

The complaint

The estate of Mr P ('the estate') is unhappy that Standard Life Assurance Limited declined a retrospective terminal illness claim made on Mr P's level protection plan ('the plan').

What happened

Mr P had the benefit of the plan which could pay out a sum of money if he died before the expiry date, which was in February 2021. It also provided terminal illness benefit which would be payable if Mr P suffered a terminal illness before the end of June 2018. I'll refer to the latter date as the 'relevant date'.

Mr P had been diagnosed with several illnesses before the relevant date and a claim for terminal illness was made on the plan. However, Standard Life declined that claim on the basis that Mr P hadn't been diagnosed with a terminal illness as defined by the terms of the plan.

Very sadly, shortly before the claim was declined, but after the expiry of the policy, Mr P died in September 2021. Unhappy with Standard Life's decision, the estate of Mr P raised a complaint. And after Standard Life maintained its decision to decline the claim, the estate raised a complaint with our service.

Our investigator looked into what happened. He didn't uphold the estate's complaint because he didn't think the claim was unfairly declined. The estate disagreed and raised a number of points in reply. These didn't change our investigator's opinion and the estate requested an Ombudsman's decision. So, I have to make a 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.

For the avoidance of doubt, that includes the further comments the estate has provided since our investigator issued his view on this complaint – including but not limited to the estate's email dated 30 May 2023.

At the outset I acknowledge that I've summarised this complaint in far less detail than the estate has, and in my own words. And I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern our service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

I also acknowledge that in response to our investigator's view, the estate has raised other concerns against Standard Life including that Mr P was advised to pursue a retrospective terminal illness claim in June 2018 rather than being offered an extension to the plan or told that the terminal illness benefit expired on the relevant date. However, these complaints

were investigated by Standard Life, and it responded to them in its final response letter dated July 2021. I understand that neither the estate nor Mr P referred that complaint to our service within 6 months from the date of this final response letter. But to be clear, I haven't considered whether our service has jurisdiction to determine such concerns or considered the merits of those complaints.

I've only considered the complaint made by the estate as set out in the complaint form submitted to our service in August 2022; namely whether Standard Life has acted fairly by declining the retrospective terminal illness claim made under the plan. That was the complaint point addressed by Standard Life in its final response letter dated March 2022, and in its subsequent correspondence dated June 2022. Our investigator summarised the complaint when emailing the estate in October 2022 and the estate didn't say there were other concerns, they wanted investigated.

And although the estate has recently provided further medical letters dated May 2023 in support of the claim, I've focussed on the information available to Standard Life as at the date of its final response letter dated March 2022 and its follow up letter dated June 2022. The estate is free to provide the further medical evidence to Standard Life in the first instance to consider whether it changes its claims' decision.

Did Standard Life unfairly decline the terminal illness claim?

Standard Life has an obligation to handle claims promptly and fairly and it mustn't unreasonably decline a claim.

When making a claim, it's for the policyholder (or in this case, the estate) to establish that there's a valid claim under the plan and that the definition of terminal illness has been met. It's not for an insurer (in this case, Standard Life), to show that this definition hasn't been met.

The terms of the plan say that if the plan is still in force and terminal illness benefit still applies (as shown in the policy schedule), a claim for terminal illness will be accepted if Standard Life has "received satisfactory proof that the life assured has a terminal illness..."

Standard Life agreed to consider a retrospective terminal illness claim if Mr P established that he had a terminal illness – as defined by the plan - before the relevant date. And given the circumstances of this case, I think that's fair and reasonable and in line with what I would reasonably expect it to have done.

Under the terms of the plan, terminal illness means: "advanced or rapidly progressing illness where, in the opinion of an attending consultant and our Chief Medical Officer, the life expectancy is no greater than 12 months".

I'm satisfied that Standard Life has fairly and reasonably concluded that Mr P (or the estate) hadn't established that Mr P had a terminal illness before the relevant date. I'll explain why.

- Standard Life's Chief Medical Officer considered the medical evidence and there was no evidence, in their opinion, to establish or suggest that a life expectancy of less than 12 months to support a retrospective claim. I've read the medical evidence Standard Life requested (and considered) for the period before the relevant date – including hospital letters. I'm satisfied it fairly concluded that there was nothing before the relevant date to show that a consultant (or indeed other medical professional) advised that Mr P's life expectancy was no greater than 12 months.
- The estate has explained why it feels the term 'terminal illness' is commonly

misunderstood and has put forward references stating that Mr P's illnesses were incurable. But this term is specifically defined by the policy terms and I don't think it's unreasonable for Standard Life to rely on that specific definition when concluding that Mr P hadn't been diagnosed with a terminal illness as defined by the policy.

- The estate has also said that the medical evidence might not have been accurate or as comprehensive as it could've been, that it was clear that Mr P was dying, and due to the complexity and number of medical issues, it was difficult to get a medical professional to give an opinion on Mr P's life expectancy. However, I don't think it was unreasonable for Standard Life to rely on the medical evidence obtained when assessing the claim. And there's nothing to support that he was told that his life expectancy was no greater than 12 months before the relevant date in line with the policy terms.
- In response to our investigator's view, the estate has said that Mr P and his wife did raise the life expectancy question with a couple of consultants. They were told by one that "no-one had a crystal ball to predict the future or anyone's life expectancy" and "to live the best possible life within the short time he had left". The estate says another consultant said: "a diagnosis was very difficult to determine given there are so many things going on". But this doesn't support that Mr P was advised prior to the relevant date that his life expectancy was no greater than 12 months.
- I agree with the estate to the extent that the medical evidence supports Mr P's medical needs weren't straightforward. He had a number of medical issues – and was clearly unwell - before the relevant date. These medical issues are mentioned on the death certificate. However, I don't think that means Standard Life has unfairly concluded that before the relevant date Mr P's life expectancy was no greater than 12 months. As I've found above, that's not supported by a consultant or Standard Life's Chief Medical Officer as required by the terms of the policy.
- I've considered a medical report prepared for the court by a consultant physician dated April 2021. Although the report does go into Mr P's medical history in detail and does give an opinion on life expectancy if he were to develop one of the malignant conditions and why his average life expectancy might be reduced, this report is dated almost three years after the relevant date and the opinion given is from that date forwards. So, I've placed less weight on its content when determining whether Standard Life has fairly declined Mr P's retrospective claim for terminal illness.
- I don't agree with the estate that Standard Life ought to have approached each of Mr P's physicians and each of his regular GPs to disprove that he was dying – or that Standard Life should instruct a medical expert at its own cost to determine whether the policy definitions are met. I don't think it reasonably should've done so in this case. As I've said above, it's for Mr P (or, in this case, the estate) to establish a valid claim made under the plan and that Mr P had a terminal illness, as defined by the terms of the plan, before the relevant date. For the reasons set out above, I'm satisfied Standard Life has reasonably concluded that this hasn't been established.

I know the estate will be very disappointed by my decision. And I can see this has been a very difficult time for Mr P's family. I hope that it helps them to know that this complaint has been carefully considered by someone independent of the parties.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr P to accept or reject my decision before 3 August 2023.

David Curtis-Johnson
Ombudsman