

IN THE MATTER OF THE *FINANCIAL INSTITUTIONS ACT*
(R.S.B.C. 1996, c. 141)
(the “Act”)

and the

INSURANCE COUNCIL OF BRITISH COLUMBIA
 (“Council”)

and

SIMON KIMBLE MARPLES
(the “Licensee”)

ORDER

Pursuant to section 237 of the Act, Council convened a hearing at the request of the Licensee to dispute an intended decision of Council dated March 1, 2022.

The Hearing Committee heard the matter on July 19 and 20, 2022.

The Hearing Committee then prepared its Reasons for Decision, dated December 12, 2022.

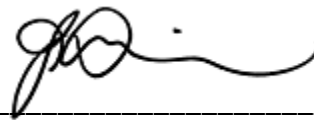
In accordance with the decision-making powers delegated to the Hearing Committee pursuant to section 223 of the Act, Council makes the following orders:

- a) the Licensee be reprimanded;
- b) the Licensee is required to complete the following courses, or equivalent courses as acceptable to Council by July 4, 2023:
 - i. the Council Rules Course for life and/or accident and sickness insurance;
 - ii. the Corporate Taxation Course currently available through the Business Career College; and
 - iii. Financial Analysis – 912 currently available through Advocis;

Collectively, the “Courses”.

- c) the Licensee is ordered to pay Council's costs associated with the investigation of this matter, in the amount of \$2,100, to be paid by April 5, 2023; and
- d) A condition is imposed on the Licensee's life and accident and sickness insurance agent ("Life Agent") licence and general insurance licence that a failure to complete the Courses by July 4, 2023, or a failure to pay the costs associated with the investigation of this matter by April 5, 2023, will result in the automatic suspension of the Licensee's Life Agent licence and general insurance licence, and the Licensee will not be permitted to complete his 2024 annual licence renewals until such time as he has completed the Courses and paid the investigation costs in full.

This order takes effect on the **5th day of January, 2023**.



Janet Sinclair, Executive Director
Insurance Council of British Columbia

In the Matter of
The *FINANCIAL INSTITUTIONS ACT*
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THE INSURANCE COUNCIL OF BRITISH COLUMBIA
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SIMON KIMBLE MARPLES
(the “Licensee”)

Date: July 19 and 20, 2022
9:30 a.m.

Before: Donna Thorne Chair
Glen Ewan Member
Peter Jong Member

Location: By video-conference
Insurance Council of British Columbia
1400 – 745 Thurlow Street
Vancouver, BC

Present: David McKnight
Menka Sull Counsel for Council

Tom Newnham Counsel for the Licensee

Michael D. Shirreff Counsel for the Hearing Committee

REASONS FOR DECISION OF THE HEARING COMMITTEE

BACKGROUND AND ISSUES

1. The Licensee has been licensed as a life and accident and sickness insurance agent with Council since 1992. The allegations in the Notice of Hearing relate to the Licensee’s actions with respect to two life insurance policies that he placed for a long-time client (the first policy in 2005 and the second in 2017).

2. On March 1, 2022, Council issued an intended decision, which alleged that the Licensee had breached certain provisions of the Council Rules and/or the Code of Conduct (the “Code”) when he sold his client (the “Client”) the two life insurance policies.
3. On April 4, 2022, the Licensee requested a hearing to dispute the intended decision, as was his right pursuant to section 237(3) of the Act.
4. The Notice of Hearing alleged that the Licensee failed to act in good faith and in a trustworthy and competent manner, failed to act in accordance with the usual practices of the business of insurance and failed to act in accordance with Council Rules and the Code, by:
 - a) selling life insurance policies to the Client that were not suitable for the Client and did not meet the Client’s needs;
 - b) failing to provide the Client with material information that would have allowed the Client to make an informed decision when purchasing the policies;
 - c) failing to deliver the life insurance policies to the Client;
 - d) taking advantage of the Client’s trust in him;
 - e) failing to comply with Council Rules 7(6) (nominee responsible to Council for all activities of the insurance agency) and 7(8) (compliance with Council’s Code of Conduct); and
 - f) failing to comply with Council’s Code of Conduct sections 3 (Trustworthiness), 4 (Good Faith), 5 (Competence), 7 (Usual Practice: Dealing with Clients), and 13 (Compliance with Governing Legislation and Council Rules).
5. The hearing was convened to determine whether the allegations could be proven and whether Council should make one or more of the available orders set out in sections 231, 236 and 241.1 of the Act.
6. At the outset of the hearing, Council advised the Hearing Committee that it was not proceeding with the allegation in sub-paragraph c) of the Notice of Hearing – the alleged failure to deliver the policies to the Client. Further, with respect to the allegations in sub-paragraph f) of the Notice of Hearing, Council advised that it was not seeking any adverse findings in relation to sections 3 or 4 of the Code.

7. What this meant, in practical terms, was that Council was not alleging that the Licensee had acted in bad faith or in an untrustworthy manner during his dealings with his Client.
8. The issues in the hearing instead focused on the Licensee's competency and professional practices, including whether or not the Licensee appropriately documented advice that he maintained he had given to the Client.
9. All of the allegations in the Notice of Hearing were denied by the Licensee.
10. The Hearing Committee was constituted pursuant to section 223(1) of the Act to hold the hearing and decide the allegations in the Notice of Hearing. This is the Hearing Committee's written decision.
11. As outlined in detail below, although the Hearing Committee has concluded that the Licensee fell short with respect to aspects of his record-keeping and the manner in which he documented certain advice that he gave to his Client, the Hearing Committee has also determined that Council did not meet its burden to prove that the Licensee sold a policy to his Client that was not suitable, or failed to provide his Client with material information about the policy that was being purchased. Those aspects of the Citation have therefore been dismissed.

EVIDENCE

Witnesses

12. There were four witnesses who testified at the hearing. Council's only witness was the Client, who gave evidence about his long-time working relationship with the Licensee, as well as the events and circumstances relating to his purchase and then cancellation of the two life insurance policies at issue.
13. The Licensee testified on his own behalf. The Licensee also introduced evidence from two local businessmen who had also purchased insurance through the Licensee. These witnesses were called, in part, to speak to what they observed in terms of the Licensee's usual practices with respect to delivering insurance policies to his clients, as well as the Licensee's general approach to advising his clients about which insurance products to purchase.
14. The evidence from each of the witnesses is discussed below.

Exhibits

15. There were 12 exhibits entered into evidence during the course of the hearing, as follows:

- | | |
|-------------------|--|
| Exhibit 1 | Agreed Statement of Facts (the “ASF”), signed July 13, 2022. |
| Exhibit 2 | Council’s Book of Documents (13 tabs of various materials relating to the insurance policies and Council’s investigation). |
| Exhibit 3 | Client needs analysis (undated). |
| Exhibit 4 | Letter from an accountant to Client, dated June 12, 2017. |
| Exhibit 5 | Emails between Client and a colleague of the Licensee, June 11-12, 2017. |
| Exhibit 6 | Application for insurance policy, dated November 28, 2017. |
| Exhibit 7 | Policy amendment document, dated January 25, 2018. |
| Exhibit 8 | Name and ownership change form (undated). |
| Exhibit 9 | Beneficiary change request form, dated January 24, 2018. |
| Exhibit 10 | Meeting notes taken by the Licensee, dated November 28, 2017. |
| Exhibit 11 | File notes prepared by the Licensee, from December 2017 through January 2018. |
| Exhibit 12 | Reason why letter FAQs (undated). |

16. At the conclusion of the matter, Council also provided the Hearing Committee with a written submission along with a book of authorities.

ASF

17. In advance of the hearing, the parties reached agreement on a comprehensive ASF, which provided a detailed and chronological review of many of the important dates and facts relating to the insurance policies purchased by the Client.
18. The Licensee had been licensed with Council as a life and accident and sickness insurance agent (“Life Agent”) since March 1992 and as a level 2 general insurance agent since July 1990.
19. During the material period, the Client owned and operated an automobile repair shop in Vancouver.
20. The Client filed his complaint with Council in February 2019. In his complaint, he raised concerns about two life insurance policies that he had purchased through the Licensee. The more recent policy was an Equitable Life \$1,500,000 Equimax Wealth Whole Life policy that was issued in 2017 (the “Equitable Policy”); and the earlier policy was an Industrial Alliance Insurance and Financial Services Inc. \$1,000,000 Meridia Universal Life policy that was issued in 2005 (the “IA Policy”).
21. In the late spring through the summer of 2017, the Licensee had several meetings with the Client during which they discussed a long-term retirement plan for the Client that would eventually lead to the purchase of the Equitable Policy later in 2017.
22. Through the course of these meetings, the Client was presented with several documents by the Licensee that discussed the potential benefits of the Equitable Policy. The Client also completed a series of forms that were used to apply for the policy and then later amend the policy after it had been received.
23. On June 9, 2017, the Client completed a risk tolerance questionnaire that had been provided to him by the Licensee wherein the Client described himself as an “average risk taker”.
24. On July 12, 2017, the Licensee met with the Client, the Client’s spouse, and another Life Agent who was a colleague of the Licensee. During that meeting, the parties discussed the Client’s financial plans and retirement goals. In advance of the meeting, a Portfolio Cashflow Analytics Technology Chart Path Report (the “PCA Chart Path Report”) had been prepared for the Client and his spouse by the Licensee and his colleague. This report was reviewed during the course of the meeting.
25. On October 30, 2017, the Client told the Licensee that he intended to cancel the IA Policy. The Licensee advised the Client that he would be taxed on the funds if he did not wait for another year because the funds coming out of the policy had been paid for by his holding company.

26. On November 28, 2017, the application for the Equitable Policy was completed and signed by the Client. A couple days later, the advisor disclosure form was signed, and the application was submitted to the insurer.
27. On December 6, 2017, the Licensee called the Client's accountant to discuss the purchase of the Equitable Policy. The Licensee said that he explained to the accountant that the plan was for the Client's holding company to fund the Equitable Policy for approximately \$65,000 per year for 10 years, with the Client having the ability to leverage the funds in the policy for any investments he might wish to pursue in the coming years.
28. On December 21, 2017, the Client signed the policy delivery receipt and illustration that were given to him by the Licensee. The Licensee said that he reviewed the policy schedule pages with the Client and left the policy and other supporting documents with the Client in a black zippered binder. At that same meeting, the Client provided a cheque to the Licensee to pay for the first premium instalment for the Equitable Policy (\$63,764.44).
29. A number of other documents relating to the Equitable Policy were later signed by the Client in early 2018. The evidence in relation to these documents is discussed below.
30. On November 26, 2018, the Licensee and his colleague met with the Client and his business partner. During this meeting, the Client stated several times that he would not write another cheque for the Equitable Policy, as he had thought the premium was only to be paid once.
31. On December 3, 2018, the Client signed a termination request for cancellation of the Equitable Policy. This was sent on the Client's behalf by another Life Agent at a different agency than the Licensee. At that time, the Client wanted the Equitable Policy terminated if it could not be rescinded.
32. In support of the request, the Client provided a letter to the insurer stating that he could not "afford this policy and I would like the money I paid returned for a policy I never received".
33. On December 7, 2018, the Equitable Policy was terminated.
34. On December 17, 2018, the Licensee met with the Client. The Licensee advised the Client that it would cost him approximately \$20,000 to cancel the Equitable Policy and he would not get one hundred percent of his premiums back.

35. On December 24, 2018, the Licensee visited the Client again and asked him to sign a letter rescinding the termination of the Equitable Policy in order to request 30 days to review the policy in more detail. The Client was adamant that he was not paying for the renewal and confirmed his desire to cancel the Equitable Policy (it had already been terminated).
36. On January 2, 2019, the Licensee emailed the Client and his spouse reiterating his recommendation to postpone the termination of the Equitable Policy and asked that the Client sign a form intended to ask for a 30 day grace period to reassess the cancellation of the policy.
37. On January 7, 2019, the Licensee's managing general agency advised him that the Client had filed a formal complaint against him.
38. In February 2019, the insurer declined the Client's request for a full refund of the premiums paid for the Equitable Policy, stating that the policy had been properly administered based on the signed application.

Evidence of the Client

39. At the time of the hearing, the Client was 56 years old. By training, he was an automobile repair technician. He had completed high school, as well as a five-year car-repair diploma program through a local post-secondary school. He was the half-owner of an automobile repair shop in Vancouver.
40. The Client had purchased the repair shop in the mid-1990s. The business was owned through a corporation and the Client was one of two shareholders.
41. The Client also had a further corporate entity that he used for investment purposes, which he described as a real estate holding company. The Client's holding company owned residential investment properties, the commercial premises where the repair shop was located and one other commercial building. The shares in the holding company were owned jointly by the Client and his wife.
42. The Client estimated that his annual employment income from the shop was around \$35,000. His wife also received employment income from the business for work that she did at the shop on weekends, but she was paid quite a bit less than he was on an annual basis.
43. The Client had been introduced to the Licensee before he purchased the repair shop. After the Client purchased the business, the Licensee assisted the Client with various aspects of the business for over 20 years and the Client purchased several personal and corporate insurance products from the Licensee during this time.

44. The Client described himself as inexperienced with respect to financial and investment matters. He believed that he had an average understanding of insurance but said in broad terms that investment products were not his “go to”. He testified that he relied heavily on the professionals he engaged to give him advice with respect to such matters.
45. With respect to the insurance policies at issue in this proceeding, the Client’s evidence about how he came to purchase each policy, and the advice he was given by the Licensee, was only very general in nature. He recalled that he had purchased a \$1 million policy many years ago that he had paid a monthly amount towards for 10 years. He also remembered withdrawing money from the policy on perhaps two occasions. He believed that he paid back \$20,000 that he withdrew from the policy, but he was unable to recall if he had paid back an earlier \$40,000 that he had withdrawn several years earlier.
46. After paying into the policy for 10 years, the Client told the Licensee that he wished to “cash out” the IA Policy. He said this conversation occurred in 2016. He recalled that the Licensee’s advice was that it was not the right time to cash out the policies and that there could be some tax issues associated with taking such a step at that time.
47. Eventually, the Client cancelled the IA Policy in October 2018. The Client blamed the Licensee for the fact that the policy had decreased in value in the years after he initially suggested that he wished to cash-out. He said that the policy lost \$9,000 between the date that he had initially wanted to terminate the IA Policy and the date on which it was eventually cancelled.
48. With respect to the Equitable Policy, the Client recalled meeting with the Licensee and a colleague in the spring/summer of 2017 to discuss further options with respect to his financial planning. He was adamant that he was not looking for a further insurance policy at that time. He said he was hoping to develop a scheme that would allow him to take money out of his holding company tax-free.
49. The Client recalled providing financial documentation to the Licensee in or around that period that set out details of his personal and corporate investments and income. The Client was shown the PCA Chart Path Report, which included detailed information about the family’s finances and listed his expected retirement age as being 55 years old. The family assets were described in the report as being in the range of \$4.8 million. The Client could not recall reviewing the report with the Licensee but said that aspects of the information appeared to be accurate.
50. The Client was also shown a letter from the summer of 2017 that was sent to him by his accountant enclosing the financial statements for his holding company. As at May 31, 2017, the holding company appeared to have over \$800,000 in cash, along with retained earnings of \$428,000. Given the funds that were available in the

holding company at that time, the Client was asked if he was looking to use some of that money to purchase another insurance policy. Again, the Client was insistent that his plan did not involve more insurance. He said that it would have been “crazy” for him to spend any available funds on insurance.

51. The Client acknowledged that he later submitted an application through the Licensee to purchase the Equitable Policy. On December 21, 2017, the Client also signed an acknowledgement indicating that the Licensee had personally delivered a copy of the insurance policy to him. Despite agreeing that he had signed the delivery form, the Client said that he had been unable to locate a copy of the actual policy.
52. The policy that the Client purchased required an annual premium payment of \$63,764.44. The Client signed a cheque for the first payment amount on December 20, 2017. It was the Client’s evidence that he did not pay careful attention to the various documents that the Licensee asked him to sign in relation to the Equitable Policy. He simply trusted the Licensee to be looking out for his best interests.
53. The next year, in November 2018, the Client described another meeting with the Licensee at the repair shop. At that time, the Licensee advised the Client that he was required to make a further payment of approximately \$65,000 on account of the Equitable Policy. The Client said that this came as a complete surprise to him. He found the request disturbing and advised the Licensee that he didn’t have the money to fund the policy and that it would need to be cancelled. The Client testified that the Licensee explained that he was required to continue to pay the policy each year and that if he cancelled at that time he would lose perhaps \$20,000. The Client said that his response was that a loss of \$20,000 at that time was better than a loss of \$65,000 each year for the rest of the life of the policy. The Client testified that, in his mind, he had no other options at that time. He could not afford to put \$65,000 a year into an insurance policy that he would never use.
54. Given his concerns, the Client consulted another Life Agent in late November 2018 to see what could be done with respect to terminating the Equitable Policy. The new agent assisted the Client to prepare a request for termination, which was submitted to Equitable Life on December 3, 2018. In support of the request for cancellation, the Client sent a handwritten note to the insurer indicating that he had understood that the policy required only a *one-time* payment and that he could not afford the policy on an ongoing basis.
55. On February 6, 2019, the Client delivered a complaint to Council, raising issues with respect to the Licensee’s actions relating to both policies. As part of his complaint, the Client enclosed a letter that he had sent to the Licensee’s agency requesting reimbursement of \$19,992.40 that he lost by cancelling the Equitable Policy early; the lost interest on the premium that he paid into the Equitable Policy in 2017; and

\$9,000 of damages in relation to the decrease in cash value of the IA Policy between 2016 and 2018.

Evidence of the Licensee

56. At the time of the hearing, the Licensee was 65 years old. His agency was founded in 1996 and the majority of the Licensee's clients were small business owners like the Client. The Licensee said that his client base had been developed largely by referrals from other clients who appreciated his assistance.
57. The Licensee agreed that he first met the Client in the mid-1990s. He described the Client as being a valuable client of his and acknowledged that he had done quite a bit of insurance work with the Client and his business in the past 20 years.
58. The IA Policy was recommended by the Licensee to the Client in or around 2005. At that time, the Client had very little in the way of life insurance. The Licensee recalled discussing different life insurance options with the Client, but ultimately the decision was made to purchase the IA Policy, which was a whole life policy that required the Client to pay monthly premiums for ten years.
59. Many years later, in or around 2016, the Licensee recalled a conversation with the Client about cancelling the IA Policy. The Licensee advised the Client that it wasn't the right time to do that because of the potential tax implications. In the Licensee's experience, given the expected increase in the fund value over time, the optimal year to look to cancel such a policy was typically 13-14 years after it was purchased. The Licensee also described there as being potential issues with the adjusted cost base of the investments if the policy was cancelled too early. The Licensee believed that the Client understood why he advised against cancellation at that time and said that he could not recall any questions from the Client about the advice he had given him.
60. The Licensee said that he learned in or around that same time that the Client had made a withdrawal from the IA Policy in the amount of \$40,000. He said that he did not know this at the time the withdrawal was made, but he learned about it when the Client told him that he was going to withdraw a further \$20,000. The Licensee described speaking with the Client about the impact of those withdrawals and he recalled that the Client paid the \$20,000 back into the policy. The Licensee said that he advised the Client that the withdrawals would drastically change the projections of the policy and he recommended to the Client that if he needed funds that he borrow from the policy as opposed to making withdrawals.
61. The Licensee acknowledged that he did not have any written communications with the Client setting out his advice on these issues. He admitted that he did not document the discussions that he had with the Client about the withdrawals from the IA Policy.

62. The Licensee also testified about the events that led to the purchase of the Equitable Policy. The Licensee reviewed what happened at the meeting in July 2017 with the Client and his wife, including how the group carefully reviewed the PCA Chart Path Report that had been prepared based on the financial information that the Client and his wife had provided. As part of that process, the Licensee received and reviewed the financials for the Client's holding company. The Licensee said that the July 12, 2017 meeting lasted approximately two hours and the Client signed and dated the PCA Chart Path Report after they had reviewed it.
63. One of the recommendations made by the Licensee to the Client was that he consider investing in a new whole life insurance policy. The concept, in general terms, was for the Client to use some of the retained earnings and cash that had been accumulated in his holding company to fund his retirement, in part by way of a new insurance policy. If the Client later required money for investment purposes, he could utilize some of the money invested in the policy by way of a loan. The Licensee advised the Client that this plan would be a tax-efficient way to access his available corporate funds.
64. There were further meetings between the Licensee and the Client in the fall of 2017, including a meeting near the end of October during which the Licensee recalled again reviewing the potential advantages for the Client of purchasing a whole life insurance policy as an investment and retirement vehicle.
65. There was also a lengthy meeting between the Licensee, the Client and his wife at the family home on November 28, 2017. The Licensee testified that, during this meeting, he reviewed an illustration with the Client that showed the anticipated returns on a whole life insurance policy. The Licensee recalled that the Client had confirmed by that date that he had \$950,000 of equity in his holding company. The Client was projecting his net worth in the next 20 to 30 years to be somewhere in the range of \$8 - \$10 million, which in the mind of the Licensee matched up well with the purchase of a whole life insurance policy in the range of \$1 to \$2 million. The Licensee had notes from this meeting which referred to many of the topics that he recalled having been discussed.
66. The Licensee also presented policy illustrations to the Client during that meeting which expressly identified anticipated deposits into the insurance policy of \$64,000 annually for 10 years. Ultimately, during that meeting, the Licensee and the Client completed a 48-page application for the Equitable Policy, which was signed by the Client.
67. The application was for a 20-pay wealth accumulator policy, with a face policy amount of \$1.168 million. The policy was also to include \$331,000 of enhanced

protection, bringing the total amount of the policy to \$1.5 million. The Client's net worth in the application was set out as being \$1 million.

68. The Licensee subsequently had a telephone conversation with the Client's accountant on December 6, 2017. The Licensee recalled the accountant confirming that the Client could access approximately \$150,000 from his company tax-free by way of a shareholder's loan repayment, but also that the Client had enough retained earnings available in the company to fund a 10-year policy with annual premium payments of approximately \$60,000.
69. In or around December 21, 2017, the Licensee attended at the auto repair shop to meet with the Client. During this meeting, the Licensee provided a copy of the Equitable Policy to the Client and had the Client sign a single-page document acknowledging delivery of the contract. On that document, it was again noted that the annual premiums for the Equitable Policy were to be \$63,764.94.
70. During that same meeting, the Client provided a cheque from his holding company for the full premium amount, which was subsequently delivered by the Licensee to Equitable Life.
71. A further document was prepared and signed by the Client that day that amended the Client's net worth from \$1 million to \$3 million. The Licensee said that the Client signed the amendment in his presence. There was also a seven-page policy explanation document that provided further illustrations of the Equitable Policy – both its premiums, but also its projections. The illustration was again clear that the policy was 20-pay, with annual premiums in the amount of \$63,764.94. The Licensee testified that he reviewed the illustrations and projected outcomes with the Client, which included the fact that the policy would be paid for after 10 years of payments. It was the Licensee's evidence that the Client did not express any concerns about either the illustration or the annual premium amount. The illustration document was also signed by the Client and dated December 21, 2017.
72. That same day, the Licensee noted the following in his calendar:

I reviewed [the Client]'s new policy with [the Client] at his shop.

We discussed in dept (sic) the policy premiums and funding options and [the Client] decided he would be best off if he paid for the policy annually. He signed the policy delivery receipt and gave me a cheque for the annual premium. I left a (sic) [the Client] with his policy and illustration
73. Following that meeting, early in 2018, a series of further documents were prepared and submitted to Equitable Life, including a change of ownership form, signed by

the Client and his wife on January 24, 2018, which changed the ownership of the policy from the Client personally over to his holding company.

74. The Licensee also prepared a form for the Client to change the beneficiary of the policy from his wife to the holding company. That form was also signed by the Client and his wife on January 24, 2018.
75. Later that year, in or around late November 2018, the Licensee met with the Client as part of an annual review process. During the meeting, the Client advised that he was not willing to write another annual premium cheque for the Equitable Policy.
76. There were then a series of communications between the Licensee and the Client in December 2018 through early January 2019 relating to the Client's request to terminate the Equitable Policy. The Licensee eventually sent the Client an email on January 2, 2019, which included a memorandum that the Licensee had drafted that he said he was hoping to send to Equitable Life effectively rescinding the cancellation of the policy that the Client had already submitted. The Licensee explained that, in his mind, there was lots going on at that point that he could not make sense of. He believed the Client would lose \$20,000 by cancelling the policy and he thought he had enough of a relationship with Equitable Life that he could convince the insurer not to hold the Client to the cancellation. The Licensee confirmed that the Client did not respond to his January 2, 2019 email.

Evidence from other witnesses

77. The Licensee also called two other witnesses at the hearing, both of whom gave evidence about the Licensee's usual insurance practices, including the steps typically taken by the Licensee to provide information and documentation to his clients. Both witnesses were experienced local businessmen who had purchased a variety of insurance products through the Licensee over the years. Both spoke highly of the Licensee's professionalism and practices.
78. Unfortunately, the Hearing Committee concluded that it is unable to put significant weight on the evidence of these individuals in terms of assessing the interactions between the Licensee and the Client. First, the circumstances in which the businessmen used the Licensee to purchase insurance were very different from what occurred as between the Client and the Licensee.
79. Further, and more importantly, both of witnesses readily admitted that they had very close personal and professional ties to the Licensee. The first witness and the Licensee had a regular referral arrangement through which they would each send clients to the other. The Licensee had also himself been a client of the witness with respect to some business coaching. In addition to the professional linkages, the witness also acknowledged that he had a close personal relationship with the

Licensee. Similar circumstances existed with respect to the second witness, who was open and upfront about the fact that the Licensee was a good friend of his and was someone who he socialized with on a monthly basis.

80. In light of these connections to the Licensee, the Hearing Committee did not see the two witnesses as being independent or objective enough to provide evidence that would be of assistance with respect to the allegations in this proceeding.

SUBMISSIONS OF THE PARTIES

Council

81. By the close of the evidence, Council's position had narrowed from the manner in which the allegations had been set out in the Notice of Hearing. Council submitted that the Licensee had:
- a) sold the Client the Equitable Policy which was not suitable for the Client and did not meet the Client's needs;
 - b) failed to provide the Client with material information about the Equitable Policy that would have allowed the Client to make an informed decision when purchasing the policy;
 - c) failed to comply with Council Rule 7(8) (compliance with Council's Code of Conduct); and
 - d) failed to comply with Council's Code of Conduct sections 5 (Competence), 7 (Usual Practice: Dealing with Clients) and 13 (Compliance with Governing Legislation and Council Rules).
82. Specifically, Council submitted that the Licensee had sold the Equitable Policy to the Client without conducting an adequate needs analysis or financial modeling and without reasonably explaining the potential tax implications of the policy. Council also submitted that the Licensee failed to consider, and discuss with the Client, other insurance products from other carriers that may have been more suitable for the Client than the Equitable Policy.
83. With respect to the IA Policy, Council took the position that the Licensee had failed to adequately explain the implications of making early withdrawals from the IA Policy and failed to document the advice that he had given to the Client about the withdrawals, as well as the need for repayment of those funds.

The Licensee

84. The Licensee did not accept that he had sold an unsuitable policy to his Client. In submissions, counsel for the Licensee emphasized the stark differences between the Licensee's testimony and that of the Client with respect to what occurred at the various meetings and the advice that was given to the Client. The Licensee submitted that the Equitable Policy was suitable for the Client in 2017 and did meet his needs. The Client was a successful businessman with a significant net worth at that time. Although he intended to retire in a few years, he was also expecting to grow his net worth significantly in the next 20 years.
85. The Client also had retained earnings and cash in his holding company that could be used to purchase a whole life insurance policy through his corporation. The Licensee said that purchasing a new whole life policy made sense given the personal circumstances of the Client and that it was a tax-efficient program to put in place as part of the Client's retirement planning.
86. With respect to the allegation that the Licensee had not provided material information to the Client, the Licensee emphasized his evidence about what was discussed at the many meetings they had and pointed as well to the detailed information that was contained in the documents themselves.
87. A review of the materials showed that it was clear from the documents that the Equitable Policy was a 20-pay policy, where the Client was expected to provide 10 accelerated payments of approximately \$64,000. The Licensee submitted that it would be dangerous for the Hearing Committee to accept, without careful consideration, the Client's evidence that he never reviewed the various documents that were prepared and had no idea about the terms of the policy. The Licensee submitted that he provided documentation to the Client at all stages of the planning and purchase of the Equitable Policy, dating back to the summer of 2017. The Licensee submitted that the only reasonable view was that the Client knew exactly what he was purchasing in 2017.
88. With respect to the adequacy of the needs analysis in particular, the Licensee submitted that the Hearing Committee must not look at any single page in his file with respect to how he assessed the needs of the Client, but at the entire collection of material that was prepared by the Licensee and his colleague about the family and its needs, including the PCA Chart Path Report that was prepared in the summer of 2017.
89. All of that being said, the Licensee did concede that his file and documentation relating to aspects of these transactions was lacking in some respects. He conceded that no detailed taxation modelling was done for the Client. He accepted that he had not documented the advice that he had given the Client about the withdrawals from

the IA Policy. He admitted that he had not sent the Client a formal “reason why” letter, but submitted that it was not industry standard at the time in terms of the practices of a reasonable and prudent Life Agent. Even with those concessions, the Licensee emphasized that the issues in this proceeding were not matters of integrity or honesty and submitted that if there was a need for any sanction, it ought to be at the very low-end of the scale.

DECISION OF THE HEARING COMMITTEE

Introduction

90. The allegations in this matter touch on issues relating to both insurance policies that were placed for the Client by the Licensee. With respect to the initial IA Policy, there were no concerns raised by Council about the suitability of that policy for the Client, but Council submitted that the Licensee failed to adequately explain to the Client the implications of making early withdrawals from the IA Policy and also failed to document the relevant discussions and advice that he gave to the Client about those matters.
91. With respect to the Equitable Policy, the allegations were more serious. Council alleged that the Equitable Policy was not suitable for the Client’s needs. Council also submitted that the Licensee failed to provide the Client with material information about the Equitable Policy, failed to conduct an adequate needs analysis or financial modelling and did not explain the tax implications of the policy prior to placing it for the Client. Further, Council alleged that the Licensee failed to consider and advise the Client about other insurance products from other carriers that may have been more suitable for his needs than the Equitable Policy.

Conclusions with respect to the IA Policy

92. The Licensee conceded in closing submissions that he did not document the advice that he gave the Client with respect to either the implications of making withdrawals from the IA Policy or the need for the Client to repay the funds that he had already taken out of the policy.
93. The Hearing Committee concluded that the Client did ask the Licensee about cancelling the IA Policy in or around 2016. The Hearing Committee has also concluded that the Licensee’s advice at that time was that cancelling the policy was premature. It was noted that there was general agreement between the Client and the Licensee that the advice not to cancel the policy related to potential tax implications.
94. Unfortunately, the Client’s evidence with respect to the nature of the discussions was lacking in any specificity. The Licensee’s evidence was much more detailed with

respect to what was discussed during these conversations. He recalled providing advice to the Client about the tax implications flowing from issues relating to the adjusted cost base of the investments. He also recalled specific conversations with the Client about waiting until 2018 to cancel the IA Policy.

95. The Hearing Committee accepted the evidence of both the Licensee and the Client that there was a discussion about the IA Policy and the Licensee's advice was to not cancel it at that time.
96. Had the Licensee properly documented these discussions and what he recommended to the Client, there would be no room years later for any debate as to what was discussed in 2016. For a matter of that importance – where a client is asking a licensee to cancel a policy and seek a return of over \$100,000 in investment value – the Hearing Committee believes that a licensee, acting reasonably and appropriately, is required to document the advice given to the client and the instructions received.
97. In this proceeding, there appears to have been nothing communicated in writing between the Licensee and the Client between 2016, when the Client first asked to cancel the IA Policy, and 2018, when that step was finally taken. If the Licensee had been advising the Client in 2016 to wait for a more optimal time to cancel the IA Policy, that advice should have been presented to the Client in writing.
98. Further, with respect to the two withdrawals the Client made from the IA Policy, there was a similar absence of any documented advice given by the Licensee. As the Licensee testified, withdrawing that amount of money from the IA Policy had significant implications for the long-term projections of the investments.
99. Despite the absence of any documents, the Hearing Committee again accepts that the Licensee gave advice to the Client that he ought to repay the amounts that he had taken out of the IA Policy. The Client did accept what he was told by the Licensee and repaid the \$20,000 that he had taken out of the policy closer to 2016, but he apparently never repaid the earlier \$40,000 that he had withdrawn. Notably, there was no evidence that the Licensee followed up with the Client about why he needed to ensure that the \$40,000 was also repaid. Again, that was an important matter and the Licensee fell short with respect to his professional obligations.
100. With respect to this proceeding, the issue for the Hearing Committee is not the appropriateness of the advice given by the Licensee to the Client, but the absence of any documentation of that advice by the Licensee – both in terms of what he initially advised the Client, but also with respect to following up with the Client in order to ensure that the IA Policy was cashed-out in the most favourable manner for the Client.

101. Given the Hearing Committee's findings in relation to the IA Policy, we have concluded that Council has proven, on a balance of probabilities, that the Licensee failed to document the advice that he had given to his Client and also failed to appropriately follow-up with the Client about repaying the \$40,000 into the policy.
102. These aspects of the Notice of Hearing have been proven by Council.

Conclusions with respect to the Equitable Life Policy

103. In contrast with our findings in relation to the allegations relating to the IA Policy, the Hearing Committee has concluded, on a balance of probabilities, that the allegations with respect to the Equitable Policy were not proven at the hearing by Council to the requisite civil standard.
104. In reviewing the key events relating to the placement of the Equitable Policy, the Hearing Committee was satisfied that the Licensee had provided an appropriate level of information to the Client about why he was recommending the policy and why the Licensee believed that the purchase of the policy was appropriate for the Client.
105. In considering the allegations pertaining to the Equitable Policy, the Hearing Committee found it important to look at the entire sequence of events that ultimately led to the purchase of the policy in late 2017.
106. The Client had previously purchased a whole life policy – the IA Policy – in 2005 and had made monthly payments towards that policy for over 10 years. As such, even if one assumes that the Client lacked some degree of sophistication with respect to his personal and business financial matters, he certainly had prior experience with whole life insurance policies by the spring of 2017.
107. When the Licensee and his colleague met with the Client and his wife in the spring of 2017, they took significant steps to investigate and obtain updated information about the Client's overall financial circumstances and net worth at that time. On June 9, 2017, the Licensee's colleague had the Client complete two financial profile questionnaires that focused on the Client's risk tolerance and experience with different types of investments.
108. Information about the family finances was then obtained and synthesized by the Licensee and his colleague into the PCA Chart Path Report. That report was reviewed in detail with the Client and his wife during the meeting that occurred on July 12, 2017. Although the Client testified that he could not recall that meeting or the report itself, the Hearing Committee accepts that the Licensee and his colleague spent considerable time reviewing that document with the Client during that meeting. It was also noted that the Client signed the PCA Chart Path Report, which confirmed that he had seen that document at the time.

109. In the PCA Chart Path Report, although it was noted that the Client wished to retire within the next few years, it was also set out that the Client had considerable personal real estate holdings at that time, valued at almost \$3.4 million. Further, the Client had significant funds available in his holding company – close to \$1.15 million in shareholders loans and retained earnings. The Licensee had also been advised by the Client that he had recently sold a significant asset that had led to him having a large cash balance in his holding company.
110. As at the date of the PCA Chart Path Report, the family's net worth was estimated to be \$4.65 million.
111. Some of the priorities outlined in the PCA Chart Path Report included minimizing taxes to the estate and reviewing the family's insurance strategy in order to use corporate retained earnings to fund the balance of the family's needed income in retirement.
112. After the July 12, 2017 meeting, the Client then provided the Licensee with copies of his annual financial statements for his holding company. These statements were reviewed by the Licensee and the information contained therein confirmed once again that the Client had access to significant funds through his holding company at that time.
113. One of the more difficult aspects of this hearing for the Committee was how to address the differences in the evidence between the Licensee and the Client as to what was discussed at the various meetings. The Client was unable to recall much in the way of any details with respect to the advice that he was given by the Licensee about the Equitable Policy. He could not recall the details of almost all of the documents. He testified in very general terms that he never reviewed the documents that he was given by the Licensee relating to the policy and he suggested that he relied fully on the Licensee to place him in a policy that was suitable for him given his needs at the time. The Licensee on the other hand provided much more detail about the specific advice that he said he gave to the Client throughout 2017.
114. Even though the Client was adamant that he was not looking to purchase another insurance policy, that evidence was difficult for the Hearing Committee to reconcile when compared to the documents that showed the Client participating in the process to purchase the Equitable Policy at every turn between June 2017 and January 2018. The purchase of the Equitable Policy did not occur over a short period of time. It was purchased after a process that took place over the course of several months. There were many meetings and conversations during this period and the Hearing Committee accepts the evidence given by the Licensee as to what he advised the Client about that policy.

115. In particular, there were two important meetings between the Licensee and the Client in October and November 2017. The Licensee discussed the purchase of a whole life insurance policy with the Client at the initial meeting in October. The documents from the November 28, 2017 meeting speak for themselves – at that time, the Client signed an application seeking to purchase a \$1.5 million life insurance policy from Equitable Life. The application was for a whole life policy with a 20-pay premium. A simple review of the application revealed that what was being applied for required multiple significant annual premium payments.
116. By the time of the November 28, 2017 meeting, the Client had advised the Licensee that he had access to over \$1 million of cash in his holding company and was also anticipating that his family’s net worth in the next 20-30 years would potentially be as high as \$10 million. The Client had already been relatively successful in building wealth through his holding company so his projections for retirement would have been viewed by the Licensee as reasonable at that time.
117. Even after submitting the application to Equitable Life, the Licensee then arranged to speak with the Client’s accountant in early December 2017. The accountant was not called to give evidence at the hearing, but the Hearing Committee accepts that such a call took place. Whether or not the accountant agreed with the purchase is not relevant for the Hearing Committee in terms of looking at the Licensee’s professional conduct. By simply reaching out to the accountant, the Hearing Committee found it to be material that the Licensee was undertaking further due diligence and fact-finding at that juncture in terms of ensuring that the whole life policy was suitable for his Client.
118. Even after the application was submitted, there were several further events during which the Client received information about the Equitable Policy. There was a further meeting between the Licensee and the Client on December 21, 2017, when the policy was delivered by the Licensee. There were then a series of further forms filled out by the Client relating to the policy in early 2018 when changes were being made to the owner and beneficiary under the Equitable Policy.
119. During these meetings, the Client signed many documents, including:
 - a) an amendment increasing his net worth to \$3 million;
 - b) an application to change the ownership of the Equitable Policy from the Client to his holding company; and
 - c) a form changing the beneficiary pursuant to the Equitable Policy from the Client’s wife to the holding company.

120. In light of all of the information that was provided, the Hearing Committee does not accept that the Licensee failed to provide material information to his Client about the Equitable Policy. In addition to the above documents, the application for the policy and the illustrations provided to the Client by the Licensee on December 21, 2017 clearly identify the material terms of the Equitable Policy, including the 20-pay requirement and the annual premiums.
121. Even with the Client's modest annual employment income and intention to retire within the next few years, the Hearing Committee could not conclude, on a balance of probabilities, that the Equitable Policy was not suitable for the Client. A whole life insurance had the potential to fulfil a number of important long-term goals for the Client at that time. First, the policy would provide a significant insurance payment should he pass away, which would assist with the expected taxes arising from the disposition of the Client's estate. Second, if funds were needed for investment purposes in the coming years, the Client would still be able to borrow against the policy. Third, it had been stated by the Client that he wished to cancel the IA Policy, so there was also likely to be some need for him to secure further life insurance.
122. Although the Hearing Committee is somewhat critical of the Licensee for not presenting the Client with a detailed analysis of the tax implications of the Equitable policy, or a presentation of potential alternative insurance and/or investment options at that point in time, the Hearing Committee was still unable to conclude that the Licensee fell below the professional standards expected of a Life Agent in recommending the Equitable Policy to the Client. The Client may not have been proficient with all the intricacies and details of this type of policy, but he had shown himself to be a successful businessman and the idea of purchasing a whole life insurance policy was a method that could reasonably be implemented to utilize some of the retained earnings within the holding company for his retirement.
123. Finally, although a specific "needs analysis" document may not have been prepared for the Client, the Hearing Committee accepts the Licensee's submission that one must examine the full relationship between the Client and the Licensee when assessing the adequacy of the investigation undertaken by the Licensee into the Client's financial circumstances before recommending the whole life policy.
124. The Client was asked in June 2017 to complete forms designed to assess his risk tolerance. Considerable detailed financial information was then obtained by the Licensee and his colleague in order to prepare the PCA Chart Path Report. Even after the meeting on July 12, 2017, the Licensee took steps to obtain and review updated financial information for the Client's holding company and he also spoke directly with the Client's accountant in December 2017.

125. Given the work done by the Licensee to investigate these matters, the Hearing Committee does not accept Council's submission that the Licensee failed to undertake an appropriate needs analysis for his Client.
126. As noted above, the Hearing Committee concluded that Council had not proven on a balance of probabilities that the Equitable Policy was unsuitable for the Client, or that the Licensee had failed to review the policy and insurance strategy with his Client.
127. However, similar to what happened with respect to the advice that the Licensee gave the Client with respect to the IA Policy, the Hearing Committee has concluded that the Licensee could have done more in terms of documenting advice that he gave to the Client on aspects of the Equitable Policy. That being said, such issues on their own do not rise to a level where the Hearing Committee thought it appropriate to conclude that the Licensee committed misconduct with respect to these allegations in the Notice of Hearing.
128. In the result, the Hearing Committee decided to dismiss the allegations in the Notice of Hearing relating to the Equitable Policy.

Conclusion

129. For the reasons set out above, the Hearing Committee has dismissed the allegations in paragraph 1. a), b) and d) of the Notice of Hearing.
130. The allegations contained in paragraphs 1. e) and f) of the Notice of Hearing have been proven by Council insofar as these matters relate to our conclusions above with respect to the IA Policy.

ORDERS OF THE HEARING COMMITTEE

131. In light of the Hearing Committee's conclusions that the Licensee fell short with respect to aspects of his professional dealings with his Client in relation to the IA Policy, we must then determine an appropriate disciplinary sanction.
132. Council is responsible for protecting the public and ensuring that licensees are competent and carry on the business of insurance in accordance with the usual practices in the industry. The primary purpose of the Act is the protection of the public.

133. It is always with a view to the public interest that the Hearing Committee must assess the appropriate penalty in a particular matter. With respect to this proceeding, the Hearing Committee has carefully reviewed the written submissions provided by Council, which helpfully referred to some of the broad principles that must be considered when setting an appropriate administrative sanction (see: *Financial Services Commission v. The Insurance Council of British Columbia and Maria Pavicic*, November 22, 2005).
134. The Hearing Committee also reviewed the prior decisions referred to by Council in its written submissions, specifically *Kamna Suri* (November 2020), *Ismat Simo* (September 2017) and *Edraline Buetipo Borgonia* (June 2016).
135. However, given the Hearing Committee's conclusions that Council did not establish the more serious allegations against the Licensee relating to the Equitable Policy, these prior decisions were of only limited utility in terms of establishing an appropriate sanction for the Licensee for the misconduct that was found by the Hearing Committee.
136. There were a number of factors in this matter that the Hearing Committee considered to be mitigating in terms of the sanction. First, it was noted that the Licensee had been licensed with Council for over 30 years without having any prior discipline issues. Second, the misconduct found by the Hearing Committee in this case did not involve any allegations of fraud or dishonesty on the part of the Licensee. Finally, the Hearing Committee accepted Council's concession that the Licensee also deserved credit for being cooperative during the course of the investigation.
137. All of that being said, it is an important professional obligation for a licensee to document the advice he or she gives to a client and the corresponding instructions provided in response to the advice. In this matter, particularly with respect to the IA Policy, the Licensee ought to have better documented the advice that he gave to the Client, both in terms of the implications of the early withdrawals from the policy but also about the need to repay the amounts that had been withdrawn. Even though we have concluded that Council was unable to establish misconduct in relation to the issues surrounding the purchase of the Equitable Policy, the Hearing Committee also notes that there were matters relating to that policy where the Licensee could also have better documented the advice he was giving to his Client. The Licensee conceded in his closing submissions that he had failed to properly document these matters.
138. The Licensee's actions in relation to the IA Policy are regarded by the Hearing Committee as being misconduct at the low-end of the spectrum. The misconduct involves breaches of sections 5 and 7 of the Code, which in turn leads to a conclusion that the Licensee also breached Council Rule 7(8). These are still important provisions of the Code, but it must be taken into account in assessing an appropriate

sanction that this proceeding raises issues of licensee competency, as opposed to bad faith or any type of intentional misconduct.

139. In these circumstances, taking into account the nature of the misconduct but also the mitigating circumstances noted above, the Hearing Committee has concluded that the following order is appropriate:

- a) the Licensee be reprimanded;
- b) the Licensee complete the following courses, or equivalent courses as acceptable to Council within 180 days of Council's order:
 - i. the Council Rules Course currently available through Advocis;
 - ii. the Corporate Taxation Course currently available through the Business Career College; and
 - iii. Financial Analysis – 912 currently available through Advocis;
- c) the Licensee pay Council's investigation costs in the amount of \$2,100 within 90 days of Council's order; and
- d) a condition be imposed on the Licensee's licences that a failure to complete the above courses within 180 days of Council's order, or a failure to pay the investigation costs within 90 days of Council's order will result in the automatic suspension of the Licensee's licences and the Licensee will not be permitted to complete his 2024 annual licence renewals until such time as he has completed the above courses and paid the investigation costs in full.

140. With respect to the investigation costs, the Hearing Committee has concluded that the costs of the investigation were reasonably incurred by Council in light of the issues raised in the Client's complaint. Even though some of the allegations in the Notice of Hearing have been dismissed, the Hearing Committee nevertheless has concluded that it is appropriate and fair for the Licensee to be assessed the costs of the investigation.

141. The parties also made submissions at the hearing about the appropriate order with respect to the costs of the hearing. An order with respect to hearing costs is always a discretionary matter. Some guidance on the issue is set out in Council's policy J.21 – Assessing Investigation Costs and Hearing Costs.

142. In light of the Hearing Committee's conclusions in this matter, and the fact that only some of the allegations in the Notice of Hearing were proven by Council, it is our preliminary view that this would appear to be an appropriate instance for each party to bear their own costs of the hearing. That being said, if either party wishes to seek

an alternative order in relation to costs, counsel can advise the Hearing Committee of this through our counsel within 10 days of the delivery of this decision and we can then discuss the best way to exchange further submissions on any remaining costs.

Dated in Vancouver, British Columbia, on the 12th day of December, 2022.

A handwritten signature in cursive script that reads "D Thorne". The signature is written in black ink and is positioned above a horizontal line.

Donna Thorne
Chair of the Hearing Committee