

The complaint

The estate of Miss M is unhappy with Aviva Life & Pensions UK Limited's decision to maintain its decline on the late Miss M's claim after submitting new evidence.

What happened

The late Miss M brought a complaint to the Financial Ombudsman Service previously about Aviva's decision to decline her term assurance claim. She'd been diagnosed with stage IV metastatic breast cancer in February 2023. This new complaint is brought by the estate, following the death of Miss M in January 2025.

The estate of Miss M said it provided new medical evidence that shows the late Miss M likely had less than 12-months life expectancy from her diagnosis in February 2023. And that Aviva should now accept and pay the claim.

Aviva said the new medical evidence provided doesn't alter its original decision to decline the claim. It said the letters from the consultant oncologist were written with the benefit of hindsight and are inconsistent with the contemporaneous evidence at that time.

Our investigator didn't uphold this complaint. He said that whilst he couldn't revisit the original complaint brought by the late Miss M, he was satisfied Aviva considered the new evidence fairly.

The estate of Miss M, unhappy with that, asked for an ombudsman to review their complaint. In summary, they said Aviva asked them to produce this evidence and that it's now changed its position. They acknowledged there needed to be evidence stating the late Miss M had a life expectancy of less than a year, 18-months before the policy ended and that the new evidence supports that was the case.

The estate of Miss M also said this wasn't recorded in the contemporaneous medical evidence because the NHS doesn't usually provide this information, which is why they've produced it retrospectively. And so, it's now for me to reach 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.

I was sorry to learn of the circumstances that gave rise to this complaint and the passing of the late Miss M. Our investigator explained that I cannot revisit the original complaint brought to this service last year – which was about Aviva's decision to decline the claim originally. So, my final decision will focus on the two new pieces of evidence from the late Miss M's treating oncologists, in February and October 2025. Having carefully considered those letters, I've decided not to uphold this complaint.

I know this'll come as a disappointment to the estate of Miss M, but these letters were produced much later than 2023, when the late Miss M was undergoing her initial treatment.

And they contrast with the contemporaneous medical evidence, which although indicated she'd been diagnosed with terminal stage IV breast cancer, didn't specify she had less than 12-months life expectancy.

The new evidence goes some way to address that with the specialists offering their professional opinions, but because these opinions were offered retrospectively, I find it less persuasive in the circumstances. It therefore follows that I think Aviva has fairly assessed the new evidence. I'll explain why.

The relevant rule that applies in this case comes from the Insurance Conduct of Business Sourcebook and says Aviva must consider claims promptly and fairly and must not reject a claim unreasonably. I've considered Aviva's actions in line with this and other relevant industry guidance.

The relevant policy term in this case is:

"Terminal Illness Benefit will be payable where, other than within eighteen months prior to the expiry date, the life assured is diagnosed as suffering from an advanced or rapidly progressing and incurable condition (the "Terminal Illness") which is, in the opinion of the company's medical advisor, such that the life expectancy of the life assured is no greater than 12 months from the date the condition is notified to the company by the policy holder"

This term says that the late Miss M's terminal illness benefit ended at the point there's 18-months left on the policy. The policy ended on 1 December 2024, which meant the terminal illness benefit ended on 1 June 2023. The policy continued to provide life cover until December 2024, it was only the terminal illness benefit that ended sooner.

That meant the late Miss M needed to evidence that she was suffering from a terminal illness, which meant she had less than 12-months to live, before her terminal illness benefit stopped in June 2023.

The new evidence provided confirms the late Miss M's breast cancer was considered incurable from March 2023 after her initial treatment. The specialists also say it's their professional opinion it was from that point in time, on the balance of probabilities, the late Miss M had less than 12-months life expectancy.

Aviva, however, highlighted this wasn't an opinion that was shared at the time and that it's offered in retrospect and therefore less persuasive as the insurer would have reasonably expected it to have been documented at that point in time. The estate of Miss M said the NHS doesn't ordinarily offer guidance on life expectancy for fear of misleading patients and their families.

I've considered these arguments and I'm more persuaded by what Aviva has said. I think it's reasonable to expect there to have been some mention of this in the contemporaneous medical records. Further, Aviva said the late Miss M still had available treatment options from March 2023 aimed at extending her life expectancy. I'm therefore less persuaded by the recent specialist's letters, because the treatment pathway for the late Miss M was still actively being considered.

The specialist's letters explain it was realised the late Miss M's terminal cancer had metastasised to her liver in August 2023 and that her treatment was changed from that point in time. Aviva said even though this was realised after the terminal illness benefit was no longer in place, it showed the late Miss M still had the option of further treatment afterwards.

I've also seen the late Miss M's treatment was changed again in September 2023 and that

her CT scan showed the disease had stabilised by May 2024. I've highlighted this activity because I think it persuasively shows the late Miss M was actively being treated some time after her initial diagnosis and after the date her terminal illness cover had ended. And so, I think that's most likely the reason the contemporaneous medical evidence doesn't explain her life expectancy prior to the cover ending on 1 June 2023.

The consultant's recent letters, although suggest otherwise, are in contrast with that evidence and seemingly with the treatment pathway explored after that date. And so, for the reasons I've explained, I think Aviva's decision to maintain its position on this claim is reasonable.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Miss M to accept or reject my decision before 8 April 2026.

Scott Slade
Ombudsman