

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000, Chapter I-3
(the "Act")

And

In the Matter of Brokerlink Inc. o/a BrokerLink
(the "Agency")

And

As represented by
Edward Parry, Designated Representative
(the "DR")

DECISION
OF
The General Insurance Council
(the "Council")

This case involves allegations pursuant to s. 480(1)(a) and s. 509(1)(a) or (c) of the Act.

As it relates to Count 1 it is alleged that the Agency, on two (2) occasions, unilaterally transferred two (2) client insurance policies from one insurer to another. In so doing, it is alleged the Agency is guilty of making a false or misleading statement, representation or advertisement, as contemplated by s. 509(1)(a) of the Act, or in the alternative, is guilty of engaging in any unfair, coercive or deceptive act or practice, as contemplated by s. 509(1)(c) of the Act, and subsequently violated s. 480(1)(b) of the Act.

In relation to Count 2, it is alleged that the Agency, on two (2) occasions, misleadingly claimed that an insurer did not offer the type of insurance the client had despite offering the same policies. In so doing, it is alleged that the Agency is guilty of misrepresentation, fraud, deceit, untrustworthiness, or dishonesty, as contemplated by s. 480(1)(a) of the Act.

As it relates to Count 3, it is alleged that the Agency, on two (2) occasions, failed to provide the information necessary for the client to make an informed decision. In so doing, it is alleged that the Agency is guilty of engaging in any unfair, coercive or deceptive act or practice, as contemplated by s. 509(1)(c) of the Act, and subsequently violated s. 480(1)(b) of the Act.

Regarding Count 4, it is alleged that the Agency, on two (2) occasions, disclosed the client's financial information to an insurer without the client's express consent. In so doing, it is alleged that the Agency is guilty of engaging in any

unfair, coercive or deceptive act or practice, as contemplated by s. 509(1)(c) of the Act and subsequently violated s. 480(1)(b) of the Act.

In relation to Count 5, it is alleged that the Agency, on two (2) occasions, unilaterally selected an insurer as the client's new insurer without requesting other quotes from different insurers. In so doing, it is alleged that the Agency is guilty of engaging in any unfair, coercive or deceptive act or practice, as contemplated by s. 509(1)(c) of the Act and subsequently violated s. 480(1)(b) of the Act.

As it related to Count 6, it is alleged that the Agency, on two (2) occasions, stated that the client's new insurance policy needed to be cancelled in writing contrary to the Statutory Conditions within the Act. In so doing, it is alleged that the Agency is guilty of misrepresentation, fraud, deceit, untrustworthiness, or dishonesty, as contemplated by s. 480(1)(a) of the Act.

Regarding Count 7, it is alleged that the Agency, on two (2) occasions, did not comply with the client's request to cancel insurance policies and insisted on the client signing a cancellation form. In so doing, it is alleged that the Agency is guilty of engaging in any unfair, coercive or deceptive act or practice, as contemplated by s. 509(1)(c) of the Act, and subsequently violated s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 23, 2024 (the "Report"). The Report was forwarded to the Agency for review and to allow the Agency to provide the Council with any further evidence or submissions by way of Addendum. In arriving at its conclusion, the Council carefully reviewed all evidence presented.

The Agency is the holder of a General Insurance Agency certificate of authority and has held such, consistently, since August 31, 2004.

This matter arose in response to a complaint received by the AIC, on August 5, 2022, from [C.K.] [redacted] (hereinafter the "Complainant"), relating to the conduct of the Agency:

[...]

Currently I have vehicle and tenant insurance with [W.I.] [redacted] (hereinafter "Current Insurer") with Brokerlink as the broker.

Brokerlink is arbitrarily switching my insurance upon the September renewal to [I.I.] [redacted] (hereinafter "Proposed Insurer"). See the email with the explanation as to why.

I am concerned on a number of levels, and would like you to investigate. I am very uneasy about the fact that I can authorize a broker and then they can cancel and issue policies in my name at their discretion.

I have so many questions as to how this can happen, especially since I noticed that little [Proposed Insurer] [redacted] symbol on the bottom of the first correspondence from Brokerlink. I would really appreciate if you would look into this.

I have secured a new broker for the September renewal and have signed forms to authorize new broker for September renewal. I have been informed by the new broker that [the Current Insurer] [redacted] is still offering insurance, so at least with the new broker I can retain my policy.

[...]

In the same email of August 5, 2022, the Complainant provided the AIC with the following documents:

1. A letter from the Agency dated June 30, 2022 (hereinafter the “Agency June 2022 Correspondence”), and
2. An email chain between the Complainant and the Agency dated July 5 and 6, 2022 (hereinafter the “July 2022 Emails”).

The Agency June 2022 Correspondence provided the following:

[...]

BrokerLink strives to place the needs of our customers first, ensuring they are informed and up to date on any market changes impacting their policies.

As your preferred Broker, and in accordance with our commitment to you, we would like to advise of the upcoming relocation of your [Current Insurer] [redacted] personal policy.

Upon review and after careful consideration, we have selected [Proposed Insurer] [redacted] will be able to deliver a product more closely aligned with your insurance needs.

[...]

What’s next?

You will soon receive your renewal policy and additional information about [the Proposed Insurer] [redacted]. Please review these documents carefully, as your limits of coverage and/or deductibles may differ from your [Current Insurer] [redacted] policy such as:

- Change in your deductibles
- Change in policy limits for Sewer Back-up and/or Overland Water coverage
- Change in available payment options

In addition, if you are presently on a monthly payment plan, the withdrawals from your account will now be made by [the Proposed Insurer] [redacted].

[...]

[Emphasis added in original document]

The July 2022 Emails stated the following:

[The Complainant] [redacted]

Tue, Jul 5, 2022 at 8:11 PM

To: [Agency Email] [redacted]

Hi. Policy *****400 [redacted] and *****940 [redacted]

Please call me urgently [...] as I do not authorize changes to my policy. I am not sure why these changes including my bank withdrawal will not be [the Proposed Insurer] [redacted]. I never asked for these changes. I called to change address and ensure my policy information was correct. I did not ask or inquire about [the Proposed Insurer] [redacted].

[...]

[M.P.] [redacted]

Wed, Jul 6, 2022 at 11:33 AM

To: [The Complainant] [redacted]

[...]

Your policy was rolled over from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted] as [the Current Insurer] [redacted] was no longer offering the coverage. There was a letter explaining the relocation sent out.
[...]

On August 8, 2022, the AIC investigator requested additional information from the Complainant as follows:

[...]

- Any additional correspondence you have with representatives of Brokerlink Inc. regarding this issue
- If you have communicated directly with either insurer about this, please provide that correspondence as well
- Any other documents you feel may help my understanding of the material facts.

[...]

On August 10, 2022, the Complainant responded to the AIC investigator, with the following information:

[...]

Thank you, I have attached further documents for your assistance.

- Correspondence June 2022 with Brokerlink regarding updating the property information for the Tenants Policy;
- Correspondence July 2022 with Brokerlink with further explanation as to why the policy is changing from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted];
- Correspondence August 2022 with Brokerlink to cancel [the Proposed Insurer] [redacted] policy.

I have not corresponded with either insurer directly, just through Brokerlink.

[...]

In the same email of August 10, 2022, the Complainant provided the following documents:

1. An email chain between the Complainant and Agency dated July 6, 2022 (hereinafter the “July 6, 2022, Emails”), and
2. An email chain between the Complainant and Agency dated August 2022 (hereinafter the “August 2022 Emails”).

The July 6, 2022, Emails stated the following:

From: [The Complainant] [redacted]
Sent: Wednesday, July 06, 2022 11:55 AM
To: [M.P.] [redacted]
Subject: [External]Re: [External]Fwd: Not authorized changes

[...]

Sorry I misunderstood the letter.

I did not see anywhere in the letter that [the Current Insurer] [redacted] was not offering the coverage. The letter is [sic] specifically notes that Brokerlink has reviewed and selected [the Proposed Insurer] [redacted].

There are many companies that offer insurance why pick [the Proposed Insurer] [redacted]. Except I noticed a symbol on the bottom for [the Proposed Insurer] [redacted]. So you are pushing your insurance.

[...]

On Jul 6, 2022, at 1:53 PM, [M.P.] [redacted] wrote:

If you would prefer not to be with [the Proposed Insurer] [redacted] we can look at other markets, however when we make the choice on where we move a company we take into account a lot of factors.

[The Complainant] [redacted]
To: [M.P.] [redacted]

Wed, Jul 6, 2022 at 2:20 PM

No thanks I want to stay with [the Current Insurer] [redacted].
[...]

The August 2022 Correspondence stated:

From: [The Complainant] [redacted]
Sent: Thursday, August 04, 2022 6:36 PM
To: [Agency Email] [redacted]
Subject: [External]Cancel [the Proposed Insurer] [redacted] policy Existing [the Current Insurer] [redacted] policy

As of my September renewal,
I have revoked your authorization as my broker.
Apparently I have an [Proposed Insurer] [redacted] policy that I don't want as of September
[...]
Can you please let me know if:

Do I need to put a stop payment on [the Proposed Insurer] [redacted] amount [...]

Do I need to sign a cancellation for the [Proposed Insurer] [redacted] policy that was chosen for me so that it does not come into force on Sept 22? As I will still have my [Current Insurer] [redacted] policy with my new broker on September 22.
[...]

[D.K.] [redacted]
To: [The Complainant] [redacted]

Fri, Aug 5, 2022 at 2:20 PM

[...]
Thank you for your email and I apologize for any inconvenience or stress this situation has caused you.

You will not need to put a stop payment on [the Proposed Insurer] [redacted] as the first scheduled withdrawal is for September 22, 2022. They require 2 weeks to process cancellations for their billing, but we will have submitted your cancellation far before this window of time. This should hopefully save you the additional fees associated with stop payments through your bank.

We will need a signed cancellation form for the [Proposed Insurer] [redacted] policy to complete processing the cancellation effective September 22, 2022. I have sent you a separate email for electronic signature on the cancellation form. If you are able to please type your name where indicated on this form, it will complete the electronic signature. I will then receive the signed document in my email to finish processing the cancellation. Once [the Proposed Insurer] [redacted] has processed the cancellation I will send you another email with the cancellation documents to confirm it has been completed.
[...]

On August 5, 2022, the Complainant signed a cancellation form for the policy with the Proposed Insurer.

On August 31, 2022, the AIC investigator requested, by way of a formal Demand for Information, the following information from the Agency:

The AIC has received a complaint from a customer of your company, [the Complainant] [redacted], alleging that Brokerlink Inc. recently notified [the Complainant] [redacted] it would be moving [the Complainant's] [redacted] policies from one insurer to another at [the Complainant's] [redacted] September renewal, without [the Complainant's] [redacted] authorization, request, or input. [...]

1. A detailed account and explanation of this matter, including any authorization Brokerlink Inc. thinks exists, to make the changes.
 2. Copies of all documents and correspondence relating to the changes to [the Complainant's] [redacted] policies.
 3. Any other information or evidence you feel may assist in my understanding of the material facts.
- [...]

On September 10, 2022, the Agency responded to the AIC investigator with the following information:

[...]

To provide some insight to the inquiry on [the Complainant's] [redacted] insurance policies:

[The Complainant] [redacted] was insured with [the Current Insurer] [redacted] through our brokerage, Brokerlink Inc.

As [the Complainant] [redacted] appointed Brokerlink as [the Complainant's] [redacted] broker we are always looking out [sic] for the best interests of our clients, and due to ongoing changing market conditions, we look for the best solution for our clients, upon review of this particular file, we were able to provide [the Complainant] [redacted] another policy with [the Proposed Insurer] [redacted] with superior coverage than that of the [Current Insurer] [redacted] policy. We ensured [the Complainant] [redacted] would receive renewal rates vs new business rates, loyalty discounts, and conviction and claims waivers honoured (if applicable)

A written notice was sent to [the Complainant] [redacted] of the relocation of [the Complainant's] [redacted] policy 84 days in advance of [the Complainant's] [redacted] renewal date Sept 22, 2022, with an added note to contact us to review if [the Complainant] [redacted] would like. [The Complainant] [redacted] did contact us inquiring why [the Complainant's] [redacted] policy had been relocated, and [the Complainant] [redacted] has since decided to stay with [the Current Insurer] [redacted]. The future dated [Proposed Insurer] [redacted] policy has been flat cancelled with no negative financial impact to the client.

[...]

On March 3, 2023, the Agency sent a letter to the AIC investigator as a response to the original Report to Council dated February 14, 2023, regarding this matter:

[...]

Notice to the Complainant

- The Report notes that BrokerLink chose to transfer the Policies from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted] "without consulting the Complainant or receiving any request or authorization to do so".
- BrokerLink respectfully disagrees with this characterization of our process. Tenant and automobile policies are short-term products, limited to twelve (12) months. Every year, an insured's broker may seek renewal policies with the existing insurer or obtain alternative policies with other insurers based on the suitability of premium and coverage. The primary relationship is with the broker, not the insurance companies whose products the broker distributes.
- Brokers are responsible for making sure that their customers are offered competitive products that meet their overall needs, and BrokerLink ensures that customers are adequately notified when changes occur in order to give insureds a meaningful opportunity to review and ask questions.
- In this case, BrokerLink gave the Complainant eighty-four (84) days' notice that the Policies [the Complainant] [redacted] was being offered at renewal were no longer with [the Current Insurer] [redacted]. This notice allowed the Complainant sufficient time to review and respond to the offer, which the

Complainant] [redacted] did. We believe that our practices with regards to notices about policy changes are fair in this context.

Communication with the Complainant

- The transfer of the Policies to another insurer was undertaken proactively because [the Current Insurer] [redacted] had indicated to BrokerLink that it could expect its customers to experience coverage changes and pricing increases. BrokerLink wanted to make sure customers were insulated from these changes and [the Current Insurer] [redacted] was fully aware that BrokerLink would be trying to find alternative coverage for anyone who might potentially be affected.
- BrokerLink acknowledges that the communication with the customer was not as clear as it should have been. BrokerLink did not believe it would be able to renew the Policies with [the Current Insurer] [redacted] for the same or similar premium and coverage, but once the Complainant requested that [the Complainant] [redacted] remain with [the Current Insurer] [redacted], BrokerLink should have provided a quote and a clear outline of the differences between the offers so [the Complainant] [redacted] could make an informed decision.
- BrokerLink regrets that the Complainant was not fully advised of the reasons for the transfer of [the Complainant's] [redacted] Policies, and we agree that we should have engaged in a more complete discussion. However, BrokerLink does not believe that its exchange with the Complainant amounts to misrepresentation, fraud, deceit, untrustworthiness or dishonesty in contravention of section 480(1)(a) of Alberta's *Insurance Act*. Nor do we believe it constitutes a false, misleading statement or representation under section 509(1)(a) if [sic] the *Act*.

Conclusion

Based on the above, BrokerLink respectfully disagrees with the investigator's conclusion that its actions could attract civil penalties. While the communication was imperfect, there was no intention to mislead the Complainant; BrokerLink was simply trying to ensure its customers received the best coverage for their need at a competitive premium.

BrokerLink will, however, be reviewing its practices and conducting training to ensure that our staff properly communicates with customers to proactively present all available options related to any products we offer.

[...]

[Emphasis added in original document]

On August 29, 2023, the Agency responded to the AIC investigator's July 28, 2023, correspondence with the following information:

[...]

As you will see in our responses below, the Policies were identified by [the Current Insurer] [redacted] as requiring action (i.e., moving to another insurer, re-underwriting) by BrokerLink. This is what initiated moving the Policies to [the Proposed Insurer] [redacted]. The change from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted] was not motivated in any way by BrokerLink's affiliation with the insurer. BrokerLink acknowledges that an error was made when the Complainant was advised that coverage was not available with [the Current Insurer] [redacted] at renewal. Although [the Current Insurer] [redacted] had identified the Policies as requiring action in their portfolio review, BrokerLink should have offered the Complainant a renewal with [the Current Insurer] [redacted] when requested.

Please see our responses below to your request for additional information.

1. A list of all the insurance companies BrokerLink Inc. was dealing with at the time of events that would have provided automobile insurance coverage.

[Proposed Insurer] [redacted], [Current Insurer] [redacted], [E.I.] [redacted], [P.H.I.] [redacted], [T.I.] [redacted], [P.I.] [redacted], [O.G.I.] [redacted], [C.I.] [redacted], [N.I.] [redacted]

2. Copy of the original application sent to all the insurance companies where BrokerLink requested quotes for the complainant.

There was no new application created for the [Proposed Insurer] [redacted] policy. BrokerLink relied on the Complainant's previous application for the [Current Insurer] [redacted] policy and used the [Current Insurer] [redacted] policy data, which was then submitted to the [Proposed Insurer] [redacted] portal for policy issuance.

3. Copy of all the quotes requested, received, and used by BrokerLink as comparable that helped to decide [the Proposed Insurer] [redacted] was the best choice.

[The Proposed Insurer] [redacted] was the only quote requested and used by BrokerLink. Based on familiarity with the available markets in the region, BrokerLink identified [the Proposed Insurer] [redacted] as offering the most comparable coverage for the Complainant. The [Proposed Insurer] [redacted] policy also offered superior coverage in certain areas, such as identity theft and a higher limit for loss of use on the property policy, the Claims Advantage endorsement on both policies, and the Minor Conviction Rating Waiver endorsement (CAE 5) on the auto policy. Based on these factors, BrokerLink determined that [the Proposed Insurer] [redacted] was the best option for the Complainant prior to making the offer.

[...]

7. Copy of the communication sent by [the Current Insurer] [redacted] to BrokerLink stating they were "no longer offering the coverage, [M.P.] [redacted]."

As a result of communications with [the Current Insurer] [redacted] (as noted in our response to item 10 below), the broker speaking with the Complainant mistakenly believed that they would not be able to renew the Policies with [the Current Insurer] [redacted]. We acknowledge that stating that [the Current Insurer] [redacted] was "no longer offering the coverage" was unclear and confusing for Complainant. When the Complainant requested that [the Complainant] [redacted] remain with [the Current Insurer] [redacted], BrokerLink should have requested a policy renewal from [the Current Insurer] [redacted] rather than making this statement.

8. Copy of the authorization held by BrokerLink to switch policies on behalf of [the Complainant] [redacted].

As stated in our response on March 3, 2023, BrokerLink proactively moved the Complainant's policy due to the expected increased premium with [the Current Insurer] [redacted] and the Complainant was advised of this via written notice 84 days prior to their renewal. This notice provided the Complainant with sufficient time to review and respond to the offer, which [the Complainant] [redacted] did.

9. "[...] Respectfully disagrees with this characterization of our process. [...]" A detail explanation of the BrokerLink process. Please explain to us the processes we misunderstood.

Please refer to item 8 above. We disagree with the characterization that the process of making an offer at renewal with sufficient notice and time to respond was a transfer "without consulting the Complainant or receiving any request to authorization to do so".

10. You also stated, "[...] was undertaken proactively because [the Current Insurer] [redacted] had indicated to BrokerLink that it could expect its customers to experience coverage changes and pricing increase." Include copy of the [Current Insurer] [redacted] notification mentioned above.

[...]. Upon reviewing their book of business in Alberta, [the Current Insurer] [redacted] provided a list of categorized risks and corresponding actions to BrokerLink. BrokerLink understood this to mean that if the indicated red and yellow policies remained with [the Current Insurer] [redacted] on renewal, these customers would likely experience coverage changes and/or pricing increases. The email communication in the attachment is from December 2020, but there were verbal discussions on this topic up until August 2021.

[The Current Insurer] [redacted] uses a broker advisory system to oversee each broker's book of business. While the advisory system has since changed since 2021, representatives of [the Current Insurer] [redacted] and BrokerLink meet occasionally to review the overall book of business that BrokerLink has with [the Current Insurer] [redacted]. If you would like further information on this system, we would be happy to connect you with [G.H.] [redacted], SVP and COO West of [the Current Insurer] [redacted].

[...]

12. Copy of the volume agreement between BrokerLink and [the Current Insurer] [redacted].

There is no volume agreement between BrokerLink and [the Current Insurer] [redacted].

13. Copy of the volume agreement between BrokerLink and [the Proposed Insurer] [redacted].

There is no volume agreement between BrokerLink and [the Proposed Insurer] [redacted].

14. A description of [the Proposed Insurer's] [redacted] interest in BrokerLink and how the ownership impacts BrokerLink's operation.

BrokerLink is a wholly owned subsidiary of [I.F.C.] [redacted]. [I.F.C.] [redacted] also owns [the Proposed Insurer] [redacted]. BrokerLink's ownership by [I.F.C.] [redacted] and affiliation with [the Proposed Insurer] [redacted] is disclosed to customers at point of sale in writing and is also disclosed on the BrokerLink website. While BrokerLink and [the Proposed Insurer] [redacted] share common ownership by [I.F.C.] [redacted], BrokerLink's operations are separate and distinct from [the Proposed Insurer] [redacted].

15. Any agreement between [the Proposed Insurer] [redacted] and BrokerLink that describes how BrokerLink must conduct its business.

[...]. This is the standard form broker agreement that [the Proposed Insurer] [redacted] uses with all of its brokers. BrokerLink is not treated any differently than other brokers that have a relationship with [the Proposed Insurer] [redacted]. Likewise, [the Proposed Insurer] [redacted] is not treated any differently than other carriers that have a relationship with BrokerLink.

[...]

[Emphasis added in original document]

On November 3, 2023, the Current Insurer provided the AIC investigator the following information:

[...]

Please find the response to your questions below:

1. Please confirm if policies number [redacted]9940 and [redacted]5400 were identified by [the Current Insurer] [redacted] as “requiring action (moving to another insurer, re-underwriting, etc.)”; therefore, [the Current Insurer] [redacted] contacted Brokerlink and asked them to notify the complainant that [the Current Insurer] [redacted] would not offer the product to [the Complainant] [redacted] anymore.

[The Current Insurer] [redacted] and other insurers use their own versions of a broker advisory system, which advises brokers of the estimated value and risk of insurance policies to the broker's overall book of business. Representatives of [the Current Insurer] [redacted] and Brokerlink meet on occasion to review the overall book of business that Brokerlink has with [the Current Insurer] [redacted]. Although the policies referenced above did appear on a list of BrokerLink business with [the Current Insurer] [redacted] that identified risks to be reviewed, [the Current Insurer] [redacted] did not ask Brokerlink to notify [the Complainant] [redacted] that [the Current Insurer] [redacted] would not offer the products to [the Complainant] [redacted].

2. Please confirm if [the Current Insurer] [redacted] stated to Brokerlink that you would no longer be offering the coverage the Complainant had in [the Complainant's] [redacted] policies mentioned earlier.

No, [the Current Insurer] [redacted] did not advise Brokerlink that it would no longer offer the coverages to [the Complainant] [redacted].
[...]
[Emphasis added in original]

On October 10, 2024, the Agency provided the following information by way of Addendum:

[...]
BrokerLink emphasizes that the decision to transfer the Complainant's automobile and tenant insurance policies from [the Current Insurer] [redacted] was done with the Complainant's best intentions in mind and with a view to maintaining comparable coverage for comparable premiums. BrokerLink understood that the Complainant would otherwise experience change in [the Complainant's] [redacted] coverage with [the Current Insurer] [redacted]. BrokerLink has acknowledged throughout this investigation ([...]) that its communications with the Complainant could have been clearer and its process more transparent. In addition to coaching provided to brokers about clear communications with its customers, BrokerLink provided immediate coaching to the individual broker who informed the Complainant, in error, that [the Current Insurer] [redacted] was no longer offering [the Complainant's] [redacted] coverage. BrokerLink remains committed to implementing better practices and ongoing training for its brokers.

The Accuracy of Information provided by the D/R.

[...]
Paragraph 48 of the Investigation Report implies the D/R had informed the Council investigator that [the Current Insurer] [redacted] had asked BrokerLink to transfer the Complainant's policies to another insurer. At no time during this investigation did the D/R tell the Council Investigators that [the Current Insurer] [redacted] asked BrokerLink to transfer the Complainant's policies. The D/R's representations in this regard were as follows:

- The Complainant's policies were identified by [the Current Insurer] [redacted] as requiring action (i.e. moving to another insurer, re-underwriting). BrokerLink understood this to mean that is the Complainant's Policies remained with [the Current Insurer] [redacted] on renewal, [the Complainant] [redacted] would experience coverage changes and/or pricing increases [...]. It was this understanding that initiated moving the Complainant's policies to [the Proposed Insurer] [redacted]; and
- Upon review of the Complainant's file, BrokerLink had ascertained that it was able to provide the Complainant insurance with [the Proposed Insurer] [redacted] with comparable coverage [...].

The responses provided by the D/R align with information provided by [the Current Insurer] [redacted] – that the Complainant's policies appeared on a list of business to be reviewed [...]. The D/R was accurate in his response to the Compliance Investigator. BrokerLink had a *bona fide* belief that moving the Complainant's insurance was more beneficial to [the Complainant] [redacted] than remaining with [the Current Insurer] [redacted].

Informed Decision-Making

In its March 3, 2023 response to the initial Investigation Report, BrokerLink acknowledged that the client should have been provided with a quote and clear outline of the differences in coverage between [the Current Insurer] [redacted] and [the Proposed Insurer] [redacted] [...]. BrokerLink acknowledges that it was inaccurate and misleading to inform the Complainant that [the Current Insurer] [redacted] was no longer offering the type of insurance that [the Complainant] [redacted] had previously held. This statement was made in error by a single broker. The broker was not instructed to tell the Complainant that [the Complainant's] [redacted] coverage with [the Current Insurer] [redacted] was no longer available and on review of the communications between the broker and Complainant, the broker was provided with coaching.

BrokerLink respectfully requests that Council consider the following information that BrokerLink provided the Claimant surrounding the transfer of [the Complainant's] [redacted] insurance from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted]:

- On June 30 2022, BrokerLink wrote to the Complainant to advise the Complainant that [the Complainant's] [redacted] insurance would be transferred to [the Proposed Insurer] [redacted] from [the Current Insurer] [redacted]. This was 84 days prior to the renewal of [the Complainant's] [redacted] insurance with [the

Current Insurer] [redacted] [...]. BrokerLink described the reasons it had chosen [the Proposed Insurer] [redacted]. BrokerLink invited the Complainant to contact its office with any questions.

- On July 5, 2022, the Complainant sent an e-mail to BrokerLink to inquire about the switch from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted]. BrokerLink's June 30, 2022 letter served its purpose of raising the change in the Complainant's insurance.
- When the Complainant expressed [the Complainant] [redacted] did not wish to transfer to [the Proposed Insurer] [redacted], BrokerLink offered to obtain other quotes for [the Complainant] [redacted]. The Complainant declined.

BrokerLink maintains that its process of sending a renewal or new policy documents 84 days prior to the end of an existing policy aligns with the fair treatment of customers. This practice provides insurance consumers with close to 3 months to review the coverage, whether it is a new policy or a renewal of an existing policy, and to contact BrokerLink with any questions or to make any changes (as the Complainant did in this case).

BrokerLink's Privacy Policy

BrokerLink disagrees with the conclusion in the Investigation Report that it did not have the Complainant's consent to share [the Complainant's] [redacted] bank information [...]. BrokerLink also disagrees with the allegation that BrokerLink violated privacy laws by sharing the Complainant's banking information with [the Proposed Insurer] [redacted] without the Complainant's consent [...].

Through its Privacy Promise, BrokerLink informs its customers in plain language that it collects, uses, and discloses personal information [...]

As the Complainant's agent for the purpose of paying insurance premiums, BrokerLink collected the Complainant's banking information in compliance with its Privacy Promise. Subsequently, when BrokerLink formed the understanding that the Complainant could expect changes in coverage and premiums, BrokerLink was again acting as the Complainant's agent and in accordance with its Privacy Promise when it provided the Complainant's banking information to [the Proposed Insurer] [redacted] for the purpose of paying insurance premiums. [...]

Negative Option Marketing

[...] BrokerLink strongly disagrees with the conclusion that sending a renewal policy without confirming the client wants the renewal amounts to negative option billing or that this practice is impermissible. [...]. Moreover, it has become industry standard that insurers automatically issue renewal policies for home and automobile insurance. Automatic renewals are relied on in the industry to avoid gaps in coverage.

BrokerLink respectfully submits the following with respect to negative option billing/marketing as it relates to the facts of this case:

- BrokerLink's conduct does not fall within that described by the SOI in the September 6, 2016 e-mail. When the Complainant asked that coverage with [the Proposed Insurer] [redacted] be canceled, BrokerLink did so. There was no attempt on the part of either BrokerLink or [the Proposed Insurer] [redacted] to collect premiums earned.
- While BrokerLink acknowledges that, in this case, the Complainant received a new policy, BrokerLink disagrees that sending a renewal to a customer amounts to "negative option marketing" or that it is prohibited in Alberta. Automatic renewals, sent to the client at least 45-60 days prior to the renewal date, are standard practice in the insurance industry.
- The Investigation Report points to a single e-mail, from eight years ago, to support an assertion that negative option billing is prohibited. While insurers and intermediaries are expected to comply with the CCIR/CISRO's *Guidance Conduct of Insurance Business and Fair Treatment of Customers*, negative option

billing is not expressly prohibited in Alberta's *Insurance Act*. The e-mails between the SOI and Alberta Insurance Council do not amount to law and, to BrokerLink's knowledge, does not form the subject of any published guidance. Unless insurers or intermediaries contact their respective regulator, they would have no way of knowing the position of the SOI or Alberta Insurance Council.

The Cancellation of the [Proposed Insurer] [redacted] Policies

[...]

BrokerLink submits that when an insurance broker, rather than the client personally, makes a request of the insurer to cancel the insured's policy, the insurance broker is acting as the client's agent. On August 5, 2022, BrokerLink informed the Complainant that BrokerLink (not the insurer) would need a signed cancellation form for the [Proposed Insurer] [redacted] policy to complete processing the cancellation effective September 22, 2022. Alberta's General Insurance Code of Conduct *requires* insurance agents to maintain records of insurance transactions. BrokerLink submits it was reasonable and a best practice as agent for the Complainant to request written instructions to cancel the Complainant's policies with [the Proposed Insurer] [redacted]. This documentation aligns with the expectation that insurance agents will maintain records of insurance transactions.

[...]

The Aggravating Factors

In addition to BrokerLink's earlier submissions and those above, BrokerLink responds as follows with respect to the aggravating factors listed in the Investigation Report:

a. **"The Agency's actions were reckless or intentional"** – BrokerLink's actions were neither reckless nor intentional. When BrokerLink inferred from [the Current Insurer] [redacted] that the Complainant could expect changes in coverage and/or increased premium, BrokerLink transferred the Complainant's insurance with the intention of ensuring [the Complainant] [redacted] had comparable coverage for a comparable premium. The Complainant was informed, in error, by a single broker that [the Complainant's] [redacted] coverage with [the Current Insurer] [redacted] was no longer available. The broker was provided with coaching when this error was discovered.

b. **"The actions of the Agency had a significant impact on the Complainant"** – BrokerLink disagrees that the Complainant's financial information was disclosed without [the Complainant's] [redacted] consent. [The Complainant's] [redacted] banking information was provided in accordance with BrokerLink's Privacy Promise available to the Complainant on its website. The Complainant did not pay any premiums to [the Proposed Insurer] [redacted].

[...]

[Emphasis added in original document]

The Agency provided to the AIC investigator the broker agreement, made effective on January 1, 2012, between the Agency and the Proposed Insurer, which addresses the transfer of the Complainant's personal information:

18. TRANSFER OF PERSONAL INFORMATION

Before transferring personal information to the Company, the Broker shall, in all cases, obtain consent for the collection, use and disclosure of the personal information from the individual to whom the personal information pertains.

Discussion

In order for the Council to conclude that the Agency has committed an offence pursuant to s. 480(1)(a) of the Act, the Report must prove, on the basis of clear and cogent evidence, that it is more likely than not that the Agency committed the act as alleged. The Council is cognizant that findings of guilt under s. 480(1)(a) can dramatically impact an insurance intermediary's ability to remain in the industry. Therefore, the Council carefully weighs all evidence before it before reaching its decision.

The applicable legal test to determine the Agency's guilt in violating s. 480(1)(a) of the Act is set out in the Court of Queen's Bench of Alberta Decision, *Roy v. Alberta (Insurance Councils Appeal Board)*, 2008 ABQB 572 (hereinafter referred to as "*Roy*"). In *Roy*, the Life Insurance Council found that an agent violated s. 480(1)(a) of the Act by attesting to completing the required continuing education hours when he did not, in fact, complete the required continuing education hours. The Insurance Councils Appeal Board also found the agent guilty on appeal. The agent advanced the decision to the Court of Queen's Bench of Alberta.

In his reasons for judgment dismissing the appeal, Mr. Justice Marceau wrote as follows at paragraphs 24 to 26:

[24] The *Long* case, albeit a charge under the Criminal Code of Canada where the onus of proof is beyond a reasonable doubt (not on a preponderance of evidence as in this case), correctly sets out the two step approach, namely the court or tribunal must first decide whether objectively one or more of the disjunctive elements have been proven. If so, the tribunal should then consider whether the mental element required has been proved. While the Appeal Board said it was applying the *Long* decision, it did not make a finding as to whether step 1 had been proved with respect to each of the disjunctive elements. Rather it immediately went into a step 2 analysis and found that the mental element required for untrustworthiness might be less than the mental element required for fraud (as a given example).

[25] I am of the view that statement was in error if it was made to convey a sliding scale of *mens rea* or intent depending on which of the constituent elements was being considered. In my view, **the difference between the disjunctive elements may be found in an objective analysis of the definition of each** and certainly, as demonstrated by the *Long* case, what constitutes fraud objectively may be somewhat different from untrustworthiness. However **once the objective test has been met, one must turn to the mental element.** Here to decide the mental element the Appeal Board was entitled, as it did, to find the mental element was satisfied **by the recklessness of the Applicant.**

[26] While the language used by the Appeal Board may be characterized as unfortunate, on this review on the motion of the Applicant I need not decide whether the Appeal Board reasonably could acquit the Applicant on four of the disjunctive elements. Rather, the only matter I must decide is whether the Appeal Board **acting reasonably could conclude, as they did, that the Applicant's false answer together with his recklessness justified a finding of "untrustworthiness".**

[Emphasis added]

The decision of the Insurance Councils Appeal Board was subsequently upheld, its findings confirmed, and the agent was found guilty of an offence pursuant to s. 480(1)(a) of the Act.

The evidence in these types of cases is based on the concept of "*clear and cogent*" evidence. In *The Matter of the Appeal of Arney Falconer*, Chairperson Hopkins dealt with this principle of clear and cogent evidence and provided as follows:

The Life Insurance Council stated in the Decision that there is a requirement "for 'clear and cogent evidence' because our findings can dramatically impact an insurance agent's ability to remain in the industry". However, the requirement for clear and cogent evidence does not mean that the evidence is to be scrutinized any differently than it should be in any other civil case. **In all civil cases evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities.** In *F.H. v. McDougall* 2008 SCC [sic]; [2008] 3 S.C.R. 41 the Supreme Court of Canada states:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending

upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[Emphasis added]

Contraventions of s. 480(1)(a) are *mens rea* offences that require proof of intent, knowledge, or recklessness on a balance of probabilities. Section 480(1)(a) of the Act reads:

If the Minister is satisfied that the holder or a former holder of a certificate of authority has been guilty of misrepresentation, fraud, deceit, untrustworthiness or dishonesty, [...] the Minister may revoke, suspend or refuse to renew or reinstate one or more of the certificates of authority held by the holder, impose terms and conditions provided for in the regulations on one or more of the certificates of authority held by the holder and impose a penalty on the holder or former holder.

Section 509(1)(a) of the Act provides that “[n]o insurer, insurance agent or adjuster may make a false or misleading statement, representation or advertisement.” Offences such as those considered under s. 509(1)(a) of the Act are strict liability offences. As such, the AIC only has the onus to prove that the Agency’s actions regarding the transfer of insurance policies were done with a false or misleading statement, representation or advertisement. Once this occurs, the onus then shifts to the Agency to establish a defence of due diligence. To establish this, the Agency must prove that all reasonable measures were taken to avoid making a false or misleading statement, representation or advertisement.

Similarly, s.509(1)(c) of the Act provides that “[n]o insurer, insurance agent or adjuster may engage in any unfair, coercive or deceptive act or practice.” Offences such as those considered under s. 509(1)(c) of the Act are strict liability offences. As such, the AIC only has the onus to prove that the Agency’s actions regarding the transfer of insurance policies were unfair, coercive or deceptive acts or practices. Once this occurs, the onus then shifts to the Agency to establish a defence of due diligence. To establish this, the Agency must prove that all reasonable measures were taken to avoid taking part in any unfair, coercive or deceptive acts or practices.

Section 4 of the *Insurance Councils Regulation*, A.R. 126/2001, sets out the composition requirements of the General Insurance Council. The Council is comprised of eight members: two appointed by the Lieutenant Governor in Council that do not hold (insurance) certificates of authority, one appointed by the Insurance Bureau of Canada that is engaged in general insurance business and employed by a licensed insurer that does not restrict its agents from acting as general insurance agents for other insurers, three elected in accordance with the *Insurance Councils Regulation*, A.R. 126/2001, that hold general insurance certificates of authority and are not employed by an insurer

and are not restricted by contract from acting as an insurance agent for more than one insurer, and two appointed by the Insurance Bureau of Canada that are engaged in the general insurance business and employed by a licensed insurer that are restricted from acting as a general insurance agent for other insurers.

Council quorum is established by the *General Insurance Council By-Laws*, adopted July 11, 2007:

4. QUORUM

4.1 The quorum for all meetings of the General Insurance Council shall be 5 members.

Although quorum was present to conduct the Council meeting, quorum was lost with respect to this investigation and could not be repaired as two of the five Council members recused themselves due to a conflict of interest. Accordingly, the Council struck a *Review Committee* in accordance with *Articles I and IV* of the *General Insurance Council By-Laws* duly approved July 11, 2007:

ARTICLE IV – COMMITTEES

1. ESTABLISHING COMMITTEES

1.1. The General Insurance Council may at any meeting establish any standing or ad hoc committees that it deems necessary to carry out the **objects** of the General Insurance Council and may by resolution set out the duties and function of such committees. [...]

ARTICLE I – OBJECTS

1.1 The General Insurance Council has its objects:

[...]

- (i) to revoke, suspend and/or impose penalties against the holder or former holder of an insurance agent's certificate of authority pursuant to section 480 of the *Insurance Act*, [...]

[Emphasis added]

The *Review Committee* was comprised of three voting members of the Council. The *Review Committee* was charged with reviewing the Report and making recommendations for the Council to accept. The Council conceded that the recommendations of the *Review Committee* would be accepted by the Council and binding on the Council as if the Council had rendered the decision as a whole.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 1, that the Agency is guilty of two (2) violations of s. 509(1)(a) of the Act. The *Review Committee* recommended that a civil penalty in the amount of \$1,000.00 be levied against the Agency. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 2, that the Agency is guilty of two (2) violations of s. 480(1)(a) of the Act. The *Review Committee* recommended that a civil penalty in the amount of \$5,000.00 be levied against the Agency. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 3, that the Agency is guilty of two (2) violations of s. 509(1)(c) of the Act. The *Review Committee* recommended that a civil penalty in the amount of \$1,000.00 be levied against the Agency. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 4, that the Agency is guilty of two (2) violations of s. 509(1)(c) of the Act. The *Review Committee* recommended that a civil penalty in the amount of \$1,000.00 be levied against the Agency. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 5, that the Agency is not guilty of violating s. 509(1)(c) of the Act. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 6, that the Agency is not guilty of violating s. 480(1)(a) of the Act. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

The *Review Committee* convened. The *Review Committee* recommended, as it relates to Count 7, that the Agency is guilty of two (2) violations of s. 509(1)(c) of the Act. The *Review Committee* recommended that the Council refuse to levy a civil penalty against the Agency. The Council accepted the recommendations of the *Review Committee* by way of a motion duly made and carried at a properly conducted meeting of the Council.

Count #1

The Report alleged that the Agency was guilty of two (2) counts of making a false or misleading statement, representation or advertisement as contemplated by s. 509(1)(a) of the Act when the Agency unilaterally transferred two (2) of the Complainant's insurance policies from the Current Insurer to the Proposed Insurer. In the alternative, the Report alleged that the Agency was guilty of two (2) counts of engaging in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act.

The Council was concerned with the following statements made by the Agency in its June 30, 2022 letter to the Complainant:

[...]

Brokerlink strives to place the needs of our customers first, ensuring they are informed and up to date on any market changes impacting their policies.

As your preferred Broker, and in accordance with our commitment to you, we would like to advise of the upcoming relocation of your [Current Insurer] [redacted] personal policy.

Upon review and after careful consideration, we have selected [the Proposed Insurer] [redacted] to be your insurance provider. We have found that [the Proposed Insurer] [redacted] will be able to deliver a product more closely aligned with your insurance needs.

[...]

In addition, if you are presently on a monthly payment plan, the withdrawals from your account will now be made by [the Proposed Insurer] [redacted].

[...]

Also of significance to the Council was the July 5, 2022, email that the Complainant sent to the Agency, where the Complainant clearly expresses that they did not authorize changes to their policy:

Hi. Policy [redacted]5400 and [redacted]9940

Please call me urgently at [redacted] as I do not authorize changes to my policy. I am not sure why these changes including my bank withdrawal will now be [the Proposed Insurer] [redacted]. I never asked for these changes. I called to change address and ensure my policy information was correct. I did not ask or inquire about [the Proposed Insurer] [redacted].

[...]

In light of the Agency's statements in the June 30, 2022, letter to the Complainant, along with the Complainant's statements in their July 5, 2022, email to the Agency, the evidence confirmed that the Agency unilaterally, and without the Complainant's consent, transferred two of the Complainant's policies from the Current Insurer to the Proposed Insurer. Therefore, the Council finds that the Agency made a false or misleading statement, representation or advertisement as contemplated by s. 509(1)(a) of the Act and therefore has breached s. 480(1)(b) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(b) of the Act not exceeding \$1,000.00 per demonstrated offence, in accordance with s. 36.1(1)(b) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. The Council considers this violation of s. 480(1)(b) involving the Complainant's two policies as one incident and therefore one demonstrated offence and orders a civil penalty of \$1,000.00 be levied against the Agency.

Count #2

The Report alleged that the Agent was guilty of two (2) counts of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when the Agency misleadingly claimed that the Current Insurer did not offer the type of insurance the Complainant had despite offering the same policies.

The Council was concerned by the statement from the Agency in its July 6, 2022, email to the Complainant, in which the Agency explained that the Current Insurer was no longer offering the coverage that the Complainant had:

[...]

Your policy was rolled over from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted] as [the Current Insurer] [redacted] was no longer offering the coverage. There was a letter explaining the relocation sent out.
[...]

The Council also took into consideration the Agency's statements in its March 3, 2023, letter to the AIC, stating that the Agency should have provided a quote for maintaining insurance coverage with the Current Insurer, along with an outline of the differences between the potential insurance policy option from the Proposed Insurer:

[...]

- Brokerlink acknowledges that the communication with the customer was not as clear as it should have been. Brokerlink did not believe it would be able to renew the Policies with [the Current Insurer] [redacted] for the same or similar premium and coverage, but once the Complainant requested that [the Complainant] [redacted] remain with [the Current Insurer] [redacted], Brokerlink should have provided a quote and a clear outline of the differences between the offers so [the Complainant] [redacted] could make an informed decision.

[...]

Of particular significance to the Council were the statements from the Agency acknowledging they made an error in advising the Complainant that coverage was no longer available with the Current Insurer, and that the Agency should have requested a policy renewal from the Current Insurer. These statements were found in the Agency's August 29, 2023, email response to the AIC:

[...]

As you will see in our responses below, the Policies were identified by [the Current Insurer] [redacted] as requiring action (i.e., moving to another insurer, re-underwriting) by BrokerLink. This is what initiated moving the Policies to [the Proposed Insurer] [redacted]. The change from [the Current Insurer] [redacted] to [the Proposed Insurer] [redacted] was not motivated in any way by BrokerLink's affiliation with the insurer. BrokerLink acknowledges that an error was made when the Complainant was advised that coverage was not available with [the Current Insurer] [redacted] at renewal. Although [the Current Insurer] [redacted] had identified the Policies as requiring action in their portfolio review, BrokerLink should have offered the Complainant a renewal with [the Current Insurer] [redacted] when requested.

[...]

7. Copy of the communication sent by [the Current Insurer] [redacted] to BrokerLink stating they were "no longer offering the coverage, [M.P.] [redacted]."

As a result of communications with [the Current Insurer] [redacted] (as noted in our response to item 10 below), the broker speaking with the Complainant mistakenly believed that they would not be able to renew the Policies with [the Current Insurer] [redacted]. We acknowledge that stating that [the Current Insurer] [redacted] was "no longer offering the coverage" was unclear and confusing for Complainant. When the Complainant requested that [the Complainant] [redacted] remain with [the Current Insurer] [redacted], BrokerLink should have requested a policy renewal from [the Current Insurer] [redacted] rather than making this statement.

[...]

Finally, the Council took into consideration the November 3, 2023, email response from the Current Insurer to the AIC, which stated that the Current Insurer did not advise the Agency that it would no longer offer the insurance coverage to the Complainant, and that they did not ask the Agency to notify the Complainant that they would not offer this insurance coverage to the Complainant:

[...]

Representatives of [the Current Insurer] [redacted] and BrokerLink meet on occasion to review the overall book of business that BrokerLink has with [the Current Insurer] [redacted]. Although the policies referenced above did appear on a list of BrokerLink business with [the Current Insurer] [redacted] that identified risks to be reviewed, [the Current Insurer] [redacted] did not ask BrokerLink to notify [the Complainant] [redacted] that [the Current Insurer] [redacted] would not offer the products to [the Complainant] [redacted].
[...]
[...] [The Current Insurer] [redacted] did not advise BrokerLink that it would no longer offer the coverages to [the Complainant] [redacted].
[...]

In light of the Agency's statements that the Current Insurer was no longer offering the insurance coverage to the Complainant, along with confirmation from both the Agency and the Current Insurer that this was not factually accurate, and that the Agency was not specifically advised as such by the Current Insurer, the objective and subjective elements of the applicable legal test under s. 480(1)(a) are met. This was intentional conduct, and it is fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated pursuant to s. 480(1)(a) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(a) of the Act not exceeding \$5,000.00 per demonstrated offence, in accordance with s. 36.1(1)(a) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. The Council considers this violation of s. 480(1)(a) involving the Complainant's two policies as one incident and therefore one demonstrated offence, and given the serious nature of this offence, the Council orders a civil penalty of \$5,000.00 be levied against the Agency.

Count #3

The Report alleged that the Agency was guilty of two (2) counts of engaging in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act when the Agency failed to provide the information necessary for the Complainant to make an informed decision regarding the Complainant's policies.

The Council found significant the June 30, 2022, letter from the Agency to the Complainant, in which the Agency stated that they have selected the Proposed Insurer as the Complainant's new insurer, without offering any other option for the Complainant to consider:

[...]
BrokerLink strives to place the needs of our customers first, ensuring they are informed and up to date on any market changes impacting their policies.

As your preferred Broker, and in accordance with our commitment to you, we would like to advise of the upcoming relocation of your [Current Insurer] [redacted] personal policy.

Upon review and after careful consideration, we have selected [the Proposed Insurer] [redacted] to be your insurance provider. We have found that [the Proposed Insurer] [redacted] will be able to deliver a product more closely aligned with your insurance needs.

[...]

The Council took particular note of the March 3, 2023, letter from the Agency to the AIC, in which the Agency stated that their communication with the Complainant should have been more clear and should have included an outline of different policy offers and their respective differences in order for the Complainant to make an informed decision:

[...]

- BrokerLink acknowledges that the communication with the customer was not as clear as it should have been. BrokerLink did not believe it would be able to renew the Policies with [the Current Insurer] [redacted] for the same or similar premium and coverage, but once the Complainant requested that [the Complainant] [redacted] remain with [the Current Insurer] [redacted], BrokerLink should have provided a quote and a clear outline of the differences between the offers so [the Complainant] [redacted] could make an informed decision.
- BrokerLink regrets that the Complainant was not fully advised of the reasons for the transfer of [the Complainant's] [redacted] Policies, and we agree that we should have engaged in a more complete discussion.

[...]

Also of significance to the Council was the Agency's August 29, 2023, email response to the AIC investigator, in which the Agency clarified that they simply relied on the Complainant's previous application for the Current Insurer to submit information for the new Proposed Insurer policy, and that the only quote requested by the Agency and provided to the Complainant was for the Proposed Insurer policy:

[...]

2. Copy of the original application sent to all the insurance companies where BrokerLink requested quotes for the complainant.

There was no new application created for the [Proposed Insurer] [redacted] policy. BrokerLink relied on the Complainant's previous application for the [Current Insurer] [redacted] policy and used the [Current Insurer] [redacted] policy data, which was then submitted to the [Proposed Insurer] [redacted] portal for policy issuance.

3. Copy of all the quotes requested, received, and used by BrokerLink as comparable that helped to decide [the Proposed Insurer] [redacted] was the best choice.

[The Proposed Insurer] [redacted] was the only quote requested and used by BrokerLink. Based on familiarity with the available markets in the region, BrokerLink identified [the Proposed Insurer] [redacted] as offering the most comparable coverage for the Complainant. The [Proposed Insurer] [redacted] policy also offered superior coverage in certain areas, such as identity theft and a higher limit for loss of use on the property policy, the Claims Advantage endorsement on both policies, and the Minor Conviction Rating Waiver endorsement (CAE 5) on the auto policy. Based on these factors, BrokerLink determined that [the Proposed Insurer] [redacted] was the best option for the Complainant prior to making the offer.

[...]

In light of the Agency's statements in the June 30, 2022, March 3, 2023, and August 29, 2023, correspondence from the Agency, the evidence confirmed that the Agency failed to provide the information necessary for the Complainant to make an informed decision regarding the Complainant's policies. Therefore, the Council finds that the Agency engaged in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act and has thus breached s. 480(1)(b) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(b) of the Act not exceeding \$1,000.00 per demonstrated offence, in accordance with s. 36.1(1)(b) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. The Council considers this violation of s. 480(1)(b) involving the Complainant's two policies as one incident and therefore one demonstrated offence and orders a civil penalty of \$1,000.00 be levied against the Agency.

Count #4

The Report alleged that the Agency was guilty of two (2) counts of engaging in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act when the Agency disclosed the Complainant's financial information to the Proposed Insurer without the Complainant's express consent.

The Council took particular note of the June 30, 2022, letter from the Agency to the Complainant, in which the Agency stated that the withdrawals from the Complainant's account would now be made by the Proposed Insurer, without seeking the consent of the Complainant:

[...]

In addition, if you are presently on a monthly payment plan, the withdrawals from your account will now be made by [the Proposed Insurer] [redacted].

[...]

Also of particular significance to the Council is the July 5, 2022, email from the Complainant to the Agency, in which the Complainant clearly indicated that they have made no request and provided no authorization for the disclosure of the Complainant's financial information from the Agency to the Proposed Insurer:

Hi. Policy [redacted]5400 and [redacted]9940

Please call me urgently at [redacted] as I do not authorize changes to my policy. I am not sure why these changes including my bank withdrawal will now be [the Proposed Insurer] [redacted]. I never asked for these changes. I called to change address and ensure my policy information was correct. I did not ask or inquire about [the Proposed Insurer] [redacted].

[...]

Additionally, the Council took into consideration the broker agreement, effective on January 1, 2012, between the Agency and the Proposed Insurer, which addressed the transfer of the Complainant's personal information:

18. TRANSFER OF PERSONAL INFORMATION

Before transferring personal information to the Company, the Broker shall, in all cases, obtain consent for the collection, use and disclosure of the personal information from the individual to whom the personal information pertains.

In light of the Agent's statements in their June 30, 2022, letter, the Complainant's statements in their July 5, 2022, email, and the broker agreement between the Agency and the Proposed Insurer, the evidence confirms that the Agency disclosed the Complainant's financial information to the Proposed Insurer without the Complainant's

express consent. Therefore, the Council finds that the Agency engaged in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act and has thus breached s. 480(1)(b) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(b) of the Act not exceeding \$1,000.00 per demonstrated offence, in accordance with s. 36.1(1)(b) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. The Council considers this violation of s. 480(1)(b) involving the Complainant's two policies as one incident and therefore one demonstrated offence and orders a civil penalty of \$1,000.00 be levied against the Agency.

Count #5

The Report alleged that the Agency was guilty of two (2) counts of engaging in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act when the Agency selected the Proposed Insurer as the Complainant's new insurer without requesting other quotes from different insurers. The Council finds that there is insufficient evidence to find the Agency guilty of violating s. 509(1)(c) of the Act.

Count #6

The Report also alleged that the Agent was guilty of two (2) counts of fraud, deceit, dishonesty, untrustworthiness and/or misrepresentation as contemplated by s. 480(1)(a) of the Act when the Agency stated that the Complainant's new policy with the Proposed Insurer needed to be cancelled in writing contrary to the Statutory Conditions in the Act. The Council finds that as the request for a written cancellation originated from the Proposed Insurer and not the Agency, the Agency is not guilty of violating s. 480(1)(a) of the Act.

Count #7

The Report alleged that the Agency was guilty of two (2) counts of engaging in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act when the Agency did not comply with the Complainant's request to cancel the policies with the Proposed Insurer and insisted on the Complainant signing a cancellation form.

The Council found of particular note the August 5, 2022, email from the Agency to the Complainant, in which the Agency stated that they would need a signed cancellation form in order to cancel the Proposed Insurer policy:

[...]

We will need a signed cancellation form for the [Proposed Insurer] [redacted] policy to complete processing the cancellation effective September 22, 2022. I have sent you a separate email for electronic signature on the cancellation form. If you are able to please type your name where indicated on this form, it will complete the electronic signature. I will then receive the signed document in my email to finish processing the cancellation. Once [the Proposed Insurer] [redacted] has processed the cancellation I will send you another email with the cancellation documents to confirm it has been completed.

[...]

In light of the Agency's statements in their August 5, 2022, email, the evidence confirms that the Agency did not comply with the Complainant's request to cancel the policies with the Proposed Insurer and insisted on the Complainant signing a cancellation form. Therefore, the Council finds that the Agency engaged in an unfair, coercive or deceptive act or practice as contemplated by s. 509(1)(c) of the Act and has thus breached s. 480(1)(b) of the Act.

In terms of the available sanction, the Council may impose a civil penalty for a violation of s. 480(1)(b) of the Act not exceeding \$1,000.00 per demonstrated offence, in accordance with s. 36.1(1)(b) of the *Insurance Agents and Adjusters Regulation*, AR 122/2001. The Council considers this violation of s. 480(1)(b) involving the Complainant's two policies as one incident and therefore one demonstrated offence, however, the Council refuses to levy a civil penalty against the Agency.

Conclusion

Collectively, the Council is comprised of both industry and public members who are well-equipped to assess consumer risk and industry competence. The Council weighed the effects of the alleged actions, the evidence presented, and the accounts of all parties involved when arriving at their conclusion.

Consumers who purchase insurance products expect that insurance agencies will act with the utmost good faith while carrying out their work. Honesty and integrity are the hallmarks of a good insurance agency. An insurance agency owes a fiduciary obligation to act in the best interest of their clients. It is, therefore, not unreasonable to expect that a high standard of due diligence be practiced by insurance agencies. The relationship between an insurance intermediary is such that the client relies on the Agency's expertise, competency and integrity to affect the discussed coverage.

Insurance agencies operate in a profession which necessitates placing the client's interests first and foremost when determining policy coverage and the choice of insurer, including engaging in a discussion with clients on their insurance needs, informing clients of different insurance product options and insurers, and obtaining the full and informed consent of their clients. Clients have a right to be made aware of changes to their insurer and have a right to execute the action of informed consent. Clients are never well served when information regarding their policies is not fully and properly disclosed to them, and where they are not presented with various options and given the opportunity to properly consent to any insurance policy or insurer changes.

The Council therefore orders that a total civil penalty of \$8,000.00 for Count #1, Count #2, Count #3, Count #4 and Count #7 be levied against the Agency.

The Council found the Agency not guilty in relation to Count #5 and Count #6.

The civil penalty must be paid within thirty (30) days of the date the decision is mailed. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue. Pursuant to s. 482 of the Act (copy enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a Notice of Appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: January 22, 2025

[Original Signed By]

Amanda Sawatzky, Chairperson
General Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001**Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Contact Information and Useful Links for Appeal:

Email: tbfi.insurance@gov.ab.ca

Phone: 780-643-2237

Fax: 780-420-0752

Toll-free in Alberta: Dial 310-0000, then the number

Mailing Address: 402 Terrace Building, 9515 – 107 Street Edmonton, AB T5K 2C3

Link: [Bulletins, notices, enforcement activities | Alberta.ca](#) – *Interpretation Bulletin 02-2021 – Submitting Notices of Appeal of Insurance Council Decisions*