

The complaint

Mr T has complained that Best Risk Management & Financial Services Limited ('Best') mis-sold a policy to him and didn't ask relevant questions to ensure the product was suitable for him.

What happened

Mr T has appointed a representative to assist with his complaint. For ease, all reference to Mr T includes any submissions made by his representative.

Mr T bought a policy through Best, as a non-advised sale, in March 2018. He did this as the insurer of his previous policy had exited the market.

Mr T was made redundant in 2023 and made a claim but this was declined by the insurer. Mr T complained about both Best and the insurer. The complaint about the insurer has been looked at separately.

Mr T said Best should have recommended a suitable product by probing further about his 'director' role and title.

Best didn't think the policy was mis-sold and so Mr T brought his complaint to the Financial Ombudsman Service.

Our investigator looked into the complaint and found that Best should have brought the significant limitations in the policy to Mr T's attention. But she didn't think Mr T would have been able to buy another policy and so she recommended £500 compensation for distress and inconvenience.

Mr T disagreed and in summary, said there were other policies available at the time and had he been properly advised, he would have bought an alternative policy. He also referred to the various rules and industry regulations, including the Consumer Duty.

As an agreement couldn't be reached, the case has been passed to me for a final 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.

I issued a provisional decision which I have set out in full below:

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

- *Mr T has referred to the Consumer Duty but this only came into force on 31 July 2023 and does not apply retrospectively. I have taken into account the relevant rules and principles as well as good industry practice that did apply at the time of*

sale, as set out by the investigator.

- Both sides have provided numerous comments and information which I have reviewed carefully and in full. But I will only comment on what I consider to be key to my conclusions.*
- The crux of the matter is that Mr T thinks Best mis-sold the policy to him, which left him without cover. And he thinks Best should have done more to ensure the policy was suitable for his needs.*
- The policy was sold on a non-advised basis. This means Best had to ensure the information it provided to Mr T was clear, fair and not misleading so that he could make an informed decision about whether the product was suitable for him.*
- Discussions about the different policies that were available took place over the phone. Our investigator said that due to Mr T's title of 'director' and the definition of 'self-employed', this was a significant limitation and should have been brought to Mr T's attention. So I have looked at the information which was sent to Mr T at the point of sale.*
- Shortly after the telephone conversation with Best, it sent Mr T an email with a quote illustration, the application, key facts and policy wording.*
- The policy terms are only 8 pages long and the definition of 'self-employed' can be found on page 2. Pages 4 and 5 set out the unemployment requirements and also refer to the self-employed definition. The key facts document is 3 pages long and on page 2, this says: "you will be regarded as self-employed if you or a close relative are a director."*
- I have also seen a document setting out the demands and needs considerations. This includes a number of bullet points and says: "you will need to take into consideration that any of the following circumstances could impact on your ability to claim on your policy... You or a close relative of yours is a director or shareholder of your employer, in which case you may be treated as self-employed."*
- Mr T hasn't said that he didn't receive this information. The policy document is only 8 pages long. And the demands and needs sets out very clearly that as Mr T was a director, he may be treated as self-employed.*
- I agree that Best should have done more during the sales calls to draw Mr T's attention to the information relevant to directors. But I also think the documents that were sent to Mr T after the sale were very clear.*
- Furthermore, although both sides have provided information about the other policies available at the time, I am not persuaded that Mr T would have opted for an alternative policy or that he would have been accepted for an alternative policy by the underwriters. Even if Mr T had been given other options at the time, it doesn't follow that a claim would have been successful or that other policies would have continued to be available over the years (the previous insurer had exited the market).*
- I have listened to the available calls. Mr T told Best that he was a director in title only. Mr T was listed as a director at Companies House but didn't inform Best about this. Best could have asked the question but as it was told that Mr T was a director in title only, I can understand why it wouldn't then ask whether Mr T was listed as a director at Companies House.*
- When Mr T made his claim, his employer completed a form to confirm that he was a statutory director. The letter from the insurer refers to this as being key and*

this suggests that had Mr T not been a statutory director, his claim might have been paid. So I am not satisfied that Best's actions have caused Mr T's loss and I don't think it would have made any difference to Mr T even if Best had drawn Mr T's attention to the limitation, as he considered himself to be a director in title only, despite his employer later confirming otherwise.

- *Best accepts that it gave Mr T incorrect information in July 2023 when he called to discuss his redundancy. Even though Mr T raised concerns about what the policy definition said, Best said he didn't need to worry as long as his shareholding was less than 5%. This was clearly incorrect as the definition of self-employment was also relevant. However, by this time, he was already aware of his claim and couldn't have made any changes to the policy.*
- *I don't think Best mis-sold the policy as the sale was non-advised and the policy information which it sent to Mr T after the call was clear. Best did not know that Mr T was a statutory director and even if it had drawn his attention to the limitation of the policy, I am not satisfied that he would have been able to buy an alternative policy or that he would have been accepted by a different underwriter. In addition, I don't think a refund of premiums is appropriate either as Mr T could have benefitted from the policy in certain circumstances. I can't say he could never have benefitted from it.*

I appreciate Mr T will be very disappointed with my decision and I am sorry to hear of his difficult circumstances. I do think Best caused Mr T distress and disappointment as a result of the incorrect information it gave to him in July 2023 and for not drawing his attention to the significant limitations of the policy during the sales call. For this, I think Best should pay Mr T £500 compensation."

In summary, Mr T has said he remains unhappy because he doesn't think the proposed compensation of £500 is appropriate or sufficient. He says he was forced to sell his family home abroad as he could no longer afford to live without income that should have been provided by the policy and this is a clear example of severe disruption to his daily life with long term consequences. This should therefore meet the criteria for a higher award of compensation. Additionally, he has asked what else the Ombudsman can do to obtain missing recordings from the initial policy set up.

As Best has said the initial call recordings are unavailable, there is nothing further I can do to obtain those records. So I have to base my decision on the available evidence. I am satisfied there is sufficient evidence available to reach a decision, which I have referred to in my provisional decision, including the policy details that were provided to Mr T.

I have carefully considered everything Mr T has said again and as set out in my provisional decision, I don't think the policy was mis-sold. So I can't say that the consequences Mr T describes were as a direct result of Best's actions.

I see no reason to depart from my provisional findings and so I adopt my provisional decision as my final.

My final decision

For the reasons set out above, I direct Best Risk Management & Financial Services Limited to pay Mr T £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 February 2025.

Shamaila Hussain
Ombudsman