

The complaint

Mr M complains about Unum Ltd's decision to decline a claim he made under his critical illness policy.

What happened

The details of this complaint are well known to both parties, so I'll give just a brief summary here.

In January 2023, Mr M was diagnosed with prostate cancer. He made a claim on his group critical illness policy, a benefit available to him through his employer.

In April 2023, Unum declined Mr M's claim, saying he didn't meet the policy term for 'cancer – second and subsequent'. In 2000, Mr M was diagnosed with chronic lymphocytic leukaemia (CLL) – a type of blood cancer. Mr M says that since this diagnosis he has continued to live a normal, active life. He's monitored regularly by his local haematology department, but to date, hasn't required specific treatment for this condition. Unum said the medical evidence showed Mr M's CLL remained present, which meant he didn't meet the relevant policy term. Mr M appealed the decision and complained, but Unum maintained its position.

Mr M brought his complaint to the Financial Ombudsman Service. Our investigator didn't uphold the complaint. She thought Unum had acted fairly when it declined Mr M's claim. She was satisfied his circumstances didn't meet the policy definition for cancer – second and subsequent, and therefore a critical illness claim wasn't payable.

Mr M disagreed so the complaint has come to me for a final decision. Mr M says Unum's decision is discriminatory, unfair and unreasonably punitive. He argues that his prostate cancer is separate and unrelated to his CLL. And that Unum's term discriminates against people with chronic conditions and goes against the spirit of the policy. He also argues that Unum was aware of his CLL at inception. He argues Unum accepted the risk associated with his CLL as a pre-existing condition from the outset, so his claim for prostate cancer shouldn't therefore be affected by it.

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.

Having done so, I'm not upholding this complaint. I recognise my decision will be very unwelcome news for Mr M and I'm sorry about that. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

Critical illness policies are designed to provide cover for the most common types of serious illness or condition and most commonly occurring serious events. Mr M's policy does that. But it doesn't provide cover for all critical illnesses in all circumstances.

It's not disputed that Mr M's diagnosis of prostate cancer is a covered critical illness. But as a second cancer diagnosis, the issue for Mr M is the impact of his previous diagnosis of CLL on his prostate cancer claim.

Mr M's policy has a specific section covering a second and subsequent diagnosis of cancer. It defines *cancer – second and subsequent* as:

*'This provides some cover for employees **who have been previously diagnosed with cancer**. A benefit would be payable for a diagnosis of a new, unrelated cancer as defined by the general terms.*

'The pre-existing condition exclusion applies in the normal manner to subsequent cancer claims unless:

- *the member has been treatment free for a period of 5 years from the date of the most recent previous diagnosis of cancer, and*
- *there is no evidence, confirmed by appropriate up-to date investigations and tests, of any continuing presence, recurrence or spread of the previous cancer, and the new cancer:*
 - *affects an organ that is physically and anatomically separate to any previous cancer, and*
 - *is not a secondary cancer or histologically related to any previous cancer; or*
 - *for haematological cancers, the new cancer is categorised or divided according to defined cell characteristics in a distinctly different manner to any previous cancer.*

'Treatment includes chemotherapy, radiotherapy, monoclonal antibody therapy, and invasive or non-invasive surgery, but does not include long term maintenance hormone treatment.' [My emphases in bold.]

I've reviewed the medical evidence and can see Mr M is routinely monitored for his CLL. The three clinic appointments prior to Mr M's diagnosis of prostate cancer – in May, August and November 2022 – all record his CLL as stable. In other words, there is *continuing presence* – something Mr M acknowledges, given the chronic nature of the disease.

Unum has said its decision is based on the insurance contract and the threshold to be met for a claim to be paid. A business is entitled to decide the terms on which it's prepared to offer cover.

Mr M argues his prostate cancer is distinct and unrelated to his CLL – something he says could be confirmed by his consultant. I'm satisfied I can fairly decide the complaint on the evidence available to me. Part of the terms defining a new, unrelated cancer include that there is no evidence of any continuing presence of the earlier cancer. Unum's claims decision of April 2023 was based on the most recent medical evidence relating to Mr M's CLL. And that evidence showed a continuing presence of the first cancer. So I don't see how any statement from Mr M's consultant now could undermine the decision Unum made last year.

Mr M has also argued that the terms discriminate against people in his circumstances and that the purpose of the term isn't to exclude those with chronic conditions. I think the terms are clear and, on the contrary, actively do exclude anyone with a chronic, or indeed, acute cancer showing a continuing presence. So I don't think Unum has treated Mr M differently to anyone else making a claim in similar circumstances.

Mr M also says his policy was medically underwritten, so Unum knew about his CLL from the outset. I've looked at the general information about medical underwriting, available on Unum's website. I've not seen specific information about Mr M's acceptance for cover, but the underwriting process is to determine if cover will be offered and if so, on what terms. The policy information provided shows the standard terms applied, including the terms relating to cancer – second and subsequent. And according to those terms, Mr M's previous diagnosis of a cancer that is still present excludes him from cover for his prostate cancer. So I don't accept Mr M's argument that Unum knew of his CLL and therefore shouldn't have taken it into account in its claims decision.

I acknowledge this is a frustrating and disappointing situation for Mr M. But I don't think Unum has treated Mr M unfairly in relying on the policy terms to decline his claim. So I'm not going to tell Unum to do anything more in respect of this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 March 2024.

Jo Chilvers
Ombudsman