Financial Ombudsman Service

The complaint

Ms L complains that London and Country Mortgages Ltd (L&C) mis-sold her a personal income protection insurance policy.

What happened

Ms L had an income protection policy with an insurer I'll call F. In 2014, Ms L met with an adviser from L&C to discuss her protection requirements. He recommended that Ms L should cancel her policy with F and take up a new policy which was underwritten by an insurer I'll call V. Ms L chose to do so and V set-up a policy. The policy provided cover for Ms L's own occupation. The policy would provide cover until Ms L reached the age of 65; included a deferred period of three months and attracted a monthly premium of £506.57 per month. The policy provided Ms L with a potential monthly benefit of £5000 if she became incapacitated and was unable to work.

In May 2020, Ms L underwent surgery and was no longer able to work in her own occupation. So she made a claim on her income protection insurance policy. V accepted the claim, but paid Ms L a significantly lower monthly benefit than she'd expected – around £1925. That's because it calculated the monthly benefit based on her personal tax return. This showed an income of substantially less than £5000 per month.

Ms L complained to L&C. She considered it'd mis-sold her income protection policy. She said she'd requested that the policy should cover her *limited company's* income. And she hadn't been told that her personal tax return would be used to calculate the monthly policy benefit.

L&C didn't uphold Ms L's complaint. It didn't agree that its adviser had mis-sold the policy to Ms L. So she asked us to look into her complaint.

Our investigator didn't think Ms L's complaint should be upheld. In summary, he felt the available evidence showed that Ms L had told L&C that her income was £122,771 in 2013. So he considered the monthly benefit it'd recommended was appropriate given such an income. And he was satisfied L&C had made it sufficiently clear that monthly benefit would be calculated based on a policyholder's income at the time of the claim, which might affect people whose income fluctuated. Therefore, he didn't think L&C had mis-sold the policy to Ms L.

Ms L disagreed. She provided evidence from her accountant which showed he considered the policy had been sold incorrectly. And she provided evidence from V which stated that her personal income at the time she applied for the policy had never supported a monthly benefit of £5000. She said L&C had only considered her company income but sold her a personal income protection policy. This policy had never covered her company's monthly expenses.

The complaint's been passed to me to decide.

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, whilst I'm sorry to disappoint Ms L, I think L&C has treated her fairly and I'll explain why.

At the start, I'd like to reassure Ms L that while I've summarised the background to her complaint and her detailed responses to our investigator, I've carefully considered all she's said and sent us. In making my decision though, I haven't commented on each point she's raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

There's no dispute that L&C's adviser recommended that Ms L should take out the income protection policy. This means, in line with the relevant rules and industry guidelines, they needed to check it was suitable for Ms L's needs. And they also needed to provide her with enough information to decide if the policy was right for her. So I'll explore whether I consider L&C met this obligation, based on the available evidence and what I think is most likely to have happened in the circumstances.

First, I've looked carefully at the 'fact-find' that the adviser carried out with Ms L in June 2014. It seems this was an in-person meeting to establish Ms L's financial needs. In brief, the fact-find document sets out Ms L's personal details – her age and her self-employment in a limited company. It says that Ms L felt she was paying too much for her policy with F and also that she wanted to cover a shortfall between the term of that policy and her mortgage end date. The fact find document states that Ms L wanted to:

'*Ensure that in the event of (her) being unable to work, that (she) had an ongoing income so (she) can afford mortgage, bills and current lifestyle, as if (she) did lose her income she would not be able to do this. (She) want(s) a three month deferred period to keep costs down.'*

The fact-find also shows that Ms L told the adviser that she needed £60,000 worth of cover per annum for a 13-year period. And that her income for the previous three years had been as follows (this is referred to as 'dividends' on the fact-find, but L&C has told us that this does refer to Ms L's income):

2011: £142,395
2012: £164,971
2013: £122,771.

L&C has also sent us a copy of a document Ms L provided to it at the time of application. This document was a tax calculation for the year 2012-13 issued by HMRC. It states that Ms L's self-employed profit was £122,771. And it states that it's this income on which her income tax has been calculated. This document refers to Ms L herself rather than the name of her limited company and suggests that her personal income for that year was £122,771.

It's clear Ms L feels that she told L&C that she wanted a policy which covered her *company's* income rather than her own. However, while I accept it's possible this may have been the case and that therefore, Ms L may've preferred, for example, a 'key-man' insurance policy to cover her company or some other form of business protection policy, I don't think the available evidence suggests that this was most likely what happened. The HMRC tax calculation suggests that Ms L's *personal* income, rather than her company's income was £122,771 in 2013. This accords with the income figure L&C has recorded on the fact-find.

So I don't think it was unreasonable for L&C to rely on this document as evidence of Ms L's income. And the notes in the fact-find don't suggest Ms L indicated to the adviser that she wanted the policy to cover her company's monthly expenses as well as her own. I say that because the fact-find makes no reference to Ms L wanting to cover company expenses, such as her professional indemnity insurance. Instead, they indicate that Ms L wanted to cover *her* mortgage, bills and lifestyle. This further indicates to me that it was reasonable for L&C to conclude that Ms L was seeking to cover her personal income.

Based on this evidence, I don't think it was unreasonable for L&C to recommend a policy to Ms L which took into account an income of around £122,771 (less tax) and which provided £60,000 worth of cover per year. The income information she'd provided suggested this was a reasonable benefit. I appreciate V may later have concluded that in fact, the income Ms L personally earned at inception didn't reflect the monthly benefit that had been set. But I don't think this is enough evidence to show that L&C unreasonably placed weight on the evidence Ms L provided from HMRC or that it wasn't entitled to do so.

As Ms L was self-employed in a limited company, I may reasonably expect an adviser to recommend a policy which included cover for potential dividends. Having checked the policy paperwork, I can see that the key facts document says:

'If you own a limited company then your income can also include dividend income from your business. This is as long as the dividend income is clearly related to your work activities, and the dividends are paid from current year annual profits net of tax. For more information please see the definitions section for income in the policy conditions.'

As such then, I think it's clear that the policy Ms L was recommended did include cover for potential dividend income. As such, I find this was a reasonable recommendation.

It's also clear that V calculates monthly benefit taking into account a policyholder's income at the time of claim, rather than the income noted at inception. This may be subject to fluctuation – especially in the case of a self-employed person. So I'd expect the adviser to explain this to Ms L. Following the adviser's meeting with Ms L, they sent her a summary of their recommendations, known as a 'reasons-why' letter. This letter included additional policy information and specifically stated the following:

'Income Protection

Claims under income protection policies are based on your income at the time of the claim. This could therefore mean that the relevant income might be less than the insured benefit (in which case the benefit would be reduced). This point is particularly relevant for clients with fluctuating income or for those who are self-employed.'

I think this information makes clear how monthly benefit is calculated and the relevant income on which it's based. So I think the adviser provided sufficient information to bring this to Ms L's attention. I appreciate Ms L is unhappy that V deducts tax from her monthly benefit at source, given her premiums are paid from a company account. However, it seems to me that V has calculated the maximum monthly benefit due to her in accordance with the policy terms. And as I've set out above, I don't think it would've been clear to L&C that Ms L was seeking to protect her company, rather than her personal income.
Additionally, I note that based on Ms L's circumstances, only one quote was produced for income protection cover and that was for the policy Ms L took out with V. On that basis, given the gap in cover on her existing policy, it seems likely Ms L would've had little choice but to take up this policy even if she had been fully aware that V would deduct tax at source from any monthly benefit it paid her, given its tax obligations. So even if I thought such a

point should've been made clear (and I'm not making such a finding here), in these circumstances, I still wouldn't have concluded that Ms L had lost out as a result.

Taking the totality of the evidence into account, I find it's more likely than not that L&C acted fairly when it recommended a monthly benefit of £5000 for Ms L's policy. I think it had reasonable grounds to conclude that her personal income was £122,771 and that therefore, its recommendation took this amount into account. I haven't seen enough evidence to demonstrate that Ms L specifically told L&C that she wanted cover for her company's expenses or that the income she'd declared related to her company's profits rather than her own income.

I can also see that the adviser did recommend Ms L a cheaper policy, with a guaranteed premium. This met her identified objective of keeping her costs down. The deferred period on the policy matches the deferred period Ms L indicated she wanted. And it seems the adviser did ask Ms L about existing health conditions, which it passed on to V. All in all, it seems to me that the policy the adviser recommended matched Ms L's requirements based on the information and evidence L&C was given. While Ms L may later have found that the policy didn't work as she'd thought it would, I'm not persuaded the evidence shows that this was down to any failing on L&C's part.

So overall, I don't think there's enough evidence to show that L&C acted unreasonably when it sold Ms L's policy.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 27 June 2022.

Lisa Barham
Ombudsman