

## **The complaint**

H Ltd ("H") complains that One Sure Insurance Limited mishandled a commercial vehicle insurance policy.

## **What happened**

H is a small business, represented by its director Mr M.

H or Mr M has a van that he drives for its business.

A previous insurer recorded a claim involving Mr M in May 2022.

Mr M accepted three penalty points for a speeding offence in October 2022.

In mid-June 2023, One Sure acted as an insurance intermediary or broker between H and an insurer. Mr M provided information to One Sure. It set up a commercial vehicle policy to cover the van.

One Sure sent H a welcome letter dated 16 June 2023. The welcome letter enclosed a statement of fact document.

That document recorded that One Sure had asked a question whether Mr M had been involved in any accident or suffered any loss in the last five years.

The document also recorded that that One Sure had asked a question whether Mr M had any penalty points in the last five years.

Mr M omitted to mention the claim from May 2022 or the three penalty points.

The welcome letter included that the cost of the cover was as follows:

|                 |           |
|-----------------|-----------|
| Premium         | £1,136.24 |
| Arrangement fee | £ 100.00  |
| Total           | £1,236.24 |

By an email dated 27 June 2023, the insurer told One Sure that it had found the record of the claim that Mr M hadn't disclosed, which would increase the premium by £280.21. The insurer asked One Sure to get further information from H, including Mr M's driving record.

By an email dated 12 July 2023, the insurer reminded One Sure that it hadn't replied and asked it to send a seven-day notice of cancellation to H.

By an emailed letter dated 19 July 2023, One Sure on behalf of the insurer gave H seven days' notice of cancellation of the policy.

Also on 19 July 2023, One Sure spoke to Mr M. It told him that the insurer had found the undisclosed claim which dated from late May 2022.

On about 20 July 2023, Mr M emailed information to One Sure. One Sure sent an automated reply, saying that it might take ten days to process.

One Sure didn't pass on Mr M's information to the insurer. With effect from 26 July 2023, the insurer cancelled the policy.

On about 27 July 2023, Mr M contacted One Sure.

By a letter dated 29 July 2023, One Sure confirmed to Mr M that the policy was cancelled. It included a statement of account.

In late July 2023, H complained to One Sure that the cancellation was due to its delay in handling the information.

By a short form of final response dated early August 2023, One Sure told H of its right to bring its complaint to us.

H brought its complaint to us in mid-August 2023.

#### *our investigator's opinion*

Our investigator recommended that the complaint should be upheld in part. She thought that Mr M wasn't responsible for the long delays in One Sure's administration. She recommended that One Sure should:

1. refund H the £90.00 cancellation fees it was charged; and
2. provide a letter stating any record of cancellation on H's records is an error; and
3. pay £75.00 compensation; and
4. if Mr M can evidence he took a policy elsewhere and the cost paid for it, pay the difference between that cost and the cost of the policy through One Sure (including the additional premium) plus 8% simple interest.

#### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to H and to One Sure on 25 January 2024. I summarise my findings:

I wasn't minded to find it fair and reasonable to hold One Sure responsible for the insurer's cancellation or its consequences.

I didn't find the "loc fee" or loss of commission of £1111.01 fair.

H is a company, so I didn't consider that it suffered distress. But I found that One Sure's delay caused it inconvenience in having to respond under the pressure of a seven-day notice and in having to contact One Sure again on about 27 July 2023 to find out what had happened.

Subject to any further information either from H or from One Sure, my provisional decision was that I upheld this complaint in part. I intended to direct One Sure Insurance Limited to pay H:

1. in addition to its refund of £762.18, a further refund of £111.01; and
2. simple interest at a yearly rate of 8% on that further refund of £111.01 from the date of the refund of £762.18 to the date of that further refund. (I didn't include our usual wording about income tax because H is a company and not liable to income tax); and
3. £100.00 for inconvenience.

H didn't respond to the provisional decision.

One Sure disagreed with the provisional decision. It says, in summary, that:

- At the point of sale, the terms of business are read out to the client and also confirmed to the client it will also be sent with his documents.
- The loss of commission is typically between 5% and 20%. It cannot possibly give out all the different commission rates for all the different underwriters. It won't know what it would be in total until the point of cancellation.
- If a client asked us at point of sale what the commission level is for commercial clients of course we would tell them. This client didn't ask.
- It's not quite sure why we don't think the claw-back of commission is fair.

### **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.

One Sure's welcome letter asked Mr M for a signed copy of its terms of business and for proof of no-claims discount on his car. One Sure chased Mr M for those documents later on about 20 and 26 June 2023. I don't consider that had anything to do with the cancellation.

After finding out about the claim, the insurer sent its request for an additional premium and further information to One Sure on 27 June 2023.

Despite the insurer giving instructions on 12 July 2023 for a seven-day letter, it took One Sure until 19 July 2023 to contact Mr M. So he was then faced not only with requests for an additional premium and further information but also with a seven-day notice of cancellation.

Mr M contacted One Sure the same day. From the recording of the call, I find that he accepted that the claim from May 2022 led to the additional premium.

He emailed One Sure the next day with some information that I think included access to his DVLA driving summary.

One Sure had already delayed for three weeks in passing on the insurer's request to Mr M. One Sure sent a seven-day notice to which Mr M responded promptly. But One Sure delayed passing on his response to the insurer. So I hold One Sure responsible for poor service.

However from what it has provided to us, I accept that One Sure's auto-response included the following:

*"Thank you for contacting One Sure Insurance.  
We will aim to process your request or provide an update within 10 working days  
(Monday - Friday)  
Or alternatively contact our dedicated Customer Service Team on 01782 880140.  
Our Opening Hours are Monday- Friday 9:00-5:30."*

So I accept that Mr M could've phoned One Sure before the seven-day notice expired on 26 July 2023.

Moreover, Mr M's DVLA driving summary (dated 27 July 2023) included the three penalty points that he hadn't disclosed.

So, if the insurer had received Mr M's information, the insurer would've been mindful that he had not only failed to disclose the May 2022 claim, but he had also failed to disclose the October 2022 penalty points. So I find it likely that the insurer would either have cancelled the policy or asked for another additional premium, when Mr M would've reconsidered whether he should cancel the policy.

For these reasons, I don't find it fair and reasonable to hold One Sure responsible for the insurer's cancellation or its consequences. Those consequences include H's need to move quickly to get a replacement policy. I've also noted that Mr M hasn't provided details of the replacement policy or the information on which it was based.

So – unlike the investigator – I don't find it fair and reasonable to direct One Sure to pay compensation or interest in relation to the cost of the replacement policy. In any event, I consider that it is the insurer rather than One Sure that is responsible for maintaining any record that it initiated the cancellation. So – unlike the investigator – I don't find it fair and reasonable to direct One Sure to write a letter saying that the cancellation was an error.

My understanding of One Sure's statement of account is that it is as follows:

|                        | Credits £ | Debits £ | Balance £ |
|------------------------|-----------|----------|-----------|
| Initial cost of policy |           | 1,236.24 |           |
| Paid by H              | 1,236.24  |          |           |
| Additional premium     |           | 280.21   |           |
| Returned premium       | 1,243.40  |          |           |
| Cancellation fee       |           | 85.00    |           |
| Refund fee             |           | 5.00     |           |
| "loc" fee              |           | 111.01   |           |
| Refund paid to H       |           |          | 762.18    |

I consider that it is the insurer rather than One Sure that is responsible for calculating the premium, additional premium and returned premium. (In any event, H was on cover for about six weeks out of the intended year and the insurer returned a high percentage of the premium and additional premium.)

I don't consider that One Sure's cancellation fee and refund fee were unfair in the circumstances.

#### Loss of commission, One Sure's response to the provisional decision

One Sure has confirmed that "loc" is an abbreviation for "loss of commission".

And One Sure's terms of business included the following:

*"What You Pay*

*We normally receive commission from insurers or product providers, typically this is from 5%-20%. If you wish to know, you may ask us to confirm the exact amount applicable to your policy.*

*...*

*If your policy is voided as a result of misrepresentation or fraud, we will retain any commission lost as a result of the voidance, along with an administration fee of £85.00 and the retention of any arrangement fee applied at the point of sale*

*...*

*In the event of there being a rebate of premium following an adjustment / cancellation on the insurance policy, we will apply a charge of 20% of the rebate to cover any commission clawback that the insurer(s) may apply. Refunds will only be issued once we receive the monies from the insurers, this can take up to 6 weeks, but with some insurers it may take up to 6 months."*

One Sure says that it reads out the terms of business at the point of sale. However, I note that the terms of business are five pages long and there is a lot of detail before (towards the end of page 2) the reader would get to the "What You Pay" section quoted above. So, in the absence of a call recording, I'm not satisfied that One Sure did enough to bring that section to Mr M's attention at the point of sale.

I accept One Sure's points that commission rates vary, that it couldn't disclose them all, and that it would've told Mr M the commission on H's policy if he had asked.

I also accept that One Sure wouldn't know its loss of commission until the cancellation took effect.

Nevertheless, I don't find the "loc fee" of £111.01 fair for each of the following reasons:

- I haven't seen enough evidence that One Sure made its terms of business known to H at the point of sale before the welcome letter.
- The "What You Pay" section quoted above is unclear about the amount of commission in a wide range from 5% to 20%.
- The "What You Pay" section quoted above doesn't say that - on a cancellation - One Sure will retain any commission lost as a result.
- The "What You Pay" section quoted above says that the charge is 20% of the rebate. That's not necessarily the same as the actual loss of commission clawed-back by the insurer.
- It's unclear how the "loc fee" of £111.01 was calculated. It's much less than 20% of the returned premium of £1,243.40.
- The loc fee of £111.01 isn't in line with the terms of business.

### **Putting things right**

So – unlike the investigator – I find it fair and reasonable to direct One Sure to pay H – in addition to its refund of £762.18 – a further refund of £111.01.

As H will have been out of pocket since the date of the first refund, I find it fair and reasonable to direct One Sure to pay interest at our usual rate on the further refund.

H is a company, so I don't consider that it suffered distress. But I find that One Sure's delay caused it inconvenience in having to respond under the pressure of a seven-day notice and in having to contact One Sure again on about 27 July 2023 to find out what had happened. So I find it fair and reasonable to direct One Sure to pay H £100.00 for inconvenience.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct One Sure Insurance Limited to pay H:

1. in addition to its refund of £762.18, a further refund of £111.01; and
2. simple interest at a yearly rate of 8% on that further refund of £111.01 from the date of the refund of £762.18 to the date of that further refund. (I don't include our usual wording about income tax because H is a company and not liable to income tax); and
3. £100.00 for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 8 March 2024.

Christopher Gilbert

**Ombudsman**