

The complaint

Mr F complains HFIS Limited trading as Hamilton Fraser gave him poor advice about his professional indemnity insurance, as a result of which he has been left without cover for a claim against him.

What happened

Mr F is a medical practitioner. He took professional indemnity insurance through Hamilton Fraser in 2019 and renewed this each year until 2023. The insurance provided 'claims made' cover, meaning it would cover him for a claim he made while the policy was in force.

At the renewal in 2023, the premium increased. Mr F asked Hamilton Fraser if it could find a policy at a lower premium. The existing policy was extended while it looked for alternatives but it wasn't able to find another insurer willing to cover Mr F.

Mr F told Hamilton Fraser he was looking for alternative cover himself and 10 July 2023 he emailed to say he was waiting to hear from some other insurers. On 14 July he emailed to say he had obtained cover elsewhere. He asked if there would be any problems if there was a gap in cover. Hamilton Fraser replied to say he needed to avoid having a break in cover.

Mr F was later notified of a potential claim against him. The previous insurance wouldn't cover it because he hadn't made the claim while that policy was still in force. And he wasn't covered by the new policy, because that policy only covered events that happened after the policy started and the claim related to treatment given in the past.

Mr F complained that he had been left without cover for this claim because Hamilton Fraser hadn't advised him properly about the risk of changing to a different kind of insurance.

Hamilton Fraser said it wasn't at fault, as it had explained to Mr F when his policy lapsed that it was a 'claims made' policy, and he wouldn't be covered for any claims notified after the policy had ended.

Our investigator did not think the complaint should be upheld. She said Hamilton Fraser had explained to Mr F he would no longer be covered by the old policy, and it didn't need to do more to advise Mr F, when he had sought alternative cover himself.

Mr F disagrees and has requested an ombudsman's decision. He's supported in his complaint by solicitors, who have made detailed submissions on his behalf.

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.

The complaint concerns the extent to which Hamilton Fraser should have advised Mr F about the risks of moving to a different type of insurance. His solicitors have provided detailed submissions and I've considered them carefully but I won't comment in detail on every single point that has been raised and will focus on the key points. This is in line with

our role, which is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case.

The crux of the matter here is whether, when Mr F told Hamilton Fraser he was considering moving, it should have given clear advice about the risk of uninsured claims that arises when moving from claims made insurance to a medical defence organisation without any provision to bridge the gap, such as run off cover.

The basis on which Hamilton Fraser dealt with Mr F was set out in its terms of business, which explained that it would make a recommendation to him. Hamilton Fraser gave advice to Mr F and it had a duty under the relevant rules and guidance, to:

- provide appropriate information in good time to enable him to make an informed choice about what cover was needed;
- assess Mr F's demands and needs and, when proposing a contract of insurance, ensure it was consistent with his insurance demands and needs;
- ensure the suitability of its advice, and ensure the information it provided was clear, fair and not misleading.

I'm satisfied Hamilton Fraser did this when recommending the renewal of the old policy; this was a policy that would have met his needs. But Mr F didn't go ahead with the renewal, due to the increased cost.

If Hamilton Fraser had gone on to recommend a different policy to Mr F, it would have needed to ensure that insurance met his assessed insurance needs. There doesn't seem to be any argument about the new policy Mr F obtained meeting his needs for professional indemnity claims going forward. The issue is that it doesn't provide cover for claims made against him relating to something that had happened in the past, while the old policy was in force. And that policy won't cover him now, as it only covered him for claims he made while it was in force. So there's a gap in cover.

If Hamilton Fraser had recommended that Mr F move to the new policy without explaining the risks of changing the type of cover or recommending that he take out run off cover, I don't think that would have been suitable advice. It needed to ensure the policy it recommended would meet all his assessed insurance needs. But in this case, it didn't recommend the new policy – Mr F obtained that himself and only told Hamilton Fraser after he had done that.

I've considered whether Hamilton Fraser should have been more proactive and advised Mr F about the potential risks even though it wasn't advising him on his new policy. His solicitors say other brokers in the market point out to policyholders the need for run off cover to avoid uninsured claims, and have standard correspondence they send to customers about this. And they say Hamilton Fraser should have explained to Mr F the risk of uninsured claims when he first mentioned he was thinking about moving to a medical defence organisation in early July 2023.

The fact that another broker provides different information doesn't in itself mean there was a requirement for Hamilton Fraser do so. If it had been advising Mr F, I agree it should have explained to him that cover from a medical defence organisation was of a different nature to the insurance contract he'd previously had with an insurance company, advised him on the risks of changing, and discussed the need for run off cover.

Hamilton Fraser wasn't, however, aware at the time that Mr F was switching to a membership with a medical defence organisation – he said he was in contact with other

insurers. It only found out he had moved to a medical defence organisation after his old policy had lapsed. It wasn't involved in his decision and didn't give him any advice about that.

By the time Hamilton Fraser knew that Mr F had switched to a medical defence organisation his old policy had already lapsed. It did then tell him that as his policy has now lapsed, he would not be indemnified for any claims notified after the expiry date of the old policy, and said if that had been an oversight on his part he should get in touch as a matter of urgency.

Mr F didn't then take any further action. He hadn't renewed his existing policy due to the increased premium. I think it's unlikely Mr F would have incurred the cost of obtaining additional insurance cover. I've explained why I don't think Hamilton Fraser needed to do more but, even if that's not correct, if Mr F had been given different advice earlier I'm not persuaded he would have acted differently in any event.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 February 2026.

Peter Whiteley
Ombudsman