

provisional decision	
complaint by:	Ms W
complaint about:	Halifax Insurance Services Limited
complaint reference:	
date of adjudication:	March 2012

summary of complaint

This provisional decision is issued by me, Tony Boorman, an ombudsman with the Financial Ombudsman Service. It sets out my provisional conclusions in relation to the dispute between Ms W and Halifax Insurance Services Limited (which I refer to as Halifax).

This dispute is about the decision to withdraw Halifax Pet Insurance from the market, the impact this will have on Ms W's dog (Lucky) and the costs Ms W may now incur in relation to veterinary bills that would otherwise have been covered by her insurance.

I have carefully considered all the information and evidence submitted by both sides, in order to decide what is fair and reasonable in the circumstances of this complaint.

For the reasons I set out below, my provisional decision is that I should determine this complaint in Ms W's favour – albeit only in part – in that I conclude that Halifax acted unfairly and should now, in the circumstances of this case, offer Ms W some compensation for the problems and distress it has caused and pay to “top up” any alternative insurance cover Ms W now purchases for Lucky.

This is a provisional decision and is subject to any further comments and evidence that I receive from the parties. Subject to any further comments I would expect to issue a final decision in the following terms.

background to complaint

a) events leading up to the complaint

Ms W is retired and in 2005 she took ownership of a dog – named Lucky. She arranged for Lucky to be insured and purchased a Halifax pet insurance policy when Lucky was two months old.

Ms W and Lucky remained loyal Halifax Insurance customers over the next six years, paying a monthly collected premium initially of about £6 rising over the years to £10. Various claims were made under the policy from time to time. Sadly Lucky developed various health problems – in particular, a troubling skin condition that now requires regular treatment. The vet used by Ms W estimates that Lucky's treatment will cost about £720 a year for the rest of her life.

In 2011 it seems that Halifax decided that it should no longer offer cover in this form – and it announced it was withdrawing from the pet insurance market. It wrote to Ms W about one month before the policy was due to renew, to tell her of its decision. It said:

“The decision hasn’t been taken lightly and careful thought has been given to how this might affect customers. Therefore we wanted to give you time to make alternative arrangements for Lucky when your current insurance ends”.

Halifax then drew attention to “*Alternative Arrangements*”. It said:

“We know it’s important to you that Lucky is insured. That’s why we (BDML Connect Limited) have agreed to provide you with a quote for alternative cover with Petwise. Your quote is enclosed ...”

The decision by Halifax was particularly important for Ms W, as the terms of the Halifax policy meant that even though Lucky suffered from a long standing condition, this would continue to be covered (up to a maximum value a year) for as long as the policy was renewed.

In contrast, had Ms W made alternative arrangements with another insurer – or taken out the new policy with Petwise – “pre-existing conditions” would be excluded from cover. So Halifax’s decision to withdraw from the market has left Ms W with a pet with ongoing health problems that cannot now be insured – so Ms W herself must pay the vet bills.

b) the complaint and the Halifax’s response

Ms W feels that Halifax’s decision is unfair. She had planned the care of her pet on the basis that the insurance arrangements she had made would continue to provide Lucky with the care required. The new cover she has been offered provides less cover and is more expensive. Ms W says if Halifax cannot continue to supply insurance cover then it should compensate her for the future bills she must now pay – and for the significant distress and anxiety the whole issue has caused her

Ms W complained to Halifax. It said that its decision was reasonable and that it could not compensate Ms W (in fact the letter, whilst on Halifax headed paper, argued that part of the issue might rest with Halifax, not with BDML Connect. I explain the role of these two insurance businesses in the next section).

Ms W was not satisfied with Halifax’s response and complained to the ombudsman service.

c) explanation of the businesses involved

Although the policy Ms W had is heavily branded “Halifax” and is referred to throughout the relevant documentation as “Halifax pet insurance”, it is in fact *not* insurance provided by Halifax itself. Rather, the policy was underwritten (that is, the actual person providing insurance cover) by a number of businesses over the years – most recently by Agria International Försäkring AB, an insurer based in Sweden).

And the policy was “*arranged and administered*” by BDML Connect Limited. Halifax’s role is described as follows:

“Policies are introduced by Halifax General Insurance Services Limited”.

Arrangements like these of overlapping responsibility by regulated entities are not uncommon in general insurance. But they can be confusing for customers. In the present case – mindful of the fact that the insurer is based overseas, and given the

documentation is branded, and indeed *emphasises* the Halifax name – I conclude that it is reasonable to consider Halifax as the responsible party to whom complaints are properly directed and against whom any award I might determine should be made.

In saying this, however, I note that Halifax is not here itself an insurer (but is an insurance intermediary) – and that there are other parties to whom complaints could be brought by consumers, given the overlapping responsibilities here.

In the circumstances of this case, I can well imagine that there are disputes between the industry parties as to the respective responsibilities that each may hold in relation to consumer disputes (indeed, that is already evident in the correspondence Ms W has received). This assessment, however, is solely concerned with addressing the concerns that Ms W has raised about the withdrawal of insurance. It does not seek to assign commercial responsibilities between Halifax and its previous business partners.

Finally, I note that there is scope for continuing uncertainty about which of the parties is acting at any time. For example, the letter sent informing Ms W of the withdrawal of cover (and quoted above) is headed both Halifax *and* BDML Connect – and is signed by an officer of BDML Connect. However, for simplicity I refer throughout to all correspondence from these firms as from Halifax.

my provisional findings

I have included only a brief summary of the complaint above. But I have read and considered all the evidence and arguments available to me from the outset, in order to decide what is fair and reasonable in all the circumstances of this complaint.

relevant considerations

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator’s rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The FSA principles apply to all authorised firms, including Halifax. Of particular relevance to this complaint is:

- Principle 6
“A firm must pay due regard to the interests of its customers and treat them fairly”
- Principle 7
“A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading”

In addition, the more detailed FSA’s Insurance Conduct of Business rules apply. And so it is necessary to take those into account. Of particular relevance to this complaint is:

- ICOBS 2.2.2R
“When a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading”

Taking account of all these factors it seems to me that the central questions I need to determine in reaching my assessment of this case is whether or not:

- Halifax is under any obligation to continue to provide insurance cover to Ms W in respect of her pet;
- Halifax misled customers about the nature of the insurance policy; *and*
- Halifax communicated its decision and otherwise acted in manner that was fair and reasonable in all the circumstances.

If I conclude that Halifax did not act fairly and reasonably in handling this matter, I need to consider what award I should make. This might either be a direction to Halifax to take steps to assist Ms W that I think are “just and appropriate” and/or might be an award of “fair compensation” for any loss or damage that Ms W has suffered.

was Halifax under an obligation to continue to provide insurance?

The cover provided by Halifax had a number of important provisions. If the policy was renewed (and I understand that in many cases this occurred automatically, unless the policyholder cancelled their direct debit arrangement), the normal exclusion relating to “pre-existing conditions” would only apply from the date the policy was first purchased.

So in Ms W’s case, the policy would never provide cover for health conditions that Lucky *already* had when the policy was first taken out in 2005. But because she did not cancel the policy, Lucky continued to be covered for re-occurrences of conditions (ill health) so long as those conditions had first occurred *after* the Halifax policy was first purchased.

Customers value this type of policy in medical/veterinary cover, because it means they can obtain insurance even for ongoing medical problems. These policies are often more expensive initially – but they may provide a sensible way to budget for long-term veterinary needs. In contrast, for policies that do *not* have this provision (or if the pet owner decides to switch to a different insurer), any claims are likely to be *excluded* for any re-occurrence of an existing illness in a subsequent year.

In Ms W’s case, the existing Halifax policy provided (as Halifax described it in its October 2010 renewal letter):

“Up to £1000 to cover vet’s bills for every year of the policy, including cover for any ongoing illnesses your pet may develop – unlike some policies which just cover a condition for up to 12 months. This is subject to the cover limits of the policy; that the premiums are paid to date and that the policy is renewed.”

So it is not surprising that, as Lucky became older, Ms W came to rely on this provision more and more – to provide cover for veterinary bills for the various illnesses she suffered. By 2010 she was paying a premium of around £120 a year – but Lucky’s veterinary bills have amounted to around £500 on average over the past three years.

However, the fact is that the policy Ms W purchased was a *regularly renewing* policy. So all that Halifax (and the other insurance businesses) were, in fact, promising to do *in law* was to provide cover for the period of cover specified in the policy schedule (typically one year). And while it was the custom for Halifax to renew the policy at the end of each period of cover, it was under *no legal obligation* to do so.

And so it seems to me that Halifax acted lawfully and within its rights in deciding to stop offering cover generally.

Halifax has said that it has been unable to find someone to provide ongoing cover (although in practice I assume this means it is unable to do so on terms that Halifax thinks are commercially viable). But in any event, it seems to me that requiring Halifax to provide insurance cover is not a realistic or practical alternative in this case.

The right of insurers to decide generally to enter or leave the market is not one to be overridden by the ombudsman when considering *individual* cases – unless the decision to withdraw was clearly unlawful.

So I conclude that Halifax was acting within its rights to withdraw from the market and I should not require Halifax to provide generally affordable ongoing cover, as Ms W would wish.

did Halifax mislead customers about the insurance?

I note here that when Ms W first purchased the Halifax pet insurance policy, it was described on the Halifax insurance web-site in headlines as:

“Life-long cover from as little as £3.50 a month ...”

And I also note that in the original letter that Halifax sent Ms W in 2005, it said:

“Welcome to award winning, great value Halifax Pet Insurance. Thank you for choosing to protect Lucky’s health with Halifax pet insurance and we hope that you will be reassured that you have chosen the right cover, no matter what the future brings.”

As it turns out, these marketing commitments must ring rather hollow for Ms W. This was not, in fact, life-long cover. Nor did it prove to be “the right cover, no matter what the future brings”.

The description of the policy as “life-long” seems to me to be a significant error by Halifax. The policy was not life-long for the reasons I have explained. And it was clearly misleading to suggest that it was – regardless of the fact that this is a common term in similar pet insurance policies.

While the detail of the policy had the renewal features that I have described, from a straightforward consumer-perspective all that was happening was an occasional change in premium levels – for providing the insurance protection required. In 2010 the introductory sections of the annual letter read:

“Your Halifax Pet Insurance for Lucky is due for renewal on 1 November 2010. Thank you for choosing Halifax pet insurance over the last 12 months. As you pay by direct debit your policy will be automatically renewed on 1st November 2010. ... The new annual cost of protecting Lucky is just £xx ...

Remember, by renewing your Halifax pet insurance policy you’ll continue to benefit from our comprehensive cover and the protection for Lucky that this brings.”

So in Ms W's circumstances, I can understand that she may well have believed that she had "life-long" cover for Lucky that would provide continuing cover for those illnesses which reoccurred as Lucky got older. That indeed was true. But only for so long as Halifax provided such cover and maintained a continuation of policy terms. However, the fact was it was under *no legal obligation* to keep providing pet insurance or to renew policies on existing terms.

But while the statements made may have misled the customer, this does not mean that an award is automatically due to the consumer. Before I could recommend an award in such a case, the question I need to ask is what – on the balance of probability – would the customer have done differently, if any misrepresentation had *not* been made and the customer *had* been able to make an informed choice.

So in Ms W's case, what in fact *would* she have done differently – had she been fully aware of the limited commitment Halifax was making in 2005 and in each subsequent year? Indeed, even if it had been emphasised that Halifax might at some future point leave the market, would Ms W have acted differently?

On balance, I think it is unlikely that any other insurer offering similar annual renewable cover would have *guaranteed* to maintain cover – or would clearly have been a more reliable insurance partner than Halifax would have been seen as in 2005. I have not been able to find records of any similar but more reliable long-term cover reasonably open to a customer like Ms W. All pet insurers, in essence, would have represented a similar risk.

So there is no reason to think that Ms W would, in fact, have opted for another insurer. The logically available choice for her, given this uncertainty, would have been to purchase lesser cover which just provided 12 month cover for conditions. This could have been cheaper – but of course would not have provided the cover Lucky now needs.

However, I do conclude that Ms W has been disadvantaged by Halifax's failure to describe clearly the limits of its commitments. Pet ownership is a considerable responsibility and there is every reason to believe that Ms W has approached this responsibility very seriously. She had, after all, made careful plans to ensure that Lucky was able to obtain appropriate veterinary care.

Had Halifax been clearer in its statements, Ms W would have been able to consider alternative arrangements. We cannot now be sure what those arrangements would have been. But in principle, Ms W could have decided *not* to take on a pet at all – or perhaps to have taken *different* steps towards Lucky's care and treatment – or simply to have made savings to fund the likely requirements for uninsured medical treatment.

has Halifax otherwise acted unfairly?

I think the manner in which Halifax withdrew from this market was not well considered. It must have known that its decision would cause anxiety and loss to customers such as Ms W. It could have given longer notice to customers of its decision. I understand it first concluded it should exit the market during the early summer of 2011 but it did not write to Ms W until a month before her policy ended in November.

And even at the stage it wrote to Ms W, it was clear that it had not considered and agreed with its business partners how complaints would be handled – or how it should respond to the anxieties that would inevitably occur for that group of customers who had pets with recurring conditions.

I note that Halifax made a web statement about its decision. This said:

“What’s happening?”

Halifax is withdrawing from the pet insurance market and therefore Halifax Pet Insurance will no longer be available to new customers. Halifax has not taken this decision lightly and a lot of consideration has been given to how this can be done with as little impact to customers as possible.

In addition, the insurer of Halifax Pet Insurance (Agria International Försäkring AB) has decided that, from 24th September 2011, it will no longer offer to renew existing policies ...”

“What happens when my existing policy with Halifax Pet Insurance expires?”

At your renewal date your policy will automatically end and you should seek a new insurer for your pet(s). A quote for a new annual policy can be offered by BDML Connect Limited, the administrator of your current policy, under their own Petwise brand.

We understand you may have some further questions so if you would like to talk about this in more detail please call BDML Connect Limited on 0845 850 0265.”

I note that in this statement Halifax failed to highlight the material information that the new policy would *not* cover conditions that had occurred during the life of its own policy.

So I conclude that Halifax has mishandled the communications around its decision to withdraw cover. It could have notified customers earlier of its decision – and could and should have been clearer about the impact its decision would have for many of its loyal customers.

overall conclusions

So overall, I have concluded that Halifax was entitled to exit the insurance market and that, for the reasons explained above, it would not be fair or practicable for me to seek to require Halifax to maintain formal insurance cover for customers generally.

I have also concluded that elements of Halifax’s marketing and information about the product at various times placed too great a weight on the policy being “life-long” – and failed to alert customers to the limited impact of the commitment that Halifax was, in fact, making to continue cover for pre-existing conditions.

However, it is difficult to see that if Ms W had been more accurately informed about the policy, she would in practice have made different insurance decisions that would have placed her and Lucky in a better position today. But at a minimum, I can well imagine that Ms W has made arrangements based on some assurance that continued cover for Lucky would be available in the manner she had been led to believe by Halifax that she could rely on. She now faces the need to make new, more expensive arrangements for Lucky because of Halifax’s actions.

I have also expressed significant reservations about the way in which Halifax communicated its decision and has dealt with customer concerns and complaints.

Its actions will have caused unnecessary inconvenience and distress to customers including Ms W.

approach to redress

Following the involvement of the ombudsman service in this case, I understand that Halifax has made an offer of compensation to a number of customers – including to Ms W. Halifax says it is offering an “ex-gratia payment, as a gesture of goodwill”. It says it is basing this on its own judgement about whether or not a condition is likely to be ongoing or to recur – and therefore on the particular recent claims history of the customer. In Ms W’s case, the offer amounts to a payment of £589 (including £100 for distress and inconvenience).

Compensation in such cases is very much a matter of judgement – but this seems to me a difficult position for Halifax to maintain. Customers such as Ms W will have suffered significant anxiety about the position – an anxiety added to, in my judgement, by poor communication by Halifax.

At a minimum, Ms W will have suffered from a loss of reasonable expectation that her financial arrangements for her pet were secure. The anxiety about coping for future uncovered bills will not, in practice, be overcome by a formulaic approach to redress.

Turning to the facts of this case – and taking account of my concerns about the potentially misleading nature of some early communication by Halifax, the delays in notifying customers of its decision to exit this market, and the shortcomings in its subsequent communications – I think fair compensation suggests that Halifax should make compensatory payments to Ms W.

My preference is for Halifax to provide some assurance to Ms W that, so long as she maintains insurance cover with another provider, it will in effect “top up” that cover – by paying for any condition requiring treatment that the *new* insurer will not cover because it is “pre-existing” under the new policy (but first occurred during the period for which Halifax provided cover). Any payments would need to take account of the previous excesses and policy limits. In Ms W’s case, I suggest that these top up payments are provided for the next three years.

I recognise that this may not be straightforward administratively. But it does appear to me to be the best way to respond to Ms W’s understandable concerns. So I ask Halifax to consider carefully how this could be achieved for Ms W (and no doubt for other customers in a similar position).

Such an arrangement would require Ms W’s cooperation (for example, in providing information about ongoing cover and claims with another insurer). But I would be happy to adjudicate on any detailed terms that are required to make such a scheme work.

Finally, and in addition, I conclude that Halifax should pay Ms W £200 for distress and inconvenience.

additional observations

This is not the first case that I and my colleagues at the ombudsman service have seen where marketing commitments have not been carried through in a manner that the customer might reasonably expect they would be.

Providing policies marketed as “life-long” which are *not* is clearly a problem. And there is a particular issue with *annual* policies expressing themselves as providing *long-term* insurance cover. These issues seem to me to be matters for the industry itself – and if necessary its regulator – to address. It would clearly add to customer confidence, if product descriptions more fairly and clearly reflected the reality of cover for customers – not just the positive “spin” on what can in some cases be provided.

In particular, it seems to me that careful consideration needs to be given to how to explain fairly to customers how matters like “pre-existing condition” exclusions relate to *frequently renewing* policies.

my provisional decision

For the reasons set out above, I consider that Ms W’s complaint should be upheld in part. Halifax has not handled fairly its decision to withdraw from the pet insurance market in this case – nor has it provided information that was sufficiently clear to enable Ms W to make an informed decision. Its errors will have caused distress and inconvenience for Ms W.

I have set out above my provisional decision for redress in the particular circumstances of this case. It is now up to the parties to indicate whether or not they are willing to accept this approach in full and final settlement of this approach.

I now ask the parties to let me have in writing by 26 April 2012 any further comments they want to make.

Tony Boorman
ombudsman