

The complaint

A company, which I'll refer to as T, complains that Lloyds Bank PLC sold it two term assurance policies that didn't include cover for critical illness.

T's representative and Mr H, who is the sole director and beneficial owner of T, bring the complaint on T's behalf.

What happened

T took out two loans with Lloyds in 2014. Following discussions with a Lloyds adviser, T also took out two term assurance policies ("the policies"), with 20 and 15 year terms. The policies had a guaranteed premium and provided decreasing cover that would pay out whatever was outstanding on T's loans in the event of Mr H's death.

Mr H suffered a serious illness in 2017 and was unable to work. When T tried to claim on the policies, it was told they covered life and terminal illness only and didn't include critical illness cover (CIC).

T complained to Lloyds that they had recommended policies that were unsuitable as they didn't include CIC. T said Mr H had made it clear to the Lloyds adviser that T needed CIC because Mr H was the only person running the company and he wanted to have cover in place should anything happen to him. T added that, because of Lloyds' failings, Mr H had to return to work sooner than medically advised.

Lloyds didn't uphold T's complaint. They said, in summary:

- Whilst they recommended CIC, T declined it because of the additional cost. That was determined at a meeting between Mr H and a Lloyds adviser on 29 January 2014. At that meeting the adviser would have provided Mr H with an indication of the likely premiums for policies providing life cover only, and life and critical illness cover.
- On 12 March 2014 the Lloyds adviser sent a financial review document to T, based on information discussed at the 29 January meeting. The review said that CIC had been discussed at the meeting but discounted by Mr H. Reflecting that, the adviser recommended decreasing life cover only.
- The adviser would have shared quotes for policies offered by two providers. The premiums were very similar, with one provider being recommended due to the ease of all of T's policies being with one company. Although the other provider's quotes said "yes" next to the CIC line, that was an error as the quotes were on the same basis. That was reflected in the very similar cost of the quotes.
- At a further meeting on 14 March 2014, Mr H was content to proceed with the policies previously discussed, which did not include CIC. The adviser therefore went through the policy application documents with Mr H, which made clear the cover was for life and terminal illness only.

- There was no reason for them to have dissuaded T from taking out policies that included CIC, it was T's decision not to do so.

T brought its complaint to the ombudsman service. In its submissions, T made the following additional points:

- It refutes Lloyds' claim that they recommended policies including CIC, but T disregarded their advice due to the cost of the policies.
- It challenges Lloyds' claim that a meeting took place on 14 March 2014. There is no evidence that a meeting took place on that date. Mr H has no record of a meeting and says that due to the constraints of his business it wasn't possible for him to attend meetings on Fridays. The 14 March meeting is referred to in the financial review document which is dated 5 March so can't be taken as evidence it took place.

Our investigator looked into T's complaint and didn't think Lloyds had acted unfairly. He said:

- On balance, he thought it was more likely than not that Mr H met with Lloyds on 14 March 2014.
- He was satisfied that CIC was discussed with Mr H, but he had seen no evidence that Mr H asked for it to be included in the policies.
- He was satisfied that Lloyds made it clear to T that CIC wasn't included as part of the policies. The financial review document said that T wanted Lloyds to arrange policies on a life cover only basis as CIC wasn't such a concern. He would have expected T to raise the omission of CIC with Lloyds when it received the review letter and policy documents.

T didn't accept our investigator's findings and asked for an ombudsman to make a final decision. T said:

- CIC was essential and one of the main reasons it entered into discussions with Lloyds about insurance cover in the first place.
- T was an unsophisticated borrower and Lloyds had a duty of care towards it. Mr H wasn't experienced in insurance protection of any kind and was very much guided by Lloyds and their recommendations.
- Lloyds fell short of the requirements to provide information that was clear, fair and not misleading. Had T been made aware the policies did not include CIC it would have raised it at the time and not taken the policies out.
- The meeting on 14 March 2014 did not take place. The 'personal data extract' document provided by Lloyds did not include an entry for 14 March. Even if the meeting did go ahead, that is in no way evidence of Mr H confirming that T didn't want CIC.
- The financial review document does not reflect what was discussed with Mr H and in any event is unsuitable for unsophisticated customers like T. The document is negligent as it does not accurately reflect the position discussed. It is not fair to rely on a document which is negligent when Lloyds have no other evidence of what was discussed.
- It is not an adequate defence for Lloyds to say they would have destroyed any handwritten notes from the time.

If the reference to CIC in one of the quotes was a typographical error, then it is a further example of Lloyds' negligence and it is not surprising the terms of the policies were not clear to T.

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.

It might be helpful to explain first the role of the Financial Ombudsman. We provide an independent, informal dispute resolution service, where decisions are made based upon the balance of probabilities. We have a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case.

In reaching my decision on this complaint, I've taken account of what both parties have said as well as the documents available from the time. I'd like to reassure T's representative that I've looked carefully at all the information they have provided on behalf of T. Having done so, I hope they won't take it as a discourtesy that I haven't addressed every point they have raised. Instead, I've concentrated my findings on what I consider to be the key factors in reaching a fair and reasonable outcome.

Mr H met a Lloyds adviser in January 2014 to discuss protection for the loans that T was taking out. Mr H and Lloyds have provided differing accounts of what happened at that meeting. Mr H has said he made it clear that he would want any policies to include CIC. Lloyds say their adviser would have provided Mr H with an indication of the price of both life cover only and life and CIC cover, and that Mr H decided to proceed with life cover only because of the cost. Lloyds have said that the addition of CIC would have approximately quadrupled the price.

I've taken account of what both parties have said, although I note that memories of what was discussed can fade after so many years. I've not seen copies of any notes that were taken at the meeting itself, although I don't think that's unusual for a meeting that took place more than nine years ago.

I've seen a copy of the financial review document prepared by the Lloyds adviser on 5 March 2014 and sent to T the following week. The adviser's covering letter said that the review summarised the needs and priorities identified during the meeting in January 2014.

I've taken account of the concerns raised by Mr H's representative about the financial review document, including that it is unclear and poorly drafted. I do however think it is reasonable to give some weight to the review document in determining what was most likely discussed between Mr H and Lloyds at their meeting in January 2014. I say that because the document was written just a few weeks after the meeting and Mr H would have had the opportunity at the time to correct anything that he didn't think was an accurate reflection of the meeting.

The financial review document included the following:

- Under aims and objectives, it said that Mr H had been referred to the adviser to discuss protection of T's loans "in order to ensure that in the event that [Mr H] were to die, any outstanding borrowing would be fully repaid."
- The same section said "...you wish to arrange this on a life cover basis only as you feel that critical illness protection is not such a concern to you or the business. You fully understand that this may cause you and the company some financial losses although you feel this would not be anywhere as serious as if you were to pass away."

You would sell the business if you were unable to work and the business may even run itself to a certain extent.”

- The recommendation section said “I recommend that your business arrange & pay for decreasing life only cover on the life assured of [Mr H], as follows...”
- In the same section, listing possible disadvantages of the recommendation, it said “If the life assured were to suffer a critical illness, there will be no payout unless the life assured died before the end of the term.”

I’ve seen no evidence from the time that Mr H disagreed with what was recorded in the financial review document or asked for CIC to be added to the life cover policies that Lloyds were recommending. Based on the evidence I’ve seen I think the recommended policies matched T’s objectives and were suitable for T’s needs.

I think the review document made clear that the policies recommended by Lloyds provided life cover and did not include CIC. I note that T’s representative has described T as an unsophisticated borrower. But I think the information provided by Lloyds was sufficiently clear to enable Mr H, on behalf of T, to make an informed decision about the policies that were being recommended.

T’s representative has highlighted that the summary of the alternative quotes given in the financial review document showed “yes” against CIC. I’ve considered this and I think it was most likely a mistake in the description of the policies. As I’ve already noted there were several references in the document to T not requiring CIC. The alternative quotes were almost identical in cost to the recommended policies, and I think any policies including CIC would most likely have been significantly more expensive.

T’s representative has also questioned Lloyds’ account that Mr H met their adviser for a ‘presentation meeting’ on 14 March 2014. Lloyds have said that Mr H and the adviser discussed the review document at that meeting and went through the policy application forms, from which it would have been clear that CIC was not included.

I note what T’s representative has said about Mr H not being able to attend meetings on a Friday and that there is no record of a meeting in the personal data extract provided by Lloyds. On balance, however, I think it is more likely than not that a further meeting did take place on 14 March 2014. I say that because:

- The financial review document referred to a ‘presentation meeting’ taking place on 14 March 2014. Although T’s representative is concerned that the financial review document predated 14 March, I think it is evidence that the meeting had most likely been scheduled in advance.
- I’ve seen a copy of an email from the Lloyds adviser to Mr H on 17 March 2014 saying, “I hope you had a good weekend; it was good to see you Friday.”
- I’ve also seen that Mr H signed an ‘access to medical reports’ document in relation to the policies on 14 March 2014.

I think it’s most likely that Mr H completed the necessary paperwork for the policies at the meeting on 14 March 2014. I’ve seen a copy of the applications submitted and the related ‘key features’ document and I think it would have been clear to Mr H that the policies provided life cover and not CIC. That would have given Mr H another opportunity to query

the absence of CIC if he had wanted it to be included. Instead, Mr H went ahead with the applications for the policies that Lloyds had recommended to T.

I have considered what T's representative has said about letters from Lloyds to T dated 12 March 2014 (enclosing the financial review document) and 17 March 2014 being sent to different addresses. The 12 March letter was sent to T's registered address. It's not clear why the later letter was sent to an alternative address used by Mr H's businesses, but I think it's most likely that T would have received it. I note too that the letter was simply confirming details of the policies and that Lloyds had the necessary paperwork, so even if there had been a slight delay in the letter being received, it would not affect my findings on this complaint.

In summary, based on the evidence I've seen, I think it is most likely that Mr H, on behalf of T, told Lloyds he only wanted life cover. I think Lloyds recommended policies that were suitable for T's needs and provided information about the policies that was clear, fair and not misleading so that Mr H could make an informed decision.

I realise this will be a disappointing decision for Mr H on behalf of T, but I won't be upholding this complaint.

My final decision

For the reasons I've explained, my final decision is that I don't uphold T's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 23 October 2023.

Matthew Young
Ombudsman