

**DECISION**  
**of the**  
**GENERAL INSURANCE COUNCIL OF MANITOBA**  
**("Council")**  
**respecting**  
**HUB INTERNATIONAL MANITOBA LTD. ("Agency")**  
**KEITH JORDAN ("Licensee")**

**INTRODUCTION**

The General Insurance Council of Manitoba (the "Council") derives its authority from *The Insurance Act* C.C.S.M. c. 140 (the "Act") and the *Insurance Councils Regulation 227/91*.

Following receipt of a written consumer complaint from the Financial Institutions Regulation Branch outlining concerns with the issue of a policy renewal by a licensed agent with HUB International Manitoba Ltd., an investigation was conducted pursuant to sections 375(1) and 396.1(7) (e) of the *Act* and section 7(2) (e) of *Regulation 227/91*. The purpose of the investigation was to determine whether the Licensee had violated the *Act*, and/or the General Insurance Agent Code of Conduct (the "*Code of Conduct*"). During the investigation, the Licensee was provided an opportunity to make submissions.

On April 19, 2017, during a meeting of the Council, the evidence compiled during the investigation and the position of the Licensee were reviewed. Upon assessment of the evidence, Council determined its intended decision. Pursuant to sections 375(1) and 375 (1.1) of the *Act* and *Regulation 227/91*, the Council now confirms its decision and corresponding reasons.

**ISSUES**

1. Did the Agency fail to advise the Complainant that it had made a corporate decision to upgrade all policies from standard form to broad form?
2. Did the Agency fail to advise the Complainant of the differences between the two policies?
3. Did the Agency fail to advise the Complainant that he could retain standard cover with his current carrier through the Agency or through another agent?

## **FACTS AND EVIDENCE**

1. The Insurance Council of Manitoba issued a notice to agents in 2015 advising them that the *Consumer Protection Act* had been amended in 2013 to allow negative option marketing by an insurer, a reciprocal insurance exchange or insurance agent licensed under *The Insurance Act*. Council had reminded agents that this exemption did not relieve the agent from advising insureds of any change to the policy, as well as, the benefits, restrictions or limitations. The insured has the right to receive proper advice from the agent with respect to any changes to the policy, and the option to delete additional coverages.
2. At all material times, the Licensee was the Operating Agent for the Agency.
3. The Agency had concerns about the adequacy of policy coverages which had been offered by a former agency purchased by the Agency when it had been determined during a claim that the risk was severely underinsured.
4. On March 10, 2016, Insurer A was advised by the Agency's Personal Lines Manager that all standard policy renewals were to be renewed on the broad form. This email noted that this was the first step in improving coverage and that the Agency would be advising the clients of the change in cover.
5. On renewal in 2016, the Complainant, having received his renewal, realized that the premium, now \$900.00, had increased about 20% over that of the previous year.
6. In a letter to the Complainant with respect to this renewal, dated August 25, 2016, and signed by the Agency's Agent A, it was noted that the current form was broad, and it was recommended that the insured consider upgrading the form to comprehensive. There was no mention of the change from standard to broad form, the benefits and limitations of the broad form over the standard form, or the ability of the insured to reject the option of the upgrade.
7. The Complainant contacted Agent A who advised him that Insurer A no longer provided standard coverage and had simply changed the policy to broad form. The Complainant noted that he had received no notification drawing his attention to the changes made to his policy.

### **February 10, 2017 and February 24, 2017 - Operating Agent responses to Council:**

8. In March 2016, in a meeting between Insurer A and the Agency, it was discovered that some clients, including the Complainant, did not have suitable property coverage. They were severely underinsured. As a result, these policies were upgraded from standard to broad form. The Operating Agent noted that Agency staff would not have been aware of clients where this had taken place.
9. The Complainant's renewal was issued on August 12, 2016, as a Home Pak B and was sent by the insurer with the Agency's standard renewal letter dated August 25, 2016.

10. The Complainant contacted Agent A who explained that the Agency was no longer supporting the standard form. It was the belief of Agent A that the Complainant misunderstood this to mean it was no longer offered by Insurer A, due to a language barrier.
11. The Complainant contacted Insurer A to enquire why the standard form was not offered. Insurer A contacted Agent A, and the COO/CMO of the Agency.
12. On September 7, 2016, Agent A and the Agency's COO/CMO contacted the Complainant to explain the Agency's position – stating that the standard policy was not adequate coverage and that the Agency was acting in the best interest of its clients. They also clarified that the standard policy was available and the client could opt for the standard form, against the Agency's advice.
13. After being advised of the differences between the two policy forms, the Complainant opted to continue with the standard form, against the advice of the Agency.
14. A request to change the policy back to a standard coverage was submitted on September 7, 2016, and a revised renewal sent to the Complainant.
15. The Agency believed it was acting in the best interest of the client and it was a simple misunderstanding that coverage was “no longer available.” Agent A and the Agency's COO/CMO promptly contacted the client and after providing an explanation, took advice from the Complainant to amend his policy back to the standard form.
16. The Licensee noted that 472 clients had been moved from standard to the broad form. With the exception of the Complainant who stayed with the standard form, all clients had stayed with the broad form or moved to a comprehensive policy. Agent A had attempted to contact all of these clients by phone to discuss the change. In some cases, she was unable to reach the client or the client failed to respond. In addition, Agent A quoted broad form with other carriers when there was an increase in premium.
17. The renewal letter did not include or discuss the change because they were attempting to contact all clients. With the changes over the period of one year it was “not an onerous job.”

## **ANALYSIS**

The Council had advised agents of their responsibilities when applying negative option marketing in 2015.

The Agency determined that in the interest of its clients it would upgrade all Insurer A policies from a standard form to a broad form and to encourage the comprehensive form. Over the period of one year, 472 clients were affected. The renewal letter sent to the clients made no mention of

the policy change. In addition, no advice was provided on the benefits, restrictions or limitations of the broad policy.

When the Complainant noticed the premium increase and contacted the Agency, he was not provided with the information that he could return to his previous standard policy form.

The Complainant escalated his concerns to the Financial Institutions Regulation Branch and the insurer became aware. Subsequently, the Complainant was contacted and offered a return to the standard policy form, if he so wished.

While the Council agreed that offering enhanced coverage to clients was a good practice, it was the responsibility of the Agency to ensure that a program was in place to provide notice when it was proposing a change to a policy, advising on the pros and cons of making the change, and advising the insured that there was an option to reject the change. The Agency should have considered the volume of change before committing to this blanket enhancement and should have ensured that a method of communication was in place to advise all clients of its activity.

Council concluded that the Agency had failed to properly and adequately communicate with the Complainant and had violated s. 375 (1) (a) and (e) of *the Act* by advising the Complainant that the insurer no longer provided the standard form, and s. 1, 2, 3, 4 and 7 of the *Code of Conduct* in failing to advise the Complainant of the changes to his policy and the opportunity to revert back to his old policy form.

### **PENALTY AND FINAL DECISION**

Council's Decision dated September 13, 2017 was delivered by registered mail to the Licensee on September 15, 2017. The Decision outlined the foregoing background, analysis, and conclusions. Having regard to the determination of the violations aforesaid, and pursuant to sections 375(1.1) (c) and (d) of *the Act* and section 7(1) of *Regulation 227/91*, the following penalties are imposed on the Licensee, namely:

1. The Licensee be fined \$1,000.00 and assessed partial investigation costs of \$375.00.

As part of its Decision, Council further informed the Licensee of his right to request an Appeal to dispute Council's determinations and its penalty/sanction. The Licensee expressly declined his right, chose not to pursue a statutory Appeal, and accepted this Decision.

The Decision is therefore final. In accordance with Council's determination that publication of its decisions are in the public interest, this will occur, in accordance with sections 7.1(1) and (2) of *Regulation 227/91*.

Dated in Winnipeg, Manitoba on the 10th day of October, 2017.