

The complaint

Mr H complains Legal and General Assurance Society Limited (L&G) has sent him marketing material after it was agreed several years ago it would stop doing this. Mr H says receiving the mailing has caused him upset.

What happened

In 2015, Mr H contacted L&G after receiving product marketing information. He said this had caused him distress because he was in dispute with L&G at the time about a decision to decline a claim under a life insurance policy (for which he was acting as a representative for the beneficiary). L&G apologised and agreed that no further marketing information would be sent to him.

But in October 2019, L&G sent marketing information to Mr H again, so he raised a complaint. L&G acknowledged his concerns and said it would respond. As he didn't receive an effective response, he referred his complaint to this service.

I issued a provisional decision in November 2023. This is what I said:

"The crux of the issues relate to upset caused to Mr H from receiving marketing material in 2019, after previously raising concerns about this and being reassured he would be removed from marketing by L&G.

It is clear from the 2015 final response letter that L&G agreed to stop sending Mr H marketing material. There is evidence that it failed to keep to this reassurance. So, I understand why Mr H has raised concerns. He has explained that receiving this information caused him upset due to an unrelated dispute his family has with L&G about a declined claim. L&G has failed to provide an explanation as to why it sent him marketing material in 2019. This has led to Mr H having to raise concerns and seek a response. While I understand L&G did give Mr H information on how to remove himself from marketing lists in 2015, I don't think this means it is absolved from fault here.

It is disappointing that L&G hasn't responded to Mr H's concerns. It also hasn't provided this service with an explanation as to why Mr H was sent marketing material having been told he wouldn't. So, I think this has compounded the matter and meant it has continued to be a concern for longer than it should have. So, my finding it that there is a failing by L&G as it has sent marketing material after saying it wouldn't send it to Mr H.

I've considered the evidence provided about the impact of L&Gs failing. The matter has caused Mr H distress and frustration. He also suffered inconvenience as he has had to spend time trying to get a response to why he was sent marketing material.

I haven't found that Mr H has suffered a financial loss as a result of L&Gs failing, but I do think it should provide an explanation and pay him compensation for the impact of what has happened. I intend to require L&G to pay Mr H compensation of £100. I think this is a fair and reasonable resolution to the complaint."

Mr H responded and provided some further comments. In summary he said:

- The sending of marketing wasn't an isolated incident, Legal and General sent further marketing information by email in 2019.
- He referenced another complaint he has with this service about Legal & General and provided comments about how the marketing material linked to arguments he had put forward on the other complaint.

L&G responded and provided further submissions. In summary it said:

- Mr H's details were provided to Legal & General by a marketing data and insight company. It did not use data it holds for Mr H in relation to his other complaints or his previous complaint about receiving marketing material in 2015.
- While a vast proportion of its marketing is based on consent, the legal basis for this particular direct marketing activity is 'legitimate interest'. To undertake marketing based on 'legitimate interest' organisations are required to conduct an internal balancing test called a Legitimate Interest Assessment.
- Mr H would have been served a privacy notice from the company at the original point of data capture. The notice would have confirmed data would be shared with the Marketing Services Providers listed for a variety of direct marketing purposes.
- It sent Mr H marketing material in 2019 because his data was supplied to it by a marketing company and its checks did not flag a need to remove him from the campaign.
- After his 2015 complaint, it added Mr H's data to its stop files with the intention to prevent it unintentionally using his data again for marketing campaigns. At this time, it also gave Mr H the contact details of the data supplier, so he could arrange with them for his data to be removed from their lists. It also informed Mr H that he could register with the Mail Preference Service to prevent receipt of all marketing material in future.
- In 2019 when the relevant data checks against its stop files were completed, it didn't flag that Mr H's data was to be removed from the marketing campaign. Unfortunately, it is unable to confirm why his data was not located on the stop files and it is sorry this occurred.
- It believes Mr H has been clear in his position that he has no desire, potential or otherwise, to be a customer of Legal & General Assurance Society. As such, his personal complaint about receiving marketing material was managed as ineligible.

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.

I've reviewed the further submissions made by both parties. Having done so I haven't found reason to change the outcome I set out in my provisional decision. I'll explain why.

Mr H has provided further information relating to the link he sees with marketing material being sent in 2019 and another separate complaint that he is representative for about Legal & General. I don't think this has a direct link to the other complaint, so my findings here carry no relevance to the other complaint. I acknowledged that receiving the marketing caused Mr H to raise further points and strengthen his opinion on why the other complaint should succeed. I have taken this into account when considering the impact of receiving an application to take out a life policy when Mr H had asked Legal & General not to send him marketing. But this is as far as I find there is relevance between the circumstances of the two complaints when deciding this complaint.

Legal & General has now provided a detailed explanation as to why Mr H received marketing material in 2019, having previously been informed that he wouldn't. I'm satisfied that this does meet the requirements I set out in my provisional decision when I asked it to give Mr H an explanation. It has set out its use of marketing data companies and how this led to a further marketing offer to commence a policy being sent to Mr H (details set out in the responses above). While the response may not answer every query Mr H has, it does give an explanation of why he received an application for a policy when he had asked not to be sent marketing material.

I note the reasons provided by Legal and General about how it uses marketing, including the points it makes about legitimate interests. But Legal & General has acknowledged that it can't provide a reason why its internal markers didn't stop the policy application being sent to Mr H in 2019. The fact this didn't happen is important as it had previously provided reassurances in 2015 that it would not send this type of correspondence to Mr H. As set out in my provisional findings, I still find there has been a failing in that Legal & General didn't keep to the reassurances it made in 2015 - and Mr H has suffered distress and inconvenience as a result of the failing.

In respect of Legal & General's comments about Mr H's eligibility as a complainant to this service. I acknowledge that Mr H did not take up the offer to purchase a policy and become a customer in respect of this direct offer he received. He reviewed this correspondence and raised queries about the terms of the policy being offered with Legal & General. The rules only require him to be a potential customer to be eligible. For the reasons previously explained, I think he meets the definition required to be an eligible complainant.

For the reasons described above and those set out in my provisional decision, I still think Legal & General should pay Mr H compensation for the impact of what has happened. Having assessed this, I remain of the view that a compensation payment of £100 is a fair and reasonable resolution to the complaint.

My final decision

I uphold Mr H's complaint and direct Legal and General Assurance Society Limited to pay him £100 in compensation for the distress and inconvenience he has suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 January 2024.

Daniel Little
Ombudsman