

In the Matter of the

FINANCIAL INSTITUTIONS ACT, RSBC 1996, c.141
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

DEREK WILLIAM FUNG
(the “Former Licensee”)

ORDER

As Council made an intended decision on December 10, 2024, pursuant to sections 231, 236, and 241.1 of the Act; and

As Council, in accordance with section 237 of the Act, provided the Former Licensee with written reasons and notice of the intended decision dated January 9, 2025; and

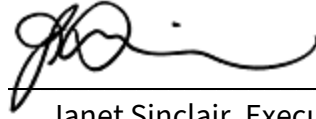
As the Former Licensee has not requested a hearing of Council’s intended decision within the time period provided by the Act;

Under authority of sections 231, 236, and 241.1 of the Act, Council orders that:

- 1) The Former Licensee is fined \$2,000, to be paid by May 20, 2025;
- 2) The Former Licensee is required to complete an ethics course, as acceptable to Council, prior to being licensed in the future;
- 3) The Former Licensee is assessed Council’s investigation costs in the amount of \$2,312.50, to be paid by May 20, 2025;
- 4) Council will not consider an application for any insurance licence from the Former Licensee for a period of one year, commencing on February 18, 2025 and ending at midnight on February 17, 2026 and until the fine and investigation costs are paid in full and the course has been completed.

Order
Derek William Fung
LIC-199846C147008R1 / COM-2022-00017
February 18, 2025
Page 2 of 2

This order takes effect on the **18th day of February, 2025.**

A handwritten signature in black ink, appearing to read 'Janet Sinclair', written over a horizontal line.

Janet Sinclair, Executive Director
Insurance Council of British Columbia

INTENDED DECISION

of the

INSURANCE COUNCIL OF BRITISH COLUMBIA (“Council”)

respecting

DEREK WILLIAM FUNG (the “Former Licensee”)

1. Pursuant to section 232 of the *Financial Institutions Act* (the “Act”), Council conducted an investigation to determine whether the Former Licensee acted in compliance with the requirements of the Act, Council Rules and Code of Conduct relating to allegations that the Former Licensee regularly processed Insurance Corporation of British Columbia (“ICBC”) one-year vehicle insurance Autoplan policies that were then cancelled days later, contrary to ICBC policies and procedures.
2. On October 24, 2024, as part of Council’s investigation, a Review Committee (the “Committee”) comprised of Council members met via video conference to discuss the investigation. An investigation report prepared by Council staff was distributed to the Committee and the Former Licensee before the meeting. Although the Former Licensee was provided with advance notice of the October 24, 2024, meeting, the Former Licensee did not attend the meeting. Having reviewed the investigation materials and after discussing the matter, the Committee prepared a report for Council.
3. The Committee’s report, along with the aforementioned investigation report were reviewed by Council at its December 10, 2024, meeting, where it was determined the matter should be disposed of in the manner set out below.

PROCESS

4. Pursuant to section 237 of the Act, Council must provide written notice to the Former Licensee of the action it intends to take under sections 231, 236 and 241.1 of the Act before taking any such action. The Former Licensee may then accept Council’s decision or request a formal hearing. This intended decision operates as written notice of the action Council intends to take against the Former Licensee.

FACTS

5. The Former Licensee became licensed with the Insurance Council as a Level 1 general insurance salesperson (“Level 1 Salesperson”) on May 19, 2015. The Former Licensee had an authority to represent an agency (the “Agency”) from November 8, 2019, to August 23, 2021. The Former Licensee’s licence has been inactive since August 23, 2021, and was cancelled on August 3, 2022, for non-renewal.
6. On July 4, 2018, and February 16, 2020, ICBC issued Broker News Bulletins on Licensing Vehicles Appropriately and Some Important Reminders for Temporary Operation Permits. ICBC reminded Autoplan agents that when a vehicle is licensed, it must be for the purpose of operation on a British

Columbia highway. If a licensee is aware that the only reason a policy is being sold is to facilitate the export of the vehicle, and the intention of the customer is to cancel the policy within days of issuance, the customer should only be sold a Temporary Operation Permit (“TOP”).

7. On May 14, 2021, Council issued ICBC a Production Order requesting records from July 4, 2018, to May 14, 2021, where an agency, or a licensee in the same agency office, placed more than 40 one-year policies on newer vehicles that were subsequently cancelled and transferred within 30 days.
8. The records received from ICBC showed that between May 25, 2020, and March 31, 2021, the Former Licensee processed 55 transactions involving new or newer luxury vehicles. The Former Licensee issued 55 one-year insurance policies, cancelled all of the policies, and then facilitated the transfer of ownership to subsequent owners, all within three days or less. In addition, seven of these short-term cancellations involved seven different named purchasers using the same credit card to pay for the one-year policies. Of the 55 transactions, 32 policies were transferred to the same subsequent owner, Company ABC, and 23 policies were transferred to the same subsequent owner, Company DEF.
9. On January 28, 2022, ICBC conducted an interview with the Former Licensee. The Former Licensee stated that he serviced auto dealerships while working at the Agency, and that he was introduced to Company ABC and Company DEF. He stated that when he realized that the transactions he was processing were not permitted, he stopped processing the transactions for Company ABC and Company DEF and informed them about his decision. The Former Licensee stated that although Company ABC and Company DEF wanted him to continue placing the policies or recommend someone else to assist them, he declined to do so.
10. In the ICBC interview, the Former Licensee was asked if, when he was conducting the transactions, he also processed the new vehicle licence plate, the cancellation of the policy, and the subsequent transfer to Company ABC or Company DEF. He replied, “Yes, possibly some times just do the new plate. I’d issue a plate and then cancel it a couple days later, they said they needed to move the car and something for exporting, insurance for that”. The Former Licensee stated that he did sell an annual policy when he knew the policy would be cancelled within a short period of time. He said that he was expected to do this, and did not believe there was anything wrong with this. However, he stated that he found it “weird” that ICBC didn’t have a clawback commission provision in place, so he believed it was acceptable.
11. In the ICBC interview, the Former Licensee also expressed regret for his actions and stated “It wasn’t my intention to defraud ICBC, [I] thought it was just allowed to do it. If I knew it was going to get me in trouble or it was not allowed, I wouldn’t have done it. Any money I made, it wasn’t worth it. Insurance was supposed to be my career and I wouldn’t jeopardize it for this. I regret it happened.”
12. On February 27, 2022, and December 11, 2022, the Former Licensee emailed his submissions to the Council’s investigator. The Former Licensee stated that he was not aware of ICBC’s communications entitled Licensing Vehicles Appropriately, dated July 4, 2018, and Some Important Reminders for Temporary Operation Permits, dated February 16, 2020. He also stated that he was not aware of the business of exporting vehicles at the time of the short-term cancellation transactions. Concerning

remuneration, the Former Licensee stated that he was not paid any amount above and beyond his ICBC commission. He denied that common purchasers were involved in any of the transactions and stated that he did not know if the purchasers received any remuneration for the transactions.

13. On December 11, 2022, the Former Licensee replied to a further set of questions from Council regarding his involvement. He said that initially, the customers stated that the vehicles would be used for pleasure purposes and only for several days. He stated that he would have recommended a TOP but that the customers preferred a one-year policy.
14. The Former Licensee also stated that as he processed more of these transactions, he eventually became aware that the policies would be cancelled shortly after being placed. The Former Licensee stated that “after a while yes I did know but did not think too much of it as it just became normal.” He also stated that when the customers returned to cancel the policies, he would offer them other options, such as storage insurance, but when the customers kept declining, he stopped offering this option.
15. The Former Licensee stated that he did not bring the short-term cancellation transactions to his manager’s attention. He said that he believed it was unnecessary and felt that if there was an issue, his manager would have mentioned it to him.
16. As a result of ICBC’s investigation into the Former Licensee’s conduct, on February 10, 2022, the Former Licensee was prohibited from conducting ICBC Autoplan business and accessing ICBC’s Broker Connect for a period of six months.

ANALYSIS

17. Council determined that the Former Licensee repeatedly placed and collected commissions for one-year Autoplan insurance policies when he ought to have known they were suspicious, not intended for the purpose of operation on a British Columbia highway for a one-year period, and would be cancelled shortly after being issued. The Former Licensee admitted that he sold customers one-year policies knowing that they would be cancelled shortly after being issued. In addition, he should have known from the repeated transactions with Company ABC and Company DEF that the policies were being cancelled shortly after issuance and then transferred to Company ABC and Company DEF. Given all of the indicators, he should have made appropriate inquiries about whether a TOP was required instead of continually issuing one-year Autoplan policies and then cancelling them shortly thereafter. The Former Licensee should have known that issuing these 55 one-year Autoplan policies was contrary to the procedures and interests of ICBC. The Former Licensee did not adhere to the authority of the insurer when he processed and placed one-year Autoplan policies knowing that the vehicles were not intended to be in operation on a British Columbia highway for one year.
18. Council determined that the Former Licensee’s statement that he was unaware of the July 4, 2018, and February 16, 2020, ICBC Bulletins relating to the issuance of TOP demonstrated a lack of competence and would not be in line with usual practice. The Former Licensee should have made

himself aware of ICBC procedures and announcements relating to the insurance services he was providing.

19. Given these factors, Council found that the Former Licensee did not conduct himself in a manner consistent with the usual practice. Council considered the impact of Council Rule 7(8) and Council's Code of Conduct guidelines, including section 3 ("Trustworthiness"), section 4 ("Good Faith"), section 5 ("Competence"), section 7 ("Usual Practice: Dealing with Clients") and section 8 ("Usual Practice: Dealing with Insurers") on the Former Licensee's conduct. Council concluded that the Former Licensee's conduct amounted to breaches of the above Council Rule and Code of Conduct sections, as well as the professional standards set by the Code of Conduct.

PRECEDENTS

20. Before making its decision in this matter, Council took into consideration the following precedent cases. While Council is not bound by precedent and each matter is decided on its own facts and merits, Council found that these decisions were instructive in providing a range of sanctions for similar types of misconduct.
21. [Anthony Bryan Chua Cua \(February 2021\)](#) concerned a Level 2 general insurance agent licensee who unethically profited from commissions received from ICBC by regularly processing one-year vehicle insurance policies for an automobile dealership engaged in the export of vehicles out of Canada, and then cancelling the policies several days later. The licensee was found to have processed at least 129 transactions for the dealership and had served as a straw buyer on two occasions by purchasing two vehicles using funds provided by the dealership. In total, the licensee earned over \$24,000 in commissions from ICBC. Council found that the licensee's actions demonstrated an overall lack of trustworthiness and good faith, and was exploitative of ICBC and its commissions system. In terms of mitigating factors, Council believed that the remorse shown by the licensee was genuine and noted that the licensee was a relatively inexperienced agent with no previous disciplinary history at the time of the misconduct. Most notably, Council considered that the licensee had already experienced sanctions from ICBC, having had his Autoplan privileges suspended for a year and being required to complete courses. As for aggravating factors, Council found that the licensee's actions were financially motivated and demonstrated a lack of due diligence and wilful blindness. Council believed its decision should send a message to the insurance industry and public that generating commissions by processing exploitative transactions is not acceptable to Council, and that licensees should self-correct and seek guidance and clarification in situations in which they suspect there may be ethical problems. Council ordered that the licensee's general insurance licence be suspended for a period of one year and downgraded to a Level 1 Salesperson general insurance licence for a period of one year of active licensing. The licensee was also fined \$7,000 and assessed investigation costs.
22. [Ting En \(Brian\) Lin \(February 2021\)](#) concerned a Level 2 general insurance agent and a life and accident and sickness insurance agent licensee who unethically profited from commissions received from ICBC by regularly processing one-year vehicle insurance policies for an automobile dealership engaged in the export of vehicles out of Canada, and then cancelling the policies several days later. The licensee was found to have processed at least 30 transactions while employed at two insurance

agencies and had served as a straw buyer on three occasions by purchasing vehicles using funds provided by the dealership. Council concluded that the licensee had facilitated grey market transactions involving the export of luxury vehicles. Council found that the licensee's actions demonstrated an overall lack of trustworthiness and good faith and was exploitative of ICBC and its commissions system. In terms of mitigating factors, Council believed that the remorse shown by the licensee was genuine, and considered the licensee to have been open and forthright with information. Most notably, Council considered that the licensee had already experienced sanctions from ICBC, having had his Autoplan privileges suspended for a year and being required to complete courses. As for aggravating factors, Council found that the licensee's actions were financially motivated and demonstrated a lack of due diligence and wilful blindness. Council believed its decision should send a message to the insurance industry and public that generating commissions by processing exploitative transactions is not acceptable, and that licensees should self-correct and seek guidance and clarification in situations in which they suspect there may be ethical problems. Council ordered that the licensee's general insurance licence and life and accident and sickness insurance licence be suspended for a period of six months and downgraded to a Level 1 Salesperson general insurance licence for a period of one year of active licensing. The licensee was further required to be supervised for a period of one year. The licensee was also fined \$5,000 and assessed investigation costs.

23. [Peter Hing-Fu Hung \(January 2015\)](#) concerned a Level 1 Salesperson licensee who worked mostly as a mobile road services agent. Over the course of two days, the licensee completed insurance transactions for two different luxury vehicles for an individual who was later found to have been an imposter. There were suspicious circumstances involved with the transactions, but the licensee did not put notation on the transaction documents or take any other action to flag suspicions to ICBC or his supervisor. Council believed that the licensee had "turned a blind eye" to the suspicious circumstances, and that he had not appreciated his responsibilities when conducting suspicious transactions. The licensee was fined \$1,000, assessed costs of \$2,625 and required to complete three ICBC courses. The licensee was also required to complete the Insurance Brokers Association of British Columbia's Ethics for Insurance Brokers course and was only allowed to conduct insurance business from his agency's office until his courses were completed.

MITIGATING AND AGGRAVATING FACTORS

24. Council considered the relevant mitigating and aggravating factors in this matter. A mitigating factor considered by Council was that the Former Licensee was given a six-month prohibition from conducting ICBC Autoplan business as a result of these transactions. Additionally, the Former Licensee provided Committee members with an apology for his actions, and Council found the Former Licensee's acknowledgement of his conduct to be mitigating. Council also found there to be aggravating factors in this case. This was not an isolated incident and the Former Licensee repeated the misconduct over a period of time. Council determined that the Former Licensee's actions caused potential harm to the public and could create, in the public's perception, a loss of confidence in the insurance business, which Council considered an aggravating factor.

CONCLUSIONS

25. After weighing all of the relevant considerations, Council found the Former Licensee to be in breach of the Council's Rules and the Code of Conduct.
26. Council concluded that the Former Licensee's processing of the described transactions demonstrated an overall lack of competence and ability to act in good faith. Council found the Cua and Lin precedents to be more egregious than the circumstances of this case, as the Former Licensee did not act as a straw buyer, and Council therefore concluded that a lower penalty than those imposed in those precedents was warranted in these circumstances.
27. With respect to investigation costs, Council has concluded that these costs should be assessed to the Former Licensee. As a self-funded regulatory body, Council looks to licensees who have engaged in misconduct to bear the costs of their discipline proceedings, so that those costs are not otherwise borne by British Columbia's licensees in general. Council has not identified any reason for not applying this principle in the circumstances.

INTENDED DECISION

28. Pursuant to sections 231, 236 and 241.1(1) of the Act, Council made an intended decision that:
- a. The Former Licensee be fined \$2,000, to be paid within 90 days of Council's order;
 - b. The Former Licensee be required to complete an ethics course, as acceptable to Council, prior to being licensed in the future;
 - c. The Former Licensee be assessed Council's investigation costs in the amount of \$2,312.50, to be paid within 90 days of Council's order; and
 - d. Council will not consider an application for any insurance licence from the Former Licensee for a period of one year from the date of Council's order and until the fine and investigation costs are paid in full and the course has been completed.
29. Subject to the Former Licensee's right to request a hearing before Council pursuant to section 237 of the Act, the intended decision will take effect after the expiry of the hearing period.

ADDITIONAL INFORMATION REGARDING FINES/COSTS

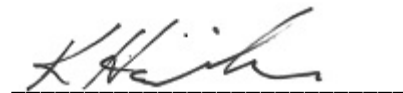
30. Council may take action or seek legal remedies against the Former Licensee to collect outstanding fines and/or costs, should these not be paid by the 90-day deadline.

RIGHT TO A HEARING

31. If the Former Licensee wishes to dispute Council's findings or its intended decision, the Former Licensee may have legal representation and present a case in a hearing before Council. Pursuant to section 237(3) of the Act, to require Council to hold a hearing, the Former Licensee **must give notice to Council by delivering to its office written notice of this intention within 14 days of receiving this intended decision.** A hearing will then be scheduled for a date within a reasonable period of time from receipt of the notice. Please direct written notice to the attention of the Executive Director. **If the Former Licensee does not request a hearing within 14 days of receiving this intended decision, the intended decision of Council will take effect.**
32. Even if this decision is accepted by the Former Licensee, pursuant to section 242(3) of the Act, the British Columbia Financial Services Authority ("BCFSA") still has a right of appeal to the Financial Services Tribunal ("FST"). The BCFSA has thirty (30) days to file a Notice of Appeal once Council's decision takes effect. For more information respecting appeals to the FST, please visit their website at www.bcfst.ca or visit the guide to appeals published on their website at <https://www.bcfst.ca/app/uploads/sites/832/2021/06/guidelines.pdf>.

Dated in Vancouver, British Columbia, on the **9th day of January 2025.**

For the Insurance Council of British Columbia



For Janet Sinclair
Executive Director