

The complaint

Mrs N and Mr N have complained that Legal and General Assurance Society Limited (“L&G”) declined Mrs N’s critical illness claim.

What happened

The background to this complaint is well known to the parties so I won’t repeat it in detail here. In summary Mrs N submitted a claim under her joint decreasing life insurance and critical illness policy, following open heart surgery. L&G didn’t meet the claim – it said that she didn’t meet the policy definition. However, it felt that she had received poor service and offered compensation of £500.

Our investigator didn’t recommend that the complaint be upheld, and she felt that the offer of compensation was fair. Mrs N appealed.

I issued a provisional decision on 21 February 2024. I said as follows:

I’m aware I’ve summarised the background to this complaint and some sensitive medical details. No discourtesy is intended by this. Instead, I’ve focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. I recognise that Mr and Mrs N will be very disappointed by my provisional decision and I’m sorry it doesn’t bring more welcome news. But for the following reasons I’m not minded to uphold this complaint:

- The relevant regulator’s rules say that insurers must handle claims promptly and fairly. And that they mustn’t turn down claims unreasonably. So I’ve considered, amongst other things, the terms of Mr and Mrs N’s policy and the available medical evidence, to decide whether I think L&G treated them fairly.*
- Mrs N’s claim was considered under the following policy definition: Open heart surgery – with median sternotomy. The undergoing of surgery requiring median sternotomy (surgery to divide the breastbone) on the advice of a consultant cardiologist to correct any structural abnormality of the heart. It’s clear from the medical information that Mrs N underwent open heart surgery. It is not in dispute that this has been a very traumatic and painful journey for Mrs N. The issue is whether she met the policy definition in full – that is whether the surgery was to correct a structural abnormality of the heart.*
- ‘Heart’ is not defined by the policy – so a valid question here is where does the heart end and the vascular tree start? I put this to L&G who responded ‘Our policies do not generally provide definitions for parts of the body, including organs such as the lungs, kidneys, or heart. There is no requirement for them to do so where we are able to follow the definitions used by the medical profession’. So I’ve considered with care the comments of L&G’s Chief Medical Officer with regards to Mrs N’s surgery. Their conclusion was that the surgery wasn’t performed to correct any structural abnormality of the heart. They said that the surgery was “performed on the*

Pulmonary artery distal to its bifurcation into left and right branches, i.e. in anatomical terms a long ways from the heart itself”.

- *Mrs N sent in a medical case report referring to her surgery. In the introduction the report referred to the condition which Mrs N had as “a rare congenital heart abnormality in which the left pulmonary artery originates from the right pulmonary artery”. The report also stated “a transoesophageal echocardiogram showed no cardiac abnormalities”. I asked L&G if their Chief Medical Officer would comment on the article, as it does suggest, by the one reference I’ve quoted, that the surgery was to correct a congenital abnormality of the heart. They further clarified their earlier opinion which was: “In summary as the blood leaves the heart, it enters the great vessels, the Aorta and Pulmonary artery. The transition from heart to great vessels occurs at the valves i.e. the Aortic valve and the Pulmonary Valve.... Anatomically the place where surgery was performed in this case is well above this junction and well into the great vessels”.*
- *It is not for me to make a medical judgement; I’m not qualified to do so. Rather, my function is to determine whether L&G have treated Mrs N fairly in assessing her claim. I understand why Mrs N thought she would be covered by her critical illness policy – she’s had open heart surgery to correct a structural abnormality. But I’m not persuaded on the evidence that it would be correct to say that abnormality was of the heart – rather than say the cardiovascular system, which would include the Aorta and Pulmonary artery. This being so I’m not minded to find that L&G was wrong to conclude that Mrs N didn’t meet the policy definition. It follows that I don’t find it declined her claim unfairly.*
- *L&G admitted that the service that Mrs N had received was less than she could rightly expect. There had been delays in assessing her claim (although not all of L&G’s making) and Mrs N hadn’t been called back as promised. Additionally text messages that she had been sent were unclear. There is no doubt that this was a very worrying time for Mrs N and I agree that compensation was merited. Ultimately L&G offered £500 with regard to this complaint, which I find was fair in all the circumstances.*

I invited the parties to respond. L&G didn’t have anything further to add. Mrs N said she didn’t have any further evidence but made a statement. She articulately explained how she felt massively let down and that the life changing surgeries she had to endure were for nothing and worthless. She said that the last two years had been extremely stressful and had impacted significantly on her mental health. She said she felt insulted by L&G who had gone against her health professionals and insulted her intelligence.

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.

I recognise Mrs N’s strength of feeling and have great sympathy for her position. She has undergone major surgery which has left a lasting impact on both her physical and mental health. But L&G was entitled to consider whether her claim met the policy definition. My provisional finding was that L&G hadn’t treated Mrs N unfairly in concluding that open heart surgery alone wasn’t enough to meet the definition – it also needed to be to correct a structural abnormality of the heart.

I appreciate it would be helpful in this unusual case if ‘heart’ was defined, but I accept that that organs are not generally defined in policies of this type. I didn’t find it was unreasonable

or unfair to follow definitions used by the medical profession. I have carefully considered Mrs N's further points, but nothing she now says persuades me to change my provisional findings, which I adopt here. In all the circumstances I don't find that L&G treated Mrs N and Mr N unfairly or contrary to their policy terms by declining Mrs N's claim. But I'm satisfied that the offer of compensation made for the service failings was fair.

My final decision

My final decision is that I don't uphold this complaint about Legal and General Assurance Society Limited.

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

Lindsey Woloski
Ombudsman