

The complaint

Mr A on behalf of business 'C' has complained about the way a broker, Nash Warren Insurance Services Ltd sold and cancelled a motor trade insurance policy on behalf of the insurer.

C has raised a separate complaint against the insurer.

What happened

C bought a motor trade insurance policy through a broker, Nash Warren on 31 July 2019.

He complained that he felt pressurised into buying the policy by Nash Warren. C said the policy was cancelled within the first two weeks and so within the cooling off period, but he received only around 10% back of what he paid for ten months' premiums. C was unhappy with how long it took to receive a refund.

In September 2019 Nash Warren replied to C's complaint. It said it didn't apply any 'hard selling' sales techniques when it sold the policy to him.

Nash Warren explained that the reason why the policy was cancelled was because C hadn't provided satisfactory proof of trading for the insurer. After issuing a cancellation notice, C provided some evidence which Nash Warren forwarded to the insurer, but it didn't accept it. And so the cancellation of the policy went ahead on 28 August 2019.

Nash Warren said the insurer was in receipt of the premium and so it would take 30-40 days to provide a refund as it had previously explained. At the time of replying to C on 27 September 2019, Nash Warren was in receipt of the refund and said a cheque would be forwarded to C within the next three working days.

C remained unhappy and so he asked us to look at his complaint.

Our investigator explained that she could only look at the charges and actions of Nash Warren— and that the actions and charges set by the insurer were separate.

Although C had a query about how many years NCB had been set under the policy, the investigator explained that this didn't make any difference to the outcome – as the reason for his complaint and for the cancellation related to evidence of proof of trading.

Our investigator asked Nash Warren if it had a recording of the sales call – but it said it didn't. So in its absence, the investigator couldn't say it had adopted any sharp practices in pushing C to buy a policy.

She found that the charges that had been deducted on cancellation by Nash Warren were as set out under its Terms of Business.

Nash Warren offered to reduce its cancellation fee from £145.69 to £50. The investigator thought this was reasonable, but had concerns about a discussion between C and Nash

Warren on 20 August 2019 – where Nash Warren asked C to pay the instalment due the following day when – in her view – it seemed unlikely the insurer would accept C's proof of trading. She found Nash Warren had offered to C to revoke the cancellation notice – but that another notice would be issued the next day.

She thought Nash Warren could have done more by asking the insurer to extend the first notice of cancellation until the proof of trading issue had been resolved. She thought this delayed the refund in premium to C. So to resolve the complaint, the investigator recommended Nash Warren waive a mid-term adjustment fee it charged of £30 – in addition to the reduction in the cancellation fee to £50.

Nash Warren accepted the investigator's findings. It explained that C had told it he could provide the required evidence of proof of trading on 20 August 2019 to prevent the cancellation. So Nash Warren reasonably believed the insurer would most likely have accepted the further proof and the policy would have continued.

It said if C had advised at that point that he wasn't able to provide the further proof requested, Nash Warren wouldn't have collected the next instalment and the policy would have been cancelled.

This service has dealt with C's separate complaint against the insurer.

In July 2021 C said he thought Nash Warren should award £200 compensation for the inconvenience it caused. In summary he remains unhappy with the way Nash Warren handled the cancellation of his policy, He says it wasn't his choice to cancel the policy and in his view it was cancelled within the cooling off period. He says Nash Warren didn't send the required documents to the insurer in time.

Nash Warren asked for an ombudsman to decide.

I issued a provisional decision on 13 January 2022. I thought it was reasonable for Nash Warren to charge the mid-term adjustment fee of £30 and so didn't intend to ask it to waive it. But I didn't think it had clearly set out an arrangement fee of £125 until after C had bought the policy as it wasn't included in its Terms of Business. So I provisionally decided Nash Warren should refund the arrangement fee of £125 to C.

C accepted my provisional decision. Nash Warren accepted my provisional decision but said it had already refunded the mid-term fee of £30. So it asked if it could refund £95 instead of £125 to C. We asked for evidence to show this. Having provided its response, we explained to Nash Warren that the amount of refunded fees didn't show it had already refunded the £30 fee. Nash Warren hasn't provided any further comments.

So as both parties have replied to my provisional decision, the case has been passed back 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.

C bought the policy to start on 1 August 2019. The insurer contacted Nash Warren on 13 August 2019 to ask for further evidence. On 14 August 2019 Nash Warren wrote to C to explain that the insurer required proof of motor trading. It wrote that C needed to provide this documentation within 14 days – so no later than 28 August 2019.

On 21 August 2019 the insurer wrote to C to give him seven days' notice of cancellation due to the failure to provide satisfactory proof of trading.

On 23 August 2019 Nash Warren wrote to C to provide a copy of the seven day cancellation notice from the insurer.

On 27 August 2019 C provided his evidence of trading to Nash Warren by email. From what I can see, on the cancellation date of 28 August 2019, Nash Warren emailed the insurer and explained the circumstances under which C trades. The insurer responded that – as per its stance from 27 August 2019 - the cancellation notice is irrevocable.

I understand there has been some confusion over whether the insurer would have accepted C's proof of trading if it had received revised information from C. The insurer said that Nash Warren sent C's proof of trading to the incorrect address. However from what I've seen, this didn't make any difference as the insurer's decision would have remained – even if it had been received – as it wasn't acceptable proof. I therefore don't think Nash Warren – as the broker - acted unreasonably in arranging the cancellation of the policy on behalf of the insurer. And I haven't seen evidence to show that C's policy should have been cancelled within the cooling off period. I think it was correctly cancelled in line with the cancellation notice given – and due to the insurer not accepting proof of trading provided by C.

As C is a commercial customer, I cannot consider an award for compensation for any distress Nash Warren may have caused him. But I can consider if the actions of Nash Warren caused business 'C' inconvenience. I don't think compensation for inconvenience is due in this case as I think the broker correctly followed the cancellation process.

C is unhappy with the refund amount he received on cancellation. I've looked at the fees Nash Warren charged C and how they were explained to him before he bought the policy. I think Warren Nash clearly set out most of its fees under its Terms of Business – but I cannot see that it set out its arrangement fee of £125 until after C paid it by way of a receipt.

Warren Nash has provided wording it gives to customers to say it may charge an arrangement fee and that the fee amount is variable. But I don't think this is enough to show that C was clearly made aware of the arrangement fee – in addition to the other fees - before he bought the policy to enable him to make an informed decision.

I think Nash Warren should have more clearly set out its arrangement fee of £125 along with the other fees under its Terms of Business. So that C was aware that it would not be refunded on cancellation as it is a significant sum. For this reason I don't think it's fair for Nash Warren to have charged C this sum on cancellation.

Nash Warren says C didn't complain about the arrangement fee. But he included his concerns about the refund he received in his complaint to us. I've considered this part of C's complaint within our inquisitorial remit as C is unhappy about the cancellation and the consequences of it in the refund he received. So I think the fairest outcome is for Nash Warren to waive its arrangement fee of £125 and provide a refund of this amount with interest to C.

Nash Warren's terms of business show it will charge C a cancellation fee of £145.69 and a mid-term adjustment fee for a reduction in NCB of £30.

But its agreed to reduce its cancellation fee to £50. Our investigator thought it should also waive its mid-term adjustment fee of £30. I don't think the outcome would have been different if Nash Warren had asked the insurer to extend the cancellation process. This was

a request which I think the insurer was unlikely to have agreed to. And as I've said, the insurer didn't revoke the cancellation and didn't accept the proof of trading provided - so the policy would have cancelled anyway.

So I think Nash Warren's decision to reduce its cancellation fee from £145.69 to £50 is fair and reasonable. But I don't think it needs to waive its mid-term adjustment fee of £30 for the reduction in NCB. This means C is paying the same cancellation fee he would otherwise have paid had his policy been cancelled within the cooling off period.

In response to my provisional decision, Nash Warren said it had already refunded the £30 mid-term adjustment fee. On 24 January 2022 Nash Warren said the cancellation fee it refunded was £95.70 plus the £30 fee totalling £125.70. However, we explained that on 2 August 2020 Nash Warren said it had charged an arrangement fee of £125, a mid-term adjustment fee of £30 plus a cancellation fee of £145.69.

So based on this information, I don't think Nash Warren has shown the £30 mid-term adjustment fee was included in the reduction of the cancellation fee which was £145.69 and not £95.70.

I don't think Nash Warren caused undue delay in providing a refund to C as this was provided within the timeframe given and within the control of the insurer.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint in part. I require Nash Warren Insurance Services Limited to refund the arrangement fee of £125 to C on cancellation in the absence of clear evidence this fee was set out to C before he bought the policy.

Nash Warren Insurance Services Limited should pay interest on the refund at a rate of 8% simple interest a year from the date of cancellation to the date it pays C.

Nash Warren Insurance Services Limited must pay the compensation within 28 days of the date on which we tell it C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If Nash Warren Insurance Services Limited considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell C how much it's taken off. It should also give C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 15 March 2022

Geraldine Newbold
Ombudsman