

## **The complaint**

Mrs M complains about poor customer service from Legal and General Assurance Society Limited and about the length of time taken to assess a terminal illness claim she and her late husband made under their life insurance policy. Mrs M also thinks she and her husband should have received a higher pay-out.

## **What happened**

The details of the complaint are well known to the parties, so I shall give just a brief summary here.

Mr and Mrs M took out a decreasing term life assurance policy in August 2008. Mr M was initially diagnosed with cancer in 2017. But in August 2021 a scan indicated disease recurrence and Mr M was told that his cancer was terminal. Very sadly, Mr M died in July 2022.

Mr and Mrs M had submitted a claim for terminal illness benefit in September 2021. The claim was accepted in April 2022 and L&G paid Mr and Mrs M £88,690 the following month. This included one month's refund of premium. By this time, Mr and Mrs M had raised three complaints about delays and poor service.

In three complaint response letters, L&G provided explanations about the progression of the claim between September 2021 and February 2022, February 2022 and April 2022, and April 2022 until the claim was paid. L&G acknowledged Mr and Mrs M had been given wrong information and received an email that was insensitively worded. It accepted timescales should've been quicker, particularly given the nature of the claim. L&G acknowledged its mistakes had caused trouble and upset. And it apologised for the additional delay in paying the claim. In total, L&G offered £850 compensation for distress and inconvenience, which was later accepted, without prejudice to the complaint Mr and Mrs M had brought to the Financial Ombudsman Service.

In October 2023, our investigator issued her opinion on the complaint. She didn't think L&G needed to do anything more to resolve things. She said L&G had acknowledged and apologised for mistakes being made and had paid Mr and Mrs M compensation to reflect the distress and inconvenience caused. And she didn't think L&G was in a position to assess the claim before April 2022 as it wasn't responsible for delays in receiving a specialist report from Mr M's oncologist.

Mrs M disagreed so the complaint has come to me for a final decision. Mrs M didn't think there'd been any recognition of the significant impact on her husband, whose health deteriorated as the claim progressed. And she disagreed that L&G weren't in a position to assess the claim until April 2022. She thought she and Mr M should've been paid the value of the policy when they first claimed.

## 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, I'm not upholding the complaint. The circumstances of this complaint are sensitive and I recognise my decision will disappoint Mrs M. I'm sorry about that. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

It's not disputed that by August 2021 Mr M's cancer was terminal and his treatment options limited. The issue here is when Mr M met the specific policy definition for terminal illness. Mr and Mrs M's policy defines terminal illness as:

*'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 payable for the policy year in which the Terminal Illness Benefit is paid.'*

So the policy required both an attending consultant and L&G's Chief Medical Officer (CMO) – himself a consultant medical oncologist – to be satisfied that life expectancy was no greater than 12 months.

I've reviewed the claim and medical evidence carefully. I can see that Mr and Mrs M's claim form gave the primary doctor as Miss B, a consultant general and colorectal surgeon. The details of three other surgeons were also provided.

The evidence shows that by the beginning of September 2021 it was clear further surgery was not advised and the only option for Mr M was palliative chemotherapy. Clinic letters from the surgeons treating Mr M support the terminal nature of his cancer, but do not comment on prognosis. Consultant surgeon Mr D suggested Mr M see his local oncologist with a view to further systemic treatment.

Dated October 2021, Miss B provided a brief letter to L&G which concluded by saying;

*'[Mr M's] recurrence is not amenable to surgical resection and therefore will be treated with palliative chemotherapy. I support his claim that this constitutes a terminal illness.'*

The letter did not comment on prognosis. But Miss B did provide an opinion on prognosis in a subsequent specialist report, requested by L&G and received in November 2021. The following questions and answers are relevant:

*'Q: Please comment on your patient's prognosis in terms of life expectancy?*

*'A: Many months – this will depend on response to chemotherapy.'*

*'Q: What factors have you taken into account when estimating your patient's life expectancy?*

*'A: Performance status, duration since initial diagnosis, lack of co-morbidities.'*

*'Q: Has your patient been added to the GSF pathway or referred for best supportive care?*

'A: No

'Q: Is there any further treatment planned?

'A: Palliative chemotherapy. Average prognosis with multiple lines of chemotherapy = 24-30 months.'

Following receipt of this report, L&G sought further specialist oncological evidence, initially writing to Dr M, a consultant medical oncologist, in late November 2021. The claims notes evidence considerable difficulties in contacting Dr M or her medical secretary and in obtaining a report. At a clinic appointment in mid-February, Dr M confirmed to Mr M that she'd completed a report, but L&G had no record of receiving a document and further attempts to obtain clarity on the date of sending, or forwarding of the original document, were not successful.

I'm not aware that the report Dr M referred to has ever come to light. However, on 7 April 2022, L&G received a report from Dr M, dated 21 February 2022. The report gave an overview of the progression of Mr M's cancer. And it included the results from a scan on 15 February 2022 - after Mr M had received six cycles of palliative chemotherapy - which Dr M referred to when commenting on prognosis. She said:

*'The CT of his chest, abdomen and pelvis undertaken on 15 February 2022 to assess response to treatment revealed stable appearances albeit the known sites of disease growing in size.'*

*'Given the response to this line of treatment [Mr M's] disease is likely to be progressing further on the next CT scan. His life expectancy is estimated from several months to year [sic] but not years.'*

*'[Mr M] potentially has 2 further lines of treatment available – both of which have low response rates in [Mr M's particular type of cancer]. [Mr M] is currently not for best supportive care but has been linked with the community Palliative Care team in view of the incurable nature of his disease.'*

L&G sought the opinion of its CMO which was received 23 April 2022. The CMO commented:

*'Generally we support a TI diagnosis at the time of progression on first line therapy, From the info this seems likely to be the case now/shortly. Sadly the benefits from further therapy are likely to be modest and survival beyond 12 months from now would be unexpected.'*

Overall, I think it was reasonable for L&G to seek the opinion of a consultant medical oncologist. Miss B's opinion on prognosis did not satisfy the policy requirements in terms of the definition of terminal illness. And at that stage, how Mr M would respond to palliative chemotherapy was unknown. I accept there's conflicting information about what happened to the report Dr M spoke of when she met with Mr M in February 2022 and I acknowledge Mrs M's views on this issue. But in any event, the report from Dr M is dated six days after an important scan which enabled Mr M's doctors to assess his response to palliative chemotherapy, such that L&G was then able to confirm that the terminal illness requirements had been met.

Between the date of Dr M's report in February and its confirmed receipt in April, I've noted that L&G chased regularly to try to understand what had happened with the report and to obtain it. Overall, I don't think L&G was responsible for this period of delay. And I'm satisfied April 2022 was when L&G had sufficient evidence to assess whether Mr M met the policy definition of terminal illness.

The policy definition requires both the opinions of an attending consultant and the CMO. I acknowledge there was an additional delay of approximately two weeks between receipt of Dr M's report and acceptance of the claim following receipt of the CMO's view. But as the benefit paid was for the policy month beginning 28 March 2022 (£88,591) this additional time wouldn't have affected the amount paid to Mr and Mrs M. So overall, I think L&G's decision to pay for the policy month beginning 28 March 2022 was fair.

I've also thought about the compensation paid to Mr and Mrs M for mistakes in the handling of the claim and the impact of those mistakes on Mr and Mrs M at what was an already very distressing time. Had L&G not already acknowledged errors and offered compensation totalling £850, I would have directed payment of compensation in this region, because the business's mistakes did cause substantial distress, upset and worry over a number of months. I think the level of compensation was fair, so I'm not going to ask L&G to pay anything more.

Mrs M has also expressed concern that there's been no reference to any requirement on L&G to review processes for dealing with terminal illness claims. I appreciate Mrs M's views on this matter and her desire for other families in similar situations to receive a better service. But I'm afraid this isn't something I'm able to comment on. Our role as a dispute resolution service is to give fair and impartial answers to individual customer complaints. The Financial Ombudsman Service is not the regulator and has no power to tell a business to review its processes and procedures. However, the industry regulator – the Financial Conduct Authority - does require businesses to learn from customer complaints and to identify and remedy any recurring or systemic problems.

So to conclude, I think L&G acted fairly in terms of paying the terminal illness benefit applicable on the date the claim was accepted in April 2022. And I think the £850 compensation for the impact of mistakes and delays reasonably acknowledges the substantial distress and inconvenience caused to Mr and Mrs M. So I don't think L&G needs to do anything more to resolve this complaint. Once again, I'm sorry to send difficult news to Mrs M.

### **My final decision**

My final decision is that I don't require Legal and General Assurance Society Limited to do anything more to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 28 December 2023.

Jo Chilvers  
**Ombudsman**