

complaint

Mrs A (representing the estate of the late Mr A) is complaining about Legal & General Assurance Society Limited because it didn't backdate the benefit on her late husband's life insurance policy to when he first became ill.

background

Mr A took out a decreasing term life insurance policy in 2004 for a term of 14 years. It included terminal illness benefit designed to pay out early if he became terminally ill before the policy ended.

Mr A became seriously ill and claimed on the policy in October 2013. Legal & General accepted the claim and paid out the death benefit applicable in May 2013, when a consultant wrote there was a possibility of him passing away in the next year. Sadly, Mr A died this year.

Mrs A says her husband suffered from MSA since 2009 and Legal & General should pay the claim from that date. Because the policy provided decreasing cover, that would mean she gets a higher amount.

Our adjudicator didn't recommend the complaint be upheld. She felt Legal & General had followed the policy conditions by paying from the date it was said Mr A may have less than 12 months to live.

Mrs A disagrees, saying Mr A had his condition from 2009. It has a very uncertain prognosis and Legal & General should have paid from this date. She also says the details of the terminal illness benefit weren't clearly explained when they took the policy.

my findings

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 agree with the adjudicator's conclusions for much the same reasons. I'm not upholding Mrs A's complaint.

I've taken account of Mrs A's concerns about the policy documentation, but I'm satisfied the terminal illness benefit was clearly explained, particularly in the policy schedule. This is a succinct two-page document and the benefit is explained in full and given equal prominence to the rest of the text.

At a time when he didn't know how things would turn out, I'm not persuaded Mr A wouldn't have taken the policy if the terminal illness benefit had been explained differently. I say this because the policies offered by most providers have similar restrictions and I think it's unlikely he would have found another insurer that would have paid out significantly earlier than Legal & General did. If I were to conclude the policy was mis-sold, I would award compensation designed to restore the position that would have existed if Mr A didn't take it in the first place. This would be based on a refund of the premiums and would be significantly less than the benefit Legal & General has already paid.

The policy was primarily designed to pay out on Mr A's death. It didn't include a *critical illness benefit*, which would have cost significantly more but would have paid out if he was diagnosed with a serious illness. But it did include a *terminal illness benefit*. This was really

designed to pay out the death benefit early if Mr A reached a position where he became terminally ill and was expected to die before the end of the policy. The policy conditions defined a terminal illness 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.

From reviewing the available medical evidence, it does appear Mr A had MSA from 2009. Although this doesn't seem to have been formally diagnosed until 2011. But the key point here is that the policy wasn't designed to pay out when he got the illness, but rather when he became terminally ill – in this case when he was diagnosed with less than 12 months to live. I've seen nothing in the evidence provided, including the recent letter from Mr A's GP, to indicate anyone involved in his treatment felt this was the case before May 2013.

I realise Mr A was very ill for a long time and that this must have been very difficult and distressing for both him and Mrs A. But for the reasons I've explained above, I'm satisfied Legal & General paid out on the policy when it should have.

Finally, I note Mr A applied for further life cover in 2009 and that was declined because of his health. Although he hadn't formally been diagnosed with MSA at that time, he was experiencing serious health problems. It was for Legal & General to make a business decision about whether it was willing to offer cover based on what was known about his health at the time. I don't think there are sufficient grounds for me to criticise it for the decision it took.

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 A to accept or reject my decision before 6 November 2015.

Jim Biles
ombudsman