

## complaint

Mr C complains that an error by Leeds Building Society ("LBS") led to his life insurance policy being set up incorrectly in 2009. He's unhappy that now the error has come to light, the policy provider has amended the cover, which he says will leave him underinsured.

## background

LBS accepted that it was responsible for the policy being set up with an incorrect date of birth. It offered to compensate Mr C by paying him a refund of just over £1,300 with an additional £300 for the trouble and upset its mistake had caused.

I issued a provisional decision on Mr C's complaint in which I explained why I thought this was fair in the circumstances. I acknowledged his concerns that he no longer had the same level of cover, because the policy provider had amended the policy in line with his correct date of birth. But I felt that, on balance, if the mistake *hadn't* been made it was unlikely he would've proceeded with the same amount of cover, or for the same term, in 2009 as it would've been considerably more expensive.

LBC accepted my provisional decision. Mr C didn't, saying, in brief;

- The compensation wasn't fair and didn't put him back in the position he'd have been in if the mistake hadn't been made.
- LBS offered him a mortgage and then advised/instructed life cover to cover its position.
- What would the situation have been if he'd died during the period for which the policy provider had incorrect details?
- LBS' offer had been made on the basis that any increase in his premiums because of current health issues would be accounted for.
- If affordability was an issue, as I'd suggested, why was the mortgage offered?
- He's upset that he seems to be being blamed for not spotting the error himself.
- Checking the date of birth should've been part of the application process.
- He was now 67, with no affordable cover in place.
- It was insulting to suggest that he would now be able to find alternative cover.

## my findings

I've reconsidered all the available evidence and arguments, including the further submissions, to decide what's fair and reasonable in the circumstances of this complaint.

As I said in my provisional decision, I do appreciate the frustration and upset this matter will have caused Mr C. Clearly, until the point at which he came to make some changes to his finances in 2017 he had no reason to doubt that he had cover in place, albeit on a decreasing basis, until his 85th birthday.

So, I can understand his disappointment at finding out this wouldn't in fact be the case, or certainly not at the cost he was expecting. But it nevertheless remains my view that if the mistake hadn't been made, or had been spotted and corrected, Mr C would most likely *not* have opted to take out a policy that provided £125,000 of decreasing cover to age 85, as either one wouldn't have been available or would've been prohibitively expensive.

In all the circumstances, I think it's simply too difficult to say with any certainty what Mr C would've done differently if the error hadn't occurred. Affordability would've been an issue because the cover Mr C thought he was getting would've actually cost in excess of £100 per month rather than the £13 he has been paying. And Mr C has confirmed that affordability was an issue that led him to re-mortgage soon after.

And his protection needs have gone on to change several times more since 2009, with a series of re-mortgaging that means it's also doubtful whether an alternative, more expensive policy started in 2009 would've been retained in any event. Further, cover for Mr C's borrowing has never been a requirement of the lending. Rather, it's something that he, not unreasonably, has wanted to have for peace of mind.

So, in summary, I remain of the view that LBS' offer is a fair way of putting the matter right. Mr C can retain the policy (I understand he's done this, but maintained his existing £13 premium rather than taking the option to increase the premiums and the level of cover) while also using the compensation to go some way towards supplementing his cover requirements.

I appreciate his circumstances have changed and his health is not as it was in 2009. But it remains the case that I don't feel it would be fair for me to direct LBS to provide Mr C with a level of cover that I don't consider he would've had if the mistake hadn't been made.

In respect of what would've happened if a claim had been made prior to the mistake being discovered, I think LBS would've taken responsibility for ensuring the full amount was paid either voluntarily or as a result of an upheld complaint. But luckily the situation didn't arise. And regarding the mortgage LBS recommended in 2009, if Mr C has concerns about the suitability of that lending he would need to raise it directly with LBS in the first instance.

### **my final decision**

For the reasons given, my final decision is that I don't uphold the complaint as I consider Leeds Building Society's offer to be fair and reasonable in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 June 2019.

James Harris  
**ombudsman**

## **COPY PROVISIONAL DECISION**

### **complaint**

Mr C complains that an error by Leeds Building Society ("LBS") led to his life insurance policy being set up incorrectly in 2009. He's unhappy that now the error has come to light, the policy provider has amended the cover, which he says will leave him underinsured.

### **background**

Mr C took out a new mortgage with LBS in 2009. He borrowed £125,000 on a repayment basis over a 27 year term, which would've taken him to age 85. At the same time LBS recommended a life policy to protect the new borrowing.

An application was put forward to the chosen policy provider but an error was made with Mr C's date of birth, so the application was processed on the basis that he was 19 years younger than his actual age. With these incorrect details the policy was set up with Mr C paying £13.32 per month.

This continued until 2017 when Mr C was making some changes to his finances and the error came to light. The policy provider explained that if the correct date of birth had been entered at the outset it would only have been able to provide cover for Mr C to age 69. It said that it would now have to amend the policy to reflect the correct date of birth, which would mean it would now end in 2022. And to maintain the same level of cover the premiums would need to increase to just over £37 per month. Alternatively Mr C could continue paying the £13.32 premium but this would significantly reduce the sum assured, to just over £30,000.

Mr C complained to LBS and it accepted responsibility for the error. It offered to refund all the premiums he'd paid to the policy to that point, with an additional £300 to reflect the trouble and upset the matter had caused. Mr C didn't accept this as he felt he should continue to be provided with the same level of cover for the same premium. So he referred the complaint this service. (He also raised a complaint about the policy provider, which was also referred to us, but Mr C accepted that it hadn't been at fault as it had simply acted in good faith on the information provided by LBS).

Our investigator felt the complaint should be upheld. He proposed that LBS agree to underwrite any future claim such that Mr C effectively retained the level of cover he'd been led to believe he had.

LBS didn't accept this. It said it felt its offer was fair, particularly given that Mr C had been asked to check that the policy details were correct. It also pointed out that it was unlikely he would've have been able to afford cover that took him to age 85, as it would've been considerably more than £13 per month.

As no agreement could be reached, the matter's been referred to me to review.

### **my provisional findings**

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

LBS has accepted responsibility for Mr C's policy being set up incorrectly. So, I only need to consider how things should be put right – whether the offer it's made to Mr C is fair in the circumstances.

I understand it will've been very frustrating for Mr C to discover that his insurance wouldn't cover him in the way he'd been led to believe. I can appreciate his concern that getting new cover now he's older will be more difficult and expensive. But when the ombudsman service looks at how things should be put right we do so on the basis of putting the consumer back in the position, as near as possible, that they'd be in if the error hadn't been made.

If LBS had given the policy provider Mr C's correct date of birth it would have explained that it could only insure him until age 69. And that to do so would be much more expensive than he'd been led to believe. Looking at the figures that have been provided now it looks like it would have been about three times as much. And further, had Mr C tried to obtain cover that did take him to age 85 this would've been well over £100 per month.

As such, I'd question the likelihood of Mr C deciding to proceed with the cover at such a higher price. He's said that within a few years of taking out the LBS loan he'd re-mortgaged to another lender because he was having difficulty in maintaining the payments. So it seems affordability was an issue for him around that time.

Mr C might alternatively have simply chosen a cheaper option. After all, it wasn't a requirement of the mortgage that he had life cover. Rather, it was something that he wanted to have for his own peace of mind. There was therefore no absolute need for him to have cover for the whole amount, or term, and I note he had no dependents.

I'm also aware that his circumstances have changed significantly since 2007 and he now has an outstanding mortgage balance of around £55,000 and this is due to end in 2026 at age 75. So his needs are different. He has the option of maintain the existing policy until 2022 with no increase in premiums and keeping cover of £30,000. The balance of the mortgage will be further reduced by 2022 so for the last four years I'd imagine he'll be able obtain some reduced cover if he wishes, potentially utilising LBS' offer of just over £1,600 to supplement this.

In summary, while I'd stress again that I do understand his concerns, I think if the error hadn't been made Mr C would most likely have either accepted a lower amount of cover or potentially decided not to take any cover at all. In any event, I think LBS' offer to refund all the premiums he's paid since 2007 and to pay him £300 for the trouble it's put him to is fair.

#### **my provisional decision**

For the reasons given, but subject to any further submissions I receive, I'm currently of the view that the offer Leeds Building Society has made to Mr C is fair and reasonable and I don't intend to ask it to do any more.