

The complaint

The estate of Mr G complains that Stonebridge International Insurance Ltd declined a claim they made on the late Mr G's accidental death plan.

What happened

Mr G held an accidental death plan. Sadly, Mr G died following the obstruction of his airway by a piece of food causing hypoxia. The cause of death was recorded as upper pulmonary obstruction by food and dementia. A coroner recorded a verdict of death by mis-adventure.

Stonebridge declined the claim on the basis that the policy definition of accidental death was not met. They also thought that the evidence suggested that the reason for choking was due to his pre-existing dementia which can cause problems with swallowing. Unhappy, the estate of Mr G complained to the Financial Ombudsman Service.

Our investigator looked into what had happened and upheld the complaint. She thought the definition of accidental death was met as Mr G's death was caused by choking, not eating.

She also didn't think that the available evidence suggested Mr G choked due to dementia. So, she wasn't persuaded that Stonebridge had fairly declined the claim. She thought Stonebridge should reassess the claim and gather further evidence.

Stonebridge didn't agree and asked an ombudsman to review the claim. They highlighted that the claim form disclosed Mr G had visited his GP due to problems swallowing two weeks before his death. They also noted that the coroner had concluded Mr G was known to be at risk of choking and that the investigator's conclusions called the legitimacy of the coroner's findings into question. Stonebridge also said that part two of the death certificate contains any diseases, injuries, conditions or events that contributed to the death which supported that Mr G was at higher risk of choking due to his dementia.

These further representations didn't change our investigator's thoughts about the overall outcome of the complaint. So, the complaint was passed to me to make a decision.

In December 2023 I issued a provisional decision. I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant rules and industry guidelines say that Stonebridge has a responsibility to handle claims promptly and fairly. And, they shouldn't reject a claim unreasonably.

The policy terms and conditions

The policy terms and conditions define 'accidental death' as:

'The death of an insured adult or insured child as a direct result of a bodily injury caused by an accident'.

'Accident' is defined as:

'A sudden, unexpected and unfortunate event that occurs whilst the policy is in force and which results directly from external and violent means'.

There is no cover if an accidental death is:

- Due to a naturally occurring conditions, degenerative process or medical or mental disorder.

The policy also says that where a pre-existing condition is a contributing factor to the claim, it will be taken into consideration in calculating the amount payable. A medical assessment will be converted into a percentage and applied to the policy benefit payable.

Has Stonebridge unfairly declined the claim?

Stonebridge relies on the exclusion I've outlined above and says that Mr G's death was due to a naturally occurring degenerative disease. They say that the medical evidence shows the reason for choking was due to his pre-existing dementia. They've also argued that people with dementia can develop problems with eating and swallowing, particularly in the advanced stages of their illness. As Stonebridge relies on the exclusion it's for them to demonstrate, on the balance of probabilities, that they've fairly declined the claim.

In the claim form it was disclosed that Mr G had visited his GP due to 'problems swallowing' around two weeks before his death. There's no further medical evidence which demonstrates what was discussed at the appointment.

The record of inquest says the medical cause of death is:

1a Upper airway pulmonary obstruction by food

1b

1c

II Dementia.

The record also says:

The deceased's upper airway was obstructed by a piece of [redacted] causing hypoxia. The deceased was known to be at risk of choking in consequence of his dementia.

Conclusion of the Coroner as to the death

Misadventure.

My understanding is that a verdict of misadventure usually implies that the person who died deliberately undertook a lawful action which resulted in their death. So, there's an intended action which has an unintended consequence. The coroner didn't record a verdict of accidental death which is usually used where the cause of death is unnatural but not unlawful.

I'm not persuaded that Stonebridge has fairly declined the claim as I don't think their decision fairly reflects the overall evidence and information that's available. I think the

coroner's verdict of misadventure reflects that, in eating the meal, Mr G deliberately undertook the lawful action of eating.

This resulted in him choking. Even though the coroner didn't record the death as 'accidental' I don't think that means that Stonebridge is entitled to say that the policy definition can't be met or that Stonebridge is calling the coroner's findings into question. Rather, it reflects that the coroner wasn't applying the very specific definition set out in the policy terms. And the verdict reflects the facts the coroner was presented with, which I think most likely reflected that Mr G was engaging in a deliberate action of eating.

I'm satisfied that choking on food can reasonably be considered to be a sudden, unexpected and unfortunate event which results directly from external and violent means. In reaching this conclusion I've taken into account the Cambridge definition of 'violent' which includes, 'using force to hurt or attack' or 'sudden and powerful'. I think it's reasonable to conclude that choking as a result of eating food is external and violent, bearing in mind the definitions I've referred to above.

I do think the coroner's findings reflect that Mr G's dementia was a factor in what happened although it's unclear to what extent. Mr G had seen his GP a few weeks before he died for problems swallowing. Dementia is noted as the secondary cause of death and the coroner said that Mr G was known to be at risk of choking in consequence of his dementia. But I don't think, in the very specific circumstances of this case, that this automatically means the policy definition of accidental death can't be met. Rather, I find it would be fair to take into consideration that the pre-existing condition was a contributing factor to the claim.

During their investigation Stonebridge haven't sought to gain any further meaningful insight into Mr G's condition and to what extent this contributed to what happened. I've not been provided with any detailed information or evidence about the nature of Mr G's dementia or how advanced it was. Nor have Stonebridge provided any detailed information in support of their position that Mr G can fairly be considered as a person who had developed problems with eating and swallowing due to the advanced stage of his illness. That's not supported by any detailed medical information.

It was open to Stonebridge to obtain further information from Mr G's medical records, including details of the relevant medical appointment, or other information from the home about Mr G's functionality. I think this would have reasonably enabled to more fairly assess the extent to which his pre-existing condition was a contributing factor to the claim. When asked to provide medical evidence in support of their assessment of the claim they haven't been able to do so.

Putting things right

I've thought about whether it's fair and reasonable to direct Stonebridge to reassess the claim and have the opportunity to obtain further medical evidence or information. But Mr G died over two years ago and I think it's unlikely that they'll be able to fairly assess the extent to which Mr G's dementia contributed to his death.

I think Stonebridge should settle the claim on the basis that 50% of the benefit should be paid. I think this would most fairly reflect the circumstances of this case and the coroner's findings. They should also pay 8% simple interest on the settlement from the date the claim was declined to the date of settlement.

Stonebridge and the estate of Mr G accepted my provisional findings.

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.

As the parties accepted my provisional decision there's no reason for me to reach a different outcome. For the reasons I've outlined above, and in my provisional decision, I'm partially upholding this complaint.

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My final decision

I'm partially upholding the estate of Mr G's complaint and direct Stonebridge International Insurance Ltd to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr G to accept or reject my decision before 8 February 2024.

Anna Wilshaw
Ombudsman