

The complaint

Mr P has complained about Legal and General Assurance Society Limited's (L&G) decision to decline his claim under his life and critical illness policy.

What happened

Mr P was diagnosed with what his treating consultant described as a left frontal brain abscess secondary to periodontal disease. He submitted a claim under the life and critical illness policy ("the policy") he has which started in April 2011. The policy has a sum insured of £200,000. L&G defined the condition as an intracerebral abscess and said this was not one of the critical illnesses listed as covered by the policy. So, they turned down Mr P's claim. Mr P complained to L&G. They said they were satisfied their decision to turn down his claim was correct.

Mr P asked us to consider his complaint about L&G. One of our investigators did this. He said he was satisfied L&G were entitled to turn down Mr P's claim. This was on the basis he thought the medical information indicated that Mr P's condition could fairly be called an abscess that was enclosed by a membrane, which was cystic like in appearance, as opposed to actually being a cyst. He said that in view of this, Mr P had not suffered from one of the critical illnesses covered by his policy.

The investigator also considered Mr P's complaint about L&G's decision to turn down a claim under another policy he has, which started in February 2018. But this is being dealt with by us as a separate complaint.

Mr P didn't agree with our investigator and asked for an ombudsman's decision. In his opinion the abscess he had meets the definition of a cyst as set out in the Association of British Insurers (ABI) Guide to Minimum Standards for Critical Illness Cover, which was produced in 2018. He thinks the expert medical evidence he's provided supports this view. In his opinion, an infected cyst is called an abscess and how it is formed is irrelevant. And he doesn't think the opinions of the two experts he's provided, which he thinks supports his view, should be ignored.

I issued a first provisional decision on 21 October 2022, which addressed L&G's decision to turn down Mr P's claims under both his policies.

In this I provisionally decided on the basis of what was fair and reasonable in all the circumstances that Mr P's illness did meet the definition of Benign Brain Tumour under the policy. And I said the fair and reasonable outcome to Mr P's complaint was for L&G to settle his claims by paying the amount due to him under each of his policies, ie £200,000 under each policy. I also said L&G should pay Mr P £500 in compensation for the distress and inconvenience he experienced as a result of L&G incorrectly turning down his claims.

I gave both parties until 18 November 2022 to provide further comments and evidence in response to my provisional decision.

Mr P provided the following further comments on the merits of his complaint:

- His case rests on the precedent of the definitions held within the ABI guidelines. These guidelines are mandatory rules for all ABI members to follow and are default definitions for the insurance industry. In consideration of L&G responding with a more detailed explanation of cyst versus abscess in an effort to defend their position, he has drawn my attention to some notable facts he has not highlighted before, which are as follows:
 - The compelling evidence given by Mr K and Ms M (his treating consultant and an expert he saw for a second opinion on his condition), who both support his illness as a valid definition of a cyst without the ABI critical illness guidelines. Hence, their definition of what a cyst is and how it captures his illness is only reinforced in reference to the actual definition of a cyst within the ABI guidelines.
 - In consideration of the precedent of the definition within the insurance industry against others, he thinks I should refer to page two of the ABI guidelines under 'Introduction' where it refers to the fact the guidelines came off the back of a recommendation by The Office of Fair Trading following a review in 1998 to see whether the market for critical illness insurance was working well. He thinks that, in view of this, if the definitions in the guidelines are ignored it would allow exactly the opposite to happen to what they are meant to deliver and it would create inconsistency across the market.

I also noticed that I hadn't addressed Mr P's complaint point, which he made when making his complaint to us, that the time L&G took to make a decision on his claims and consider the further evidence he provided after they rejected them originally, along with the manner in which they did this, caused him unnecessary distress and inconvenience. In view of this, I wrote to him to say I had now considered this and that I thought that L&G did provide an answer in a reasonable time initially. And – while they could have provided an answer quicker after he provided further evidence – I didn't think the time they took was unreasonable. I went on to say in light of this, I didn't think the distress and inconvenience he'd experienced as a result of the delay in the claims process and L&G's approach warranted further compensation.

Mr P responded to say that, for expediency, he was inclined to agree with my view on the delay point and how L&G handled his claim. However, he said that his initial contact with L&G was very challenging and they showed no understanding of his physical state at the time. He thinks the person he spoke to was 'rude and dismissive' and almost treated his observations of the validity of his claim 'as a game he needed to win'. He pointed out it has taken a lot of his energy and focus over the months to persist with his own research into the matter and engage professional opinion. Therefore, whilst it is difficult to value and/or seek compensation, he thinks it is clear L&G didn't fulfil their obligations as a 'credible insurer'.

L&G provided detailed comments in response to my provisional decision, some of which are from their Chief Medical Officer (CMO). Many of these were the CMO restating medical evidence relating to Mr P's claims. I considered everything L&G said in their response to my provisional decision and everything they had said previously. And I listed what I considered to be the key further points L&G had made as follows:

Their prime concern is the fact I have chosen to use the model wording contained in the ABI guidance for the definition of a cyst and then applied it to this claim situation. And they do not think it is reasonable to assess the circumstances of Mr P's claim in this way.

- My conclusion that the abscess Mr P suffered fits the description for a cyst as set out in the ABI guidelines fails to acknowledge that there can be other medical conditions where

this description can be just as reasonably applied.

- Referring to a cyst as “a non-specific and all-encompassing way of describing a collection of fluid with a solid wall” is not correct. And, besides an abscess and cyst, there are multiple other lesions which can present as a collection of fluid within a solid wall including spermatoceles, hydroceles, myelomeningoceles. One could also argue that the stomach, gallbladder and - even the heart - have a collection of fluid within them and a solid wall.
- Mr P has presented with a grand mal seizure, caused by an underlying brain abscess. Subsequent investigation revealed that this had spread from an underlying dental infection. He was treated with burr hole aspiration and is awaiting further scans, but to date, the abscess has continued to improve and resolve without the need for further intervention. The evidence provided does not demonstrate the presence of a cyst or benign brain tumour.
- There are separate policy definitions which cover abscesses, and these are costed for in the premiums and cover offered, but in this case, the policy does not include this cover. Based on the evidence provided and for the reasons they’ve outlined previously and in response to my provisional decision, they do not think that the Critical Illness definition for Benign Brain Tumour has been met in this case.
- They referred back to the comments made in their email of 9 August 2022, where they explained that there was a clear distinction in medical classifications between an abscess and a cyst . They say I have not acknowledged or responded to this, but they remain of the view that it is relevant to my decision making. They do not consider it compelling or reasonable for me to accept that the terms brain “abscess” and “cyst” can be used interchangeably. The policy covers the latter, but the former is a separate insurable event. Although not covered by the policy, they and other insurers do now provide cover against it. There would be no logical reason for insurers to do so if a brain abscess was intended to be covered by a different condition.
- Cysts and abscesses are separate conditions under the International Classification of Diseases (ICD 10) and an abscess is not a sub-set of cyst. Cerebral cysts are coded G93 and an intracranial abscess is G06. This is contrary to Mr P’s view that “an infected cyst is known as an abscess”.
- They realise I have a propensity to favour opinions put forward by a customer’s medical professionals over and above that of their medical experts. However the crux of this case is based on the definition applied to Mr P’s condition more so than regular points of dispute such as prognosis or ongoing deficit. They feel they have provided a number of credible explanations which demonstrate that Mr P’s brain abscess is not medically defined as a cyst, and do not believe my position is correct.
- They consider a decision to the contrary would have far reaching implications for insurers, in publicising that critical illness cover may be incorrectly extended from the conditions which are covered to those which are perceived to share similar features.
- They stressed once again that all of Mr P’s medical notes from the time of his hospital admission and treatment refer to him suffering a brain abscess. They reiterated their point that the language was only changed to include the word cyst when Mr P engaged with medical professionals for the purposes of his critical illness claim.

I issued a further provisional decision on 22 December 2022. In this I set out what I'd provisionally decided as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so I have considered what L&G have said both prior to my previous provisional decision and after it. But my view on the fair and reasonable outcome to Mr P's complaint remains the same. It seems to me that this is as much a matter of differing medical opinions on whether a brain abscess can also be termed a brain cyst, as it is about the policy definition of a Benign Brain Tumour, which is as follows:

"A non-malignant tumour or cyst in the brain, cranial nerves or meninges within the skull, resulting in either surgical removal or permanent neurological deficit with persisting clinical symptoms."

For the above definition, the following are not covered:

- *Tumours in the pituitary gland.*
- *Angiomas.*

I believe I explained clearly in my provisional decision why I considered that in deciding the fair and reasonable outcome to Mr P's complaint it is appropriate for me to use the definition of a cyst in the 2018 ABI Guide to minimum standards.

These define a 'Cyst' as 'A cavity or sac enclosed by a membrane, often containing liquid or semi-solid material.' They do say insurers didn't need to adopt the changes it introduced until February 2019 at the latest. However, as I've already explained, the absence of any definition of a cyst in the policy wordings for Mr P's policy or a previous definition by the ABI, means I think it's appropriate to apply this definition when deciding whether Mr P suffered from a brain cyst. This is because if the ABI later defined a cyst in this way, they must be satisfied it is the right one for insurers to use. Also, it was clearly considered to be the industry standard at the time Mr P made his claim. It's still the same in the new ABI guide, which was issued by the ABI recently, which I think reinforces my view that it is fair and reasonable to use it when deciding the outcome to Mr P's complaint.

I appreciate there could well be other medical conditions where the definition can just as reasonably be applied. But I have to decide the merits of Mr P's complaint and need to focus on whether he has had one of the critical illnesses as defined in his policy. These include Benign Brain Tumour and to meet the policy definition of this illness he needs to have had a non-malignant tumour or cyst in the brain. Therefore, in my opinion, if he had a cyst - as defined in the ABI guidelines - in his brain and it was this that left him with a permanent neurological deficit with persisting clinical symptoms, his illness meets the policy definition of a Benign Brain Tumour.

L&G have not argued Mr P hasn't been left with a permanent neurological deficit with persisting clinical symptoms. And it remains my view that he has, because of what Mr K said in January 2021 about Mr P having a permanent abnormality within his brain, long-term neuro-cognitive deficits. Along with the fact Mr P has had another seizure since Mr K said this will need to take medication for epilepsy for the rest of his life.

I also appreciate that some insurers do specifically offer cover for brain abscesses and that L&G may not have intended to provide cover for them under the policy. But, as I also

explained in my previous provisional decision, in deciding the fair and reasonable outcome to this complaint I need to consider what is fair and reasonable in light of the wording of the policy and the cover provided according to it and not according to what L&G actually intended to cover.

I have noted L&G's point that if something is referred to as cystic it is not necessarily the same as a cyst, which is defined in medical textbooks as 'a cavity with an epithelial lining containing fluid or a semi-solid material'. I've also noted their reference to typical cysts in the brain that may result in a critical illness claim and that an abscess is formed by a different pathophysiological process and that they develop as part of the body's inflammatory process. I also appreciate that in this process pus forms in a cavity and is then 'walled off' by fibrous tissue and that there is no epithelial lining around an abscess. I also understand L&G's point that a cyst can become infected and develop an abscess within it.

But these comments do not alter my view that Mr P suffered from a cyst in his brain according to the definition of a cyst set out in the ABI guide. I say this because all this definition requires is a cavity or sac enclosed by a membrane, often containing liquid or semi-solid material. There is no reference to this needing to be formed in a particular way. And, as I set out in my previous provisional decision, both Mrs M and Mr K, who have seen all the medical evidence, consider Mr P suffered from a cyst in his brain. L&G's CMO does not agree with them, but I prefer Mr K's and Ms M's opinions as they are to a large extent independent and they are experts in their field. Their opinions are also backed up by a large body of medical opinion.

I acknowledge L&G's point that there is a clear distinction in medical classifications between an abscess and a cyst. And I understand L&G don't think the terms brain abscess and cyst can be used interchangeably. But these points do not alter my view that what Mr P suffered from meets the definition of a cyst as set out in the ABI guide. This is because of Mr K's and Ms M's opinions.

I have noted L&G's view that a decision in Mr P's favour would have far reaching implications. But, in my opinion, this complaint turns on a difference in medical opinion and a definition that is accepted as the industry standard. And, while I appreciate L&G and their CMO have a different medical opinion to Mr K, Ms M and many other medical experts that have written articles on the subject, I prefer these other opinions to that of L&G's CMO. This is because, as I've already said, they are to a large extent independent experts, one of whom has actually treated Mr P and one of whom has met with him.

For the sake of completeness, I have listed below the comments and evidence provided by Mr P, Mr K and Ms M that have persuaded me that Mr P suffered from a Benign Brain Tumour as defined in his policy and in accordance with the ABI guide definition of a cyst in his brain:

- Mr K has said that, although the primary source of bacterium resulting in the formation of the abscess is believed to have originated from Mr P's dental treatment, the abscess itself formed within the brain and nowhere else. Therefore, purely from the abscess point of view, it originated in the brain. I find this comment very persuasive. And I am satisfied that this shows Mr P did have a cyst in his brain.*
- I think Mr K's opinion that a cyst embraces a large number of different pathologies and that a brain cyst is defined as a collection of fluid within a membrane or capsule separating it from normal brain tissue is significant. And I think this adds great weight to the view that Mr P suffered from a brain cyst.*

- *I think Mr K's comment that in recent decades the definition of cyst has been used to embrace any collection of fluid (which includes pus) that is collected within the confines of an inflammatory capsule is important. This is because it shows there is expert support for my view that Mr P suffered from a cyst in his brain.*
- *Mr K has also said that there is a respectable body of medical opinion which includes abscess and an infective process under the definition of cyst. And he has referred to the peer-reviewed publication by Go (European Journal of Radiology 1993; 17; pages 69-84) entitled "Cystic lesions of the Brain: A classification based Pathogenesis and consideration of Histological and Radiological Features". This is further medical opinion that I think supports the view that Mr P suffered from a cyst in his brain.*
- *I also think the Cedars Sinai definition of a brain cyst, which lists a brain abscess as a type of brain cyst supports the view Mr P suffered from a brain cyst.*
- *Mr K also thinks that in essence, publications both within the medical specialist field, and those which appear in lay language on the internet, include abscesses as benign cysts. And that the large majority of these present as cystic abnormalities. I think this again provides strong evidence in support of Mr P having a valid claim under his policy.*
- *Ms M has said that based on the surgical procedure and the aspirate there is no doubt Mr P had a brain cyst. I consider this in itself very strong evidence in support of Mr P's claim, as Ms M has met Mr P to discuss his case and reviewed his medical notes.*
- *Ms M's takes the view that the lesion Mr P presented with was encapsulated with a solid wall, the contents were both fluid and semi-solid and that this means it satisfies the definition of a cyst. This is again very strong evidence in support of my view that what Mr P had was actually a brain cyst.*

In summary, it remains my view that Mr P suffered from a Benign Brain Tumour as defined by the policy, as he had a cyst in his brain based on the definition of a cyst as set out in the 2018 ABI guide. And this has left him with a permanent neurological deficit with persisting clinical symptoms. And – for the reasons set out in my provisional decision, ie that because of the roles Mr K and Ms M hold or have held, I'm satisfied this has been verified by medical specialists who hold or have held appointments as consultant neurosurgeons at hospitals in the UK.

It therefore follows that I consider the fair and reasonable outcome to this complaint is for L&G to settle Mr P's claim by paying him the sum insured under the policy of £200,000, as this is what the policy terms require if he has a valid claim under it. I've now provisionally decided that interest should be paid on this amount with effect from one month after Mr P made his claim. This is different to my previous provisional decision. It's because I've reconsidered this aspect and think it's reasonable to allow a month for the fact L&G had to consider the claim, even though it took longer than this for them to do so and turn it down. The interest is because Mr P has been deprived of funds he should have had as a result of what I consider to be an incorrect decision by L&G to decline his claim.

It's also my view that Mr P should receive £250 in compensation for the impact L&G's decision to turn down his claim had on him in terms of distress and inconvenience. It was a difficult time for Mr P anyway and, whilst L&G's decision was – in my opinion – the wrong one, they did at least explain it clearly to Mr P. I also appreciate it took longer than Mr P thinks it should have done for L&G to communicate their decision to him originally and after he provided more evidence. I also acknowledge the fact that Mr P thinks the attitude of L&G's claims handler was inappropriate. But I think £250 for distress and inconvenience is

adequate compensation alongside the payment of his claim and interest on the amount due as part of the fair and reasonable outcome to his complaint.

I gave both parties until 10 January 2023 to provide further comments and evidence in response to my provisional decision.

Mr P provided the following comments for consideration:

- Within L&G's analysis they have made reference to his illness being treated with burr hole aspiration. This is incorrect, as he had a craniotomy, which is self-evident with the triangulated scar and indentation in his skull.
- When visiting Ms M to seek her professional opinion regarding his illness, she did so by reading his hospital notes. But, most importantly he arranged for her to receive copies of his brain scans, which support her view of a walled structure encapsulating the illness.
- Mr K previously advised in his letter discharging him from hospital that in the unlikely event that he suffered a further brain seizure he would suffer with epilepsy and need to take an anti-convulsant for the rest of his life.
- He has continued to pay the monthly premiums for the policy to make sure it remains valid, which wouldn't have been necessary if L&G had accepted his claim. He thinks these premiums, plus interest, should be added to the settlement amount due to him.
- He has provided his calculation of the interest payable. He's then added that he understands the sum payable in interest maybe subject to tax. However, as a company owner he is not directly employed by any company. And he would prefer the interest sum is paid gross, so it is taxed correctly in consideration with his accountant.

I then wrote to L&G on 29 December 2022 to say that I agreed with Mr P's point that the premiums he paid since 5 September 2020 had only been paid because his claim was wrongly rejected. I went on to say this meant it was a loss flowing from what I considered to be an incorrect decision by L&G on his claim. And that I thought Mr P should have any premiums he'd paid since 5 September 2020 refunded to him with interest at 8% per annum simple from the date he paid them, as he'd been without money he should have had. I also gave L&G until 10 January to provide further comments on this. I also let Mr P know I'd done this.

L&G have now responded to my provisional decision and my email about the refund of premiums to say they have no further comments or evidence to provide to either.

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've noted the further points Mr P has made about his treatment, Ms M's review being based on his brain scans as well as his hospital notes and Mr K's comment on what would happen if he had a further brain seizure. But, as these don't alter my view on the fair and reasonable outcome to his complaint, I see no reason to comment on them.

I've also noted his point about the monthly premiums he paid after his claim was turned down. He is aware I think L&G should refund these, plus interest, for the reason stated above.

I do not consider it is appropriate for me to tell L&G how they should pay interest on the amounts due to Mr P. This is because I think this is a matter for them as the respondent business.

As L&G haven't provided any further comments and evidence in response to my provisional decision I see no reason to depart from what I provisionally decided. I also see no reason to depart from the view I set out in my email of 29 December, as L&G have not provided any comments or evidence in response to it.

Putting things right

It therefore follows that for the reasons set out in my provisional decision and my email of 29 December 2022, I've decided the fair and reasonable outcome to this complaint is to uphold it and make Legal and General Assurance Society Limited pay Mr P £200,000 in settlement of his claim. I've also decided L&G should pay interest on this amount at 8% per annum simple from one month after Mr P submitted his claim to the date of actual payment.

In addition, for the reasons set out in my email of 29 December 2022, I've decided L&G should refund any monthly premiums Mr P paid for his policy after 5 September 2020, plus interest at 8% per annum simple from the date he paid each one to the date he receives the refund.

Again, for the reasons set out in my provisional decision, I've also decided L&G should pay Mr P £250 in compensation for the impact their decision to turn down his claim had on him in terms of distress and inconvenience.

L&G must tell Mr P if they have made a deduction for income tax from the interest due. And, if they have, how much they've taken off. They must also provide a tax deduction certificate for Mr P if asked to do so. This will allow Mr P to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

My final decision

My final decision is that I uphold this complaint and order Legal and General Assurance Society Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 February 2023.

Robert Short
Ombudsman