

## The complaint

Ms S complains that Legal and General Assurance Society Limited ('L&G') has unfairly refused her critical illness claim.

## What happened

Ms S took out her policy in September 2011. It offers her both life and critical illness cover, with a sum assured of £20,758. The policy is set up to run until September 2033.

In September 2020, Ms S made a claim to L&G for critical illness under her policy's 'cancer' definition. She had sadly been diagnosed with a very rare type of cancer in February 2020 - dermatofibrosarcoma protuberans ('DFSP'). It required a wide excision surgery in March 2020 to remove it. L&G then sought medical information from Ms S's GP to verify the claim.

L&G reviewed the medical information, but in March 2021 it told Ms S that it was unable to pay her critical illness claim. It said a histology report showed Ms S's DFSP arose and was located in the deepest layers of the skin.

It said it had shown the relevant medical information to its own consultant oncologist Chief Medical Officer ('CMO') who said that DFSP was a sarcoma that arose in the connective tissue of the dermis, and so was a skin cancer. In this particular case, the tumour had extended to the subcutaneous fat which was, anatomically, part of the skin. L&G said it believed any neoplasm arising primarily in the skin should be regarded as skin cancer and excluded under the policy.

Ms S complained. She explained that she understood soft tissue sarcomas to be a group of rare cancers affecting the tissues that connect, support and surround other body structures and organs. They grew in the body's connective tissue cells, which included fat, blood vessels, nerves, bones, muscles, deep skin tissues and cartilage. Contrastingly, skin cancer referred to a group of cancers that slowly developed in the upper layers of the skin.

L&G reconsidered its position, but in December 2021 it said it still wasn't prepared to pay Ms S's claim. It reiterated that DFSP was a type of skin cancer and excluded by the policy. Specifically, it noted that despite being a sarcoma, DFSP arose in the skin. In this case, the histology report it had referenced previously confirmed Ms S's tumour had extended to the subcutaneous fat - which was anatomically part of the skin.

In its letter, L&G also told Ms S that it would address her complaint separately. That same month, Ms S brought her complaint to this service, noting that L&G hadn't issued any reply.

She said at all times during her treatment, her cancer had been referred to as a soft tissue sarcoma, not a skin cancer. She also explained that when she was in hospital for her surgery, she met a patient under the care of the same sarcoma team as her who had the same diagnosis. The patient had L&G critical illness insurance and her claim was paid in full.

An investigator reviewed the complaint and felt that it should succeed, with her proposal to resolve the complaint being that L&G ought to do more to objectively assess Ms S's claim.

She said that though L&G had sought three medical opinions from its own specialists (of which it had supplied two), it had not put the policy definition to Ms S's treating consultant. The investigator said L&G should do so now, and pay Ms S £500 for its inability to expedite the claim process or provide a complaint outcome – which remained outstanding.

Ms S said she agreed with the investigator's proposal. However, she still took issue with the fact L&G had paid out for other DFSP cases, and ombudsmen at this service had also directed businesses to pay claims for DFSP. She felt this set a precedent especially when another ombudsman's decision of 2016 had directed L&G to pay a claim for DFSP.

L&G sent a further third party report from a European Professor of histopathology, which confirmed though DFSP appeared in classifications for both soft-tissue tumours and in the World Health Organisation classification for skin cancers, it concluded that *"DFSP is a locally aggressive soft tissue tumour (sarcoma) of the skin"*.

It did not supply any additional comments, and the complaint has now been passed to me.

### **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.

I thank the parties for their patience whilst this matter has awaited an ombudsman's review.

I recognise that Ms S has referred to a specific decision upheld by a different ombudsman from this service that has similar circumstances regarding a critical illness claim for DFSP. And, she is aware of another policyholder who has had a claim paid out by L&G for DFSP.

To be clear, I can't look at the circumstances of the other policyholder, who is not part of this complaint. And, previous complaints do not establish fixed precedents for subsequent ones at this service. I will be mindful of relevant law, industry standards, relevant guidance and accepted approaches when considering a complaint. However, each complaint brought to this service will be decided on its own facts, as they relate to a complainant's individual circumstances and the specific actions of the business being complained about.

I've taken into account the evidence provided about Ms S's specific diagnosis alongside the information relied upon by L&G to decide if a claim has been met against the relevant policy wording. And, like our investigator, I do not believe L&G has sufficiently determined that the policy exclusion applies because the claim has not been properly concluded. I also believe it ought to do more to resolve this complaint – and issue a further outcome to Ms S's claim.

Under the terms of Ms S's policy, 'cancer' is defined as:

*"Cancer – excluding less advanced cases*

*Any malignant tumour positively diagnosed with histological confirmation and characterised by the uncontrolled growth of malignant cells and invasion of tissue. The term malignant tumour includes leukaemia, lymphoma and sarcoma.*

*For the above definition, the following are not covered:*

- *All cancers which are histologically classified as any of the following:*
  - *pre-malignant;*
  - *non-invasive;*
  - *cancer in situ;*
  - *having either borderline malignancy; or*

- *having low malignant potential.*
- *All tumours of the prostate unless histologically classified as having a Gleason score greater than 6 or having progressed to at least clinical TNM classification T2N0M0.*
- *Chronic lymphocytic leukaemia unless histologically classified as having progressed to at least Binet Stage A.*
- ***Any skin cancer other than malignant melanoma that has been histologically classified as having caused invasion beyond the epidermis (outer layer of skin) [my emphasis].***

The wording is clear that for claims of cancer, sarcomas are covered (providing there is histological evidence that they are characterised in the way described regarding uncontrolled growth and invasion of tissue). It's worth noting here that neither party appears to dispute that Ms S's sarcoma is a malignant tumour characterised by the uncontrolled growth of malignant cells and invasion of tissue. From the evidence I've seen, the reason L&G won't pay a claim is because it says the (bold) exclusion applies, since it contends that any neoplasm arising primarily in the skin should be regarded as skin cancer; therefore DFSP is excluded under the policy.

I recognise there are conflicting sets of medical opinions regarding DFSP and the classification of skin. And I note that L&G's CMO disputes Ms S's conclusions that her DFSP diagnosis was not a skin cancer, but instead a sarcoma which can occur in many types of connective tissue – including skin.

The medical report L&G has supplied most recently to this service is not a specific medical report relating to Ms S; rather, it is a report which addresses whether DFSP was considered a skin cancer in general terms, according to the Professor's individual expertise.

Further, though L&G's CMO has provided a view from a specialist oncology perspective arguing that Ms S's condition was a skin cancer, I am mindful that the other medical assessment supplied from L&G (in its files dated June 2021) concluded that DFSP was a form of sarcoma, rather than a skin cancer.

It is not my role to issue findings on which specialist is correct or has the most authority on a subjective matter, as I am not a medical expert. This service isn't a court; it's set up to provide informal dispute resolution. My duty is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances having regard to the evidence.

On general grounds, where there is conflicting evidence, I'll decide what I believe is the most persuasive, on balance. However, I cannot do that here – because L&G has not sought the relevant medical evidence from Ms S's treating consultant to establish whether her DFSP is considered a sarcoma or a skin cancer, and why. Instead, it has provided two conflicting internal medical views, and a third party report on the classification, epidemiology, grading, prognosis and pathological characteristics of DFSP in the general sense. Whilst that report may provide supportive evidence of the rationale for the claim being refused, I expect that any evidence relied on ought to be measured against or alongside that of Ms S's doctor(s).

I do not believe L&G has undergone a complete assessment of this claim. For that reason, I will make directions below as to how this matter ought to be resolved.

### **Putting things right**

L&G must supply Ms S's policy definition (alongside any of the three medical opinions or other evidence if it relies on the same) to her relevant treating specialist(s), requesting an explanation as to whether Ms S's specific diagnosis is considered a skin cancer (or not), and

why. It must do so within one month of confirmation from Ms S.

I believe this is the fair means to concluding this claim; it is clear that the decision is finely balanced when L&G has conflicting internal assessments of the same medical evidence. It follows that the relevant medical professionals directly involved in Ms S's treatment are in the best position to offer a clinical opinion on her instance of DFSP, with reference to the policy definition of sarcoma and exclusion of skin cancer as set out above.

L&G must then issue a final outcome to Ms S's claim, as soon as is practicable. My decision does not prevent Ms S from making a further complaint about the outcome, if so required.

Finally, L&G must make a payment to Ms S to reflect the upset and distress Ms S has been caused in the handling of the claim. L&G has failed to provide a clear answer as to the evidence on which it relies and it must do more to conclude the claim. I can see how concerned and distressed Ms S has been about this matter, as it remains unresolved after a considerable time. I find an award of £500 is appropriate for the impact of the upset on Ms S.

### **My final decision**

I uphold this complaint. I direct Legal and General Assurance Society Limited to undertake further steps to conclude the claim, issue an outcome and pay £500 compensation to Ms S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 30 January 2023.

Jo Storey  
**Ombudsman**