

## **The complaint**

Mr and Mrs M have complained that Legal and General Assurance Society Limited (“L&G”) wouldn’t accept a claim on their life policy when Mr M was advised he had a terminal condition.

## **What happened**

Mr and Mrs M bought a joint life insurance policy in 2005 (“the 2005 policy”). The policy has a 20 year term and was to provide £100,000 worth of cover on the first death. The policy would also pay the sum assured in the event of either Mr or Mrs M being diagnosed with a terminal illness, as defined by the policy. Mr and Mrs M also had a decreasing life policy, which expired in mid-2023 (“the 2003 policy”).

Mr M was diagnosed with a liver condition a number of years ago. This unfortunately developed into a condition which he was told was terminal. At the start of 2023, he contacted L&G about making a claim.

L&G explained they needed a consultant’s confirmation of a terminal diagnosis with a life expectancy of no more than 12 months. And that they couldn’t consider a claim within the last 18 months of the policy term. So they couldn’t consider a claim on the 2003 policy but may be able to on the 2005 policy. The conversation concluded with Mr M confirming he’d speak to his consultant.

When Mr M contacted L&G again about a month later, he told the adviser his consultants had told him people with his condition could expect to live up to two years. The adviser told him that this wouldn’t meet the policy criteria for a terminal illness, as the claimant had to have a life expectancy of no more than 12 months. Mr M indicated he wasn’t certain if the consultant had been speaking generally, or specifically about his life expectancy. So again he said he’d come back to L&G when he’d spoken again to his consultant.

Mr M called L&G again about a month later. He told the L&G adviser that he’d been told his life expectancy had reduced – but that there was the possibility he could have a liver transplant. The adviser explained the policy definition required that all treatment options had been exhausted before a claim would be settled.

About six weeks after this call, Mr M underwent a successful transplant. The following month, he called L&G and told them he wanted to claim a proportion of the terminal benefit for the months he had a terminal diagnosis.

L&G told Mr M the policy didn’t work that way and they didn’t make proportionate settlements. They wrote to him explaining the terminal illness benefit is an acceleration of the death benefit and there had to be no possibility of treatment extending a claimant’s life expectancy beyond 12 months for a claim to be paid.

Mr and Mrs M complained to L&G. L&G accepted they’d not logged the complaint as they should have done and offered Mr and Mrs M £200 compensation for that failure. But they

maintained their position that Mr M didn't meet the criteria to receive a terminal illness payment.

Mr and Mrs M brought their complaint to our service. Our investigator reviewed all the information and concluded L&G didn't need to do any more to resolve it. He was satisfied Mr M hadn't met the policy criteria for a payment to be made.

Mr and Mrs M didn't accept the investigator's view. So I've been asked to make a final decision.

### **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 that, I'm upholding Mr and Mrs M's complaint. But I'm not asking L&G to do more than they've already offered to resolve it. I know they'll find this distressing news and I'm sorry about that. I hope it will help if I explain the reasons for my decision.

Mr M has described himself as being "critically ill" at the start of 2023. I've no doubt that was true. But I have to think about whether L&G acted fairly in reasonably in relation to the terms of the policies he and Mrs M had with them. Neither the 2003 nor the 2005 policy included cover for critical illness – they provided cover in the event of Mr or Mrs M dying. And they included a provision for that death benefit to be paid early, should one of them be diagnosed with a terminal illness which met L&G's criteria.

Those criteria say:

*"If either Life Assured has a Terminal Illness, namely an advanced or rapidly progressing incurable illness where, in the opinion of an attending consultant and our Chief Medical Officer, the life expectancy is no greater than 12 months, Legal & General will make an advance payment of the Sum Assured. This benefit will not be available during the 18 months immediately before the Expiry Date. Once the payment has been made the policy will terminate and no further benefit will be payable."*

All parts need to be met for a valid claim to be made.

The 2003 policy was due to expire only a few months after Mr M contacted L&G, so he couldn't make a claim on that. But he was within the deadline to make a claim on the 2005 policy.

I've listened to recordings of Mr M's telephone conversations between January and March 2023. Mr M said during each call he wanted to make a claim. This led to the advisers asking him questions to establish whether he met the criteria.

In relation to his life expectancy, Mr M said he was told that someone with his condition could live up to two years. The adviser highlighted the maximum life expectancy for a successful claim was 12 months.

When Mr M called again, he indicated his consultant had told him it was unlikely he'd live longer than 12 months, unless he received a transplant. When they were told this, the L&G adviser explored whether he'd been assessed as suitable for a transplant and whether he was on a waiting list. And they explained to Mr M that, because there was the possibility of a transplant, his condition couldn't be said to be incurable.

I've listened very carefully to the calls and I don't think L&G tried to stop Mr M making a claim. I'm satisfied the advisers' questions were asked to draw out information about whether he met the terminal illness criteria in the policy. I'm satisfied it was reasonable to conclude from Mr M's answers that he didn't. It's not reasonable for me to say L&G should have started a claim which, based on what they'd been told, had no prospect of success.

Mr M has focused on how lucky he was a suitable liver became available for transplant and that the operation was a success. I'm very pleased for Mr M that it was. But the policy criteria is whether or not a condition is incurable – not how likely the cure is. I'm satisfied it was reasonable for L&G to say he didn't meet the criteria for a terminal illness payment, because there was a prospect of successful treatment while he was a transplant candidate.

And for the same reason, I can't agree with Mr M that he should receive a proportionate settlement for period while he was waiting for a transplant. I acknowledge he was very ill at the time and would have been concerned about the future. But there was a treatment option available. So the criteria weren't met. Mr M has made the point he could have died while he was on the waiting list. I accept that's true. Had that happened, I've no reason to doubt L&G would have paid the death benefit. But fortunately, it didn't.

L&G have acknowledged they didn't deal with Mr and Mrs M's complaint promptly and offered them £200 compensation. I think that's a fair sum for that failure, and I expect L&G to pay this to Mr and Mrs M should they now choose to accept it. But I don't think they need to do any more to resolve Mr and Mrs M's complaint.

### **My final decision**

For the reasons I've explained, I'm upholding Mr and Mrs M's complaint about Legal and General Assurance Society Limited and directing L&G to pay them the £200 they've previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 12 June 2024.

Helen Stacey  
**Ombudsman**