DRN-5088180

The complaint

Mr L's complained that Aviva Life & Pensions UK Limited have declined to pay his claim following a terminal cancer diagnosis.

What happened

In 2009, Mr L bought a life insurance policy with a term of 15 years. In 2011, he bought a second policy, also with a 15 year term. Both policies provide for payment of a claim if the policy holder dies, or is diagnosed with a terminal illness which meets the policy definition.

In spring 2024, Mr L was diagnosed with cancer. Unfortunately, by this time, the cancer had already metastasised and was terminal. Mr L was very sadly advised he had less than 12 months left to live.

Mr L made a claim on both policies. Aviva paid the claim made on the 2011 policy as they were satisfied Mr L met the relevant policy definitions. But they declined the claim on the 2009 policy because they said the policy definition of terminal illness required Mr L to be expected to die within 12 months and before the cover ended. Aviva said this wasn't met because the 2009 policy is due to end in November 2024.

Mr L challenged Aviva's decision, but Aviva didn't change their position. So Mr L brought his complaint to our service.

Our investigator reviewed all the information and concluded Aviva didn't need to do anything differently to resolve the complaint. She was satisfied that Aviva had checked the detail of the medical evidence they'd relied upon and had it assessed by their own Chief Medical Officer before concluding the policy definitions hadn't been met.

Mr L didn't agree with our investigator's view. So I've been asked to make a final 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.

Having done that, I'm not upholding Mr L's complaint. I know this will be extremely upsetting news and I'm very sorry about that. I hope it will help if I explain the reasons for my decision.

Mr L bought his policies to protect his family in just the circumstances he's now sadly found himself. So I can understand why he's upset that the first policy he bought – which provides the majority of cover – hasn't paid what he expected. But, however much I sympathise with his position, I can only say Aviva should do more to resolve his complaint if I'm satisfied they've not dealt with his claim fairly.

I've looked at the terms of the policy Mr L bought in 2009. I can see he's expressed concerns that Aviva haven't applied the terms as they originally appeared in the policy. I

hope he's reassured by my saying I'm satisfied that the terms provided – and which I'll refer to below – are those from the original policy.

The policy schedule clearly sets out the cover start and end dates – the latter being 19 November 2024. And a section called *"How your Life Cover works"* explains when a claim will, or won't, be paid. The relevant parts of the section say:

"When we will pay a claim

We will pay a claim if, on or before the ***cover end date,*** *the* ***person covered:***

- *dies, or*
- *is diagnosed as suffering from a* ***terminal illness***

If the claim is for a ***terminal illness*** *the diagnosis must be made by a consultant at a UK hospital who is a specialist in an appropriate field of medicine. Our Chief Medical Officer must confirm the diagnosis…."*

….

When we will not pay

We will not pay a claim if:

- *…*
- *the claim is for* ***terminal illness****, but does not meet our definition of* ***terminal illness****"*

I acknowledge Mr L's been diagnosed with a terminal illness. But I think this makes it clear that, not only does a claimant have to have been diagnosed, but that terminal illness has to meet a specific definition, as set out in the definitions section.

That section defines terminal illness as:

"An advanced or rapidly progressing incurable illness that, in the opinions of an attending Consultant and our Chief Medical Officer means the ***person covered*** *is expected to die within 12 months and before the relevant* ***cover end date."***

I can see Mr L's consultant told Aviva that – statistically - they didn't expect Mr L to survive until the cover end date. They didn't provide any further detail. But Aviva's Chief Medical Officer reviewed the information about his diagnosis, ongoing health and treatment options and disagreed with that conclusion and considered he may live into 2025. I think that was a reasonable conclusion to draw from the available evidence.

In his response to the investigator's view, Mr L has suggested that this information was buried in the small print of the policy. I accept the document is detailed, but I don't agree this information was difficult to find. The policy is sub-divided using headings and sub-headings in bold type, with policy definitions highlighted in a different colour. I think this makes it straightforward for a reader to navigate and find the information they want.

I know my decision will be a blow to Mr L and I understand it must be difficult to accept that the failure of his claim is due to timing. But his policy has a fixed end date, after which it ceases to provide cover. And it's clear that payment of the terminal illness benefit can only be made if a claimant is expected to die before the cover end date. I think Aviva's conclusion Mr L is likely to live beyond that date is reasonable. So I don't think they need to do any more to resolve his complaint.

My final decision

For the reasons I've explained, I'm not upholding Mr L's complaint about Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 December 2024.

Helen Stacey
Ombudsman