

The complaint

Mr B complains that Suttons Independent Financial Advisors Limited failed to record relevant information on the application form when it applied for a life insurance policy on his behalf. Mr B also says Suttons failed to tell him he would have difficulty getting cover whilst he was awaiting the results of medical tests.

What happened

In brief summary, in June 2022, Mr B contacted Suttons to update his protection arrangements. He was looking to replace his existing level term life cover with an indexing policy.

The sales meeting took place over the phone. Mr B says he disclosed a nerve issue in his arm, including that he was awaiting the result of a recent nerve conduction test. The insurer asked for further information, after which the policy was accepted on standard terms and commenced.

Mr B subsequently received a copy of his application form from his insurer. He contacted the insurer about the outstanding test which was not recorded on the application form. The insurer allowed 60 days in which to reassess the application. But the issue did not resolve within this period, so the insurer cancelled the policy in September 2022.

Mr B complained. He said Suttons' mistake had caused him considerable distress and inconvenience and left him without insurance whilst his condition was ongoing. Mr B thinks Suttons withheld information about his outstanding test in order to secure the policy. Mr B has subsequently been able to obtain insurance, but at additional cost. Mr B seeks £10,000 from Suttons to compensate him for distress and inconvenience and the additional cost of obtaining insurance.

Suttons didn't uphold the complaint, saying it believed its consultant had acted appropriately.

Mr B remained unhappy and came to the Financial Ombudsman Service. Suttons has since offered Mr B £250 as a gesture of goodwill to settle matters.

An investigator looked into things but didn't uphold the complaint, saying Mr B most likely didn't disclose the outstanding test to the consultant. Our investigator thought Sutton's gesture of goodwill offer was fair.

Mr B disagreed so the complaint has come 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.

Having done so, I'm not going to ask Suttons to compensate Mr B beyond the £250 offer already made as a gesture of goodwill. I recognise my decision will disappoint Mr B and I'm sorry about that. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

The sale took place over the phone. Suttons wrote to Mr B afterwards confirming the type and level of cover he'd chosen for his protection needs. The letter states that no advice was given by Suttons or sought by Mr B on the specifics of his needs. But Suttons was still under an obligation to give Mr B information that was clear, fair and not misleading, to enable him to make an informed choice. Mr B was clear about what he wanted and I'm satisfied that Suttons offered a policy that matched his requirements. The follow-up documentation from both Suttons and the insurer clearly set out the details and terms of the policy.

But the central issue in this complaint is whether or not Mr B disclosed to Suttons that he was awaiting the result of a nerve conduction test. Mr B insists he fully disclosed and that Suttons' failure to pass on that information caused him to lose out. Suttons insists the information would've been recorded and passed on if disclosed.

Unfortunately, there's no call recording of the sale. So in coming to my decision I've taken into account Mr B's testimony and the documentary evidence provided by both parties.

After the application was initially submitted, the insurer sought further information. I've seen an email from Mr B to Suttons, dated two days after the initial submission. Mr B provides a report from the time of the original injury, as requested. He gives some detail about the onset of symptoms and contact with his GP and a neurologist at the time. He refers to a nerve conduction test organised by the neurologist and mentions having physio with the NHS. Mr B goes on to say that he is currently seeing an NHS physiotherapist again to try to get back to 100% strength. There is no other reference to current treatment or mention of the outstanding test result.

I've also seen an email dated the next day in which there's further clarification sought about the date of onset of symptoms.

From the application form and the subsequent emails, it's clear Mr B disclosed a nerve disorder in the last five years to Suttons. On the application Suttons recorded the following answers [my summary headings]:

Details of symptoms

A: First symptoms were summer time 1994, some reduced strength in the right arm (where the nerve disorder is), these symptoms are ongoing but not severe. Still manage to do daily activities and has no effect on ability to do sporting activities. Symptoms have had a massive improvement since the original pain back then and is hoping to be back at 100% with support from a physio he is seeing currently to help strengthen the nerve.

Treatment

A: Originally saw a GP during the original pain in 1994 and then went to see a neurologist a couple of months after and had physio back then. Did some physio over the years and arm re strengthened to almost 100% so he stopped, then got some pain again and is now seeing a physio again and will continue to see the physio until the arm strengthens to 100% again.

Frequency of symptoms

A: Monthly.

Details of any surgery, investigations or tests

A: As seen in above. Never required surgery for this condition. Occasionally will take a painkiller to alleviate some symptoms if he gets them in the month. Neurologist ran a nerve induction test but that's the only investigation he has had.

Are you awaiting any investigations, tests, or referral to a specialist?

A: No.

How many days of work because of this condition?

A: 0.

Description of severity of condition

A: Ongoing condition with no restrictions in daily activities or mobility.

I can see Mr B's disclosures in the follow-up email are reflected in the application form. The supplementary questions, prompted by the original disclosure of a nerve disorder, seek to elicit comprehensive information. I appreciate Mr B's strength of feeling on the matter. But overall, I'm most persuaded by the documentary evidence. So on balance, I'm satisfied that if Mr B had specifically referred to the outstanding test during the application process, this would've been reflected on the application form. I'm aware Mr B thinks Suttons deliberately withheld important information in order for the application to be accepted. I understand Mr B's concerns, but I've not seen any other evidence to support this view.

Suttons has made an offer of £250 to Mr B as a gesture of goodwill. I think this is reasonable.

Putting things right

Suttons should now pay Mr B £250 as a gesture of goodwill.

My final decision

My final decision is that Suttons Independent Financial Advisors Limited should settle this complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 April 2024.

Jo Chilvers
Ombudsman