

The complaint

Mr and Mrs D complain that ActiveQuote Limited (AQ) mis-sold them a private medical insurance policy.

What happened

Mr and Mrs D held a private medical insurance policy with an insurer I'll call A. The policy was underwritten on medical health disregarded (MHD) terms. In August 2022, AQ's adviser recommended that Mr and Mrs D should switch their policy with A to a new personal private medical insurance policy with an insurer I'll call V.

The adviser spoke to V, which said that cover could be set-up on MHD terms. Accordingly, the adviser completed an application form on 'switch' terms for Mr and Mrs D, which was accepted by V. The new policy began on 9 August 2022.

In November 2022, Mrs D needed to make a claim on the policy with V. And it was at this point that she and Mr D learned that, in fact, their policy hadn't been set-up on MHD terms. Instead, it had been set-up on Continued Personal Medical Exclusions (CPME) terms. So Mr and Mrs D complained to AQ, as they felt it had mis-sold their policy.

AQ didn't agree that it had mis-sold the policy to Mr and Mrs D. It maintained that its adviser had checked with V that it could offer MHD cover ahead of Mr and Mrs D applying for the policy.

Mr and Mrs D were unhappy with AQ's position and they asked us to look into their complaint.

Our investigator didn't think Mr and Mrs D's complaint should be upheld. She considered that AQ had taken reasonable steps to confirm with V that it could offer Mr and Mrs D MHD cover.

Mr and Mrs D disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 20 June 2023 which explained why I intended to partly uphold the complaint. I said:

'It's common ground that AQ recommended that Mr and Mrs D should switch their existing policy with A to a new policy with V. That means that its adviser needed to ensure that the policy was suitable for Mr and Mrs D. It also needed to give them enough clear, fair and not misleading information so that they could decide if the policy was right for them.'

I've looked carefully at the fact-find the adviser completed. It's clear that Mr and Mrs D held cover on MHD terms. And it seems that maintaining this level of cover was very important to them. I accept that AQ's adviser did contact V ahead of making switch arrangements to enquire whether it could offer a policy on MHD terms. So I think the adviser did take some steps to check that the policy they'd recommended was suitable for Mr and Mrs D.

However, having listened to the call, it seems to have taken place along very general lines.

The adviser didn't specifically refer to Mr and Mrs D, nor was their existing cover discussed in any particular detail. And I've also seen a copy of the application form the adviser completed on Mr and Mrs D's behalf. The 'underwriting type' selected was CPME, not MHD. Neither can I see any notes on the application from the adviser to clarify that, in fact, this policy was to be set-up on MHD terms, or which referenced their previous discussion with V. As such, I don't think the adviser did enough to ensure that V's attention was drawn to the type of cover Mr and Mrs D needed and indeed, thought they were taking out.

In my view, had the adviser applied specifically for personal MHD cover, or referred to their earlier discussion with V, it would've been in a position to let the adviser know that this wasn't something it was able to offer for certain types of policy. If that had been the case, I think the adviser would've been in a position to let Mr and Mrs D know that the switch they wanted couldn't be arranged with V and to explore other options with them.

Mr and Mrs D say that had they known that MHD cover couldn't be arranged with V, they'd have remained with A on MHD terms. Indeed, they say they were able to take out a new policy with A subsequently, again based on MHD underwriting. It seems to me then that had Mr and Mrs D known that V couldn't provide MHD underwriting, they likely would've remained with A. However, I'm mindful that Mr and Mrs D were able to successfully make claims on their policy with V and it appears that one of the reasons they'd sought to move away from A at the outset was because the cost of the policy had gone up. So it seems to me that Mr and Mrs D may well have paid less for their cover with V than they did for their original policy with A.

As such then, given Mr and Mrs D were able to claim on the policy, it appears to me that it was of benefit to them. And it isn't clear to me that they've paid out more for the policy with V than they would've done had they remained with A in August 2022. So I don't think I could fairly say that AQ should refund the premiums Mr and Mrs D paid, or that Mr and Mrs D have suffered an actual financial loss as a result of its error. It is open to Mr and Mrs D to provide me with evidence to counter this point though, should they wish to do so.

With that said, I do think that AQ has caused Mr and Mrs D some distress and inconvenience and I currently think it should pay them modest compensation to reflect this. In my view, £100 compensation is a fair and reasonable award to reflect the impact I think AQ's mistake is likely to have had on Mr and Mrs D. So I'm intending to direct AQ to pay this amount to Mr and Mrs D.'

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

AQ had nothing more to add.

Mr and Mrs D disagreed with my provisional findings and I've summarised their response:

- They felt I'd made some incorrect assumptions, which had impacted on my rationale in terms of the compensation award I intended to make.
- They agreed that if they'd known that V couldn't offer MHD cover, they wouldn't have taken out the policy.
- But they didn't agree that they would've paid more for the policy with A. They said they'd paid considerably more for the policy with V and they provided me with a copy of a 2021-22 quote for cover with A, which showed the premium was lower than the premium they'd been charged for the policy with V;
- They felt my reference to them being able to make a successful claim suggested that

they'd been fortunate to be able to do so, even though they'd been paying for cover. They added that it had been a nightmare to get the claims approved, which had caused significant additional stress;

- Mr and Mrs D had been caused much upset and stress by V's claims handling process. This had amplified their anger with AQ;
- They considered my compensation award was unfair, given the policy had been mis-sold to them and bearing in mind the suffering they'd been through in order to get V to accept their claims;
- Mr and Mrs D considered that AQ should pay them compensation equivalent to half of their premium for the policy with V. They would've been trapped into staying with V for 12 months, had it not been for their tenacity in escalating the matter to V's executive team;
- AQ is getting off without a scratch as they would only lose £100, despite receiving commission from V.

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, whilst I'm sorry to disappoint Mr and Mrs D, I still find that an award of £100 compensation is fair and reasonable in all the circumstances and I'll explain why.

It's important I make it clear that this decision will only consider AQ's actions in selling this policy to Mr and Mrs D. Mr and Mrs D are clearly very unhappy with the way that V handled the claims they made on the policy. But AQ isn't responsible for how V handled Mr and Mrs D's claims, or for deciding what evidence V needed in order to decide whether the claims were covered. That's because AQ isn't an insurer and it isn't authorised to handle or settle claims. Neither is AQ legally responsible for any of V's actions. AQ and V are entirely separate legal entities which are authorised to carry out different regulated activities. So it seems to me that many of the concerns Mr and Mrs D raised in response to my provisional decision are about V's actions, rather than focused on AQ's error when it sold the policy.

Mr and Mrs D have provided me with a copy of renewal information relating to the renewal of their policy with A in the 2021-22 policy year. I acknowledge that A's premium for the 2021-2022 policy year was cheaper than the premium they were charged by V for the 2022-23 policy year. I note though that they haven't provided me with a renewal quote for the policy with A in the 2022-23 year to compare against the premium they were paid with V. And I've listened to a call between Mr D and our investigator. While Mr D said price wasn't a factor in the move from A to V, he did say that the policy with V was around £20 per month cheaper than A's price would be. So it follows that I haven't seen enough evidence to persuade me that Mr and Mrs D have paid more for the policy with V than they would've done had they renewed with A in August 2022.

I explained in my provisional decision that I felt the adviser had made errors in the sale of the policy and I was satisfied that had Mr and Mrs D known that the policy with V would be on CPME terms, they wouldn't have gone ahead with taking it out. But when considering appropriate redress, I do need to bear in mind what's fair and reasonable. Mr and Mrs D paid for private medical cover and they both were able to make successful claims under their policy. I appreciate they may not have had the claims journey they'd expected or wanted, but they have been able to benefit from the policy with V. And as I've said, I haven't seen

enough to show me that Mr and Mrs D paid more for this policy than they would've done had they remained with A. So I don't think they've shown they've been financially prejudiced by AQ's failings here either.

In my view, £100 compensation remains a fair and proportionate award to reflect the impact I think AQ's actions had on Mr and Mrs D. Given they benefited from the cover prior to exiting the policy without penalty, I don't think it would be fair, reasonable or proportionate for me to award half of the fees they paid for the contract. I understand Mr and Mrs D don't think this award recognises the upset they were caused, but in the round, I'm satisfied this is a fair and reasonable settlement for AQ's errors.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I direct ActiveQuote Limited to pay Mr and Mrs D £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 9 August 2023.

Lisa Barham
Ombudsman