complaint

Mr and Mrs P are unhappy with the offer made by Lloyds Bank PLC ('Lloyds') in relation to a complaint they made about the mis-selling of their whole of life policy.

background

Mr and Mrs P were sold a reviewable whole of life policy in 1992 for a sum of £50,000 and a premium of £36.55. The policy was sold on a Maximum cover basis and still exists.

They say that the level of benefit dropped to £19,000 and they were never told by the advisor that it could or would decrease. They made a complaint to Lloyds. It agreed that the policy was mis-sold and offered Mr and Mrs P compensation. Lloyds said there wasn't enough evidence to show that, at the time of sale, they were told the policy was reviewable. But it also says that Mr and Mrs P would still have needed life cover so the cost of this was deducted from the total amount it offered.

The offer is calculated as follows:

- £10,965.00 – full refund of premiums
- £8,528.59 – less cost of life cover
- £8,815.87 – plus interest

The total offer amount is equal to £11,252.28.

Mr and Mrs P are unhappy with this offer and say it's unfair because the life cover that they were being charged for is hypothetical. They say Lloyds has deducted more than they should. They would like the full amount without any deductions for life cover.

One of our investigators looked at the complaint and said the offer was fair and reasonable. He also said that based on their circumstances, Mr and Mrs P would still have needed life cover and it's likely they would've taken out some form of life cover. So it's fair for Lloyds to have deducted this amount from the total compensation it offered.

As Mr and Mrs P didn't agree with our investigator, the complaint has been passed to me to make a decision.

They say the following:

- They've researched proposed insurance costs in order to find out how much the approximate cost of life cover would've been for them had they taken this rather than a whole of life policy. And, essentially, they say that had they taken a term assurance policy in 1992, if it was for 25 years, the cost would've been £2,562 and had it been for 49 years (around same time as the whole of life), it would've been £13,891;

- Lloyds has acknowledged that it has wholly mis-sold the policy. But in spite of this, a new policy at their current age will *now* cost them around £28,667 and Lloyds hasn't taken this into account. They would have to take a new policy which will take them to the age of 89 and 87 respectively and would be on the basis of a 24 year term;

- They believe there's a big difference in Lloyds' estimation of what the life cover would've cost (£8,528.59) versus their own estimation (£2,562) over 25 years; and

- Lloyds should put them back in the same financial position. They don't think this has been done as they believe they now face a cost of approximately £30,000 for life cover they will need to arrange.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The main issue on this complaint is that Mr and Mrs P are not happy with the offer amount of £11,252.28 they've received from Lloyds. They believe that the cost of life cover (£8,528.59) should not have been deducted by Lloyds.

I won't be looking at the sale of the policy as Lloyds has already agreed that the policy was mis-sold. As Mr and Mrs P don't agree with the amount offered, I'll only be looking into this issue and whether it's fair for Lloyds to deduct the cost of life cover from the overall offer.

The policy was sold in 1992 but because of the passage of time, there's very little documentation that Mr and Mrs P or Lloyds have been able to provide. I don't think that's unreasonable. So I've had to consider from the information that I do have, what's most likely to have happened.

I can see that Mr and Mrs P had four children between the age of 7 and 18 years old. They were both self-employed and were running their own business. They've also told us that they had accident insurance and business assets which could've been used as collateral. So considering their circumstances, I think it's more likely than not that some form of life cover would still have been required by them had they not taken the whole of life policy.

Mr and Mrs P took out the policy and have been paying premiums for around 25 years. The policy is still active and was set up on a Maximum basis. This means that for the first five years, there was a guarantee that there wouldn't be an increase in premiums. A review then took place in 2004 when the sum assured decreased to £43,335 and a further review took place in 2012 when the sum assured reduced further to £19,000.

Mr and Mrs P have said they didn't intend to take life cover when the advisor came to see them. While I appreciate what they say, they did actually agree to take out a whole of life policy and life cover was included within it. Bearing in mind their circumstances, I agree with the business in making an assumption that life cover of some sort would still have been a requirement for them. So I don't think deducting the cost of life cover is unreasonable.

I've also considered whether, as an alternative to the offer, the business could've re-written the policy instead of deducting the cost of life cover. So, in other words, the policy could have been set up on a Standard basis rather than a Maximum basis in 1992. But this would've meant that premiums would increase significantly and it's unlikely that Mr and Mrs P would have been able to afford the policy on that basis. So the possibility that the policy could've been set up differently is unlikely as even on this basis, the policy would still have been subject to reviews and may have failed. This would have again meant that they had to increase their premium or the sum assured would reduce. And considering that Mr and Mrs P's complaint is that they hadn't been made aware premiums could increase, this option doesn't address the crux of their complaint.

I have taken Mr and Mrs P's comments into account. Firstly, I think it's important to note that Lloyds hasn't said that the policy was *wholly* mis-sold. It has said though that there's not enough evidence to say that Mr and Mrs P were made aware that the policy was reviewable. And because of the lack of point of sale paperwork, it's given Mr and Mrs P the benefit of that doubt and concluded the policy had been mis-sold. But I confirm it didn't say that the policy had been *wholly* mis-sold.

I appreciate that Mr and Mrs P will need to arrange the life cover going forward and it might also be more costly for them now at their age. But I can't see that the assumption to deduct the life cover cost is unreasonable. It's also worth noting that they've still had the benefit of life cover all the way through and this is why Lloyds has decided to deduct this amount from the total offer.

Mr and Mrs P have said that their research shows that had they taken out only life cover in 1992, it would've cost them around £2,562 over the period in question and Lloyds deducting £8,528.59 is a big difference. I acknowledge their concern but I'm unable to compare costs for life cover on hypothetical scenarios. I've looked at the amount Lloyds has deducted and whether this seems reasonable. Broken down on a monthly basis, Lloyds has deducted an equivalent of around £28 per month over 25 years – I do think this is reasonable. As I've explained above, Mr and Mrs P still had the benefit of life cover within that policy and for around 25 years. This is not an insignificant amount of time so I don't think it's unfair that Lloyds have taken this amount from the total it's offered to them.

I've also considered Mr and Mrs P's comments that Lloyds should put them back in the position they would have been in 1992. I've looked at what it's done and I do think it has done this. Lloyds has agreed that the policy was mis-sold so has offered Mr and Mrs P a refund of the premiums. It's also reviewed their circumstances at the time and decided that life cover would have still been a need for them at the time. So as they've had the benefit of this cover and put them on risk should anything have happened to either of them during the lifetime of the policy, I think it's reasonable for Lloyds to deduct the cost of that life cover. And, we would also expect it to include interest on the amount of monies Mr and Mrs P would have had, had they not taken the whole of life policy – I can see it has included an interest payment. This calculation has actually put Mr and Mrs P in the position they would've been in had they not been sold the whole of life policy.

And in fact, by doing this, Mr and Mrs P are now free to use the compensation to put towards any life cover of their choice. The whole of life policy would be cancelled at the same time as essentially, Mr and Mrs P were unhappy with the policy.

Ultimately, the issue is that Mr and Mrs P were unhappy with the policy – this included life cover for them. I realise that now they have the offer from Lloyds they would like the full refund to include the cost of life cover. But I don't think this is reasonable looking at their circumstances overall. They would still have likely needed some form of life cover and it's likely that had the whole of life not been taken then I think cover such as term assurance would have.

I consider the factors in this case mean that the assumption made by the business to deduct the cost of life cover is reasonable in the circumstances.

Overall, I consider the compensation offered to be fair and reasonable.

And if Mr and Mrs P now wish to accept the offer, they can do so by either accepting this decision or contacting Lloyds directly. If they do accept the decision, they won't then be able to take legal action over this matter. But if they don't accept the decision, Lloyds won't be obliged to hold the offer open indefinitely.

my final decision

For the reasons explained above, I consider the compensation offered by Lloyds Bank PLC to be fair and reasonable in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 12 February 2018.

Nimisha Radia
ombudsman