

The complaint

Miss S complains that Aviva Life & Pensions UK Limited has declined a terminal illness claim made on her life insurance policy.

What happened

The history of this complaint is well known to both parties, so I won't repeat all the details here. In brief summary, Miss S took out life insurance in June 2005. Her policy includes provision for a payout to be made upon diagnosis of a terminal illness, subject to the policy terms and conditions.

Sadly, in 2022, Miss S was diagnosed with metastatic inflammatory breast cancer and commenced on palliative treatment. She originally made a claim for terminal illness benefit in 2023, but this was declined as Aviva said the terms of the policy hadn't been met.

In January 2024, Miss S contacted Aviva again regarding the terminal illness provision in her policy. Aviva reviewed a recent letter from Miss S's treating oncologist, Dr W, dated April 2024. But Aviva concluded the policy terms had not been fulfilled, as the medical evidence didn't support that Miss S's life expectancy was currently less than 12 months.

Miss S complained, but Aviva maintained its stance, so she brought her complaint to the Financial Ombudsman Service. Whilst the complaint was with us, a further letter from Dr W was provided, dated July 2024. Aviva confirmed it had reviewed this new evidence prior to responding to the complaint, but its position remained the same.

Our investigator didn't uphold Miss S's complaint, saying Aviva hadn't acted unfairly, as the requirements for a terminal illness claim hadn't been met.

Miss S disagreed, so her complaint has come to me for a final decision. Miss S feels Aviva's decision is unfair because her condition is rare and deterioration could be sudden.

I'm aware Miss S has expressed some concerns about the sale of her policy. To clarify, Aviva didn't sell Miss S her policy, so the scope of my decision relates solely to Aviva's claims 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 so, I'm not upholding this complaint. I recognise my decision will be very disappointing for Miss S and I'm sorry about that. I appreciate Miss S has had a lot to cope with since her diagnosis and understandably wants the financial security a payout would provide for her and her family. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

Terminal illness is an acceleration, or early payment of the policy's life cover. The relevant term in Miss S's policy states:

Terminal Illness Benefit will be payable where, other than within the eighteen months prior to the Expiry Date, the Life Insured 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 adviser, such that the life expectancy of the Life Insured is no greater than twelve months from the date the condition is notified to the Company by the Planholder.

I've reviewed the medical evidence provided, focusing particularly on the two recent letters from Dr W. In his April letter, Dr W again confirms that Miss S's condition is incurable. He also refers to it as unusual. When commenting on her response to treatment and future management, he says:

Following chemotherapy there was minimal residual disease seen at mastectomy. On current treatments there is evidence only of treated bone metastases and no evidence of previously known nodal metastases in the neck and other distant locations.

Continuing current management until signs of disease progression at which stage expected to be fit for further lines of treatment with endocrine therapy and chemotherapy.

When commenting on life expectancy, Dr W referred to relevant trial data to best estimate life expectancy, saying:

In that study the median overall survival was 59 months in the appropriate [specific drug therapy] arm. At this stage it is very difficult to say whether [Miss S] is doing better or worse than the average given that this can be a very aggressive presentation of disease on one hand, but on the other response to date has been good.

In his letter of July 2024, Dr W confirmed both that Miss S was being monitored with three monthly scans and that her condition was rare and expected to behave aggressively. No further information was given regarding life expectancy.

Aviva said it had sought the opinion of its Medical Advisor – a practicing consultant oncologist – who did not confirm that the policy term regarding life expectancy had been met. It also confirmed that Dr W's latest information did not alter its decision.

I recognise that the additional stress of dealing with her insurance claim is upsetting for Miss S at an already difficult time. But having considered the evidence, I'm satisfied Aviva acted reasonably in declining Miss S's claim, saying the requirements for a terminal illness payout to be made hadn't been met.

I understand Miss S has been frustrated by some of the language Aviva has used, seeming not to understand the severity of her condition. Miss S says she feels disrespected when Aviva refers to her cancer 'coming back', saying she will now never be cancer free. I recognise the very difficult position Miss S is in, effectively trying to live her life, aware that her condition is expected to deteriorate. I can see that Aviva's email to Miss S, dated 20 August 2024, acknowledges its Medical Advisor's opinion that it should review her claim again upon disease progression.

To conclude, I don't think Aviva has acted unreasonably in saying the policy definition for terminal illness has not been met. So I'm not going to ask it to do anything more in respect of this complaint. At such time as Miss S contacts Aviva again about her claim, I would expect it to reassess promptly and fairly. Once again, I'm sorry to send unwelcome news to Miss S.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 24 October 2024.

Jo Chilvers
Ombudsman