

The complaint

Mrs C, Miss C, Mr C1 and Mr C2 complain that Health and Protection Solutions Limited, trading as Towergate Health & Protection, mis-sold them a private medical insurance policy.

As Mr C1 has represented the parties, I'll mainly refer to him in my decision.

What happened

HPSL sold Mr C1 a private medical insurance policy in October 2013. Mr C1 and his family were covered by the insurance policy which was underwritten by an insurer I'll refer to as 'Insurer A'.

It renewed each year until December 2020 when Mr C1 cancelled it. This was shortly after Mr C1 had requested, and received, information about the commission HPSL was receiving from Insurer A.

Mr C1 complained to HPSL because he says they failed to disclose commission paid by Insurer A to HPSL at the point of sale. He's also unhappy with the amount of commission HPSL received and the on-going nature of the commission payments (which were paid every year upon renewal).

In their final response letter HPSL didn't uphold Mr C1's complaint. They explained they were paid via a pre-agreed rate of commission, instead of a fee. They said this enabled them to offer their services to Mr C1 free of charge and set out what those services were. HPSL also explained that the level of commission didn't impact upon the price Mr C1 paid for the policy. Unhappy, Mr C1 referred his complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and upheld Mr C1's complaint in part. Overall, she was satisfied that the policy hadn't been mis-sold. She highlighted that, at the time of the sale, there was no requirement for HPSL to disclose to Mr C1 that commission was being received by HPSL from Insurer A. She was also satisfied that HPSL had considered policies sold by other insurers and that the policy he was sold was suitable for his demands and needs.

However, the investigator also noted that in October 2018 there was a change to Insurance Conduct of Business Sourcebook (ICOBS) which required commission to be disclosed to Mr C1. HPSL couldn't demonstrate that their updated terms of business, disclosing the payment of commission, were issued to Mr C1 before his renewal date. She thought that had this information been sent to Mr C1 he'd have most likely enquired about the commission payments and cancelled the policy. She recommended that HPSL refund the premiums Mr C1 had paid between December 2018 and November 2020, deducting the value of any claims paid during that time and adding 8% simple interest on the premiums paid during the relevant time.

Mr C1 accepted the investigator's findings, including the conclusions she reached about the initial sale of the policy and its subsequent renewals, prior to 2018. HPSL accepted that there was a failing when they didn't provide their updated Terms of Business in 2018, which

outlined the commission arrangement. However, HPSL didn't think this made the policy unsuitable for Mr C1 and said he'd received the benefit of private medical insurance between 2018 and 2020. So, they suggested it was fairer to put things right by refunding the commission they'd received between December 2018 and November 2020 instead.

Mr C1 didn't accept this offer as he said he'd have cancelled the policy back in 2018 if he'd known about the commission. HPSL said they wanted an ombudsman to review the case. So, the case has been passed to me to make a decision.

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 I've outlined above it is accepted by HPSL that there was a failing in 2018 when they didn't provide Mr C1 with their updated Terms of Business. So, my decision will focus on the impact of this failing and how HPSL needs to put things right.

In October 2018 there were changes to ICOBS which, in summary, required HPSL to disclose to their customers that they received commission. There was no requirement to disclose the amount of commission.

From 1 October 2018 ICOBS 4.3R applied. It says:

In good time before the conclusion of the initial contract of insurance and, if necessary, on its amendment or renewal an insurance intermediary must provide the customer with information:

- (1) On the nature of the remuneration received in relation to the contract of insurance:
- (2) (about whether in relation to the contract it works on the basis of:
 - a. A fee, that is remuneration paid directly by the customer; or
 - b. A commission of any kind, that is the remuneration included in the premium; or
 - c. Any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or
 - d. On the basis of a combination of any type of remuneration set out above in (a), (b) and (c).

I'm upholding Mr C1's complaint because:

- I think there was a failure by HPSL to disclose information about commission to Mr C1 in 2018, after the ICOBS rules changed. I'm satisfied HPSL should have provided Mr C1 with an updated copy of their Terms of Business before the 2018 renewal, which outlined the arrangements in relation to commission. That was required by the rules I've outlined above. HPSL haven't demonstrated this information was sent to Mr C1, and accepts this was a failing on their part.
- Had the Terms of Business been sent they'd have explained to Mr C1 that HPSL were receiving commission which was a percentage of the total annual premium and

that he had a right to request information about payments HPSL were receiving. This information hadn't been set out in such detail in previous versions of the Terms of Business Mr C1 had been sent.

- HPSL have acknowledged that failing to provide the updated Terms of Business potentially deprived Mr C1 of the opportunity to make a request for disclosure about whether commission was being received by them from Insurer A in 2018. I agree Mr C1 was deprived of that opportunity. The evidence available to me demonstrates that Mr C1 became aware that HPSL may have been receiving commission following an article in the media in around September 2020. Very shortly after seeing this article he asked for information about the commission HPSL were receiving. Taking this information into account I think that if Mr C1 had been sent the Terms of Business in or around October 2018, setting out the commission arrangements, he'd have asked HPSL for information about the commission at that time.
- HPSL would have been required to disclose to Mr C1 that they were receiving commission from Insurer A, in line with the rules I've outlined above. I think that if Mr C1 had made this information request in 2018 it is most likely that HPSL would have disclosed to him that they were receiving commission from Insurer A, and how much. I say that because when Mr C1 asked for information about commission in 2020 HPSL provided confirmation that they were receiving commission and set out how much the commission was.
- I've thought about what Mr C1 is most likely to have done had this information about commission been disclosed to him in 2018. I think he'd have cancelled his private medical insurance policy and not taken cover elsewhere. When Mr C1 became aware of the details of the commission in 2020, he cancelled his policy virtually straight away. And, he's not taken out alternative cover with a different provider. Instead, he's chosen to seek treatment via the NHS. So, in this case, I think it's most likely Mr C1 would have cancelled his policy in 2018 and not taken out an alternative policy, as he'd have preferred to seek NHS treatment instead.
- HPSL's representations haven't persuaded me that a refund of the commission alone is a fairer way to resolve this complaint. I don't think that leads to a fair and reasonable outcome in the circumstances of this case. I'm satisfied it is most likely Mr C1 would have cancelled the policy shortly after the rules changed in October 2018 and that he wouldn't have been paying premiums for private medical insurance.
- I've thought about when it's most likely the cancellation of the policy would have taken place, had Mr C1 asked about the commission in October 2018. I know that when Mr C1 asked about commission in September 2020 it took until December 2020 for him to cancel the policy. So, if Mr C1 had been told about the updated Terms of Business in or around October 2018, I think it's reasonable to conclude that this would have most likely led to Mr C1 cancelling the policy in December 2018.
- Mr C1 wouldn't have been paying any premiums at all between December 2018 and November 2020 and I think he's lost out financially as a result. I've taken into account that Mr C1 did receive a benefit from the policy. But I think deducting the value of any successful claims from the total value of the premiums paid fairly recognises that Mr C1 and his family received a benefit from the policy during the relevant time

Putting things right

HPSL needs to put things right by:

- Refunding the premiums paid for all policyholders on this policy from 30 December 2018 until 30 November 2020.
- Deducting the value of any claim payments made by the policyholders on the policy between 30 December 2018 and 30 November 2020.
- Adding 8% simple interest on each premium paid from 30 December 2018 until 30 November 2020 from the date of payment to the date of the refund.

If HPSL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C1 how much it's taken off. It should also give Mr C1 a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm partly upholding Mrs C, Miss C, Mr C1 and Mr C2's complaint about Health and Protection Solutions Limited, trading as Townergate Health & Protection, and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C, Miss C, Mr C1 and Mr C2 to accept or reject my decision before 10 April 2023.

Anna Wilshaw
Ombudsman