

## **The complaint**

Miss N has complained that Lloyds Bank PLC (Lloyds) mis-sold her two life and critical illness cover policies in 2004.

## **What happened**

Miss N had an existing mortgage when she met with a Lloyds advisor in November 2004. She was identified as having a shortfall in her financial protection. She was sold two policies.

The first was mortgage cover which would pay out in the event of Miss N's death or her becoming critically ill. It would also cover her mortgage repayments in the event of her being off work due to a long-standing illness.

The second policy Miss N was sold, was a standalone critical illness cover policy. Lloyds say this is because she was identified as have "*inadequate financial arrangements*" in place in the event Miss N became critically ill. The policies commenced from December 2004.

In March 2022, Miss N complained to Lloyds. She said that the policies were not required. Amongst complaint points, she said she had Death in Service benefit and a good sick pay policy from her employer. She also was unhappy with the commission amounts taken as part of the sale.

Lloyds responded to say that whilst a shortfall in protection was identified and they couldn't agree that there wasn't a need for the policies, they felt that the mortgage protection policy had been sold with too high a sum assured. They said that the outstanding mortgage at the time was only approximately £25,000 but that the sum assured of the policy was over £45,000. They therefore paid Miss N the difference in what she paid in premiums, to what they would have been, from the start of the policy, to when she cancelled it in 2012. With interest this came to approximately £1,150.

Miss N remained unhappy and brought her complaint to our service for an independent review. An investigator looked into it. She said that there was a need for cover and Lloyds had already done enough to put things right for over insuring Miss N with the mortgage cover policy. She also confirmed that whilst we could consider complaint points about the commission paid as they had been brought in time (which Lloyds accepted), Lloyds had done enough to make commission payments clear to Miss N at the point of sale.

As no agreement was reached the case has been passed to me for a 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 have reached the same conclusion as the Investigator. I'll explain why.

Miss N was identified by the Lloyds advisor as having a need for mortgage protection, other than the endowment already in place which protected her initial borrowing. Having reviewed the point-of-sale documentation, I think this was fair. Miss N's father was quoted as living at the property. He was named and it was stated that Miss N was worried that if anything happened to her and the mortgage was unfulfilled, she was unsure what would happen to her father.

Miss N was recommended a life and critical illness policy. This was meant to be set up to mirror the remaining mortgage term and liability, not protected by the endowment. It was for 20 years and had an initial monthly premium of £17.55 per month.

However, during the course of investigating this complaint, Lloyds have said that the initial sum assured of the policy was too high. It was for approximately £45,500 whereas the remaining unprotected mortgage was only approximately £25,300. Lloyds therefore paid Miss N the difference in what she paid in premiums to what she should have paid, had the correct sum assured been selected. This amount has been paid with 8% interest and I think it fairly puts Miss N back in the position she would have been in, had the policy been sold correctly.

#### Scottish Widows Level Term Assurance (LTA) \*\*\*\*\*12

At the same time Miss N was recommended mortgage protection, she was identified as having a significant shortfall in her critical illness cover. This is a policy designed to pay out a lump sum in the event Miss N is diagnosed with a qualifying illness.

Having reviewed the point-of-sale documentation, I don't think this was an unsuitable recommendation. I can't see that Miss N had significant savings or would have been able to maintain a standard of living, or make necessary adjustments, had she become seriously ill.

Whilst I appreciate that Miss N's mortgage was now protected, I think it was reasonable of the adviser to recommend further standalone cover. Miss N was identified as being able to afford a further £35 per month for this assurance policy and so a 26-year term policy for a sum assured of approximately £71,500 was selected. Less than the amount of protection shortfall identified but the maximum for the amount Miss N could afford.

Miss N has said that she didn't need this cover as she had a good sick pay policy through her employment and could also have applied for a government grant for a disability. Whilst I am sure that is the case, I haven't seen evidence of a policy that would pay out in the event she had become critically ill. Further, as individuals can often change employment, it isn't unreasonable to recommend separate, individual, standalone cover. And no grant is guaranteed.

#### Commission payments

Miss N has also complained that the commission payments received from the sale of these policies weren't made clear to her and weren't fair.

However, I can see both policies contain a section titled, *"How much will the advice cost?"*. Within this, for both policies, it states, *"For arranging this plan, the Scottish Widows and Lloyds TSB Marketing Group will provide remuneration to your adviser and will provide services and support. These sales costs depend on the size of the payment and the length*

*of the plan term and will be made immediately following the start of your plan*". It then details the cost, with a total figure for the advice of approximately £700 and £350.

I am satisfied the commission payments were sufficiently disclosed to Miss N. She had the required information, and decided to proceed with the policies at that cost.

Miss N has also said that she doesn't think the fees were fair, in line with the Supreme Court Plevin judgement. However, that doesn't apply here. The Unfair Relationship provisions, as set out in sections 140A-D of the Consumer Credit Act might apply to certain circumstances where policies were sold alongside certain types of credit or loans.

Neither of these policies were taken out at the same time as Miss N's mortgage, so sections 140A-D of the Consumer Credit Act would not apply to each of the policies complained about.

Further to this, any sale of mortgages (and associated policies) after 31 October 2004 is regulated by the Financial Conduct Authority (FCA). Both policies Miss N is complaining about were sold in 2004. So, if they were sold alongside her mortgage, the mortgage sale would have been regulated by the FCA. The unfair relationship provisions set out in section 140A-D of the Consumer Credit Act don't apply to regulated mortgage contracts so aren't relevant when considering Miss N's complaint about the commission.

In summary, I think Lloyds have already done enough to put things right, compensating Miss N the difference to what she should have paid had the correct mortgage cover been sold. I don't uphold Miss N complaint about the critical illness policy and I don't conclude the commission payments she paid were undisclosed or unfair.

### **My final decision**

My final decision, for the reasons set out above, is that I don't uphold this complaint. Lloyds Bank PLC have already done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 4 December 2023.

Yoni Smith  
**Ombudsman**