

The complaint

Mr and Mrs S complain about Legal and General Assurance Society Limited, referred to as “Legal and General” or “the business”.

In short, they say the business cancelled their life cover policy (“the policy”) by mistake, and despite upholding the complaint, hasn’t provided a fair and reasonable resolution to the problem.

What happened

Mr and Mrs S say they called up the business to update their records following a re-mortgage. They were initially told that the business doesn’t have a record of the policy. In due course, it came to light that the policy was cancelled in error.

The business upheld the complaint. It explained that in 2018, a customer with a similar policy number called to cancel their policy. However, when locating this policy, the agent for the business incorrectly found and cancelled Mr and Mrs S’s policy. That’s why when they called the business in May 2021, it couldn’t find the policy.

It agreed to reinstate the policy (without a new declaration of health (DOH)) contingent upon Mr and Mrs S paying the missed premiums (in the sum of around £4,697 at the time) to bring the policy up to date – it was happy to arrange a payment plan over 12-24 months in order to make them pay the missed premiums. It made clear that it doesn’t usually do this if premiums haven’t been paid for over three months. Alternatively, Mr and Mrs S could apply for a new policy.

The business also made clear that in the event of a valid claim, it would’ve paid out the sum assured despite there not being a policy in place at the time, due to its error. In the circumstances, it also offered Mr and Mrs S £350 compensation for the distress and inconvenience caused.

Unhappy with the business’s response, Mr and Mrs S referred the complaint to our service. They said they were unhappy that they still didn’t have life cover and weren’t in a position to pay the missed premiums. Given Mr S’s health, they just wanted their old policy to be reinstated.

One of our investigators considered the complaint and initially thought the offer by the business was broadly fair and reasonable. In summary, she said:

- It’s fair that the business is willing to reinstate the policy, without a DOH, providing the missed premiums are paid, via a payment plan.
- If Mr and Mrs S don’t wish to pay missed premiums, they can apply for a new policy which meets their needs. It might be worth discussing the idea with the business.
- Given our approach to redress, it’s not unfair to ask Mr and Mrs S to pay the premiums that they would’ve paid anyway, had the policy not been cancelled in error.
- The £350 compensation offered by the business is broadly fair and reasonable. In the circumstances it reflects the distress and inconvenience caused.

There's been much correspondence between Mr and Mrs S, the business, and the investigator regarding the redress offered by the business.

They remain unhappy with the options proposed, and still very concerned that they remain without cover whilst this matter is being dealt with.

They believe the repayment of the missed premiums should be over the lifetime of the policy – not 12-24 months – and certainly not through some 'debt recovery' scheme. The increased premiums (current premium with missed premiums) are simply unaffordable. Obtaining a new policy with the business also isn't a viable option – despite doing everything they could, the business still refused to cover Mr S.

They maintain that the business made the error but offered an unworkable solution, along with compensation that doesn't cover the distress and inconvenience caused.

The investigator, having considered the additional points and liaised with the parties, in brief made the following points:

- It's not our role to negotiate premiums, that's something that Mr and Mrs S will have to do themselves, going forward. But the payments must be fair and affordable.
- The repayment of missed premiums – over 12-24 months – is unaffordable, especially with the cost-of-living crises. The business should really give them longer – based on affordability – as there are four years of premiums to be paid.
- Mr and Mrs S now no longer wish to reinstate the policy.
- Whilst they'd would like £2,500 compensation, as full and final settlement of this complaint, the investigator doesn't think it's fair.
- £500 compensation for distress and inconvenience is suitable.

The business disagreed with the investigator's latest view and maintains that its offer of redress is broadly fair and reasonable. It doesn't agree with paying £500 compensation.

As no agreement had been reached, the matter had been passed to me for review.

On 25 July 2023, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision, I said:

"...provisionally I'm going to uphold this complaint. There's no dispute that the business cancelled Mr and Mrs S's policy in error. I understand that checks that should've been in place to prevent the error happening in the first place weren't followed. Because the business upheld the complaint, the key issue for me is to consider is redress, and whether (or not) it's fair and reasonable in the circumstances.

On the face of the evidence, and on balance, I'm not persuaded that the redress offered by the business is reasonable. In the circumstances, and on balance, I think the business should do the following:

- 1. Give Mr and Mrs S the opportunity to reinstate the policy, without DOH, which I understand the business has already offered to do.*
 - a. In the circumstances, and on balance, I think the business should also offer a 25% discount on the (missed) premiums owed.*
 - b. Mr and Mrs S should be given at least 36 months, to pay the missed premiums.*
- 2. The business should also pay Mr and Mrs S £500 compensation for the distress and inconvenience caused.*

I'm aware that it was the business that cancelled the policy and did so by mistake. So, it was through no fault of their own that Mr and Mrs S were left (and still are left) without life cover. The onus is therefore on the business to put things right, and to put Mr and Mrs S in the position (or as close to the position) they would have been in, but for the error.

In this instance, it means reinstating the policy, or at least giving Mr and Mrs S the opportunity to reinstate the policy. But if they don't want to reinstate the policy that's a matter for them – they may wish to obtain independent financial advice before deciding what to do.

I appreciate the business maintains that in the event of a valid claim (after the policy was cancelled) it still would've honoured the claim and paid the sum assured.

In the circumstances, and on balance, I don't think Mr and Mrs S should be liable to pay the entirety of the missed premiums – I don't think it's fair. That's why I've suggested a 25% discount should they wish to reinstate the policy, which I think is arguably more manageable. I do so on the basis that it was the business's fault at the outset, but also take into account that Mr and Mrs S ought reasonably to have done more to realise the premiums weren't being paid.

Despite what they say, Mr and Mrs S will be aware that they couldn't have got this cover for free and would've had to pay in any event had the mistake not occurred. Subject to the above comments I have made, in the circumstances I don't think the business is wrong to require them to pay for the missed premiums before reinstating the policy. I also can't blame it for not choosing to waive the premiums.

In the circumstances Mr and Mrs S should have been aware shortly after the policy was cancelled that the payments weren't going out. Judging by what they now need to pay to reinstate the policy, it's evidently not an insignificant amount. Whilst it's possible they didn't notice the premiums not going out, I think they ought reasonably to have done so.

Based on the affordability of the policy, I understand that Mr and Mrs S have said they're not interested in reinstating the policy – in other words, it's too expensive paying the current and missed premiums going forward. Given my decision, it's possible that they may change their minds, as they still have time to pay the lower amount – but it's not clear. It's a matter for them whether or not they want the plan back.

I'm mindful that getting a new policy in this instance isn't a viable option, so it's not something I'm going to consider any further.

In any case, I think the business should pay Mr and Mrs S £500 compensation for the substantial distress and inconvenience caused"

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.

The business responded and questioned my provisional decision. In short it said that in 2021 it offered to reinstate the policy and offered compensation that put Mr and Mrs S in the position they would've been in but for the error. It thinks that Mr and Mrs S might now benefit from its error with a discount. It offered debt recovery to take over the outstanding amount, so that a payment plan could be set up with no set timescale.

Mr and Mrs S also responded but didn't accept my provisional decision. In summary, they said:

- The business was never going to payout in the event of a claim. It couldn't even find their policy and denied that it existed.
- They never received a cancellation letter.
- They've managed to find a separate provider but feel that they are in a worse position financially.
- It wasn't made clear in my provisional decision that they were willing to take up the policy. After several months of undertaking medical examinations, completing questionnaires, and speaking with advisers the business refused. It wasn't a viable option, even though the business said it would offer this as a solution.
- Given that they now have to pay higher premiums, the compensation should reflect this.
- They referred the complaint to our service in October 2021, given the time taken to resolve this complaint, the recommended redress is now not workable.
- Given the rates of inflation the compensation recommended by me, isn't really additional compensation.

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, notwithstanding the latest submissions from the parties, I'm not persuaded to change my mind. My decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, on balance I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision. On the face of the evidence, and on balance, I still think that this complaint should be upheld, and compensation – as set out in my provisional decision – paid. And, despite what the business says, I'm not persuaded that its offer of redress is fair and reasonable in the circumstances.

I still think this complaint should be upheld. I do so, in brief, for the following reasons:

- Whilst I appreciate what the business says for not upholding this complaint, I don't think the arguments are as simple as it suggests. I simply can't dismiss the fact that it was the business's mistake that initially led to this situation.
- Notwithstanding the fact that it has offered to reinstate the policy (without a DOH) as long as the premiums are paid (within specified period), I don't think this fully considers the position that Mr and Mrs S are in.
- That's why I think it should offer a 25% discount, should they wish to reinstate the policy, as well as providing longer to pay because the balance will be much higher. I'm aware the business has made clear that the latter is possible through the debt recovery mechanism, although Mr and Mrs S aren't happy with this process.
- In my opinion, the business's offer at the outset wasn't fair. It wasn't practical and didn't objectively consider affordability issues that Mr and Mrs S were likely to face in reinstating the policy. I'm aware that's why they tried to take out a new policy as suggested by the business, but despite their best efforts the business refused to cover Mr S.
- I also can't ignore the cost-of-living crisis.
- I appreciate the business can choose to waive the missed premiums, but I can't say that it has done anything wrong by not doing so. I'm aware that but for the error, Mr and Mrs S would have to pay the fees due.
- Irrespective of whether or not they choose to reinstate the policy, the business should pay Mr and Mrs S £500 compensation for the distress and inconvenience caused –

which I think better reflects the level of distress and inconvenience caused.

- I'm mindful that getting a new policy with the business wasn't/isn't an option, given Mr S's health concerns but they have now found a new policy with a different provider.
- I appreciate Mr and Mrs S's comments, but I've no evidence to go behind or question what the business said about its intention to honour a valid claim. In any case, the point is academic.
- I'm sorry for the time taken to resolve this complaint. Our service has been and is doing its best working through the backlog of cases.

The above notwithstanding, I appreciate Mr and Mrs S will be thoroughly disappointed that despite their latest submissions I've still not been persuaded to change my mind. In other words, I've upheld the complaint but still haven't given them what they want, and that my decision isn't what they want to hear. Whilst I appreciate their frustration, I'm not going to ask the business to do anything other than what I set out below and in my provisional decision.

The above notwithstanding, on the face of the available evidence, and on balance, I'm still unable to give Mr and Mrs S what they want.

Putting things right

Legal and General Assurance Society Limited should do the following:

1. Give Mr and Mrs S the opportunity to reinstate their policy, without DOH.
 - a. It should also discount the outstanding premiums owed by Mr and Mrs S by 25%.
 - b. Mr and Mrs S should be given at least 36 months, if not longer, to pay the missed premiums.
2. The business should pay Mr and Mrs S £500 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint. Legal and General Assurance Society Limited should pay redress 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 12 September 2023.

Dara Islam
Ombudsman