M wasn't expected to die within the time period set out in the policy.

The estate brought its complaint to our service. The investigator didn't recommend that it be upheld.

Mr M, on behalf of the estate, appealed.

## 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 wish to pass on my condolences to Mr M for his very sad loss. I have taken on board the comments he has made to the investigator. I know that my decision will bring further disappointment to the estate. But I have to be fair to both parties and having considered everything I've reached the same conclusion as the investigator; I'll explain my reasons.

I do acknowledge Mr M's feeling that Mrs M was punished for exploring treatment options. But when considering life expectancy Aviva is entitled to take treatment options into account – they can extend life. And although Mr M says that Mrs M since diagnosis had an incurable illness, and therefore terminal, in order for benefit to be paid it was reasonable for Aviva to say that the policy terms needed to be met.

For a terminal illness claim to succeed Mrs M would have needed to be diagnosed with an illness meeting the policy definition by January 2022. Mrs M received a diagnosis in November 2021 and surgery was planned. Understandably Mrs M didn't want to know her prognosis. But there is no evidence that in November 2021, or by January 2022 (when the terminal illness benefit expired) that her life expectancy was no greater than 12 months.

I can see that in May 2022 Mrs M's consultant completed a questionnaire in which they recorded the treatment intent as 'palliative'. Sadly it is clear that Mrs M had an incurable illness, but this alone doesn't mean that she met the policy definition for terminal illness. The

life expectancy for someone with an incurable illness can exceed 12 months. So this isn't evidence that Mrs M had less than 12 months to live.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've taken those rules into account, along with other relevant considerations such as the contract terms and the relevant regulatory guidance and principles, when deciding whether I find Aviva treated the estate of Mrs M fairly. Despite my natural sympathy, I don't find that Aviva treated the estate of Mrs M unfairly or unreasonably in the circumstances of this claim.

### **My final decision**

My final decision is that I don't uphold this complaint for the reasons given.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 19 September 2024.

Lindsey Woloski  
**Ombudsman**