

The complaint

S have complained that one of Beneficial Life London Limited's agent's actions led to two motor fleet policies they had being cancelled, leaving them without insurance for their fleet of vans for two periods of time. And that this caused them inconvenience and financial loss.

For the sake of ease, I've referred to Beneficial throughout this decision, even though I am actually referring in most cases to the actions of their agent.

What happened

Beneficial arranged a fleet policy for S which started on 25 April 2019. On 19 July 2019 the underwriting agency who had provided the policy on behalf of the insurer wrote a letter saying the policy would be cancelled with effect from 26 July due to unpaid premium. It seems that, although this letter was addressed to S, it was sent to Beneficial. S found out this policy had been cancelled in September 2019, after making enquiries following a claim. This led to them not being able to use their vans for deliveries until a new policy was arranged by Beneficial with effect from 27 September 2019. This was with a different insurer. This policy was in force until 3 February 2020, when it was also cancelled due to the fact the premium had not been paid to the insurer. S have said this again left them with no insurance cover for their vans, which meant they were unable to use them until they themselves had managed to arrange temporary cover for some of them. They eventually managed to arrange a new annual policy for some vans.

S sold a number of their vans and downsized their business. They've said they lost money in the periods when they had no fleet insurance, purely because Beneficial hadn't passed on monies to the insurers and their policies were cancelled as a result of this. They think they should be compensated for these losses specifically.

S did complain to Beneficial, but they didn't receive a response and asked us to consider their complaint.

One of our investigators considered the complaint and concluded that both S's policies had been cancelled because Beneficial hadn't passed on funds they'd got from the lender who'd

lent S the money to pay the premiums (I'll refer to this lender as P). The investigator said that the fair and reasonable outcome to S's complaint was for Beneficial to pay S the following:

£8,644.98 for overpaid premium.

The amounts S had paid for additional day to day cover for their vans before they managed to arrange a new annual policy.

£17,061 for loss of earnings due to the cancellation of the first policy.

£17,085.59 for loss of earnings due to the cancellation of the second policy.

£750 in compensation for inconvenience.

S didn't object to the investigator's assessment. Beneficial haven't responded to it, so the complaint has been passed to me.

I issued a provisional decision on 17 February in which I set out what I'd provisionally decided and why as follows:

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

I agree with our investigator that it is more likely than not that both the policies Beneficial arranged for S were cancelled because Beneficial didn't pass funds they'd received from P to the insurers. I say this because both P and S have provided evidence that S paid a total of £64,324.68. And the evidence provided by P and from both the insurers involved shows well over £50,000 was passed to Beneficial and that none of this was ever passed on to the insurers. The funds were meant to be passed on. And, had they been, neither of the policies arranged for S would have been cancelled. I appreciate Beneficial has suggested there were other reasons why funds weren't passed on and that there were problems with additional finance not being provided. But none of this is supported by the evidence provided by P. This is of course a very serious matter. And it meant that the insurers both cancelled the policies leaving S with no motor fleet insurance cover for their vans for periods of time. It seems S didn't actually find out the first policy had been cancelled until 3 September and therefore their vans had actually been in use without insurance. Fortunately, this did not cause them any problems, as they were not stopped by the police and none of them were involved in accidents in the period between when the policy was cancelled and when they found out about this.

This did mean S weren't able to use their vans whilst they didn't have insurance, as they couldn't drive them uninsured. However, it is very difficult to work out exactly how much S actually lost as a result of this, as they could well have made savings in terms of expenditure in the periods. And it's clear their drivers were able to do some work at the depot of the delivery company S had a contract with. We are an informal dispute resolution service and I have to decide what's fair and reasonable in all the circumstances. And S have said they lost money as result of not being able to use their vans. But they've not provided detailed income and expenditure calculations that enable me to see this. For some of the period they've said they couldn't use their vans, deliveries seem to have taken place - according to the invoices I've seen. And whilst I can see there were periods when S didn't do any deliveries at all, I can't work out what they saved on expenses in these periods, such as driver and fuel costs.

As things stand, I don't think I can say it's fair and reasonable for me to award anything for losses S suffered as a result of not being able to use their vans. I'm not saying I will not award anything for this, but I will only be able to do so if S provide detailed calculations

either themselves or from an accountant to show what their income and expenditure was in the following periods, so I have a like for like comparison:

6 – 10 August 2019 and 3-7 September 2019

8 – 11 January 2020 and 5 – 8 February 2020

12 – 21 January 2020 and 9 – 18 February 2020

These are the periods S have said they either couldn't work or their drivers carried out reduced services in the delivery company's warehouse.

S have suggested they also provided other services in the period 8 – 27 September and received a lower income as a result. But – as I've already mentioned - the invoices suggest they were doing deliveries in this period. There were a few days where an invoice shows they did some warehouse duties, but they also appear to have done deliveries on these days. If S think they did lose out in the period 8 – 27 September, then they should provide figures to show their income and expenditure in this period compared to it in a similar period in August 2020. And they should explain why invoices for this period show they were doing deliveries throughout it. But, as things stand I don't think they suffered a loss as a result of not being able to use their vans in the period 8 -27 September.

I will also need S or their accountant to set out what S's tax liability would have been on any income they lost in this period. This is because I think this must be reflected in what they actually lost as a business.

This is only a provisional decision and if I can see detailed income and expenditure figures for what I think are similar periods I can then see how much net income S actually lost as a result of not being able to use their vans. And I will then consider further whether it is fair and reasonable to make an award for financial losses flowing from the fact Beneficial's actions left them without insurance. If S would rather not provide the information I require, that is their choice, but then I will not award anything for financial losses flowing from the fact they were unable to use their vans for periods of time.

I appreciate S also ended up selling vans and downsizing their business. They've said they do not want to be compensated for losses flowing from this. But, for the sake of completeness, I should say that I do not think it is appropriate for me to award anything for this, as I have no way of being sure these decisions were directly linked to the short periods where they were unable to use their vans due to them not being insured.

Turning now to what S paid for the two policies Beneficial arranged for them and whether they should receive any of this back from Beneficial.

I can see from bank statements provided by S and from what P have provided that S paid a total of £64,324.68 in instalments on the money they borrowed from P to pay the premiums for the two policies Beneficial arranged for them. And it seems that £54,968 was provided to Beneficial, plus some additional amounts. And the underwriting agency/insurer have said none of this was ever passed on to them. Some of what S paid was interest and P's fees, so not all of it went to Beneficial.

I can see from the schedule provided from the underwriting agency who provided the first policy that the annual premium was £58,968. This is what S would have paid in premium had their policy not been cancelled due to Beneficial not passing on the funds for the premium. However, this figure included five per cent commission for Beneficial, which I don't think they should receive, bearing in mind the problems they've caused S. And I think net of

commission the annual premium would have been £56,000 to the nearest pound.

The two periods S were actually on cover were 25 April to 25 July 2019 and 27 September 2019 to 3 February 2020. Whereas, the first policy should have run from 25 April 2019 to 24 April 2020 – a full 365 days. This means S were actually only covered for a total of 227 days. So – based on what the annual premium should have been if the original policy had stayed in place, S should actually have paid £34,827 for the cover they received. They would always have paid some interest on the loan they took out to pay the premium and P's fees.

However, it was Beneficial who failed to pass the money on. And it was Beneficial's inappropriate actions that led to additional premiums being charged or finance for additional premiums being requested. And this meant S ended up paying a lot more on their premium loan than they should have done. So, I think Beneficial should reimburse the cost of the interest and fees S paid on the borrowing for the premium. I also think Beneficial should pay S what they effectively lost in premium. So, as part of the fair and reasonable outcome to this complaint I intend to make Beneficial pay S the difference between what I think they should have paid in premium for the cover they received (£34,827) and what they actually paid to P (£64,324.68). This amounts to £29,498 rounded up to the nearest pound.

I also need to factor in that instead of having a policy that ran to 24 April 2020 S had to take out a new policy which started on 13 February 2020. S have provided evidence this cost them £15,657.60 for a full year. But they shouldn't have had to take this out until 25 April 2020. So I don't think they should have to pay the premium covering the period 13 February to 24 April 2020. I think Beneficial should pay this, as it is a loss S suffered as a result of Beneficial's inappropriate actions. I make this period 71 days and the premium for this period is £3,046 rounded up to the nearest pound. This means I think it is fair and reasonable for Beneficial pay S and total of £32,544 to compensate them for what they effectively lost in terms of premium when compared to the cover they actually received. I appreciate S also paid for some temporary cover for some of their vans, but overall I think this payment is fair to cover what they've effectively lost as a result of the premium issues.

Whilst, as things stand, I am not suggesting Beneficial (this should have read – 'I am not suggesting S') should receive anything for financial losses due to loss of income, as these are very hard to determine, S may produce the information I need to award something for these. But currently, I do think it's appropriate for me to make a very substantial award for the inconvenience S suffered as a business because of Beneficial's inappropriate actions. These clearly had a tremendous impact on S. They are a courier company and simply couldn't operate normally and had to reorganise and work out how to use their staff. This must have been a logistical headache and clearly would have had a significant impact on their ability to carry out their normal business, even if it is hard to quantify what they lost financially. So, on the basis I am not currently awarding anything for financial losses to their business, I intend to award S £5,000 in compensation for inconvenience. If I decide to award something for the financial loss to their business, I may reduce this amount, as this would to some extent compensate S for the impact on of Beneficial's actions on their business.

I provisionally decided to uphold S's complaint and make Beneficial pay them £32,544 for the loss flowing from the premium issues and £5,000 in compensation for inconvenience.

I gave both parties until 3 March to provide more comments and evidence.

S responded to say they don't have any more comments or evidence to provide. Beneficial Life haven't responded.

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.

As neither S nor Beneficial Life have provided any more comments or evidence, I see no reason to reach a different conclusion to the one I set out in my provisional decision.

Putting things right

For the reasons set out in my provisional decision, I've decided the fair and reasonable outcome to this complaint is for Beneficial to pay S £32,544 for the loss flowing from the premium issues and £5,000 in compensation for inconvenience.

My final decision

My final decision is that I uphold S's complaint and order Beneficial Life (London) Limited to pay them £32,544 for the loss flowing from the premium issues and £5,000 in compensation for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 5 April 2022.

Robert Short
Ombudsman