

RECENT FOS & SCT DECISIONS

Compensation Awarded for Non-Financial Loss

[Link to determination](#)**Facts**

The Applicant was diagnosed with metastatic melanoma and in 2016 claimed terminal illness benefits under a loan protection insurance policy (the Policy) which he had taken out with the financial services provider (FSP) on 2 December 2014.

The Policy excluded claims for benefits where the terminal illness resulted directly or indirectly from an illness for which the Applicant had symptoms, or received professional or medical advice or treatment for within 12 months before the Policy start date. Although the Applicant's illness was not deemed terminal until February 2016, he had undergone several examinations and consultations in the 12 month period prior to the start date of the Policy. As a result, the FSP determined that the Applicant's terminal illness claim was excluded under the Policy.

The Applicant maintained that his illness was not yet terminal at the time the Policy started. He also submitted that the FSP should backdate the Policy to 2009 as he had applied for loan protection at this time and believed his application had been accepted verbally.

The FSP submitted that the Applicant was provided a premium estimate for a loan in 2009 and that while there was an intention to proceed with the application, there was no evidence that the Applicant had accepted the premium estimate and the application had subsequently been closed.

Issues

1. Is the Applicant's claim excluded under the Policy?
2. Is it fair and reasonable for the Insurer to backdate the Policy to 2009?
3. Is the Applicant entitled to compensation in some form?

Determination

The FOS was satisfied that the FSP was entitled to deny the Applicant's claim for a terminal illness benefit by relying on the exclusion.

The medical evidence showed that the Applicant had several examinations and consultations with regard to a diagnosis of metastatic melanoma in the 12 months prior to the Policy start date. The FSP also determined that it was irrelevant that the illness had only become terminal in February 2016 as the Policy wording provided that it was sufficient that the Applicant received professional medical advice or treatment for his illness, within 12 months before the Policy start date.

The FOS did not find any evidence to suggest that the Applicant had accepted the premium estimate in 2009 and it also determined that the onus was on the Applicant to realise that he was not covered. With regard to this, the FOS noted that the Applicant did not receive a welcome letter, policy schedule or policy document in 2009, made no attempt to follow up the application and should have realised that premiums were not being deducted from his account.

Despite the above findings in favour of the FSP, the Applicant was awarded compensation of \$3,000 for non-financial loss under the FOS Terms of Reference (the TOR). The TOR allow for compensation to be awarded "for interference with the applicant's expression of enjoyment or piece of mind". As the Applicant had several policies with the FSP, and had multiple dealings with the FSP previously where he was able to accept a premium quote verbally, the FOS was satisfied that there was an interference with the Applicant's expectation of enjoyment or piece of mind.

Implications

The decision provides an example of how compensation may be awarded under the FOS TOR for non-financial loss, even when it is determined that a FSP was entitled to deny an Applicant's claim. In this particular case, even though there was no evidence in writing that the Applicant's application had been accepted in 2009, given the Applicant's prior dealings with the FSP, and their expectation that an application could be accepted verbally, this was sufficient for compensation to be awarded.