

## **The complaint**

Mrs G complains that Best Risk Management & Financial Service Limited won't cover her income protection claim, after she says it mis-sold her income protection.

## **What happened**

Mrs G purchased an income protection policy through Best Risk in September 2017. She had a number of phone calls with Best Risk before taking out the policy she ended up with.

In 2020 Mrs G unfortunately needed to make a claim on her income protection policy. She found herself without work due to the pandemic. Her insurer declined her claim, as it said she didn't meet the test required for self-employed people to claim for unemployment.

Mrs G raised a complaint against Best Risk for mis-selling her the policy. She said it hadn't made the terms around claiming as a self-employed person clear. If it had, she wouldn't have bought this cover as she'd never be able to meet them. Best Risk offered to refund the premiums she'd paid as a gesture of good will.

Mrs G brought her complaint to our service. She explained that she would've always taken out a policy, as she was looking for cover to protect her income, and as she was taking out extra borrowing. So she said Best Risk should pay her what a successful claim would've paid out under the policy she held. It didn't agree to this.

Mrs G came to our service and an investigator looked into her complaint. His final view was that Best Risk should add 8% simple interest onto the premium refund, as he concluded it had mis-sold this policy. But he didn't agree it should cover what the policy Mrs G had would've paid out for a successful claim. Mrs G provided examples of other policies she would've bought if she hadn't been mis-sold this one, but our investigator ultimately decided the interest award was fair compensation in this case.

Mrs G asked for an ombudsman's decision as did Best Risk. It didn't agree it had mis-sold the policy as it said it was a non-advised sale and it was for Mrs G to check the policy was right for her. Mrs G didn't accept that she shouldn't get the value of her claim and felt that Best Risk should train its staff better and improve its documentation.

## **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 informally set out to Mrs R that I don't consider she should receive the value of her claim. I've reviewed the alternative policies she has provided to us and also Best Risk's testimony that it doesn't sell a policy that would cover a consumer in Mrs G's situation – self-employed, without debts to creditors and looking to claim as a result of the pandemic. And based on my experience, and reviewing the policies Mrs G has sent, I agree with Best Risk that these wouldn't cover her. And it's unlikely she could've found a regular income protection policy that would.

Due to this I can't agree Best Risk does need to cover the value she's calculated for her claim. I haven't got any evidence that a policy would've paid out in this situation. And even if one did, Mrs G would've needed to pay premiums for it, which wouldn't be the equivalent of what she did pay, as I'm satisfied no mainstream provider covers this situation. So I can't fairly say Best Risk does need to pay what the policy Mrs G had would've paid for a successful unemployment claim, as I can't be confident this is a position she would've been in.

Best Risk has argued it didn't mis-sell Mrs G this policy, so it's only returning her premiums as a good will gesture. But I'm in agreement with our investigator that the policy was mis-sold. Just because a sale is non-advised doesn't mean the seller has no responsibilities in relation to the information it gives.

I've listened to the sales calls in this case and it's clear the broker's agent knows Mrs G is self-employed and in one of the later calls she asks him about the process to claim. He discusses her signing on, but not any of the other steps. In the call on 26 September 2017, when she asks about signing on to claim for unemployment, he says:

*Yeah correct, just sign on at the job centre... Erm yes, you could sell these for me! Erm yeah, it's very simple really once you've got as far as signing on. Just like a doctors note, use that as proof to the insurer that you're unemployed and you're actively seeking new work.*

As both parties are aware, Mrs G needed to do more and her business needed to be in a much more severe state to claim than just her signing on. I don't consider that this comment is enough to say the policy was advised, and so Mrs G didn't then need to check the terms for herself. And Best Risk did make it clear at the start it wouldn't give advice. But at the same time I do think the agent said more than he should have.

As Best Risk knew Mrs G's employment status, I think its agent should've highlighted to her that the policy would have different terms for self-employed people. And so she should make sure she read this section of her policy in full. And when she asked about the unemployment claims process, this should've also been his response then – telling her to go and read the terms for herself to make sure she understood them, and could meet what was required.

Best Risk needed to give Mrs G enough information to make an informed decision and I don't agree that in this case simply sending out paperwork was enough, as she asked additional questions and the agent answered them in a misleading way. I accept the policy sets out that it has different terms for the self-employed, but I also accept that Mrs G had asked about this and not been prompted to read them by the agent. So while I maintain that her claim shouldn't be paid, I do consider she was mis-sold this policy, as the agent didn't give her clear or not misleading information, so she could make an informed choice.

Due to the above I consider that a premium refund, with 8% simple interest on each premium from when it was paid, until it was or is refunded is the correct redress. I'm aware the insurer has been involved in redress for Mrs G too. So Best Risk will need to correspond with the other parties here to establish what is left to be returned to Mrs G. She shouldn't have any double benefit, but she also mustn't be left out of pocket because Best Risk is aware an offer has been made and potentially paid by another party.

### **Putting things right**

Best Risk Management & Financial Service Limited should make sure all Mrs G's premiums have been returned to her. And it should pay 8% simple interest on each premium payment from the date it was paid, until the date it was/is refunded.

As above, Best Risk should correspond with Mrs G and the insurer to make sure that the correct, remaining amount is paid to her.

**My final decision**

For the reasons set out above, I partially uphold Mrs G's complaint against Best Risk Management & Financial Service Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 16 March 2022.

Amy Osborne  
**Ombudsman**