

## **The complaint**

Ms M and Mr M complain about the delay in St Andrew's Insurance Plc settling a critical illness claim Mr M made on a Total Mortgage Protection Plan (TMPP).

Ms M and Mr M are represented by Mrs M. For ease of reading, I've mainly referred to Mr M.

## **What happened**

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In October 2022, Mr M made a critical illness claim on his TMPP. Initially, it appears that a claim was made for a stroke but Mr M was later diagnosed with an inoperable spinal tumour. He was also suffering from symptoms of cognitive decline. Sadly, he was referred to palliative care.

St Andrew's investigated Mr M's claim and it requested medical evidence from Mr M's treating practitioners. It considered Mr M's claim under the cancer; stroke, cognitive decline and Total Permanent Disability (TPD) critical illness definitions set out in the policy.

After several months, St Andrew's turned down Mr M's claim because it didn't think there was enough evidence to show his claim met any of the critical illness definitions it had considered it under. It did pay Mr M £100 compensation to reflect the impact of delays in assessing the claim.

However, unfortunately, Mr M was later diagnosed with a malignant melanoma and underwent surgery. So St Andrew's reassessed Mr M's claim under the cancer definition set out in the contract. And it ultimately agreed to accept and pay the claim, backdating the settlement to August 2023. It also paid interest on the settlement.

St Andrew's also refunded the premiums Mr M had paid for the TMPP between August and December 2023 – the point at which it had decided to pay the claim.

Mr M remained unhappy with the way St Andrew's had handled the claim and felt it ought to have been paid much sooner. So Mrs M asked us to look into this complaint.

St Andrew's subsequently told us that it also wanted to offer an additional award of £50 compensation, together with interest at an annual rate of 8% simple on the premium refund amount.

Our investigator thought St Andrew's had made a fair offer to settle the complaint. He didn't think there'd been enough medical evidence to allow St Andrew's to determine that Mr M had a valid critical illness claim earlier than it had. And he felt the total compensation of £150 it had offered was reasonable.

Mrs M disagreed on Mr M and Ms M's behalf and so the complaint's been passed to me to decide.

## **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, whilst I'm sorry to disappoint Mr M, I think that St Andrew's has made a fair offer to settle this complaint and I'll explain why.

First, I'd like to reassure Mr M and Mrs M that while I've summarised the background to this complaint and Mrs M's submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, together with industry principles and guidance, the plan terms and the available evidence (amongst other things) when deciding whether I think St Andrew's handled this claim fairly.

I've first considered the TMPP terms and conditions, as these form the basis of the contract between Mr M and St Andrew's. The policy provides critical illness cover. In order for a critical illness claim to be met, a policyholder needs to provide enough evidence to show that they meet the policy definition of a specified critical illness. Having carefully considered the available claims notes, it's clear that St Andrew's ultimately considered Mr M's claim under the following definitions:

### **'Cancer**

*Any 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.*
- *All tumours of the prostate unless histologically classified as having a Gleason score greater than 6 or having progressed to at least TNM classification T2N0M0.*
- *All forms of lymphoma in the presence of any Human Immunodeficiency Virus.*
- *Kaposi's sarcoma in the presence of any Human Immunodeficiency Virus.*
- *Any skin cancer other than invasive malignant melanoma.*

### **Cognitive impairments**

*Mental deterioration and loss in intellectual ability (shown by loss of memory, orientation and reasoning) which can be measured and results from an organic cause diagnosed by a Consultant Neurologist.*

*This will include:*

*Alzheimer's disease – a clinically established diagnosis of Alzheimer's disease (pre-senile dementia).*

### **Stroke**

*A cerebrovascular incident resulting in permanent neurological damage.*

*Transient Ischaemic Attacks are specifically excluded.*

## **Total permanent disability**

*Your total permanent disability under the plan before age 60 which prevents you from performing at least three of the following five activities for a continuous period of 12 months and which will continue to do so in the future.*

- *Dressing and undressing, putting on and taking off all necessary items of clothing.*
- *Using the toilet, getting to and from the toilet, getting on and off the toilet and associated personal hygiene.*
- *Getting up and down a flight of stairs.*
- *Getting in and out of a bed or chair.*
- *General household duties including cleaning, ironing, childminding and shopping.'*

In my view, the plan terms make it clear which criteria need to be met in order for a critical illness claim to be paid.

I've looked very carefully at the medical evidence which was available to St Andrew's when it made its first claims decision. I appreciate Mrs M says more evidence would have been available which explained Mr M's condition at the relevant time, but St Andrew's can only take into account medical evidence it's provided with at the point it assesses a claim. I can see from St Andrews' records that it got in touch with Mr M's doctors and treating team, including a specialist abroad, to request the medical information it considered it needed. So I'm satisfied it took appropriate and reasonable steps to obtain relevant medical evidence.

It's clear from the medical evidence that previous imaging had suggested that Mr M had suffered a stroke at some point. However, Mr M's treating specialist abroad told St Andrew's that MRI scans in 2022 and 2023 showed no sign of ischaemic attack in the past. The specialist said: *'The patient negated any symptom of ischaemic brain stroke.'* On that basis, I don't think it was unfair for St Andrew's to conclude that the evidence didn't indicate that Mr M had met the policy definition of stroke.

The majority of the medical evidence shows that Mr M had been diagnosed with having a spinal tumour which was inoperable, due to surgical risks. It's also clear that he was under the care of a multi-disciplinary team, which included neuro-oncology. However, the evidence shows that the histology of the tumour couldn't be tested and one report suggested the diagnosis was of a benign spinal tumour. So I don't think it was unreasonable for St Andrew's to originally conclude that the evidence didn't show Mr M had met the policy definition of cancer either.

Turning to cognitive decline, there's no suggestion from the evidence that Mr M had been given any diagnosis of Alzheimer's Disease. And while one of Mr M's specialists referred to Mr M suffering 'new cognitive decline', he also underwent cognitive assessment with a clinical consultant psychologist. The consultant psychologist found that most of Mr M's scores placed him in the average range, although they indicated Mr M had some difficulty in retaining information. Based on the medical evidence, I don't think it was unfair for St Andrew's to find that Mr M's claim hadn't met the definition of cognitive decline.

And while I appreciate Mrs M says Mr M's treating team would have supported a claim for TPD, I don't think it was unfair for St Andrew's to rely on the medical evidence to conclude that the definition hadn't been met. I say that because the consultant psychologist's evidence refers to Mr M being able to walk pets, as well as take care of family members and engage in activities. There doesn't appear to be any contemporaneous medical evidence to show that Mr M was unable to carry out at least three of the listed activities.

Overall then, I don't think it was unreasonable for St Andrew's to conclude that Mr M hadn't shown he had a valid critical illness claim when it first turned it down. I don't think there was enough evidence to show that the claim should have been accepted sooner than it was.

However, in January 2024, St Andrew's was provided with a further medical report which showed that Mr M had been diagnosed with a malignant melanoma in December 2023; that he'd undergone surgery and that the melanoma was invasive. And at that point, St Andrew's was satisfied that Mr M's claim now met the policy definition of cancer. It therefore accepted the claim. I think this was fair and appropriate. St Andrews' notes also show that it agreed to backdate the acceptance of the claim to August 2023 – outside of the policy terms. It seems this was based on the date Mr M had undergone a further MRI scan. I think this was a very reasonable action for St Andrew's to take in the circumstances. I note too that it added interest to the settlement to recognise the time Mr M was without access to the money. Again, I find this to have been fair in all of the circumstances. And in line with the policy terms, St Andrew's refunded the premiums Mr M had paid after mid-August 2023.

I appreciate Mrs M says that as a result of the delay in paying the claim, Mr M had to cash-in a pension early to cover his mortgage and that this will have financial implications for him. But given I don't think St Andrew's was in a position to settle the claim earlier than it did, I don't think I could reasonably conclude that it's responsible for any financial loss Mr M may suffer due to cashing in a pension earlier than he might have wished to.

It's clear that St Andrew's accepts that there were some avoidable delays in its handling of Mr M's claim and it's offered him total compensation of £150 to reflect this. In my view, this is a fair, reasonable and proportionate award which fairly takes into account the trouble and upset I think Mr M was caused by any claims delays which were wholly down to St. Andrew's.

And St Andrew's has now offered to pay interest at an annual rate of 8% simple on the premium refund amount it paid Mr M. I think this is a fair award to reflect the time Mr M was without access to that money between the point each premium was paid until the date of refund.

### **Putting things right**

Overall, I think St Andrew's has made a fair and reasonable offer to settle this complaint. So I now direct it to:

- Pay Mr M total compensation of £150 (less £100 if this compensation award has already been paid); and
- Add interest to the premiums it refunded for the period August to December 2023, at an annual rate of 8% simple, from the date each premium was due until the date they were refunded.

### **My final decision**

For the reasons I've given above, my final decision is that St Andrew's Insurance Plc has made a fair offer to settle this complaint and I direct it to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr M to accept or reject my decision before 24 October 2024.

Lisa Barham

**Ombudsman**