

## **The complaint**

Mr F and Mrs F complain that Liverpool Victoria Financial Services Limited has declined a terminal illness claim made on their 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, Mr F and Mrs F took out decreasing term life insurance in October 2003. Their policy includes provision for a payout to be made upon diagnosis of a terminal illness, subject to the policy terms and conditions.

Very sadly, in November 2023, Mrs F was diagnosed with metastatic breast cancer and told that her illness was terminal. In December 2023, she contacted LV to make a claim. LV wasn't satisfied the policy definition for terminal illness had been met. It said it would postpone the claim until Mrs F had had further scans to assess her response to palliative treatment. Mr F and Mrs F complained but LV maintained its stance.

Mr F and Mrs F brought their complaint to the Financial Ombudsman Service. Whilst the claim was with us, further medical evidence was provided. But LV again maintained its position. Our investigator didn't uphold Mr F's and Mrs F's complaint, saying LV hadn't acted unfairly when it declined Mrs F's claim, as all of the requirements for a terminal illness claim hadn't been met.

Mr F and Mrs F disagreed, so the complaint has come to me for 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 so, I'm not upholding this complaint. I recognise my decision will be extremely disappointing for Mr F and Mrs F and I'm very sorry about that. I appreciate Mr F and Mrs F have had a lot to cope with in recent months and are going through a particularly distressing and challenging time. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

Mr F's and Mrs F's policy defines terminal illness as:

*An advanced or rapidly progressing illness where, in the opinion of the attending consultant and our Chief Medical Officer, life expectancy is no more than 12 months, or the remaining term of the policy if less.*

The policy further states:

*We will pay the full amount of life protection benefit if the life assured is diagnosed as suffering from a terminal illness while the policy is in force.*

There's no dispute Mrs F has an incurable illness. The issue here is about life expectancy, and in that regard, the timing in this case is particularly sensitive. Terminal illness is an acceleration, or early payment of the policy's life cover. Mrs F's cover expires in October 2024. Her terminal diagnosis was in November 2023. So the key question is whether Mrs F's life expectancy is likely to be no more than the remaining term of the policy.

I've reviewed the medical evidence provided. Mrs F's consultant oncologist, Dr J, completed a report for LV in January 2024. He was asked the following questions and gave the following answers:

*Q: How long is the life expectancy of your patient?*

*A: Difficult to predict exact time. Given rapid recurrence and speed of progression, life expectancy could be less than 1 year.*

*Q: what is your patient's project survival in 12 and 24 months' time?*

*A: High chance life expectancy is less than 1 yr.*

Dr J also confirmed that Mrs F had commenced palliative chemotherapy and said:

*There is a chance that treatment could provide some disease control. Awaiting CT to assess response.*

LV consulted its chief medical officer who advised it would be reasonable to request further information on Mrs F's response to palliative treatment.

In April 2024, Dr J provided further information to Mrs F's representative. He confirmed that a recent CT scan, at the end of March 2024, had shown some response to palliative treatment, but said that in his experience, this type of response can be short lived. He further commented:

*Life expectancy in metastatic breast cancer is very difficult to predict but given this lady's history, her life expectancy is very likely to be less than 12 months.*

And in July 2024, Dr J provided a further update on Mrs F's condition, noting that a recent scan, in June 2024, had confirmed radiological progression. He referred to clinical studies with weekly chemotherapy that suggested a median progression free survival of approximately 7 months with a median overall survival of approximately 20 months. But he noted the indication was that Mrs F's cancer was:

*...rapidly progressive and aggressive, and therefore her estimated survival is much less, and is likely to be less than 12 months from her original diagnosis and presentation.*

*Therefore I would be fearful that her death would come before October 2024.*

I understand Mrs F's arguments that there are many reasons why a treating doctor may be reluctant to commit to a more precise prognosis. But whilst I note Dr J has said that life expectancy is likely less than 12 months from original diagnosis, he has not said it is likely less than the term of the policy.

For Mrs F's claim to succeed, the policy term says the opinion of LV's chief medical officer should be that life expectancy is no greater than the remaining term of the policy.

Following the more recent evidence from Dr J, LV sought opinions from two of its chief medical officers, both experienced specialists in the field. The first specialist commented:

*The policy has only 2 months left to run and the June scan showed stable bony metastases, resolution of the previous pleural effusion but some local progression in the tumours in the L breast and chest wall. These findings are not compatible with a likely life expectancy of less than 2 months.*

Perhaps given the delicate timing of the situation, there was a recommendation for a second opinion, which LV sought. This second specialist said:

*The crucial piece of evidence here is that [Mrs F's] bone metastases are stable. Whilst she has developed new metastases within her breast, there are no liver or brain metastases. A previous pleural effusion has resolved.*

*Overall, this is slow progression (the new metastases) in some areas, with disease regression in others (the lungs) and stable disease elsewhere (bone). Areas associated with a particularly poor prognosis (brain and liver) are spared.*

*Therefore, I agree with the results of the trial [Mrs F's treating] specialist quoted. That was of a median 20 month survival i.e. well into 2025. I certainly cannot say I expect death before the end of the policy.*

Finally, LV also referred the claim to its reinsurers, noting that Mrs F's representative had argued the 12 months life expectancy should apply from her original diagnosis. However, the reinsurer was satisfied the claim was not payable, relying on the two specialist opinions LV had already obtained and the policy term, requiring the diagnosis to be that the illness is terminal.

I recognise that the additional stress of dealing with the insurance claim will have been upsetting for Mr F and Mrs F at an already very difficult time. But overall, I'm satisfied LV acted reasonably in declining Mrs F's claim because the requirements for a terminal illness payout to be made had not been met. I'm not going to ask LV to do anything more in respect of the complaint.

Once again, I'm sorry to send unwelcome news to Mr F and Mrs F.

### **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 Mr F and Mrs F to accept or reject my decision before 24 October 2024.

Jo Chilvers  
**Ombudsman**