

The complaint

Mr B says Lockton Companies LLP mis-sold him a medical malpractice insurance policy.

What happened

In March 2013 Locktons gave a presentation on a medical malpractice policy to Mr B and others. Subsequently Mr B completed a proposal form which Locktons used as the basis for assessing his requirements. It obtained a policy quotation which Mr B accepted and the policy renewed in subsequent years.

In November 2019 Mr B told Locktons he was planning to retire at the end of that year. It contacted his insurer about placing the policy into run off. The insurer said a premium of around £21,700 would be required as a claim had been made on the policy. Mr B didn't agree to that. Subsequently a claim was made against him. Mr B complained Locktons hadn't explained he didn't have run off cover in place. He thought his policy included an "*extended reporting period*" and the quote Locktons provided was for something else.

A separate complaint about that was considered by another Ombudsman. She thought Locktons had made it clear an additional premium was required for run off cover to be in place. Mr B then said the policy had been mis-sold because Locktons had told him run off cover was included and there was no reference to further payment being required for this. He also said he wasn't told his policy excess or other policy terms could change.

Our investigator was satisfied this was an advised sale. And she thought cover had been provided based on Mr B's demands and needs as set out in a proposal form he provided. She didn't think the terms as they related to run off cover made the policy unsuitable for him or were something that should have been drawn to his attention during the sales process. Even if they had been she wasn't persuaded that would have led Mr B to act any differently. And the change to the excess was because the insurer subsequently became aware of Mr B's previous claims history which hadn't previously been disclosed to it.

Mr B didn't agree. He said he was told the policy would provide run off cover on retirement, there was no reference to further payments and the policy itself said "*run off cover included*". He said we should speak to others at the sales presentation who he believed would support his recollections. He said previous claims hadn't been disclosed because Locktons told him he only needed to reference ones in the past year. And he disputed he'd have taken this policy out if properly informed. So I need to reach 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.

First, I can see in response to our investigator's view Mr B raised issues which relate to the decision on his previous complaint (for example a document which he believes shows he had run off cover). However, a final decision from an Ombudsman brings our complaint handling process to a close and there's nothing I can add to what we've already said about

these matters.

In addition, Mr B says his claim was initially accepted and he paid the relevant excess. He believes that means a legally binding contract was entered into. But it was the insurer of his policy (not Locktons) that would be responsible for the handling of his claim. So any concerns he has about that would need to be pursued against it.

What I'm considering here is Mr B's complaint about what happened when this policy was sold to him by Locktons in 2013. It appears to be accepted this was an advised sale. And the relevant rules say Locktons was required to take reasonable care to ensure the suitability of its advice. To do so the rules require it to establish a customer's demands and needs using information readily available and by obtaining further relevant information from a customer.

I've thought about whether it did that. I can see Locktons did obtain information from Mr B in the proposal form prior to obtaining a policy quotation. In that form Mr B said he required a policy that covered him for medical malpractice for the work he carried out which this policy did. I don't think he was significantly affected by any of the things the policy didn't cover and there's no suggestion it was unaffordable for him.

Mr B's concerns are focussed on the issue of run off cover but I don't think that made the policy unsuitable for him either. The policy says it includes an extended reporting period if the insured dies or permanently ceases to practice. It then says:

'Within 30 days of receipt of such notification INSURERS shall, at their option, have the right to amend the terms of this extension, or to charge such additional premium as they deem appropriate, in the event of any CLAIM(s) having been first made and notified or circumstances notified to INSURERS during the PERIOD OF INSURANCE, or in the event of any new material facts being declared to INSURERS. The INSURED shall then have a further 30 days, from date of notification by INSURERS, to accept such amended terms or additional premium'

So the policy did include run off cover. The issue is that in some circumstances the insurer was entitled to charge an additional premium. That includes where there had been a claim on the policy during the period of insurance (as that could impact the ongoing risk). But I don't see that made the policy unsuitable for Mr B, particularly as on his proposal form he confirmed he had no imminent retirement plans.

However, as well as recommending a suitable policy Locktons was also required to provide clear, fair and not misleading information about it to Mr B. That included drawing his attention to the significant exclusions and limitation of the policy. Taking into account the relevant rules I think a significant exclusion or limitation would be one that would affect the decision of customers generally to buy.

Mr B says Locktons told him that run off cover was included and didn't say the insurer might charge an additional premium for this. I understand this was at the presentation he attended. Mr B has suggested we speak to other attendees who would confirm that but I don't think that's something I need to do. That's because even if Mr B is correct in his recollection I don't think Locktons did anything wrong.

I understand this was a general presentation about the policy to him and other members of his profession. I've already found the policy did include run off cover so I don't think Locktons would have done anything wrong in referencing that. And I don't think the fact that, in some circumstances, the policy gave the insurer the discretion to charge an additional premium for run off cover is a significant or unusual feature of the policy. I don't think it's of such importance that it would affect the decision of a customer generally to buy. And it follows that

I don't think this is something Locktons should have drawn to Mr B's attention either at the presentation or subsequently.

Mr B is also unhappy the excess on his policy was subsequently changed (when the insurer found out more information about his claims history). He's suggested he wouldn't have taken out the policy if he'd been told the insurer was entitled to change that (and other policy terms). But his insurance policy is an annual contract and the insurer would always have been entitled to decide at renewal whether to offer cover, on what terms and what it would charge for it based on factors such as the risk it was taking on. That's standard for policies like this (and indeed for insurance policies more generally) and isn't something I'd have expected Locktons to draw to Mr B's attention.

Finally, Mr B says if he'd been given more information about the policy he wouldn't have taken it out. I understand his position but I'm also mindful that he's making those comments with the benefit of hindsight. And given I've concluded the policy was suitable for him I'm not persuaded more information on the limited circumstances in which an insurer might charge an additional premium for run off cover would have made a difference to his decision making. At the point of sale he had no retirement plans and no additional premium would have been chargeable because no claim had been made on this policy. And Mr B wouldn't have known that would happen in future. But as I haven't found Locktons did anything wrong when selling the policy this isn't material to the outcome of the complaint in any event.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 October 2023.

James Park
Ombudsman