

## 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. The policy ("the policy") this claim is under started in February 2018.

I previously issued a provisional decision which commented on the merits of Mr P's complaint about L&G's rejection of his claim under this policy. This was because at this point I was considering L&G's decision to reject two claims from Mr P under two different policies as one complaint. However, I've since decided these need to be considered as separate complaints.

## 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 policy, which says Mr P is covered for £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 has asked us to consider his complaint about L&G turning down his claim. He's also complained about how they handled it, including the length of time it took them to consider it in the first instance. And the length of time it took them to review the further evidence he provided.

I issued a provisional decision on 22 December 2022 in which 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.*

*Mr P's policy sets out that if he - as the life insured - is diagnosed with one of the critical illnesses as defined in the section headed "Critical Illness Definitions" he will receive the amount he is covered for, which is £200,000. It also states that the critical illness must be verified by a medical specialist who holds an appointment as a consultant in a hospital in the UK and whose specialism L&G reasonably consider is appropriate to the critical illness.*

*The relevant defined critical illness that Mr P has said he had is a "Benign Brain Tumour". This is defined as follows:*

*"A non-malignant tumour or cyst originating from 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.*

- Tumours originating from bone tissue.
- Angiomas and cholesteatoma.

*L&G haven't suggested any of the exclusions listed apply, but they don't think Mr P had a cyst. They think he had an abscess and that this is different to a cyst. An abscess isn't specifically mentioned or defined in the policy.*

*Under the Association of British Insurers (ABI) Guide to Minimum Standards for Critical Illness Cover, which was produced in 2018, 'Cyst' is defined as 'A cavity or sac enclosed by a membrane, often containing liquid or semi-solid material.'*

*The guide does say insurers didn't need to adopt the changes it introduced until February 2019 at the latest. And – I appreciate the policy started in February 2018. However, in the absence of any definition of a cyst in the policy wording or a previous definition by the ABI, I think in deciding the fair and reasonable outcome to this complaint it is appropriate to apply the definition of a cyst in the 2018 ABI guide when deciding whether Mr P suffered from a Benign Brain Tumour as defined in the policy. I say this because if the ABI later defined a cyst in this way, they must be satisfied it is the right definition for insurers to use and 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 guide, which was issued by the ABI recently, which reinforces my opinion that to reach a fair and reasonable outcome in this case it is appropriate to use this definition of a cyst.*

*The medical notes provided by Mr P, which were provided following his discharge, specifically refer to finding a 'Thick capsule' and later refer to taking 'small biopsies of the wall'. These notes also refer to finding and draining pus from the cavity. While pus is generally used more specifically in definitions of an abscess, the ABI guide definition of a cyst only requires 'liquid or semi-solid material'. And I think pus fits this criteria.*

*L&G think there is a clear distinction in medical classifications between an abscess and a cyst. They do not consider it compelling or reasonable to accept that the terms brain "abscess" and "cyst" can be used interchangeably. They've said Mr P's policy covers the latter, but the former is a separate insurable event. They've pointed out that, although a brain abscess is not covered by Mr P's policy, they and other insurers do now provide cover for it. And they think that there would be no logical reason for insurers to do so if a brain abscess was intended to be covered as a different condition such as a benign brain tumour. They've also pointed out that cysts and abscesses are separate conditions under the International Classification of Diseases (ICD 10) and an abscess is not a sub-set of cyst. They've said under this a cerebral cyst is coded G93 and an intracranial abscess is G06. L&G think this is contrary to the view that an infected cyst is known as an abscess.*

*L&G think 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 a 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 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.*

*L&G have stressed that all of Mr P's medical notes from the time of his hospital admission and treatment refer to him suffering a brain abscess. And 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've noted L&G's comments and I appreciate there could well be other medical conditions where the ABI 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 the policy. These include Benign Brain Tumour and to meet the first part of the policy definition of this illness Mr P needs to have had a non-malignant tumour or cyst originating from the brain. Therefore, in my opinion, if he had a cyst - as defined in the ABI guide – originating from 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.*

*I also appreciate that some insurers do now specifically offer cover for brain abscesses and that L&G may not have intended to provide cover for them under Mr P's policy. But, 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 CMO'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 his 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 CMO'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 both the experts Mr P has seen, who'll I'll refer to as Ms M and Mr K, consider Mr P suffered from a cyst in his brain. And I think it is significant that Mr K was Mr P's treating consultant and that both he and Ms M are eminent neurosurgeons, which makes them experts in the field of medicine that is relevant so far as Mr P's illness is concerned. I appreciate L&G's CMO does not agree with them, but I prefer Mr K and Ms M's opinions for the following reasons:*

- 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 that originated from 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 originating from 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 originating from 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 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.

As I've already mentioned, both Mr K and Ms M are eminent neurosurgeons and so experts in their field who are to some extent independent. I think this means their views should carry a great deal of weight. And I'm satisfied it means Mr P's critical illness has been verified by a medical specialist who holds or has held an appointment as a consultant in a hospital in the UK and whose specialism L&G should reasonably consider is appropriate to the critical illness.

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. And that this means his critical illness meets the definition in his policy for a Benign Brain Tumour.

I have also 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 they are to a large extent independent experts, one of who has actually treated Mr P and one of whom has met with him.

I have also considered whether Mr P's illness meets the second part of the definition for Benign Brain Tumour in his policy. This is that it has resulted in either surgical removal or permanent neurological deficit with persisting clinical symptoms. And I think it does. This is because - in his letter of 26 January 2021 - Mr K said Mr P would have a permanent abnormality within his brain. And he said in Mr P's case the left frontal location of the abscess he suffered from has left him with typical higher cognitive disfunction. And he also explained Mr P was likely to have long-term neuro-cognitive deficits, although he did say these would reduce with time.

Mr K also said Mr P would require long-term anticonvulsants, but he did also suggest that if he remained seizure free for two years he may consider weaning himself off the

*antiepileptics. Since Mr K said all this Mr P has suffered a further seizure and now has a bracelet to show he has epilepsy and he has said he will need to take medication for this for the rest of his life. And I've seen details of the notes from the hospital Mr P was admitted to when he had this seizure, which refers to left side frontotemporal in the form of slow and interictal sharp epileptiform activity.*

*Therefore, considering what Mr K said in January and the fact Mr P has had another seizure since he said this, plus the fact that I have no reason to doubt Mr P's word that he will need to take medication for epilepsy for the rest of his life, I'm satisfied his illness meets the second part of the definition of Benign Brain Tumour in Mr P's policy, ie that he has a permanent neurological deficit with persisting clinical symptoms.*

*In summary, my view is 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 I've referred to. And this has left him with a permanent neurological deficit with persisting clinical symptoms. And I'm satisfied this has been verified by a medical specialist who holds or has held an appointment as a consultant neurosurgeon at a hospital 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 also provisionally decided that interest should be paid on this amount with effect from one month after Mr P made his claim. This is because I consider it reasonable to allow a month for the fact L&G had to consider Mr P's 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 is 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 further 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.

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 also 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. This is because he has 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.

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.

In addition, 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.

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**