

The complaint

Mr P has complained that Covea Insurance plc (“Covea”) has unfairly turned down a claim made under a payment protection insurance (“PPI”) policy.

What happened

Mr P took out a PPI policy to protect his mortgage repayments should he become unemployed. Covea became the policy insurer, so it was responsible for paying any successful claim.

In 2020, Mr P made a claim under his policy as he was out of work due to the COVID-19 pandemic. At this time he had been self-employed and claimed as he was unable to find work.

Covea asked for information to show Mr P was in receipt of Government benefits or confirmation that he wasn’t eligible for them. It also asked for evidence Mr P’s business had ceased or suspended trading because he couldn’t find enough work to meet all of his reasonable business and living expenses, which it said was in line with the policy requirements.

Mr P provided information to Covea, but it said the information showed he had not permanently ceased to trade, had not registered with the Job Centre and that his accountant confirmed his business had only suspended trading. Covea declined the claim as it said Mr P did not meet the definition of ‘*unemployed*’ as set out in the policy. It said he needed to demonstrate that he was not in work, registered as unemployed with the appropriate government agency and prove that he had involuntarily and permanently ceased trading. But it thought Mr P was only temporarily out of work as he had said he had a job to return to when allowed to work by government rules. Covea justified its decision by stating that the policy was designed to cover business failure for the self-employed rather than for short periods of unemployment.

Unhappy with Covea’s response, Mr P referred a complaint about the claim to our service. He said the claim should have been paid or, in the alternative, that the PPI policy had been mis-sold so he should receive a refund of the premiums paid.

One of our investigators looked into the complaint and thought that Covea had acted fairly. They said that it had applied its policy terms to Mr P’s claim and, as he was only temporarily out of work, he was not covered for claim he made.

But after that, Mr P’s complaint was reviewed again by someone else at our service. They asked Mr P to provide some more information, which he did. He explained that his self-employed business didn’t trade again, but from March 2021 he was effectively employed for six months. Since then he worked for some periods in 2022, but not continuously. Mr P said he received no help from the Government as he was told that he was not eligible due to having some savings.

After that, a second view was issued where the reviewing adjudicator thought that Covea

had not acted fairly. They thought the terms concerning self-employed people were onerous and that they should not have been applied in the way they were. The adjudicator pointed to both the Association of British Insurers' ("ABI") guidance in *Consistent Policy Interpretations Payment Protection Insurance – Statement of Principles for the Payment Protection Industry* and the Financial Conduct Authority's ("FCA") statement *Insurance and coronavirus (Covid-19): our expectation of firms*. They said that although Mr P may not have been looking for alternate work, based on the evidence available, it appeared that he was ready to restart work as soon as allowed. The recommendation was for Covea to reassess the claim, taking into account that industry specific guidance.

Mr P accepted the second view, but Covea asked for the matter to be passed to an ombudsman for a decision. It didn't provide any reasons why it disagreed, beyond what had been provided prior to the view.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having considered everything, I think this complaint should be upheld. I will set out why I think that, looking at first the policy terms, then how I think they should be interpreted and finally how this affects Mr P's claim.

The policy terms

Mr P's policy was called '*Mortgage Protector*' and was set up to pay a set monthly benefit for up to twelve months if he was made unemployed.

'Unemployment' was a defined term under the policy, which meant:

"Having no paid work or temporary work and having a Jobseeker's Agreement with the Department for Work and Pensions in the UK. If you are ineligible for a Jobseeker's Agreement you must be able to provide alternative proof acceptable to us that you are actively seeking work."

'Work' was also a defined term and it included self-employed work. If a policy holder wished to make a claim for unemployment, the claims process differed depending on whether they were employed or self-employed. For someone who was self-employed, like Mr P, they could make a claim:

"If you are self-employed and you have involuntarily and permanently ceased trading because you could not find enough work to meet all your reasonable business and living expenses and have declared this to HM Revenue & Customs, you will be entitled to claim for unemployment benefit."

In addition, Mr P had to provide certain information to show he was able to make a claim. That information included:

"evidence that your business has ceased or suspended trading because you could not find enough work to meet all your reasonable business and living expenses. We may require evidence such as that you have declared this to HM Revenue and Customs, bank statements, accounts, or a letter from your accountant with evidence that your business was no longer viable, that your business has ceased or suspended trading and that you are not receiving an income from the business"

What the policy terms mean

I've read the guidance from the ABI and the FCA to which our adjudicator referred. I think this is reflective of good industry practice and it relevant when interpreting the terms of Mr P's policy, especially where they are unclear or contradictory.

The latest version of the ABI guidance was published in August 2013. It was designed to set out "*the minimum principles insurers will follow in a range of common claim situations.*" The guidance reflected that different insurer's policy wording may differ across policies, but "*the overriding principles contained in [the ABI guidance] reflect insurers' intent that the customer can be confident that their claim will be dealt with consistently regardless of insurer.*"

For self-employed policy holders, the following guidance was given (at 1.8):

"Where insurers provide cover for the self-employed, insurers will include a statement in the policy wording directing those who are self-employed to the part of the policy detailing what cover is available to them and what evidence will be required to substantiate any claim.

The self-employed are customers who own their own business as sole traders or are able to control the affairs of their company. Claims will be accepted if they have involuntarily ceased trading because they could not find enough work to meet all their reasonable business and living expenses and have declared this to HM Revenue and Customs.

If a company or business has not ceased to trade then the policyholder will be asked to provide alternative evidence of unemployment, which may include:

- *written notice from an accountant that they are not generating revenue through their business,*
- *evidence that a main contractor has ceased to trade where the policyholder entirely relied on being a sub-contractor to that firm."*

It appears to me that there is an uncertainty in the policy wording – in the section that explained when a self-employed person could claim it says they had to "*have involuntarily and permanently ceased trading*", whereas in the section that explained the evidence needed to make a claim, it said "*evidence that your business has ceased or suspended trading*". In one section it states that a policy holder needed to have permanently ceased trading, however the use of the word '*suspended*' in the other section implies people are also covered where a business had stopped trading for an indefinite period of time.

I have also considered the other parts of the PPI policy, including the other pieces of evidence that could be asked for to validate a claim. It mentions "*a letter from your accountant with evidence that your business was no longer viable, that your business has ceased or suspended trading and that you are not receiving an income from the business*"¹. Again, I think the use of the word '*suspended*' implies that any stopping in trading could be for an indefinite period of time, rather than a permanent end of trading. This also fits with the evidence suggested by the ABI to substantiate a claim where a policy holder has not ceased to trade. Taken as a whole, I think the policy is set up to cover situations where a policy holder may be able to make a claim without permanently ceasing to trade and declaring the same to HM Revenue & Customs.

¹ This is similar to the evidence requested in the letter of 8 April 2020

To make a claim, I think a policy holder would have to show that they had involuntarily ceased or suspended trading and had declared this to HM Revenue & Customs or were able to show that they were not receiving an income from the business.

Mr P's claim

I've seen a note from a conversation between Covea and Mr P from the time of the claim. That note sets out details of the claim and that he had not registered with the Job Centre at the time of the claim. But in answer to the question, it is recorded:

*"Not yet, awaiting gov and my accountant clarifying the position for self employed
Either way this insurance paid for a long time was to cover my mortgage payments
The rest of my bills I need to work out what best option is in lieu of being able to work
or get a client contract, which I am looking daily but IT contract market is devastated
No (I will await the advice per above in coming few days before applying for UC
Expect this week)"*

And in making his claim, Mr P said:

*"On the Jobseeker's allowance, as I am still a Limited Company Director/Owner, I
have not applied for UC, as I would not receive anything I was informed, unless I
close/dissolve my company completely, which I don't want to do, as I am expecting to
return to business as soon as possible but it will be very difficult until the market is
functioning properly again and we are out of lockdown at least."*

I've also seen a letter from Mr P's accountant confirming that he suspended his business on 1 March 2020 and at the date of the letter (12 May 2020), he had not earned anything since then.

Covea initially turned down Mr P's claim as he had not permanently ceased trading. For the reasons already explained, I agree that this interpretation of the policy terms was onerous and unfair to Mr P. So I think Covea needs to reassess Mr P's claim, but on the basis of the interpretation of the policy terms I have set out above.

I think Mr P has provided sufficient evidence to suggest that his business suspended trading as he wasn't able to work at the time – had I not seen this I wouldn't have directed Covea to reassess the claim. But for the avoidance of doubt, in this decision, I've not directed it to pay the claim. That's because the complaint is about Covea's position that Mr P wasn't eligible to claim. I disagree with that, but I make no finding on whether I think the claim should succeed, although I expect Covea to take into account the evidence Mr P has already provided as detailed above.

Was the policy mis-sold?

Mr P has said that, if his claim was not accepted, he thought it likely the policy was mis-sold. In this case Covea didn't sell the PPI policy, rather it underwrote the policy at some stage after the sale took place. So I'm unable to consider the sale in this complaint. If Mr P wishes to complain about the sale of the policy, he would need to speak to the business that originally sold it.

My final decision

I uphold Mr P's complaint against Covea Insurance plc and direct it reassesses the claim, interpreting the policy conditions as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 7 October 2022.

Mark Hutchings
Ombudsman