

COMMERCE COMMISSION

TOWER INSURANCE LIMITED

SETTLEMENT AGREEMENT

DATE 16 October

2017

THIS AGREEMENT is made on the 16th day of October 2017

Parties

COMMERCE COMMISSION, a statutory body established under section 8 of the Commerce Act 1986 (**Commission**).

TOWER INSURANCE LIMITED, a limited liability company registered in New Zealand (company number 143050) with a registered office at Level 14, 45 Queen Street, Auckland, New Zealand (**Tower**).

Interpretation

1. In this Agreement:

Affected Customers means all customers, excluding Affected FinTel Customers that paid the incorrect amount for their Insurance Premiums because Tower did not apply the multi-policy discount to their Insurance Premium invoices accurately.

Affected FinTel Customer means all FinTel Customers that paid the incorrect amount for their Insurance Premiums because Tower did not apply the multi-policy discount to their Insurance Premium invoices accurately.

Agreement means this settlement agreement.

Charity means Citizens Advice Bureau being a registered charity (with a focus on consumer rights) chosen by Tower and approved by the Commission.

FinTel is a brand marketed by Tower. It offers general insurance policies, including car, contents and house insurance.

FMA means the Financial Markets Authority.

FTA means the Fair Trading Act 1986.

Gross Balance means the balance of the Trust Fund to be paid to the Charity. The Gross Balance will be the sum of:

- (a) the \$75,000 payment made by Tower in accordance with clause 18.2;
- (b) all Refunds paid to the Trust Fund in accordance with clause 17.2.2; and
- (c) minus, if Tower wishes to do so in accordance with clause 22.2, all payments to Affected FinTel Customers made in accordance with clause 22.

Insurance Premium means the amount invoiced to a customer for his/her Tower insurance policies, which is the subject of this Agreement.

Overcharge means the difference between the Insurance Premium paid by an Affected Customer to Tower and the Recalculated Insurance Premium, where:

- (a) the Recalculated Insurance Premium is less than the Insurance Premium paid by an Affected Customer to Tower; and
- (b) the difference is \$5 or more.

Policy System means the infrastructure that holds a customer's information and is used to calculate a customer's multi-policy discount.

Recalculated Insurance Premium means the Insurance Premium calculated for an Affected Customer pursuant to clause 16.

Refund means the amount that Tower is required to refund to an Affected Customer under this Agreement, which is the sum of the Overcharge.

Trust Fund means the trust account set up by Tower on behalf of the Charity in accordance with clause 18.1 of this Agreement.

Background

- 2. The Commission's functions include the enforcement of the FTA.
- 3. Tower operates in New Zealand as an insurance company providing general insurance, including car, contents and house insurance.
- 4. Tower offers customers who have more than one qualifying insurance policy a discount. The discount is between 10% and 20% of the total cost of the premiums, depending on the number of insurance policies the customer has with Tower.
- 5. In September 2015, Tower discovered an error with its administrative systems that resulted in the incorrect multi-policy discount being applied to some customers' Insurance Premiums.
- 6. In March 2016, Tower self-reported the miscalculation of the multi-policy discount to the Commission and the FMA and outlined the actions it proposed to take to satisfy any FTA concerns the Commission may have. Tower worked collaboratively with the FMA and the Commission to ensure that the issue was dealt with appropriately and co-operated fully with the Commission's investigation into these matters.
- 7. This Agreement records the background to the investigation, the conclusion reached by the Commission, and the means by which the investigation is to be resolved.

The Commission's investigation

- 8. Tower provided information to the Commission establishing that:



- 8.1 The miscalculation of customers' multi-policy discounts occurred when Tower began migrating customers insurance policies from a legacy Policy System to newer Policy Systems at the time some customers' Insurance Premiums were renewed.
 - 8.2 There are two discrete sets of customers affected:
 - 8.2.1 The Affected Customers who were migrated from the legacy system to the new system between August 2014 and September 2016 and renewed their policies between 1 October 2014 and 10 September 2016; and
 - 8.2.2 The Affected FinTel Customers who prior to 1 October 2014, were migrated from the legacy system to a different Policy System in July 2003; then reverse migrated back into the legacy system in August 2005; then migrated to the new system at the end of January 2012.
 - 8.3 In total there were 35,172 Affected Customers by Tower's miscalculation of the Insurance Premiums. Of those customers, Tower has identified 23,922 Affected Customers who were overcharged for their Insurance Premiums. This represents less than 10% of Tower's customer base. 11,250 Affected Customers were undercharged for their Insurance Premiums. Tower is not seeking to recover Insurance Premiums for the customers who were undercharged.
 - 8.4 Tower submits that because of the multiple migrations of Policy Systems it is too onerous and complex for it to accurately ascertain the identities of Affected FinTel Customers and whether any of these customers were overcharged for their Insurance Premiums.
9. Section 13(g) of the FTA prohibits a person in trade from making false and misleading representations in relation to price. In the Commission's view, from July 2003 to April 2016 Tower made false or misleading representations in Insurance Premium invoices about the discount applied to and, therefore the price payable for, insurance in likely breach of section 13(g) of the FTA.

Tower's acknowledgement and agreement

10. Tower acknowledges:
 - 10.1 The facts set out in clauses 2 – 8 above.
 - 10.2 The Commission's view set out in paragraph 9 above.
11. Tower notes that if a Court were to have found that Tower breached the FTA, its actions were not deliberate and were the result only of administrative error caused by IT system failure. Once it became aware of the failure it took prompt and effective action to provide compensation for policy holders where possible, to

improve its systems and processes and to ensure that similar failures do not occur in future.

12. The Commission has concluded, after following the practices and criteria outlined in the Commission's *Competition and Consumer Investigation Guidelines* and *Enforcement Response Guidelines* that it is in the public interest to resolve this investigation on the terms set out below.

Actions taken and to be taken by Tower

Overview of actions

13. The actions Tower has already taken, or has offered and agreed to take are to:
 - 13.1 fix the Policy System/s that caused the miscalculation of the multi-policy discount;
 - 13.2 recalculate the correct Recalculated Insurance Premium for Affected Customers (see clause 16);
 - 13.3 refund all Affected Customers (see clause 17);
 - 13.4 publish the fact of this settlement and the availability of Refunds to Affected FinTel Customers on its website (see clause 21);
 - 13.5 make a payment of \$25 per year or part year during which the customer was an Affected FinTel Customer (see clause 22);
 - 13.6 make a donation to the Charity, in place of making a payment to those Affected FinTel Customers who do not contact Tower; and
 - 13.7 make a donation to the Charity, in place of a Refund to those Affected Customers to whom Tower is unable to pay a Refund (see clause 19);
14. As at the date of this Agreement, the only remaining actions for Tower are those in clauses 13.4; 13.5; 13.6 and 13.7.

Fix Policy Systems

15. Tower has fixed the Policy System/s that caused it to miscalculate the multi-policy discount.

Calculating the Overcharge of an Affected Customer's Insurance Premium

16. Tower has calculated the Recalculated Insurance Premium as follows:
 - 16.1 Setting up a remediation project to identify all Affected Customers and policies affected; calculating the difference between the incorrect Insurance Premiums charged and the correct Insurance Premium the Affected Customer

should have been charged; and for any Overcharges, generating a Refund and a letter detailing the Overcharge.

- 16.2 Tower's Internal Auditors were involved across multiple aspects of the remediation project, including project management, system fixes and testing of the resolution plan. They also completed post-implementation testing

Paying the Refund to Affected Customers

17. Tower will continue to take all reasonable steps to pay the Refund to all Affected Customers subject to an Overcharge.
- 17.1 Tower has paid and will continue to pay the Refund by either cheque or direct credit.
- 17.2 If, after using all reasonable endeavours, Tower has been unable to Refund one or more Affected Customers within three months from the date of this Agreement, Tower undertakes:
- 17.2.1 to hold the Refund on trust for the Affected Customer in an interest bearing account for three months from that date; and
- 17.2.2 if, at the end of the three month period, an Affected Customer has not redeemed their Refund, Tower must pay the Refund in respect of that Affected Customer within seven days to the Trust Fund.

Trust Fund

18. The parties agree that Tower is not required to recalculate Insurance Premiums for Affected FinTel Customers, however, Tower will within seven days of the date of this Agreement:
- 18.1 set up a trust account on behalf of the Charity (the Trust Fund); and
- 18.2 make a payment of \$75,000 to the Trust Fund.
19. 6 months from the date of this Agreement, Tower will pay the Gross Balance of the Trust Fund to the Charity within seven days.
20. Tower will provide proof of the payment of the Gross Balance of the Trust Fund to the Charity to the Commission.

Notice of Settlement Agreement

21. Tower will within seven days of this Agreement, publish a media release acknowledging this Agreement which must include:
- 21.1 a description of the miscalculation Tower made to Insurance Premiums;
- 21.2 a description of which customers were affected; and



- 21.3 an invite to FinTel customers to contact Tower within three months from the date of this Agreement if they believe they are an Affected FinTel Customer.

Refunding Affected FinTel Customers

22. Tower will make a payment of \$25 per year or part year of being an Affected FinTel Customer to any Affected FinTel Customer that contacts Tower within three months from the date of the Agreement:
- 22.1 Tower will make the payment by direct credit, cheque or gift card.
- 22.2 Tower may deduct any payment made under clause 22. from the balance of the Trust Fund.

No Further Action by Commission

23. The Commission will close its investigation into Tower upon the execution of this Agreement.
24. The Commission will not issue or encourage any civil or criminal proceedings against Tower and/or its Directors in relation to the conduct to which this Agreement applies other than any proceedings that may be brought as a consequence of Tower's failure to comply with this Agreement.

Effect and Implementation of this Agreement

25. Tower and the Commission will each take such steps as are necessary or desirable to give full effect to the terms of this Agreement.
26. If necessary to give effect to the Agreement, the terms of this Agreement may be amended by the written agreement of the parties.
27. Nothing in this Agreement will limit or affect the ability of:
- 27.1 the Commission to issue proceedings against Tower in respect of matters not related to this investigation, or in respect of conduct engaged in by Tower after the date of this Agreement or for breach of this Agreement; and/or
- 27.2 any person who has not consented to be bound by the terms of this Agreement from pursuing any rights available to him, her or it under the FTA or under any other law.

Miscellaneous

28. This Agreement will be governed and interpreted in accordance with the laws of New Zealand.
29. Tower and the Commission agree that:

- 29.1 neither the Agreement nor the fact that Tower has entered into the Agreement is confidential.
 - 29.2 the Agreement will be published on the Commission's website after it has been signed.
 - 29.3 the Commission may issue a media release about the Agreement. The Commission agrees to provide a draft version of the media release to Tower 1 hour prior to it being issued.
 - 29.4 either Tower or the Commission may make public statements (either separately or jointly) in relation to the Agreement after it has been signed.
 - 29.5 any public statement must be consistent with the matters set out in the Agreement.
30. Tower agrees that it will not make any public comment in relation to the Agreement until after the Commission has issued any media release notifying the public of it.



31. Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:

31.1 If addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission,

44 The Terrace, Wellington

Attention: Mary-Anne Borrowdale – General Counsel Competition

Email: Mary.Anne.Borrowdale@comcom.govt.nz

31.2 If addressed to Tower, by hand delivery or email to the following address:

Tower Insurance Limited

45 Queen Street

Auckland

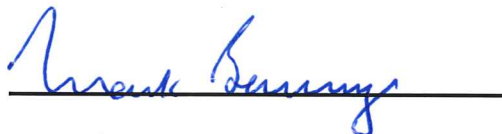
Attention: Richard Harding

Email: Richard.Harding@tower.co.nz

EXECUTION

SIGNED for and on behalf of

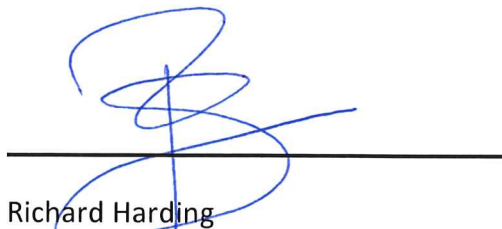
COMMERCE COMMISSION



Dr Mark Berry
Chair

SIGNED for and on behalf of

TOWER INSURANCE LIMITED



Richard Harding
Chief Executive Officer