

## **The complaint**

Mr and Mrs N complain that Lakes Mortgages Limited ('LML') failed to ask them questions about their health and lifestyle when it completed their application for life cover. They say because certain things weren't taken into account in their application, it would've likely impacted any claim on the policy they might have made. They say they want compensation for misrepresentation, lost time and the stress caused.

## **What happened**

In February 2020, Mr and Mrs N met with LML to discuss a re-mortgage. As part of the re-mortgage, LML also recommended that they take out a new life assurance policy with critical illness cover to cover the amount of the new mortgage.

Mr and Mrs N met with LML at their home over two meetings. Some of the advice paperwork was completed during these meetings, including the life assurance application.

In March 2020, LML issued its suitability report. And in April 2020, following their acceptance of its recommendation, Mr and Mrs N received confirmation from the policy provider that the policy had been set up.

In August 2023, Mr and Mrs N complained to LML. They said after reviewing their policy, they discovered that certain important information about their lifestyle had not been included in their application. They said all of this had been discussed at length with the adviser at the time when they met at their home. They said while they understood it was their responsibility to check the documents, they had every faith that their true testimony had been upheld. They said they had paid for a policy that was not fit for purpose. They said they believed the information about their lifestyle hadn't been included because it would've meant LML wouldn't have been able to sell them the policy it was hoping to sell them.

LML didn't uphold the complaint. It said that the life cover application was completed in Mr and Mrs N's presence in their home and there was no disclosure of the lifestyle things they'd referred to. It said Mrs N did however disclose a medical condition. It said the application declarations were signed by Mr and Mrs N and the policy confirmation paperwork from the provider asked them to check the documentation and let them know about any changes. It said it was Mr and Mrs N's responsibility to check the information on the application. It said there was evidence that Mr and Mrs N had disclosed the health and lifestyle information they'd referred to, and it was satisfied it had not advised them incorrectly or misled them about the cover being arranged.

Dissatisfied with its response, Mr and Mrs N brought their complaint to us.

One of our Investigators considered the matter and they said LML hadn't done anything wrong. In summary, they said there was no evidence to demonstrate Mr and Mrs N had disclosed the health and lifestyle information they'd recently referred to at any stage during the life cover application process. They said the information Mr and Mrs N received from both LML and the policy provider made it clear they needed to check the policy details including their personal information and to advise if anything was incorrect. They said for

these reasons, they didn't uphold the complaint.

Mr and Mrs N disagreed. They said there was no evidence neither the Investigator nor LML had provided, which proved they'd ask the necessary questions. They said regardless of whether they'd check the details, they were misrepresented and LML failed to ask them basic health questions which isn't acceptable.

The Investigator wasn't persuaded to change their opinion, so the complaint was subsequently referred for a final decision.

Before issuing my final decision, I obtained a copy of Mr and Mrs N's life cover application completed at the time. Because this is evidence not previously shared with Mr and Mrs N or referred to in the Investigator's assessment, I sent a copy to them and asked them to let me have any comments they wished to make.

Mr and Mrs N did not respond. But I'm satisfied they've been given a fair and reasonable opportunity to do so. So, I think if they'd wanted to comment they would've done so by now. I therefore think it is fair for me to go ahead and provide my 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, while I know this will come as a disappointment to Mr and Mrs N, I've decided to not uphold this complaint. I'll explain why.

Mr and Mrs N's complaint is that they weren't asked key questions about their health and lifestyle by the LML adviser when they completed their life cover application in 2020 resulting in them paying for a policy that wasn't fit for purpose. They say they trusted the adviser to ask the necessary questions to give them the cover they needed.

A key piece of evidence in this case is, in my view, the life cover application form completed at the time by the adviser during the advice meeting(s) at Mr and Mrs N's home. Looking at this I can see there are several sections, which are relevant to the health and lifestyle information Mr and Mrs N say they weren't asked. Firstly 'Section 5' asked questions about Mr and Mrs N's alcohol consumption, tobacco usage and their weight. 'Section 6' then asked about their medical history and pre-existing medical conditions. And 'Section 10' then asked about residency, travel and sports, including what are typically deemed as dangerous activities.

In my view, I think this evidence demonstrates that the adviser did, more likely than not, ask Mr and Mrs N the questions contained in the application, including those in the sections I've referred to above. Mr and Mrs N have said that a medical condition wasn't recorded. But there is a tick in the 'No' box against this condition. And I'm mindful that disclosure of another condition was recorded, including the amount and frequency of the medication taken for it. It strikes me as odd that, if as Mr and Mrs N say, the adviser didn't ask about questions

about their health, why this condition would've been recorded and with the level of detail. Mr and Mrs N have not said that this disclosed condition was incorrect, so I think it is likely that the adviser did also ask about the other conditions referred to in the application.

Similarly for the sport activities, there are ticks in all of the 'No' boxes here, including against those Mr and Mrs N say they undertake. It doesn't appear to be disputed that the application was completed in the presence of Mr and Mrs N at their home. So, it seems unlikely to me that the adviser simply ticked these boxes without asking them the questions they related to. I can also see that Mr and Mrs N signed the declaration at the end of the application.

So, I'm not persuaded there is sufficient evidence here to support what Mr and Mrs N say happened and that the adviser failed to ask them the relevant questions about their lifestyle and health as set out in the application. I've also not seen anything to persuade me that Mr and Mrs N told the adviser something different from what is recorded. In my view, from the way the application was completed, it suggests there was an active discussion during its completion and that Mr and Mrs N were given the opportunity to disclose all relevant personal information in their application for the policy. So, I'm not persuaded LML has done anything wrong here and that it misled Mr and Mrs N in the way they describe.

Notwithstanding the above, I think it is fair and reasonable for Mr and Mrs N to have checked the information they provided in their application. If not at the time of its completion, then later on when they received their policy pack from the insurer. In my view, both LML and the insurer made it clear to Mr and Mrs N of the importance of checking what they'd provided. The insurer pack they were sent in April 2020, included all of the information recorded during the application process and so what the policy was based on. So, while I understand like many people, Mr and Mrs N had busy lives at the time, I think they were given a fair and reasonable opportunity to review the personal information recorded and spot any mistakes or omissions – whether as Mr and Mrs N say those mistakes were about their health, their recorded weights or the activities and sports they undertook. I also think that, given the nature of the policy Mr and Mrs N were applying for and what it was going to protect, it's reasonable to assume that they ought to have understood the importance of checking the personal information in their application and to tell LML or the insurer if anything was wrong.

Overall, I don't think the evidence demonstrates that LML has done anything wrong here – I don't think it acted unfairly or unreasonably towards Mr and Mrs N. So, I don't uphold this complaint.

### **My final decision**

For the reasons above, I've decided to not uphold this complaint – so I make no award in Mr and Mrs N's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 4 April 2024.

Paul Featherstone  
**Ombudsman**