DRN-4802585

The complaint

Mr H complains that FinanceMe Ltd (FM) trading as directlinkfunding mis-sold him a personal private medical insurance policy.

What happened

The circumstances of this complaint are well-known to both parties. So I've set out a summary of what I think are the key events.

In November 2021, Mr H spoke with FM's adviser to discuss taking out a personal private medical insurance policy. Mr H is a semi-professional sports player and he says FM's adviser was aware that he wanted a policy which would provide cover for the treatment of injuries he sustained while taking part in sporting events. FM's adviser (who appears to also have been Mr H's friend) recommended that Mr H should take out a private medical insurance policy with an insurer I'll call V. Mr H accepted the adviser's recommendation and cover under the policy began in December 2021.

Unfortunately, in August 2022, Mr H suffered a ligament injury while playing a semi-professional game. So he made a claim on the policy. While V covered the cost of diagnosing Mr H's injury, it turned down his claim for surgical treatment. That's because the private medical insurance policy specifically excluded treatment for an injury arising from semi-professional sports.

Mr H took out a loan to self-fund the surgery he needed, given NHS waiting times would mean he'd be unable to participate in sports events for over a year and potentially longer. And he made a complaint to FM about the sale of the private medical insurance policy. He said its adviser had known he wanted the policy to provide him with cover if he sustained injuries while playing sports. So he felt the adviser ought to have drawn the semi-professional sports exclusion to his attention and he didn't think the recommendation he'd been given was suitable. He felt FM should cover the cost of his surgery and the loan interest charges.

FM didn't agree. In brief, it obtained statements from both its adviser and a member of V's staff which stated that neither had known Mr H wanted the policy to cover his sporting career. FM considered the main reason Mr H had wanted the policy was to obtain private medical cover for both him and his family. It noted that Mr H worked as an insurance professional and so it said it had treated him as a professional client when it sold the policy. And it also felt Mr H ought to have been aware of the importance of checking the terms and conditions to ensure the policy was right for him. FM added that a policy which covered semi-professional sports would be specialist in nature. It did offer to refund the premiums Mr H had paid for the policy.

Unhappy with FM's position, Mr H asked us to look into his complaint.

Our investigator thought Mr H's complaint should be upheld. Based on text and email exchanges between Mr H and FM's adviser, he thought it was most likely both that Mr H wanted the policy to protect him against sports-related injuries and that the adviser had been

aware of this. So he didn't think the adviser's recommendation had been suitable for Mr H, given the exclusion in V's policy terms. He felt that Mr H had been acting as a retail client when he took out the policy. And in the round, he didn't think FM's premium refund offer was fair and reasonable to reflect the impact the mis-sale of the policy had had on Mr H. Instead, he felt FM should pay the cost of Mr H's surgery, together with compensation of £200 to reflect the trouble and upset he thought Mr H had been caused.

FM disagreed and so the complaint was referred for an ombudsman's decision.

I issued a provisional decision on 6 March 2024, which explained the reasons why I thought Mr H's complaint should be upheld and how I thought things should be put right. I said:

'It's clear that FM considers that the private medical insurance policy was sold to Mr H as a professional client. Mr H accepts that he works in insurance. However, I agree with our investigator that for the purposes of this sale, Mr H was a retail client. I accept Mr H's testimony that he has no specialist knowledge of private medical insurance policies and instead, works in an entirely distinct insurance arena. As I think Mr H took out this policy as a retail client, I currently find that the regulator's rules relating to the sale of insurance to retail clients apply to the circumstances of this particular sale.

Both parties agree that FM's adviser recommended that Mr H should take out the private medical insurance policy with V. This means the adviser needed to carry out an assessment of Mr H's demands and needs and to ensure that their recommendation was suitable for Mr H's identified needs.

FM hasn't provided us with a copy of the demands and needs assessment its adviser carried out. Nor has it provided us with a copy of a 'reasons-why' letter, setting out the reasons for the adviser's recommendations. It's told us that there isn't a copy of the sales call available to show what was discussed when Mr H enquired about taking out the policy. In the absence of such evidence, it isn't clear to me that such a full demands and needs assessment did take place. FM maintains that Mr H took out the policy to ensure his family had private medical cover and relies on the fact that he added his family to the policy to support this position. Mr H maintains that FM's adviser knew he wanted the cover to protect him in case of sports-related injury.

The available evidence as to what was discussed and understood at the time of sale is limited to Mr H's recollections; brief statements from FM's adviser and a member of V's staff and email/text exchanges between Mr H and FM's adviser. I've borne in mind the statements from FM's adviser and V's member of staff and I'd assure FM that I have carefully considered this evidence when reaching my provisional decision.

But, like the investigator, I find the email/text evidence compelling evidence which supports Mr H's version of events. In particular, I've seen a copy of an email from Mr H to FM's adviser dated a short time before he took out the policy. This says:

'Regarding the outpatient cover? What is covered under that specifically?

Realistically I'm not going to need things like GP appointments or day to day things. I'm more concerned about getting seen and operated on quickly if I sustained injuries.'

A text message exchange between Mr H and FM's adviser took place in January 2022 – a few weeks after the policy was put in place. Mr H had suffered a facial injury while playing sport. FM's adviser told Mr H to get a referral from NHS staff and to contact V about the injury. In a follow-up exchange, whilst referring specifically to Mr H's sport, FM's adviser discussed Mr H's injuries and said: 'all that just to use your private medical.'

In my view, this evidence indicates, on balance, that Mr H did seek to take out the policy to provide cover for injuries he sustained while taking part in semi-professional sports. And that FM's adviser was aware of this. Given the clear policy exclusion for the treatment of injuries arising from the playing of semi-professional sports, it seems to me that not only should this exclusion have been highlighted to Mr H, it made the recommendation of the policy entirely unsuitable.

So I now need to consider what I think is fair redress. FM has offered Mr H a refund of his premium. In some circumstances, I might consider this to be reasonable if I'm persuaded it puts the consumer in the position they'd have been in but for the financial business' error. However, I must make an award based on the individual circumstances of each complaint. And in this particular case, I'm not persuaded that a simple refund of premiums puts Mr H in the position he would have been in but for FM's mistake in recommending this policy. I'll explore this further.

FM stated that Mr H wouldn't have been able to obtain a policy which provided cover for his situation unless he'd used a specialist broker. Had this been the case, in my experience, it's likely that any premiums Mr H had paid would have been higher than the price he paid for the private medical insurance policy with V.

But, Mr H has provided us with evidence which shows that he was able to take out a Life and Critical Illness policy, a mainstream policy with a well-known insurer, which included a fracture add-on. He purchased this policy in September 2022. I've looked carefully at the terms of the fracture add-on which applied at the time Mr H took the policy out. I accept it isn't a private medical insurance policy and doesn't cover the cost of medical treatment. Instead, it provides a lump sum cash benefit depending on the injury a policyholder suffers. In this case, Mr H suffered a ligament injury which required surgery. The contract terms show a lump sum benefit of £6000 would be payable for Mr H's injury. And importantly, not only is there no exclusion for semi-professional sports, there was no exclusion for the type of sport Mr H plays under the terms of the contract he purchased.

In my view, the evidence indicates that once Mr H became aware that the private medical insurance policy he'd been advised to take wasn't suitable for him; he was able to find a policy which did meet his needs. I say that because he took out the new policy very shortly after his claim with V had been declined. So I think, on balance, if Mr H hadn't been given unsuitable advice and if the exclusion had been clearly highlighted to him, he wouldn't have taken out the policy with V in December 2021. Instead, I think he'd have sought alternative cover elsewhere (with another broker, as it appears he did) and would have taken out the Life and Critical Illness policy with the fracture add-on.

In reaching this conclusion I've taken into account that this was a different product to the private medical insurance policy Mr H explored during the sales process. However, as I've outlined above, I think it's most likely that more specialist private medical insurance policies would have been significantly more expensive. On balance, I think it's most likely that Mr H would have taken out a policy, like the Life and Critical Illness policy, which would have offered him a good level of protection within his budget. I note that he'd expressed that it was a priority for him to be seen and operated on quickly. A policy of this nature would have provided him with this level of cover at a price he could afford, and without any exclusions for professional sports. And if he had taken out this particular policy instead of the policy with V, it seems more likely than not that he would have had a valid claim for his injury and would have been entitled to a lump sum payment of £6000. While this wouldn't have covered the full cost of Mr H's surgery, it would have covered around 75% of the total Mr H paid.

On that basis, I think the fair outcome in this particular case is for FM to pay Mr H a lump

sum of £6000, less the premiums he'd have paid for the Life and Critical Illness policy between December 2021 and August 2022 – the date of his accident. Mr H says this was around £50 per month, so it appears that FM is entitled to deduct £450 from the lump sum benefit payment. If either FM or Mr H disagree with this deduction, they should provide supporting evidence indicating the actual cost of the policy to Mr H during that period. I also think FM should pay Mr H annual interest of 8% simple on the lump sum amount, to reflect the period Mr H was without access to the money and the consequential losses he incurred.

FM points out that the fracture cover is annually renewable. And the terms of the fracture add-on which applied in October 2023 exclude injuries caused by Mr H's sport. The available lump-sum benefits are also significantly lower. It suggests that we should contact the relevant insurer to check if Mr H's claim would be covered. I disagree. The relevant terms here are the ones which would have applied at the time of Mr H's injury. The September 2022 contract terms are sufficiently close enough to his injury date to persuade me that they are likely to have been applicable at the time of the claim. It's for FM to contact the insurer to check what cover applied in August 2022 should it now wish to.

I also agree with our investigator that Mr H has been put to unnecessary time and trouble as a result of FM's poor advice. Not only was his claim turned down, which would have caused him disappointment and worry; he was then put to time and trouble in organising a loan for a reasonably significant amount. While a lump sum payment wouldn't have covered the full costs of Mr H's surgery, it's likely to have substantially reduced the amount he needed to borrow. So I also think compensation of £200 to reflect Mr H's material distress and inconvenience is fair, reasonable and proportionate in all of the circumstances.'

I asked both parties to provide me with any evidence or comments they wanted me to consider.

FM said that I'd alleged that Mr H could have claimed under the alternative policy. But it said it wasn't in a position to sell Mr H this policy, as it wasn't on the relevant insurer's panel.

Mr H said he wasn't necessarily happy that the proposed award had changed but he understood the reasons for this. However, he said that in fact, he'd paid £28.93 per month for the alternative cover – so he felt the premium deduction should be £260.37. He also felt I should add the premiums of £409.41 he'd paid for the policy with V to the award I planned to make. He considered that if I didn't award such a premium refund, he'd be being penalised.

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.

Having done so, my final decision is that FM must pay Mr H a lump sum award of £6000 less £268.47, together with interest and a separate payment of £200 to reflect his distress and inconvenience. I'll explain why.

Neither party has provided any further detailed representations in regard to my provisional findings relating to the sale of the policy. So I see no reason to change my provisional findings on that point. This means I still think FM's adviser gave Mr H unsuitable advice to take out the policy with V. And I'm still satisfied that if Mr H had been aware that the policy wasn't suitable for him and that, in fact, it specifically excluded professional sports from cover, he wouldn't have purchased a private medical policy through FM. Or indeed, any policy through FM. Instead, I remain persuaded that Mr H would have taken out the alternative Life and Critical Illness policy with fracture cover add-on that he went on to purchase - which does seem to have largely met his needs - through an alternative broker.

Mr H says he'd have paid a total of £260.37 for the policy. But the policy booklet he's provided shows that the alternative policy he took out cost £29.83 per month, rather than £28.93. Therefore, I think he'd have paid broadly £268.47 for the Life and Critical Illness policy between December 2021 and August 2022. So I find that FM should deduct £268.47 from the redress award it pays Mr H rather than a notional deduction of £450. I asked our investigator to obtain FM's comments on this particular change to my proposed redress. However, it didn't respond by the deadline we gave.

It's clear Mr H feels strongly that in addition to a lump sum payment of £6000 less the notional premiums he'd have paid for the Life and Critical Illness policy, I should also award a refund of the premiums he paid for the cover with V. However, I don't agree.

As I explained in my provisional decision, FM originally offered Mr H a refund of the premium he paid for the private medical insurance policy. And in some circumstances, I might find a premium refund to be fair compensation for the mis-sale of an insurance policy. In this particular case though, I didn't think a premium refund was sufficient redress to put things right, given I thought Mr H would have found alternative cover which is likely to have paid out a cash benefit following his injury. So I felt that instead of a premium refund, fair redress in this case would be for FM to pay Mr H compensation for the mis-sale itself in the form of a lump sum payment of £6000 less the price of the policy I thought he would have taken out, together with interest. This award replaces redress in the form of a premium refund – it isn't intended to be paid in addition to it.

I'd add too that FM isn't an insurer and so I can't tell it to pay claims. Nor did FM retain the premiums Mr H paid – that was down to V. Additionally, it does seem V covered some diagnostics for Mr H. And it seems his family also benefited from the cover provided by the private medical policy, even if they didn't make any claims. In the circumstances then, I don't find it would be fair or reasonable for me to direct FM to pay Mr H a premium refund as well as a lump sum award. So I find that FM must pay Mr H compensation to the value of the £6000 lump sum, less £268.47, together with interest at an annual rate of 8% simple from the date of Mr H's claim to V until the date of settlement.

Neither party has commented on the £200 compensation award I proposed for Mr H's distress and inconvenience. So it follows that I still think this is a fair and reasonable award in all of the circumstances.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint.

I direct FinanceMe Ltd trading as directlinkfunding to:

- Pay Mr H a lump sum of £6000, less £268.47 to reflect the premiums he'd have paid for the alternative policy;
- Add interest at an annual rate of 8% simple to the settlement from the date of Mr H's claim to V to the date of payment;*
- Pay Mr H £200 compensation.

**If FM considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H 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 Mr H to accept or

reject my decision before 13 June 2024.

Lisa Barham
Ombudsman