

The complaint

Mrs P complains that Liverpool Victoria Financial Services Limited declined to meet a terminal illness claim made under a level term life protection plan.

What happened

The background to this complaint is not in dispute. In summary Mr P and Mrs P took out three policies in 2011 for a term of 11 years. This complaint concerns the claim Mr and Mrs P made for terminal illness benefit under the life protection plan. Very sadly Mr P passed away in February 2023. Mrs P, also a joint policy owner, continued with the complaint started before Mr P died.

A complaint was brought here when Liverpool Victoria declined the claim. Our investigator didn't recommend that it be upheld. He didn't find that the policy definition was met for the terminal illness claim to succeed.

Mrs P appealed.

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.

Firstly, I would like to send my condolences to Mrs P for loss of Mr P. It's clear from the correspondence and call with our investigator how devastating this has been for her. I'm grateful to her for her detailed submissions at what I recognise has been an extremely difficult time.

I'm aware I've summarised the background to this complaint and left out some sensitive medical information. No discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I've fully reviewed the complete file and considered the representations Mrs P made after our investigator's investigation outcome. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I recognise that Mrs P will be very disappointed my decision and I'm sorry this decision doesn't bring more welcome news. But for these reasons I agree with the conclusion reached by our investigator:

- In addition to life cover, Mr and Mrs P's policy also included cover for terminal illness. There is no dispute that Mr P was diagnosed with the cancer from which he died before the policy came to an end in September 2022. However, in order for a claim to be met the illness needs to meet the policy definition which is: *Terminal illness – Advanced or rapidly progressing incurable illness where, in the opinions of an attending consultant and our Chief Medical Officer, the life expectancy is no greater than 12 months.* The policy excludes terminal illness claims *If you are*

diagnosed with a terminal illness less than 12 months before the end date of the policy. So, to succeed, the definition needed to be met before 1 September 2021.

- I've carefully considered the opinions of Mr P's attending consultants and Liverpool Victoria's Chief Medical Officers in order to see if Liverpool Victoria treated Mrs P fairly in concluding the definition wasn't met. Mr P's Consultant Plastic Surgeon, whom I'll refer to as Mr J, reported that Mr P first presented in his department in April 2021. A CT scan at that time showed no evidence of further disease spread. He was regularly seen by the oncology team since that date and Mr J reported that in October 2021 Mr P was clinically well and there was nothing to find in the area of the first melanoma at that stage. Mr J said that it is a moot point to try and decide which point in time (Mr P's) disease became completely incurable as no one can attribute a specific time to this. Liverpool Victoria asked Mr J whether in his opinion there was evidence of incurable metastatic disease or that Mr P's life expectancy was 12 months or less on 1 September 2021. He said that he wouldn't wish to make such judgements as he couldn't predict this with accuracy and wouldn't try to. But he felt the claim should be paid.
- Mr P's oncologist, whom I'll refer to as Dr H, wrote in July 2022 that his life expectancy was probably measured in months. She said his 12-month survival was less than 40% and 24 months less than 20%. Very sadly Mr P's cancer recurred and he passed away in February 2023 – by this date the policy had come to an end.
- Liverpool Victoria sought the opinion of two medical officers. Mrs P has seen that evidence, so I won't repeat it in detail here. But in short the opinion was Mr P initially appeared to have good prognostic features – which is why the clinical decision was to re-scan in six months. The recurrent node appeared in early October 2021, there was no indication to do a second scan until the appearance of this second lump, which was within the last 12 months of the policy. In the circumstances they didn't find that the policy definition was met before 1 September 2021.
- I've carefully thought about Mrs P's submission in which she refers to a definition of terminal illness as *an illness or condition which cannot be cured and is likely to lead to someone's death*. She writes that none of the definitions she has found in numerous online resources refer to a timeline. I do understand her point. However, the issue here is whether Mr P met the policy definition, which will differ from those found online. The policy definition does include a timeline of sorts, in that for a terminal illness claim to succeed the definition needs to be met 12 or more months from the policy end.
- The medical evidence doesn't support that Mr P met the policy definition on 1 September 2021 – in that his life expectancy wasn't found to be 12 months or less at or before this time. I can understand why Mrs P feels this is unfair. But in the light of all the evidence I can't say that Liverpool Victoria treated Mrs P unfairly, unreasonably or contrary to the policy terms and conditions in declining her claim.
- Liverpool Victoria acknowledged that the written communications Mrs P had received had caused her distress. It offered £300 in compensation. I find that was fair.
- For completeness I would add that I don't find the successful critical illness claim made on another policy had any bearing on the success of this claim.

My final decision

For the reasons given above 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 P to accept or reject my decision before 17 August 2023.

Lindsey Woloski
Ombudsman