

The complaint

Mrs M is unhappy with the service received from St. James's Place Wealth Management Plc when selling her a life and critical illness policy ('the policy').

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

St James's has an obligation to treat customer fairly.

Whilst I can understand Mrs M's disappointment, for the reasons set out below, I don't think it would be fair and reasonable to hold St James's responsible for a question not being answered accurately on the application for the policy. This ultimately led to her critical illness claim for cancer being declined by the insurer. The insurer said if it been aware that a family member of Mrs M had in the past been diagnosed with breast cancer, it would've added an exclusion to critical illness cover, excluding claims for cancer.

- Mrs M says she declared to St James's representative (when he took her through the questions on the application) that a relative had been diagnosed with breast cancer and she was told by the representative that this didn't need to be declared as it had occurred more than five years ago.
- The following question is asked under the family history section of the policy application: "Have any of your natural parents, brothers or sisters been diagnosed with, or died from any of the following before the age of 60 breast, ovarian, colon or bowel cancer". The insurer sent Mrs M a summary of the application in November 2021 (before the policy started) which reflects that this question was answered 'no'.

- I'm not persuaded that Mrs M was told that she wouldn't have to declare her relative's breast cancer diagnosis on the basis that this happened more than five years ago. There's no reference to a five-year period in the question – or other questions asked of Mrs M in the application. Further, Mrs M says her husband (Mr M) was also present during this conversation because he was asked questions relating to his application for a similar policy. Mrs M says that Mr M, when answering the same question, declared that a family member of his had also been diagnosed with cancer shortly before Mrs M's family member. Mr M's application reflects that this question had been answered "yes" so I think it's unlikely on the balance of probabilities that it would've been if St James's representative had told them that they didn't need to declare diagnoses of cancer made more than five years ago.
- Mrs M says that when St James's representative visited Mr and Mrs M in 2022 to say she wasn't covered for breast cancer under the policy, he said "in a panicked voice: I thought it was just your sister [Mr M] who had breast cancer". In the absence of any further evidence to the contrary, I accept that because I'm persuaded that Mrs M has consistently said that she'd disclosed her relative's breast cancer as part of the application for the policy and I find her submission on this point to be persuasive. I think what she says is also supported by her declaring her relative's breast cancer when applying for a life and critical illness policy in 2014 (which the policy was meant to replace). I don't think she would've tried to hide this information by not declaring it when asked. So, on the balance of probabilities I think it's likely that St James's representative answered the question 'no' in error, most likely because both Mr and Mrs M declared that two relatives were diagnosed with breast cancer within a month of each other and the representative misunderstood that one of them was Mrs M's relative.
- However, as I explained above, Mrs M was sent (by the insurer) a summary of the application and the answers provided. The covering letter dated 12 November 2021 says: "Please check the details. It's really important you check through this document to make sure the information shown is correct. Important – you have 14 days to let us know of any changes that need to be made to your application". The personal details confirmation which sits above the application summary also invites Mrs M to review the information and to let the insurer know if anything is wrong. It also says in bold: "It's important all the information shown here is correct. If anything's wrong, we may amend, or cancel the policy, or we may not pay a claim".
- I'm satisfied that the application summary reflects that the cancer question had been answered "no". I've seen no evidence that Mrs M contacted the insurer to correct this. So, although I'm satisfied that St James's representative initially put down the wrong answer on the application when taking Mrs M through the application, I think Mrs M was given an opportunity to review the application summary and check the answers provided. And that she didn't inform the insurer that the cancer question had been answered incorrectly.
- If she had done so, the insurer says that it would've added an exclusion to the critical illness cover at that time, excluding claims relating to cancer.
- At that stage, I'm satisfied that Mrs M would've either chosen to proceed with the policy (including the exclusion for cancer) or would've opted not to take it out, and would've kept her existing policy. I've considered both these options.

- As it transpires, the original policy hadn't been cancelled, so I understand Mrs M has been able to make a successful critical illness claim on that policy. Although the benefit is lower than the benefit of the policy which is the subject of this complaint, I'm satisfied that if Mrs M told the insurer that the cancer question had been answered incorrectly when invited to review the application summary, she would not have been able to have claimed under the policy for the critical illness of cancer, because of the exclusion that would've been added to the policy.
- If the application had been corrected by Mrs M, and she hadn't opted to proceed with the policy once being told that a cancer exclusion would be added to critical illness cover, she wouldn't have been paying the monthly premiums for the policy. I understand that the policy is still active and hasn't been cancelled. That being the case, St James's has offered to reimburse the premiums paid for the policy from the policy start date up to and including the premium paid on 1 February 2024 together with simple interest at a rate of 8% a year. By that stage the claim had been paid under the original policy and so, Mrs M had the choice whether to continue with the policy or cancel it.
- On the basis, that Mrs M wouldn't have taken out the policy if she'd corrected the application upon being sent the summary from the insurer and a cancer exclusion had been added, I think St James's offer is fair and reasonable.
- Although the policy may still be active, I don't think it would be fair and reasonable for St James's to reimburse any premiums paid for the policy after 1 February 2024 as the offer was made in a letter dated 5 February 2024 and Mrs M had a reasonable time whether to continue or cancel the policy before the next premium was payable.

The original policy not having been cancelled

I make no finding as to whether St James's were at fault in any way for Mrs M not cancelling the original policy, given that the policy which is subject to this complaint was meant to replace it. That's because even if St James's was responsible for this in any way (which I make no finding on), Mrs M has benefitted from any error. As it wasn't cancelled, she's been able to successfully claim the critical illness benefit. I'm satisfied that sum far outweighs the monthly premiums paid for the original policy since the end of 2021 (when the intended replacement policy started).

How St James's handled the complaint

St James's accepts that it took too long to deal with Mrs M's complaint and provide a response. It's offered her £250 compensation. I accept that Mrs M was going through a difficult and worrying time and delays to her complaint would've unnecessarily added to this. I'm satisfied £250 compensation fairly reflects the impact on her.

Putting things right

I direct St James's to pay Mrs M:

- A. total monthly premiums from the date the policy started to 1 February 2024 (as it's offered to do after the complaint was brought to the Financial Ombudsman Service) or if earlier, the date on which the policy was cancelled.

B. simple interest on the premiums set out in A above at a rate of 8% per year from the date on which each premium was paid by Mrs M to 5 February 2024 – the date St James's made the settlement offer to Mrs M (or, if earlier, the date on which the policy was cancelled)*; and

C. £250 compensation for distress and inconvenience.

* If St James's considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mrs M how much it's taken off. It should also give her a certificate showing this if she asks for one. That way Mrs M can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I partially uphold Mrs M's complaint and direct St. James's Place Wealth Management Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 October 2024.

David Curtis-Johnson
Ombudsman