

The complaint

The estate of Mr M (the estate) complained that Canada Life Limited (CL) declined a claim on his employer's group critical illness policy.

Throughout the claim and complaint process, the estate has had a representative helping. In this decision, any reference to the estate includes the actions and comments of their representative.

What happened

The late Mr M was a member of his employer's group critical illness policy. In March 2023, Mr M suddenly felt unwell. In May 2023, Mr M was diagnosed with cancer which had spread to several locations in his body. I'm very sorry to hear that Mr M died in October 2023. My sincere condolences go out to his friends and family.

Mr M raised a claim shortly after his diagnosis. CL declined the claim in July 2023. This was on the basis that his diagnosis was subsequent to a previous cancer diagnosis. A complaint was raised which was ultimately brought to this service. Our service didn't uphold the complaint.

The estate has provided additional medical evidence to support their complaint. CL has reviewed this new evidence but advised the estate it didn't change their outcome. A new complaint was raised which has again been brought to this service.

Our investigator didn't uphold the complaint. They didn't think the new evidence made a difference and CL hadn't unreasonably declined the claim. The estate appealed. They didn't think our investigator had considered balance of probability. They also didn't think our investigator had considered the proximate cause of Mr M's death. As no agreement could be reached, the complaint has been passed 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.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether CL acted in line with these requirements when it declined to settle the estate's claim.

At the outset I acknowledge that I've summarised the complaint in far less detail than the estate has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to

be able to reach an outcome in line with my statutory remit.

As a service, we won't review the same complaint twice. However, if new evidence is provided, we can consider the complaint again focusing on the new information provided. The estate brought the following medical comment as their new evidence:

"Mr M was found to have metastatic melanoma in May 2023 within a number of organs of the body. Specifically, the melanoma in 2023 affected his [body part 1], [body part 2], [body part 3], [body part 4], [body part 5], [body part 6] and [body part 7]. There was no skin melanoma detected at this time, or at any time between May 2023 and his death in October 2023. Therefore, there was no recurrent in the same organ (skin) that had been affected in 2005.

In addition, there is no test that could have definitely confirmed whether or not there was any relationship between the presentation in 2023 and the prior melanoma of the [body part 8]. As the prior melanoma in 2023 had been removed a very long time previously, [number] years, the melanoma was considered and treated as a new diagnosis."

As a starting point, it's important to understand what the policy terms and conditions say. Cancer is defined as the following in the policy:

"Cancer (including a second and subsequent cancer) – excluding less advanced cases

SECOND AND SUBSEQUENT CANCER

DEFINITION

A diagnosis of a new cancer which

- *meets the definition for cancer as shown on the previous page of this guide and*
- *is unrelated to any previous cancer suffered.*

Note: For the above definition a claim will be considered if:

- *the insured person has been treatment free for a period of 5 years from the date the last course of 'treatment' was completed in respect of the previous 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 cancer that affects any contralateral organ related to any previous cancer, and*
 - *is not a secondary cancer or histologically related to any previous cancer: or*
 - *for haematological cancer, the new cancer is categorised or divided according to defined cell characteristics in a distinctly different manner to any previous cancer.*

- *the person has any signs, or symptoms or has sought or been given advice, or has undergone or is awaiting diagnostic tests, that lead to a subsequent diagnosis of cancer regardless of when the diagnosis is made, or a subsequent diagnosis of cancer which leads to a claim being made within 120 days of*
 - *the commencement date of this policy, or*
 - *the employee's inclusion in a previous group critical illness policy in connection with their employment, if earlier, or*
 - *the persons inclusion in this Policy*
 - *any increase in benefit selected."*

CL declined the claim on two counts:

- Mr M had a previous cancer diagnosis and both cancers were a malignant melanoma. As such, the cancers are histologically related.
- Both cancers have affected the same organ, being the skin.

I've addressed each of the decline reasons separately.

Histologically related

The estate has argued that Mr M's medical team, as per their statement above, treated his most recent cancer as a new melanoma and also provided the following information from the Melanoma Foundation:

"A new melanoma is one that appears somewhere on your body that is not related to the original melanoma."

I accept that Mr M's medical team treated his cancer as a new melanoma. However, his consultant has said there is no test that could have definitively confirmed whether or not there was any relationship between the presentation in 2023 and Mr M's previous cancer. This means that Mr M's medical team were always going to have to treat it as a new melanoma as there isn't any way of saying otherwise. Mr M's consultant hasn't ruled out that the two melanoma's couldn't be related.

Both cancers affected the same organ

Mr M's first melanoma appeared on his skin. His consultant has confirmed a number of organ's had been affected in 2023. The consultant also stated that no skin melanoma was detected. However, it has also been confirmed that the primary location of the melanoma wasn't found.

The estate also raised that the critical wording in the policy is '*affects*', the proximate cause of Mr M's death needs to be considered and the cancer wasn't found in Mr M's skin.

CL has said that the primary site for approximately 97% of melanomas is the skin. So, whilst the primary location hasn't been found, it's most likely it was on the skin. This would mean the policy terms haven't been met. The policy terms don't refer to the cause of death, and so I don't find that this is relevant to the claim outcome.

When raising a claim, the onus is on the consumer to evidence the policy terms and conditions have been met. I understand why the complaint has been brought to this service.

But whilst there isn't confirmation all the terms above haven't been met, there also isn't evidence that they have been met. The onus is on the estate to show that they have most likely been met. Overall, I don't think CL have acted unfairly in declining the claim, based on there not being enough evidence to show that on the balance of probability the terms have been met.

I'm very sorry that my decision doesn't bring the estate more welcome news at what I can see is a very difficult time for them. But in all the circumstances I don't find that CL has treated the estate unfairly, unreasonably, or contrary to the policy terms and conditions in declining the claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint. I don't require Canada Life Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 11 April 2025.

Anthony Mullins
Ombudsman