

complaint

Mr D is complaining about Legal & General Assurance Society Limited because it didn't pay out on his critical illness insurance when it should have.

background

Mr D took out a flexible mortgage plan with his ex-wife in 1997. The plan included a PEP designed to help repay the mortgage loan of approximately £60,000, along with life and critical illness insurance to pay out if either of them died or became seriously ill before the end of the term. It also included premium waiver benefit to pay the monthly premiums if either of them couldn't work due to ill-health.

Sadly, Mr D became ill in 2002 and asked about taking a payment holiday. Legal & General didn't consider whether the waiver benefit was payable at that time, but I understand no further premiums were paid after this anyway.

In 2008, Mr D had a heart attack and tried to claim on the critical illness benefit. By this time, he'd separated from his wife and Legal & General didn't pay out because she hadn't signed up to the claim.

In 2014, Legal & General admitted it should have paid Mr D some money in 2008. This is because the plan, although nominally in joint names, was actually split into two with Mr D as the grantee for one and Mrs D the grantee for the other. The plan had to be set up this way because of the PEP element, which tax rules say can only be owned by one person. So each of them actually owned their own plan with a benefit of nearly £30,000.

When it realised its error, Legal & General agreed to pay Mr D the benefit (£30,000) from his individual policy. It also added simple interest at the rate of 8% per year to compensate him for not having the use of this money, and a further £1,000 for his trouble and upset.

Our adjudicator didn't recommend the complaint be upheld, saying Legal & General's offer is fair. Mr D disagrees, saying he should be entitled to the full £60,000. He also thinks the additional amount Legal & General offered doesn't adequately compensate him for the problems it caused, including the effect on his health and damage to his relationships with his family as well as the pain and suffering.

my findings

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 agree with the adjudicator's conclusions for much the same reasons. I'm not upholding Mr D's complaint because I think Legal & General has already made a fair offer.

There's no dispute that Legal & General made a very serious error. The issue I must decide is what represents fair compensation. My role is not to punish or fine financial businesses for acting inappropriately - that's for the industry regulator. The main aim of any award I make is instead to put Mr D (as far as possible) in the position he would be in but for Legal & General's errors. I can also award compensation for his trouble and upset.

Legal & General has explained why Mr D is only entitled to £30,000 from the plan and there's nothing I can really add to that. I appreciate he thinks he should get the full £60,000

benefit, but that would only be the case if the plan was set up in joint names. And if it was in joint names, he wouldn't be able to get this without the consent of his ex-wife.

Legal & General should have paid Mr D his part of the benefit a number of years ago and it's offered to add interest to compensate him for not having use of that money. The 8% interest rate is intended to compensate for a wide range of possible losses and lost opportunities, for example:

- having to borrow money and pay interest he wouldn't have had to pay if he'd had the money when he should have;
- missing opportunities to save or invest the money to generate a return;
- spending the money on various things, including holidays, home improvements, or any number of other goods that would have given him an unquantifiable return;
- or any combination of these things.

I think it's impossible to know exactly what Mr D would have done with the money if he'd have received it and how different his financial position would now be. But a rate of 8% is often used by the courts to compensate people for not having the use of their money. And in the absence of any compelling evidence about what Mr D would have done differently, I think it's a fair basis for calculating compensation in this case.

I've taken account of Mr D's comments about the effect this has had on other aspects of his life, including his health and family relationships. While I'm sure the issues with Legal & General haven't helped, I don't think I can reasonably attribute these problems solely to its failure to pay out when it should have. In particular, I note Mr D and his wife separated and also that he was experiencing serious health problems several years before he tried to claim on the policy in 2008.

This notwithstanding, I do understand the issues raised in this complaint have caused Mr D unnecessary trouble and upset. The amount of an award for trouble and upset can be particularly difficult to assess. But in this case, the problems Mr D experienced came at a time when he was already having problems with his health and I think a substantial payment is merited. I appreciate Mr D doesn't think £1,000 is enough, but I do believe it's fair.

Finally, I note Legal & General didn't consider whether Mr D was eligible for the premium waiver benefit in 2002 when it probably should have done. But I don't think he's been disadvantaged by this. I say that because no further premiums were paid after 2002 anyway. And whether or not Legal & General had used the waiver benefit to pay the premiums, he wouldn't have been entitled to any more than the £30,000 benefit now being paid.

my final decision

My final decision is that I don't uphold this complaint. I'm satisfied Legal & General has already made an appropriate offer to resolve matters. If Mr D hasn't already received this amount and now wishes to accept it, he should contact Legal & General directly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 November 2015.

Jim Biles
ombudsman