DRN-4113037

The complaint

On behalf of his business ('C') Mr B says that in 2022 One Sure Insurance Limited mis-sold a motor traders policy for C, which was later cancelled by the insurer.

What happened

Mr B had bought policies to cover C's vehicles through One Sure since 2015. In March 2021 One Sure recommended that C's business should be placed with 'insurer M'. The policy ran its term and renewed in March 2022. Shortly afterwards, insurer M cancelled the new policy, as it said it hadn't received the evidence it required of C's trading since renewal. Mr B has made a separate complaint about what he thinks was a mis-sale of the policy by One Sure in 2021, but this complaint relates to the sale in 2022 and its aftermath.

Initially, insurer M agreed to offer a policy to C in March 2022 based on C's advertising of the three cars it owned (during the previous year, there were no sales as evidence of trading). Mr B then provided evidence to One Sure of a sale for £4,700 in April 2022. But One Sure told him in June 2022 that insurer M required five more sales within two weeks, or the policy would be cancelled. That requirement far exceeded C's projected annual trading. So Mr B concluded that One Sure had mis-sold the policy, as it wasn't suitable for C.

One of our investigators reviewed Mr B's complaint. He said One Sure had a duty to provide information abut the policy that was clear, fair and not misleading. In his opinion, One Sure had done that. He noted that in a call between One Sure and Mr B before the policy started, an advisor told Mr B that insurer M would need to see evidence of active trading within three months of the policy's start, or it may be cancelled. He said One Sure had also offered Mr B the option of a policy for C with an insurer that wasn't going to monitor its trading closely. But Mr B had chosen to stay with insurer M's cheaper policy.

In response, Mr B said he had no reason to think insurer M's policy wasn't suitable for C. It had agreed to allow the policy to start in 2022 based on C's advertising in 2021, and One Sure hadn't told him insurer M expected a level of trading greater than C's normal trading target. He also said that, had a claim arisen in 2022, insurer M wouldn't have covered it, given C's trading level, so he thought the premium for the year should be returned.

As the investigator's view didn't change, the complaint was passed to me for review. I issued a provisional decision, partly upholding it, as follows:

Although all the information provided by Mr B is on the file – and I've reviewed it – I don't intend to comment on every point he has made. I'll concentrate on what I think are the central issues and the major points made by Mr B and by One Sure.

The sale in 2022 was an advised sale, as One Sure recommended insurer M's policy to Mr B, so it had a duty to ensure that the policy was suitable for C's needs. I think it did so. Insurer M had raised no concerns about C's level of trading during 2021 (when no sales were concluded) but the business file shows it had reservations about providing cover in 2022. It agreed to do so based on the evidence Mr B supplied of the advertising of C's three cars. But it told One Sure it would be monitoring the situation and that it would need to see *evidence of active trading within three months, or cancellation may follow.*

One Sure passed that information to Mr B and asked if he was confident he'd be trading within three months. It also offered him another policy and told him the other insurer wouldn't be monitoring C's trading activity in the way insurer M had said it would be doing. But as the other policy was more expensive – and Mr B was confident of C's trading activity within the next few months – he chose to stay with insurer M.

Mr B provided evidence to One Sure of a sale in April 2022. He expected that evidence would satisfy insurer M's request for proof of trading. And the amount of the sale (at £4,700) was just short of insurer M's acceptable limit for a business's annual sales (£10,000). Despite that, One Sure told Mr B by text on 13 June 2022 that insurer M wanted six 'proof' of trading very shortly, or the policy would be cancelled. It also told insurer M on the same day that it had asked Mr B to supply evidence of trading.

There's nothing in the file to show that there was a request for six sales from insurer M, and although we asked One Sure to provide evidence of it, it hasn't done so. There's also nothing on the file to show that One Sure passed C's proof of trading in April 2022 to insurer M. It may have done so (in which case it's not clear why insurer M didn't accept it) but I've seen no evidence of it. And the message it sent to insurer M on 13 June 2022 could be interpreted as Mr B not having provided any proof of trading up to that point.

When Mr B complained to insurer M about the cancellation, it said it had required evidence of trading to be provided – and that despite several requests, that didn't happen. It didn't say that evidence of trading was provided but was insufficient. In my opinion, that also points to insurer M not having received any proof of C's trading. In addition, there's an email on the file from one of One Sure's senior advisors that says insurer M doesn't have a minimum criteria for the number of cars to be sold each year. If that's the case I can't see why it would have asked for six proofs of sale at all, let alone within three months of the policy's renewal.

I think Mr B assumed the policy was cancelled because insurer M required proof of a turnover that was far greater than C's expected turnover. He thinks One Sure failed to check that his projected level of trading was acceptable to insurer M, therefore it mis-sold the policy. But I don't think that's the case. One Sure knew insurer M's minimum expected annual turnover was less than C's expected annual turnover. Its only concern at renewal in 2022 was that C would be able to show evidence of trading within three months. One Sure couldn't be certain of that, so it offered C an alternative policy.

Although C had made a good sale in April 2022 – so there should have been no problem with the policy proceeding as normal – something went wrong. In my opinion, what's most likely to have happened is that One Sure made an error. Despite a specific request from us, it hasn't shown that it provided the insurer with the proof of trading Mr B supplied in April 2022 (or that insurer M required proof of six sales). And the insurer said it made several requests for proof of trading and didn't get it. If One Sure can provide evidence on these points in response to this decision, then it may be that the insurer was at fault. Either way, I don't think the available evidence supports Mr B's view of what happened.

I understand why Mr B is so frustrated about the situation, as C has been inconvenienced as well as facing cancellation charges. I don't think a refund of the premium is due, as whilst the policy was in place, C benefitted from the cover. And I don't think One Sure mis-sold the policy in 2022. In my opinion, it gave Mr B the facts about insurer M's policy and was aware of its expectations. It also offered an alternative policy that it thought was in C's best interests, which Mr B decided not to accept.

If One Sure can't show that it provided C's proof of trading in April 2022 to insurer M, I'm *minded to conclude that it would be fair and reasonable to hold it at fault for the policy's cancellation. In that case it would be for One Sure to pay or refund the cancellation charges, and to pay compensation to Mr B for the inconvenience caused to his business. Mr B spent a lot of time dealing with the cancellation and the issues leading to it than would have been better spent on promoting C's interests. Provisionally, I think One Sure should also write to Mr B to say the cancellation of C's policy was due to its error, for future insurance purposes.*

Mr B accepted my provisional findings. He said he hadn't paid any cancellation charges and that he still thought his premiums should be returned, as he still thinks any claim made by C in 2022 wouldn't have been paid. He also pointed out that the sale he made within three months of the start of the policy reflected an annual turnover for C of £18,800 - which was well in excess of insurer M's £10,000 trading requirement.

One Sure said Mr B was told at renewal that insurer M would require proof of trading within three months. It said the proof of trading he provided in reply to its request in June 2022 was the one from April 2022, but that he'd been told at renewal he had to provide "..full evidence…" of trading within three months. One Sure said it was clear Mr B wasn't trading, but he was given a couple of weeks in June 2022 to provide evidence. It also said it disagreed that he'd spent time dealing with the cancellation. In its view he failed to do what he was asked to do at renewal in that he didn't show he met the insurer's criteria.

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 said in my provisional decision, I don't think One Sure should be required to return the sum Mr B paid in premiums. I think C had the benefit of the insurance provided by the policy – and there's nothing to show that had he made a claim, it wouldn't have been covered.

One Sure still hasn't provided any evidence of passing on the evidence Mr B supplied of the sale in April 2022 to the insurer (nor evidence that it required six sales by June 2022). I think that's a serious omission given the circumstances of the cancellation.

At renewal, Mr B was told only that insurer M wanted to see proof of trading within three months - and he provided it to One Sure within that time. So I think he did what he was asked to do. One Sure pointed to an email from Mr B in June 2022 that it said showed he wasn't trading as expected. In the email, Mr B referred to the sale in April 2022 and said he hoped to sell at least one of the other two cars owned at the time by C. He said he wouldn't be buying *more* cars for C *until* his move to another part of the UK was completed. I don't think that shows he wasn't trading. I think it shows he fully intended to continue trading.

As One Sure didn't provide the extra evidence requested, I can only base my decision on the evidence it and Mr B have provided. In its cancellation notice on 13 June 2022 One Sure said Mr B had had since 2 March 2022 (the start of the policy) to provide evidence of trading, but it had yet to be received. I think the evidence shows that wasn't correct. I've also taken into account that insurer M didn't tell Mr B that it had received *insufficient* proof of trading from him - and that it didn't require a set number of annual sales. So I'm still of the view that it's more likely than not that One Sure made an error in communicating with insurer M.

In order to put matters right, I think One Sure should pay any cancellation charge and write to Mr B to say that the cancellation of C's policy was due to its error. I think Mr B was inconvenienced before and after the cancellation. He had to spend time querying the issue, complaining to One Sure (and to insurer M) and finding alternative cover. As Mr B runs C's business, I think the time diverted away from dealing with its business impacted on C. So I think it’s fair for One Sure to pay compensation for that.

My final decision

My final decision is that I uphold this complaint in part. I require One Sure Insurance Limited to write to Mr B to say the cancellation of C’s policy was due to its error. It should also pay any cancellation charges and pay Mr B for C £250 compensation for the inconvenience to C.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B, on behalf of C, to accept or reject my decision before 1 June 2023.
Susan Ewins
Ombudsman