DRN-4699057

The complaint

Mr S complains that Legal and General Assurance Society Limited declined a claim he made under his joint life and critical illness policy. He also complains about poor service and delays.

I acknowledge this complaint relates to a joint policy. But as the claim principally concerns Mr S, I'll refer just to him throughout.

What happened

The circumstances relating to this complaint are well known to both parties, so I won't repeat all the details here.

To summarise, most unfortunately, Mr S was hit by a car in December 2021. In March 2023, he contacted L&G about a critical illness claim under his policy. In October 2023, L&G declined the claim, acknowledging Mr S's diagnosis of traumatic brain injury, but saying the full policy definition hadn't been met.

During the life of the claim Mr S made two complaints about poor service and delays. On both occasions L&G upheld the complaints, paying Mr S a total of £600 compensation for the distress and inconvenience caused. Mr S was also unhappy about the decline of his claim and brought his complaints to the Financial Ombudsman Service.

Our investigator didn't uphold the complaint. She thought L&G hadn't acted unfairly when it declined Mr S's claim. She was satisfied his circumstances didn't meet the policy definition for traumatic head injury and therefore a critical illness claim wasn't payable. And she thought the £600 compensation paid fairly recognised the impact on Mr S of L&G's poor service.

Mr S disagreed so the complaint has come to me for 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 so, I'm not upholding this complaint. I recognise my decision will disappoint Mr S and I'm sorry about that. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

Claim decline

Firstly, as well as traumatic head injury, I'm aware Mr S has referred to total and permanent disability (TPD) – also a defined critical illness under his policy - in his communication with us. I can see that, as well as looking at a claim for traumatic head injury, L&G also

considered whether Mr S's circumstances might meet the policy definition for TPD. However, to qualify, Mr S would need to be permanently unable to perform three of six specified work tasks – that is, walking, climbing stairs, lifting a 2kg object, bending, getting in and out of the car and writing or using a computer keyboard – each of which has its own particular defined criteria. TPD was discounted as there was no indication Mr S was physically disabled as required under the policy term. From the evidence I've seen, I think this was fair. So L&G focused its claims decision on traumatic head injury.

L&G has relied on the following policy definition:

> ***'Traumatic head injury** – resulting in **permanent** symptoms*
>
> > *'Death of brain tissue due to traumatic head injury resulting in **permanent neurological deficit with persisting clinical symptoms.'***

It's not disputed that Mr S suffered a head injury and has been diagnosed with traumatic brain injury. But that's not sufficient for a claim to succeed. I can see that all elements of the definition have to be met in order to satisfy the policy term. And having reviewed the medical evidence, I don't think that's the case for Mr S.

L&G noted that a CT scan, done in May 2022, hadn't identified any abnormalities and that no MRI had been done. L&G reviewed information from Dr G, Consultant in Rehabilitation Medicine, dated April 2023. Dr G noted that Mr S *'experienced a loss of consciousness at the scene…and a 24 hour duration of post-traumatic amnesia.'* Dr G hadn't had sight of the CT scan Mr S had had, but said that based on the information she had and the duration of post-traumatic amnesia, she would classify this as '*mild to moderate traumatic brain injury.'* She said that Mr S continued to experience several brain injury sequelae, including headaches, blurred vision, difficulties with memory, concentration and planning, low mood, sleep disturbance and fatigue. She thought there was potential for his symptoms to improve over time with support and treatment. She said there was a chance he may be left with some difficulties long-term, but that it was too early to comment on the likelihood of this.

Mr S attended a specialist brain injury clinic for assessment in February 2023. A report of the assessment, signed by Dr G and Dr M, Specialist Clinical Psychologist in Neuropsychology made the following recommendations, in terms of treatment and interventions:

- fatigue management sessions
- a trial of drug therapy to help with low mood and sleep
- exploring support for trauma therapy, and
- consideration of the need for neuropsychological testing.

At a follow-up appointment with Ms G, Occupational Therapist, in July 2023, recommendations were made for Mr S to meet with Dr M to discuss his psychological and cognitive needs, and with Mr C - a speech and language therapist – to discuss changes to his verbal and written communication. Ms G also noted that Mr S had reported having contact with Occupational Health upon his return to work, where counselling for PTSD to facilitate recovery had been discussed.

L&G sought the opinion of its medical officer - himself a consultant neurologist. He agreed the CT scan showed normal results with no evidence of death of brain tissue – a requirement for the policy term to be met. The consultant commented that Mr S's symptoms were more in keeping with post-concussion/psychological sequelae, rather than being directly attributable to any death of brain tissue. However, the consultant observed that if Mr

S were to have an MRI, it might show old scarring which would support a prior death of brain tissue.

Mr S has said that scans don't always show evidence of traumatic brain injury/death of brain tissue. I do understand Mr S's argument and have some sympathy with his position, particularly in view of the ongoing difficulties he's facing. But I still don't think it would be fair to ask L&G not to apply its full policy term in his case and to pay his claim. From what I've seen, the medical evidence available isn't sufficient to show Mr S meets the policy term. So I don't think L&G acted unreasonably when it declined Mr S's claim under his critical illness benefit.

Claim delays

L&G has acknowledged poor service and avoidable delays. It's apologised and paid £600 in compensation. I don't doubt that L&G's mistakes have caused considerable distress, upset and worry to Mr S over the life of the claim. And for impact on that scale, I'd expect to see an award in this region. I appreciate Mr S may feel this award is insufficient. But in all the circumstances I think it reasonably reflects the level of distress and upset caused.

So to conclude, I'm satisfied L&G acted fairly with regard to the claim decision made and has paid compensation which reasonably acknowledges the impact of its poor service. I'm not asking L&G to do anything more in respect of this complaint. Once again, I'm sorry to send unwelcome news to Mr S.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 May 2024.

Jo Chilvers
Ombudsman