

The complaint

Miss B's complains that TenetLime Ltd failed to record her answers to a health and lifestyle questionnaire accurately, resulting in her insurer cancelling her life and critical illness policy on the basis of misrepresentation.

What happened

The details of this complaint are well known to both parties, so I will simply summarise them here. In autumn 2019, Miss B consulted company O - an appointed representative of TenetLime - about mortgage and family protection. She subsequently took out three policies. A life and critical illness policy to protect her mortgage. A separate life policy that would benefit her sons in the event of her death. And an income protection policy, should she be unable to work through illness or injury.

In early 2022, Miss B sought advice from another broker about remortgaging. It came to light that a heart condition hadn't been disclosed to her insurer when applying for her policies in December 2019. She contacted the insurer to see what could be done, which resulted in her life and critical illness policy being cancelled and premiums refunded, as the insurer would not have offered cover at all, had all Miss B's health circumstances been disclosed. The insurer said it would've still offered cover in respect of her other policies, but at a higher premium. So the insurer applied a proportionate reduction in the benefit on both those policies

Miss B complained to TenetLime that it had misrepresented on her behalf. She said she told O about her heart condition, but at the time, couldn't remember the name of it. She said that had she known she could not get critical illness cover at the time, she would've used her budget to obtain more cover with her other policies.

TenetLime said its representative recalled disclosure of a recent heart condition, but otherwise could not remember exactly what was disclosed, aside from the notes recorded on the application. It said Miss B had the opportunity to identify any errors, when sent full policy details by the insurer. It did not uphold Miss B's complaint.

Miss B brought her complaint to the Financial Ombudsman Service. Our investigator upheld her complaint. He was satisfied that TenetLime had misrepresented Miss B's answers to her insurer. He considered what Miss B might've done, had her full circumstances been disclosed at the time. He took into account Miss B's present health circumstances - which have severely affected her ability to obtain insurance - and her oversight in not identifying the disclosure omission when she received her policy documents. He initially concluded that TenetLime should pay Miss B £300 compensation, which TenetLime accepted. But after further consideration, he thought £500 more fairly reflected the distress and inconvenience caused.

Neither party accepted his opinion so the complaint's now been passed to me to make a final 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.

Having done so, I'm upholding Miss B's complaint. But I'm not requiring TenetLime to pay Miss B more than the £500 proposed by our investigator. I'll explain my reasons, focusing on the points and evidence I consider material to my decision. So, if I don't refer to a particular point or piece of evidence, it's not because I haven't thought about it. Rather, I don't consider it changes the outcome of the complaint.

I was sorry to hear about Miss B's current health difficulties and I appreciate this has been a difficult and stressful time for her. I can understand why she feels let down by TenetLime and thinks it should put things right.

Where there's a dispute between the parties, I have to decide what I think most likely happened. The sale was conducted over the phone by a trainee advisor, under the supervision of a senior colleague. Unfortunately, there's no call recording available to provide certainty about what was said. TenetLime's representatives, understandably, have a limited recall of the details and have relied on the application form completed at the time.

Miss B has provided testimony that she disclosed both her historic and more recent heart issues to TenetLime, although she says she couldn't remember the name of her historic condition. She was clear that the historic issue happened when she was pregnant and that she had a small procedure to correct things. Her GP has since confirmed she was diagnosed with paroxysmal atrial tachycardia. Miss B said she experienced some concerns about her heartrate a few months prior to taking out the 2019 policies and had investigations, including an ECG, all of which were normal. She recalls the advisor asking specific questions about heart issues and is adamant she disclosed both historic and recent events. Unfortunately, only the recent matter was recorded on her application and passed to her insurer.

On balance, I'm persuaded Miss B did disclose her historic heart issue to TenetLime and this information wasn't accurately recorded and provided to the insurer. She disclosed her more recent ECG and I've seen no evidence to suggest she wouldn't also have disclosed her historic issues. Once the problem was flagged to her, she proactively contacted her insurer to alert them to the issue. And, having listened to the call between her and her advisors from O when she first raised the matter with them, I find that she was open about receiving her policy documents from the insurer, but not picking up on the missing information. I think on balance that straightforwardness would have led her to disclose the full extent of her heart history.

So I think TenetLime needs to do something to redress its error. But I have to think about what's fair in all the circumstances.

Putting things right

The impact for Miss B is that she does not have the cover in place she thought she had. Had all gone right, Miss B would've known straightaway that critical illness cover wasn't available to her. And I acknowledge that she would've been able to use her available budget to obtain the best cover she could under her other policies. Unfortunately, her options for cover are now very limited, due to an intervening health event.

I'm also mindful that Miss B had the opportunity to identify any issues with her cover shortly after the policies commenced. The insurer sent Miss B her policy documents, including her personal details confirmation which she was required to check to ensure all was accurate. Very candidly, Miss B acknowledged she received and looked at the documents, but failed to spot the issue about her more historic heart condition. She thinks she may've missed this information as the documents were double-sided. She's also said she noted the inclusion of her more recent investigations and, trusting her advisor, assumed all was well.

I acknowledge some responsibility on Miss B's part. But I don't think that absolves TenetLime – a professional firm - of all responsibility. But for its error, Miss B's mistake wouldn't have mattered. I accept that the impact of finding out that she wasn't covered has caused Miss B distress and worry. And I think TenetLime needs to do something to acknowledge its error and the impact on Miss B. Taking everything into account, I think £500 compensation for loss of expectation and distress and inconvenience is fair.

My final decision

For the reasons I've explained, I'm upholding Miss B's complaint and directing TenetLime Ltd to pay her £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 28 July 2023.

Jo Chilvers
Ombudsman