DRN-5042013

The complaint

Ms P's complained that AIG Life Limited unfairly declined her critical illness claim after she was treated for a type of cancer

What happened

In 2016, Ms P bought a life and critical illness policy from AIG. The policy provides £100,000 cover in the event of her death, or diagnosis of one of the conditions covered. In 2023, Ms P was diagnosed with a Gastrointestinal Stromal Tumour (GIST), which is a type of sarcoma. Following an operation to remove the GIST, she submitted a critical illness claim to AIG.

AIG considered the claim under the policy category *"Cancer – excluding less advanced cases".* They declined Ms P's claim. They quoted the policy definition, which says the category covers:

"Any malignant tumour positively diagnosed with histological confirmation and characterised by the uncontrolled growth of malignant cells and invasion of tissue. The term malignant tumour includes

• *Leukaemia,*

• *Sarcoma, and*

• *Lymphoma (except cutaneous lymphoma – lymphoma confined to the skin)".*

This section also includes the following exclusions:

"• All cancers which are histologically classified as any of the following

- pre-malignant,

- non-invasive,

- cancer in situ,

- having borderline malignancy, or

- having low malignant potential…."

AIG said the medical evidence Ms P had provided showed her GIST hadn't met the policy definition.

Ms P challenged AIG's decision. She said the medical information she'd provided showed she'd had a "low risk malignancy GIST". She said AIG had wrongly equated this to low malignant potential, but the terms aren't interchangeable. She said the terms *"low malignant potential"* and *"borderline malignancy"* mean a tumour isn't currently malignant – whereas the description of her tumour means it is. She supported her argument with documents explaining the classification of oncological diseases.

AIG considered Ms P's additional evidence, but didn't change their claim decision. They said GISTs are now measured by tumour size, mitotic rate (the rate at which cells divide and grow), primary location and the presence of metastases. Applying these measures, Ms P's GIST was a low grade tumour – for which they say the term "low malignant potential" is used.

Ms P also asked why AIG hadn't assessed her claim against a second section which provides cover for less advanced cancers. AIG said this covered colon and rectal cancers. But cover for the type of operation Ms P had had was excluded. Ms P said this was wrong as the GIST had been in her small intestine and AIG should have considered this against the definition *"Other cancer in situ – with surgery".*

Ms P didn't accept AIG's conclusions and brought her complaint to the Financial Ombudsman Service. Our investigator reviewed the information received and concluded AIG didn't need to do anything different to resolve matters. She was satisfied the evidence showed they'd reasonably considered the evidence before coming to their claim decision.

I didn't agree with our investigator's view. So I made a provisional decision. That said:

"The relevant regulatory guidance says that insurers must handle claims promptly and fairly. And they mustn't unreasonably reject a claim so I've looked carefully at all the evidence and circumstances to see if Ms P has been treated fairly.

Ms P's policy contains very little information about how AIG deal with claims. It says only that a claims adviser will contact them to explain the process and what information AIG will need. In this case, AIG asked Ms P to complete a claim form and provide authority for them to contact her doctors.

I can see Ms P provided what was requested – and provided further medical information when she challenged AIG's decision to decline the claim and during our investigation. This included a letter from her consultant, outlining the treatment Ms P had had. And it confirmed the consultant's opinion that the GIST didn't fall within any of the five exclusions I've set out above.

I find this persuasive evidence that Ms P's GIST met the policy terms. I'm aware that AIG may not agree. But, if that's the case, I'd expect them to have obtained their own medical opinion on the evidence that's been provided.

The investigator asked AIG if they'd asked their Chief Medical Officer (CMO) for an opinion. AIG said they hadn't – rather, they'd relied on information provided by their reinsurer. They've provided that information, which I've studied.

The information includes a paper, written by an "Underwriting and Claims Proposition Manager" and provides guidance on how to deal with claims about GISTs. It advises that GISTs are usually dealt with at one of a small number of specialist centres and lists them. The list includes the centre which treated Ms P and at which the consultant who wrote to AIG works.

The relevant section concludes:

"Claims for lower grade GISTs are notoriously challenging. Therefore, the histology is essential and the input of a CMO is advisable."

Despite studying all the information provided by AIG, I can't see any record of a CMO's opinion having been requested or the opinion of a physician with the relevant specific expertise. I can see the AIG put the issue to their reinsurer, but all of the correspondence

provided is from claims assessors, not doctors. Accordingly, I'm not able to conclude that Ms P's claim has been handled fairly."

My provisional conclusion was that AIG should obtain the opinion of their CMO, or a suitably qualified alternative, and then reassess Ms P's claim against the category *"Cancer – excluding less advanced cases"*.

But I didn't think they need to make any further assessment against the *"Less advanced cancers"* category. I agreed that the definition relating to the colon and rectum wasn't relevant, because that wasn't where Ms P's GIST was. And I didn't agree with Ms P that it should be considered under the heading *"other cancer in situ"* because the consultant's letter on which she'd relied clearly states the GIST was not an in situ tumour.

I sent my provisional decision to both parties and invited them to comment. Ms P has done so, AIG haven't. The time for comment has now expired and the matter's been passed back to me 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 Ms P's complaint for the reasons I set out in my provisional decision above. As AIG haven't commented on that provisional decision, I assume they've accepted those reasons.

I've thought about the comments Ms P has made. She's done her own research on the topic and was able to identify the paper referred to in my provisional decision. And she's supplied a subsequent note published by the re-insurer on their website, which she says supports her argument that her claim should be paid.

I've read the link Ms P provided. It's a commentary on revisions made to the minimum terms and conditions made by the Association of British Insurers in 2023 to introduce a specific exclusion for GISTs and another type of tumour. And it refers to criticism that using the terms "borderline malignancy" and "low malignant potential" has attracted from medical professionals.

I understand why Ms P's provided this information. But it refers to how policies should be written in future to make clear the reasons conditions similar to hers are excluded. It doesn't categorically state how existing policies such as hers should be applied to a claim.

I'm not a medical expert. So my provisional decision was based on whether medical evidence had been gathered and assessed by AIG to reach their decision. It was for that reason I provisionally decided AIG should obtain their own medical opinion, and reassess Ms P's claim with the benefit of that opinion. I've not persuaded by the additional information submitted that I should change my provisional decision.

Ms P has also expressed her concern AIG haven't considered the letter from her consultant dated 10 June 2024. Ms P provided this to the investigator, who passed it to AIG. It's the letter I said in my provisional decision persuaded me Ms P met the policy terms. So, while I can't say whether the claim should be paid, I'd expect AIG to review that letter as part of their reassessment.

Finally, Ms P has requested information about the qualifications and expertise of the doctor AIG will request an opinion from and the definitions used in their consideration of the claim.

And she's asked for her complaint with our service to remain open until AIG have reassessed her claim, with a view to referring the matter back to us if AIG still decline it.

My provisional decision set out who AIG should instruct for a medical opinion. I don't think it's appropriate for me to say more than I did in about that. And, while I understand Ms P's request that the complaint remains open, an ombudsman's decision is the final stage in our process. Any issues which arise following that would be a new complaint, which Ms P would need to raise directly with AIG before (if she weren't satisfied with their response) referring that new complaint to the Financial Ombudsman Service.

Putting things right

As I've not been persuaded that I should change what I said in my provisional decision, I think AIG should obtain the opinion of their CMO, or a suitably qualified alternative, and then reassess Ms P's claim against the category "*Cancer – excluding less advanced cases*".

But I don't think they need to make any further assessment against the "*Less advanced cancers*" category. I agree that the definition relating to the colon and rectum isn't relevant, because that wasn't where Ms P's GIST was. But I don't agree with Ms P that it should be considered under the heading *"other cancer in situ*" because the consultant's letter of 10 June 2024 on which Ms P relied – and which I found persuasive - clearly states the GIST was not an in situ tumour.

My final decision

For the reasons I've explained, upholding Ms P's complaint about AIG Life Limited and directing AIG to obtain a medical report from their CMO, or a suitably qualified alternative, and then reassess Ms P's claim against the category *"Cancer – excluding less advanced cases".*

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 28 October 2024.

Helen Stacey
Ombudsman