

complaint

Mr L complains that ActiveQuote mis-sold an income protection insurance policy.

background

Mr L searched for an income protection insurance policy on a price comparison website. ActiveQuote says that Mr L said he wanted a benefit amount of £1,400 a month, over 12 months.

Mr L chose a policy with insurer A. It had a benefit amount of £1,150, payable until age 65, with a premium of £25.42 a month.

ActiveQuote then contacted Mr L by phone. It said that it *“was a free advice service and wanted to make sure that [Mr L] had chosen the right [policy]”*. Mr L said that he'd started a new job the month before and was previously a student. If he was off work due to sickness, he would receive two weeks' full pay and two weeks' half pay. ActiveQuote said it would try to find Mr L a different policy. It then contacted him and said it had found a *“better”* and cheaper policy with insurer B that it would recommend it to Mr L. It had a benefit amount of £1,240, payable until age 65, with a premium of £23.15.

Mr L completed a health questionnaire. The insurer then included a number of exclusions in the policy relating to Mr L's pre-existing medical conditions. Mr L queried these. But ActiveQuote said *“...although it sounds like a lot will be excluded it is purely anything relating to your spine injury. So for instance if you was [sic] to break your back in a car accident you would get a payout because it is not relating to your pre-existing condition”*. Based on that, Mr L decided to go ahead with the policy with insurer B.

The following month, Mr L suffered an accidental injury. He made a claim under the income protection insurance to insurer B. The claim was initially rejected as the insurer said it was related to Mr L's pre-existing medical conditions. Mr L paid for a scan and a report from a doctor. The insurer then accepted that the injury wasn't related to Mr L's pre-existing injury. Insurer B then paid the claim. But the benefit amount was much less than Mr L was expecting. That was because the benefit amount was based on Mr L's income over the past 12 months. As Mr L had only been in his job for around two months, he was paid a benefit amount of around £200 a month.

Mr L's employment ended three months later – as he was unable to work because of his injury. The claim was paid until 1 December 2016, when Mr L was declared fit to work.

Mr L complains that ActiveQuote mis-sold the policy. He says it gave him incorrect information about the exclusions that applied to the policy. Mr L also says that the policy ActiveQuote recommended wasn't suitable for him because when he made a claim the benefit amount was much lower than he had been led to expect.

ActiveQuote accepted that it had given Mr L *“incorrect advice”* about the exclusions on the policy. It said the correct position was that the insurer *“may consider a claim if the accident or sickness was not connected to the pre-existing condition”*. ActiveQuote also accepted that it should have told Mr L that the benefit amount would be based on his taxable income in the 12 months before any claim. It said that this ought to have been explained to Mr L as he had told ActiveQuote that he was a student immediately before he started his job.

To resolve the complaint ActiveQuote offered to pay Mr L £1,638. This was made up of two months' premiums, one "*benefit amount*" of £1,240 with interest, and £250 for the cost of the scan.

my provisional findings

I've copied my provisional findings below. But because my final decision will be published, I've taken out some personal information about Mr L.

It isn't in dispute that ActiveQuote gave Mr L incorrect information about the exclusions on the policy it recommended and that it didn't tell him that the benefit amount would be based on his income in the previous twelve months.

exclusions

It seems unlikely that Mr L would have been able to obtain an income protection insurance policy that didn't exclude claims that related to his pre-existing medical conditions. The error that ActiveQuote made was not properly explaining the correct position. I can see how Mr L would have understood that a potentially wider range of injuries would be covered if he made a claim than was actually the case. But, I need to decide what Mr L would have done if ActiveQuote had given him the correct information.

The correct information was that the insurer would consider any claim from Mr L on the facts. So, for example, it was possible for him to suffer an injury to his back that was completely unrelated to his existing injuries. But, it was also possible for him to suffer an injury to a part of his body other than his back, where his pre-existing injuries would be a factor.

Mr L has explained that because of a medical condition, he has "*a heightened sense of fear, danger and doom and envisage[s] on a daily basis that something bad may happen*". He says this is the reason he wanted an income protection policy. Mr L has also suffered a previous injury where he made a successful claim on an income protection policy. In view of those things, I consider it is likely that Mr L would have chosen to go ahead with a policy recommended by ActiveQuote if it had given him the correct information about the exclusions.

ActiveQuote should have taken more care to ensure that it gave Mr L correct information about the exclusions to his policy. But I consider it is likely that Mr L would still have gone ahead with the policy if it had given him the correct information. So he hasn't lost out because of the incorrect information ActiveQuote gave him. It will, however, have caused him an unnecessary amount of disappointment and worry when he later found out the correct position in light of his personal circumstances as highlighted above. I have taken this into account in my award to reflect the trouble and upset this matter has caused Mr L.

benefit amount

ActiveQuote accepts that it knew that Mr L had only been employed for around a month when it gave him advice and that he was previously a student. It has also accepted that it didn't properly advise Mr L that the benefit amount would therefore be limited for the first year or so, as it was based on Mr L's income in the 12 months before any claim was made.

I note ActiveQuote's points about Mr L's level of expertise. But it was the expert here – not Mr L. It was reasonable for Mr L to rely on the advice that ActiveQuote had given him. The

fact that he has had taken out a previous income protection policy and has used a price comparison website to obtain different quotes does not mean that he is an expert – and to suggest that he is would be an unusual step for a business to take. I don't consider it would be fair to say that Mr L should have identified that ActiveQuote should have recommended a different policy or that the policy it had recommended wasn't suitable for him.

For the avoidance of any doubt, I'm satisfied that ActiveQuote was giving Mr L advice. The FCA's Insurance Conduct of Business Sourcebook sets out what ActiveQuote should do when giving advice on protection policies. It says that firms should:

- Take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgement.
- Establish the customer's demands and needs using relevant information available to the firm and by obtaining further relevant information from the customer.
- Take reasonable care to ensure a policy is suitable for the customer's demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions.
- Inform the customer of any demands and needs that are not met.

ActiveQuote recorded Mr L's demands and needs as

- He is looking to protect his income in the event of an accident and sickness.
- He was happy with the benefit of £1,240.
- He was happy with the four-week wait period.
- He has confirmed that the premium of £23.15 a month was affordable.

ActiveQuote has accepted that it was also aware that Mr L had only been in employment for around a month at the time of the sale. I consider this was a relevant piece of information available to ActiveQuote. It ought to have taken this into account when establishing Mr L's demands and needs and recommending a policy.

ActiveQuote accepts that it should have told Mr L that the level of cover would be reduced if he were to make a claim soon after he took the policy out. I agree that if it was recommending a policy that didn't meet Mr L's needs, it ought to have pointed this out to Mr L.

I don't consider that ActiveQuote took reasonable care in recommending the policy it did. The benefit amount on the policy would be limited for the first year of the policy because of Mr L's employment history. ActiveQuote knew that Mr L was previously a student and had only been employed for a short time. It ought to have taken steps to find out more about the consumer's circumstances. If it had done so it would have been able to recommend a more suitable policy.

Based on what ActiveQuote knew about Mr L's circumstances it shouldn't have recommended this policy. Therefore ActiveQuote has recommended an insurance policy that

was unsuitable for Mr L. At least it ought to have told Mr L about the limitation to the benefit amount.

Where a business has made a mistake, our approach is to put the consumer back in the position they would have been in had the mistake not occurred. So I need to decide what ActiveQuote would have done, if it had correctly advised Mr L.

ActiveQuote says if it hadn't advised Mr L, he would have ended up taking the unsuitable policy with insurer A he had chosen through the price comparison website. I don't agree. Once Mr L had accepted advice from ActiveQuote it had a duty to make sure its recommendations were suitable. What Mr L would have done in a non-advised sale is irrelevant.

Mr L was contacted by ActiveQuote after he had chosen a policy. It told him that it was giving him advice. ActiveQuote says its process was to tell consumers that "*advice was available*".

From the content of the phone call I can see that Mr L was happy to receive advice. And it was reasonable for him to understand that he was being given advice. From the initial phone call it was also reasonable for Mr L to understand that if ActiveQuote didn't find another policy for him it would assess whether the policy he had chosen was suitable or not.

So I don't agree with ActiveQuote that Mr L would have taken the policy he had chosen on the price comparison website if it had not advised him. Bearing in mind what ActiveQuote has told me about its business model, it appears that it would always have contacted Mr L after he had chosen the policy. And Mr L would have accepted advice from it.

It follows that if ActiveQuote had acted properly it could not have recommended the policy with insurer A that Mr L had chosen as it was unsuitable for him. If it had no policies that were suitable for Mr L then it should have told Mr L this. If it had done so, I consider it unlikely that he would have chosen to proceed with the unsuitable policy he had chosen himself – especially given there were other suitable policies available.

ActiveQuote says that Mr L set the search parameters with the price comparison website for a benefit amount of £1,400 a month and a 12 month benefit period. But Mr L initially chose a policy with a benefit amount of £1,150. ActiveQuote recommended a policy with a benefit amount of £1,240. Mr L has shown that he previously held an income protection policy with a lower benefit amount. And he says he was looking for policies with a benefit amount of £1,000.

I consider that Mr L's needs around the benefit amount were flexible. Even if we accept that he searched for a policy with a benefit amount of £1,400 – Mr L's actions show that he was prepared to accept a lower benefit amount. I've also already found that it was likely that Mr L would have taken some form of income protection policy because of his medical condition and his previous successful claim. So if he was told that the policy he'd chosen was unsuitable, he'd have gone on to choose another policy that would pay the full benefit amount straight away if he were to make a claim.

Mr L has identified a policy with another insurer called "Breathing Space policy" as a suitable alternative. It doesn't require proof of income. It provides a maximum benefit amount of £250 a week or £13,000 a year, payable for a maximum of five years, with a premium of £31.

ActiveQuote says it only has a selection of insurers and policies on its panel – and that doesn't include the Breathing Space policy, although it does offer other policies from the same insurer.

ActiveQuote has identified a policy with LV that is on its panel. It says this is the policy that it would have recommended to Mr L if it had taken account of his circumstances. The policy has a benefit amount of £1,005 a month, payable for two years, with a premium of £21.35. It appears that Mr L would only be required to show that he was receiving some form of income at the time he made the claim. And ActiveQuote hasn't pointed out any other features or restrictions that would mean that Mr L would receive less than £1,005 a month if he had taken this policy.

I've already found that Mr L was – reasonably – relying on the advice from ActiveQuote. So if it had recommended the LV policy I consider it likely that Mr L would have accepted that recommendation. ActiveQuote should therefore put Mr L in the position he would have been in had he taken that policy.

ActiveQuote should pay Mr L the difference between the benefit amount he has received and £1,005 a month, from the date the claim was first paid up to date of settlement, with interest at 8% simple per year from the date each benefit amount was paid to date of settlement.

It's clear that Mr L has been caused unnecessary trouble and upset because of what happened and in having to pursue the complaint to this extent. His income has been significantly lower than it would have been had ActiveQuote recommended a suitable policy for him in the first place. I also recognise how difficult it must have been for him to support his family during this time. Mr L has also explained how he's been affected by this matter and the stress it has caused him. After carefully reviewing what has happened I consider it would be fair for ActiveQuote to pay Mr L £900 to reflect the trouble and upset it caused him.

responses to my provisional decision

ActiveQuote said that it was happy to agree to my provisional findings to bring this matter to the close. It said the amount due to Mr L was £2,930.25 – and it questioned whether the monthly premiums should be deducted from that amount.

Mr L accepted my provisional findings – but he didn't agree with ActiveQuote's calculation. He said that he should receive £4,109 for the difference in payments, taking into account the payment he'd already received.

my findings

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 – and as both sides have accepted my provisional findings – I see no reason to depart from the conclusions I reached in my provisional decision.

I understand that ActiveQuote has been sent the evidence showing the payments made by insurer A to Mr L – it's not clear if we have everything we need to calculate the redress. ActiveQuote should check with Mr L and/or insurer A if it feels it needs any more information.

Mr L has provided evidence that the claim was paid from after 11 April until 2 December 2016.

Mr L has confirmed that he's received £1,638 in compensation already from ActiveQuote. That was paid soon after Mr L received the first benefit amount – and it effectively made up the difference in payments for the first 67 days of the benefit period. So Mr L hasn't been deprived of money during that period. Therefore ActiveQuote should only be required to pay interest on the difference from 18 June 2016.

my final decision

My final decision is that I uphold this complaint. ActiveQuote Limited should within 28 days of this decision:

- Pay Mr L the difference between the total benefit amount he has received from insurer A and £1,005 a month from the date the claim was paid was made up to 2 December 2106.
- Pay interest on the difference in payments at 8% simple per year from the date each payment on or after 18 June 2016 was made up to date of settlement.
- Pay Mr L £900 to reflect the trouble and upset this matter has caused him.

ActiveQuote can deduct £1,638 it has already paid to Mr L from the total amount.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 March 2017.

Ken Rose
ombudsman