

## The complaint

Mr and Mrs B complain that Legal and General Assurance Society Limited (L&G) has turned down a critical illness claim Mr B made on a decreasing term assurance policy with critical illness cover.

As Mr B brought the complaint to us, for ease, I've referred mainly to him.

## What happened

In 2002, Mr and Mrs B took out a decreasing term assurance policy with critical illness cover through a broker. It appears they purchased the policy to protect their mortgage. The policy included critical illness cover for cancer if a specific definition was met.

Unfortunately, in October 2022, Mr B was diagnosed with a low grade papillary carcinoma and he underwent surgery. He made a critical illness claim on the policy.

L&G assessed the medical evidence provided by Mr B's treating specialist. And it didn't consider Mr B's carcinoma met the policy definition of 'cancer', which required the uncontrolled growth and spread of malignant cells and invasion of tissue. That's because it concluded the medical evidence showed Mr B's cancer was confined to his bladder. So it turned down Mr B's claim.

Mr B was unhappy with L&G's decision and he asked us to look into his complaint. He noted that the policy terms excluded tumours which were histologically described as '*pre-malignant, non-evasive or as cancer in situ.*' He pointed out that the policy wording ought to have referred to 'non-invasive' tumours rather than non-evasive tumours. Given this error, he felt the policy was void. So he considered L&G should either pay his claim or refund all of the premiums he'd paid for the cover, together with interest.

Our investigator didn't think it had been unfair for L&G to turn down Mr B's claim. He didn't think Mr B's illness had met the policy definition of cancer. And he didn't agree the error in the policy wording meant that the policy terms themselves were unclear. But he did think L&G had caused Mr B some confusion as a result of the error in the policy drafting. Therefore, he recommended that L&G should pay Mr and Mrs B £100 compensation.

L&G didn't respond to the investigator's assessment by the deadline he gave. Mr B disagreed with the investigator. He provided an extract from statute law which he considered supported his position.

The complaint's been passed to me to decide.

## 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, whilst I'm sorry to disappoint Mr B, I think the fair outcome to this complaint is for L&G to pay him £100 compensation and I'll explain why.

First, I was sorry to hear about Mr B's diagnosis and resulting surgery. I don't doubt what a worrying time this has been for Mr B and his family and I do hope he is recovering well.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of the assurance policy and the available medical evidence, to decide whether I think L&G has handled Mr B's claim fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr B and L&G. The policy says:

*'Entitlement to the Guaranteed Sum Assured...contained in the schedule also arises on proof of contraction and diagnosis of one of the following illnesses or disabilities....All diagnosis and medical opinions must be given by a Medical Specialist who:*

- *Holds an appointment as a Consultant at a hospital in the UK,*
- *Is accepted by our Chief Medical Officer;*
- *Whose specialism is appropriate to the case...*

*Cancer (most malignant types)*

*A malignant tumour characterised by the uncontrolled growth and spread of malignant cells and invasion of tissue. The term cancer includes leukaemia and Hodgkin's disease, but the following are excluded:*

- 1. All tumours histologically described as pre-malignant, as non-invasive or as cancer in situ.*
- 2. All forms of lymphoma in the presence of any human immunodeficiency virus.*
- 3. Kaposi's sarcoma in the presence of any human immunodeficiency virus.*
- 4. Any skin cancer other than malignant melanoma.'*

In my view, the policy definition of cancer makes it clear that in order for the cancer definition to be met, a policyholder must have a malignant tumour characterised by the uncontrolled growth and spread of malignant cells and invasion of tissue by the tumour. I'd add that this isn't an unusual definition in critical illness policies.

It's a general principle of insurance that it's for a policyholder to provide enough evidence to show they have a valid claim on their policy. This means it's Mr B's responsibility to provide L&G with enough medical evidence to show his claim met the policy definition of cancer.

Having assessed the available medical evidence, L&G didn't think Mr B had shown he met the policy definition. So I've looked closely at the available medical evidence to decide whether I think this was a fair conclusion for L&G to draw.

Mr B's treating doctors stated that Mr B had been diagnosed with a pTa G2 (low grade) papillary carcinoma. Mr B's histology report stated that the tumour was not invasive. And the treating specialists stated that there was no evidence the tumour had spread. So it doesn't seem Mr B's treating specialists had found Mr B's tumour to have spread or that there was invasion of other tissue. And on that basis, I don't think it was unfair for L&G to have concluded that the medical evidence indicated Mr B's cancer was confined to his bladder. I also don't think L&G acted unfairly when it concluded that the medical evidence didn't show Mr B's condition met the policy definition of cancer and accordingly turned down his claim.

L&G does accept that there is a spelling mistake in the policy wording. It acknowledges that the relevant exclusion should refer to 'non-invasive' cancer rather than non-invasive cancer. I

appreciate Mr B feels statute law means this makes the policy effectively void. However, I don't agree. While it's unfortunate that L&G has made an error in the way it drafted the policy, I don't think the policy cancer definition or indeed, the terms as a whole, are rendered ambiguous as a result. So I don't think I could fairly direct L&G to interpret the error in the terms in Mr B's favour and pay the claim.

Nor do I think L&G needs to refund the premiums Mr B paid for the policy from 2002 onwards. That's because he and Mrs B have benefitted from the cover over the term of the policy. If Mr and Mrs B feel their broker mis-sold the policy to them or failed to explain the cover in a clear way, they'd need to complain separately to the broker.

I do agree with our investigator though that this spelling error is likely to have caused Mr B some confusion and upset at an already upsetting time for him. So I think it's fair and reasonable for L&G to pay Mr B £100 compensation to recognise the impact of this mistake on him. I note L&G didn't make any comment on the investigator's finding on this point.

Overall, I sympathise with Mr B's position because I understand he was diagnosed with a worrying illness and he's been through a difficult time. But on the evidence before me, I don't think L&G acted unreasonably when it concluded that Mr B's claim didn't meet the policy definition of cancer. And therefore, I don't find it acted unfairly when it turned down his claim.

### **My final decision**

For the reasons I've given above, my final decision is that I don't think it was unfair for L&G to turn down Mr B's claim.

But I direct Legal & General Assurance Society Limited to pay Mr and Mrs B a total of £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 10 June 2024.

Lisa Barham  
**Ombudsman**