DRN-5350316

The complaint

Mr and Mrs S are unhappy that Legal and General Assurance Society Limited (L&G) declined a retrospective claim for the critical illness benefit under their joint life and critical illness insurance policy.

What happened

I issued my provisional decision in January 2025 explaining why I was intending to uphold this complaint. An extract of this is set out below:

……

L&G has an obligation to handle claims fairly and promptly. And it mustn't unreasonably decline a claim.

For reasons I've set out below, I'm not currently satisfied that L&G has acted fairly and reasonably by declining Mr S' claim for the critical illness benefit under the policy.

- Subject to the remaining terms and conditions, the policy pays out a lump sum if, before the expiry date of the policy, the life assured can provide L&G with proof of diagnosis of a critical illness. The policy schedule reflects the policy end date to be June 2016.

- Cancer is one of the critical illnesses covered under the policy. That's defined in the policy terms as: "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: all tumours which are histologically described as pre-malignant, as non-invasive or as cancer in situ…"

- Mr S wasn't diagnosed with cancer before the policy ended. However, he says that the medical evidence supports that he did have cancer during the lifetime of the policy and so he made a retrospective claim.

- Mr S's consultant hepatologist and transplant physician's letter dated October 2022 reflects that Mr S had been a patient of the liver department since 2012 and had extensive investigations for abnormal liver function without an obvious cause being found. Scan results on his liver in 2014 were normal but in 2018, Mr S was shown to have a liver lesion and on biopsy this turned out to be a neuroendocrine tumour (NET). When the multi-disciplinary team went back to review scans, they could see the lesion was visible in the pancreas in 2014 and they've concluded that this was the pancreatic neuroendocrine tumour primary. The consultant concludes that Mr S "clearly had cancer for many years before the diagnosis, as is normal for these types of cancer and there was an opportunity to diagnose it in 2014".

- The same consultant's letter dated August 2023 also reflects: "by December 2017 we know from scan results that Mr S had extensive disease in the liver which meant that prior to this date, the NETs were characterised by uncontrolled growth and spread of

malignant cells and invasion of tissue. This process would have been developing for 3 to 5 years prior to the 2017 scan. Therefore, the cancer was widespread for certain before June 2016".

- The consultant says: the NETs had clearly metastasised to the liver by June 2016, were characterized by uncontrolled growth and spread of malignant cells and invasion of tissue by the end of the policy and all NETs are malignant. The consultant concludes that the policy definition of cancer has been met.

- L&G doesn't dispute that NETs are a malignancy and acknowledges that NETs often grow slowly. However, its medical officer, an oncologist, says the pancreatic NET may not have been the primary tumour as it wasn't biopsied. So, it is now "impossible to be certain that an invasive malignancy was present before expiry of the policy …it is certainly possible that this tumour was present before June 2016 but there is no way now for this to be able to be confirmed". So, L&G concluded that it wasn't able to confirm that "malignancy and invasion were present prior to the policy expiry date".

- I'm satisfied that no further histology about the NETs can now be obtained, and I don't think it would be fair and reasonable for Mr S to be disadvantaged because of this reason alone, where there is other relevant medical evidence available (as set out above).

- I've carefully considered this medical evidence and I'm persuaded by the opinion of Mr S's consultant, who is a specialist in this field. They've been treating Mr S, have access to all the necessary images and markers and explained in detail (and provided persuasive reasons) why the definition of cancer set out in the policy terms has been met. And in particular why they consider there to have been uncontrolled growth, spread of malignant cells and invasion of tissue.

- Further, whilst L&G's medical officer says they can't be "certain" whether the pancreatic NET was present before June 2016, they accept that it may well have been. They haven't provided an opinion on whether it's more likely than not that the NET was present before the end of the policy and whether Mr S met the cancer policy definition on the balance of probabilities.

- Overall, and on the balance of probabilities, I'm satisfied that Mr S has established that he had a critical illness before the end of the policy and that the critical illness benefit should be paid.

Putting things right

I intend to direct L&G to pay the critical illness benefit to Mr and Mrs S along with simple interest at a rate of 8% per year on this amount from one month after Mr S's consultant letter dated August 2023 which was after the claim was made and initially declined to the date on which the claim is settled.

I'm satisfied that it was the August 2023 letter which set out in sufficient detail why the cancer policy definition had been met.

……

I invited both parties to provide any information in response to my provisional decision.

Mr and Mrs S accepted my provisional findings.

L&G also replied to my provisional decision. It accepted that it should've done more to investigate the validity of the claim. It said it should've requested Mr S's liver biopsy report / histopathology from around early 2018. And this should've been considered by its medical officer along with Mr S's consultant letters when assessing the claim.

L&G said if it had this information, it could determine the grade of the NET based on the biopsy results in 2018. And this would help assess the claim. It says a high-grade NET would be faster growing and therefore less likely to have been present before the policy expired in 2016. If it was a lower-grade NET, then it makes it more possible that the liver NETS were present before the policy ended (and had spread from the pancreas).

Having considered these points, I wrote to the parties to explain that my provisional thoughts on the complaint had changed. Given that this information is likely to be relevant to the claim assessment, I said I intended to find that this was a fair and reasonable for L&G to obtain this evidence and reassess the claim in light of it.

However, as L&G hadn't requested this relevant and available information, I intended to find that it hadn't fairly and reasonably handled the claim and was minded directing it to pay £750 compensation to Mr and Mrs S for distress and inconvenience

Mr and Mrs S didn't agree with this proposed way forward. They said that L&G had been given enough time to thoroughly review the claim and didn't do so. It's now unfair to allow it a further opportunity to do so. They said it would unfairly provide L&G another opportunity to delay and reject the claim which has been rightfully made. They've also referred to the evidence provided by Mr S's consultant.

L&G agreed to pay £750 compensation. It said that it would write to Mr S with a medical authority form for Mr S to sign and once received it will request the medical information as a priority.

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 considered the further comments from both parties, I'm satisfied that it would be fair and reasonable for L&G to request the pathology / biopsy test results from around early 2018 and reassess the claim for the critical illness benefit in light of these.

I know Mr and Mrs S will be very disappointed and they've been, and continue to go through, a very difficult time. I have every empathy for them, and I can understand their frustrations.

However, there is further medical evidence which is potentially available, and I'm satisfied is likely to provide further insight to whether Mr S had a critical illness as defined by the policy terms before the policy ended. If the evidence is inconclusive then L&G is aware of my provisional thoughts based on the evidence currently considered.
Whilst Mr S's consultant has been categoric in their opinion that the cancer definition had been met by the time the policy ended, and Mr S had widespread cancer, I'm persuaded that the pathology / biopsy results from around early 2018 on Mr S's liver could determine the grade of NET. And given that Mr S was diagnosed with cancer around 18 months after the policy ended, I think it's reasonable to conclude that whether the NET was high or low grade (and therefore likely to be fast or slow growing) is relevant to whether, on the balance of probabilities, the cancer definition had been met during the lifetime of the policy.

However, I'm also persuaded that L&G acted unfairly by declining the claim without having requested and considered that information.

I'm satisfied this caused Mr and Mrs S unnecessary upset and worry at very difficult time for them both. And they had to go to the unnecessary trouble of having to challenge the decision that had been made at the time.

I'm satisfied £750 compensation reflects the impact this had on them.

Once L&G reassesses the claim for the critical illness benefit, and if Mr and Mrs S are unhappy with the decision, they can raise a further complaint with L&G (and thereafter may be able to bring a further complaint to the Financial Ombudsman Service if they remained unhappy with L&G's response).

Putting things right

I direct L&G to:

- promptly obtain the pathology / biopsy results on Mr S's liver from around early 2018 and once received, promptly reassess the claim for critical illness in light of all available medical evidence, including Mr S's consultant's letters.

- pay Mr and Mrs S £750 compnesation for distress and inconvenience.

My final decision

I partially uphold this complaint and direct Legal and General Assurance Society Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 24 March 2025.

David Curtis-Johnson
Ombudsman