

The complaint

Mrs W has complained that Covea Insurance plc has ended the claim she made for unemployment on a mortgage payment protection insurance policy and is requiring that she return the benefit amount that was paid to her.

What happened

Mrs W contacted Covea to make a claim after being made redundant in May 2021. Covea accepted the claim and paid out on it up until 21 December 2021. It discontinued the claim at that time due to Mrs W's failure to disclose her directorship of a limited company and her work activities relating to that company. Furthermore, Covea cancelled the policy with immediate effect and required reimbursement of the £16,515.94 that it had paid out.

Mrs W says she didn't mention her directorship as she didn't think it was relevant. She also denies working for the company during the claim period.

I wrote a provisional decision in May 2023 in which I explained why I was thinking of upholding the complaint. Covea has provided some additional comments that I will address below.

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.

As part of her claim, as well as providing job search evidence, Mrs W signed a declaration every month stating that she had not undertaken any paid or unpaid work.

Mrs W explained that she is a director of a small, home based, family business that is essentially run by her husband. The company is loss making and any income just covers costs and no wages are drawn by any family members.

Mrs W accepts that she did carry out some duties for the company prior to being made redundant from her main employment. However, she says she didn't do so during the claim period, mainly due to suffering an injury and being incapacitated.

Covea's investigations found online reviews relating to the company that mentioned Mrs W by name. Mrs W says this is probably a case of misattribution as it was actually her daughter that the clients would have seen. Another explanation was that clients don't always post reviews straight away and therefore the ones in question could relate to before the claim period.

Mrs W was interviewed by a claims assessor who concluded that the company could be classed as more of a domestic side-line rather than a reliable revenue stream. The assessor's report said it was difficult to prove the extent of Mrs W's involvement with the company but the evidence suggested some direct activity, even if it was confined to administrative duties or meeting and greeting clients.

I'd said in my provisional decision that it was reasonable of Covea to conclude that Mrs W did have some active involvement in the company and had failed to declare it. However, the next point I made was whether it was then fair and reasonable for Covea to end the claim and demand the return of the benefit already paid out.

Covea hasn't responded directly to my point about what it would probably have done if Mrs W had disclosed a limited involvement in the company. But it did make some other comments in response to my provisional decision.

It says it considers this case to be fraudulent and that her failure to disclose her additional occupation falls within the definition of deliberate misrepresentation/dishonesty.

There are two parts to 'fraud'. The first is not being truthful. The second is that the untruthfulness was put forward by the policyholder with a view to gaining a benefit from the policy they weren't otherwise entitled to receive. So, being dishonest to get something you would have got anyway – on the true facts – is unlikely to be enough to stop a claim being paid.

I have to decide what the situation most likely was, on a balance of probability.

Mrs W has said that, in reality, client bookings were few and far between. The assessor's report, having taken into account the available evidence of the company's finances and online reviews, doesn't contradict that. And the invoices that Covea requested after the assessor's visit also suggest that bookings were irregular.

Within the policy terms, the definition of 'Work' is: *'any paid work of at least 16 hours a week. This includes self-employed work and statutory maternity and parental leave but not temporary work.'*

The definition of 'Unemployed' is: *'having no paid work or temporary work and having a job seekers agreement...and can prove you are actively seeking work.'*

As Mrs W wasn't drawing a salary, whatever involvement she had in the company was unpaid.

In my provisional decision I concluded that any unpaid work was probably less than 16 hours per week. Covea's response was to ask how that assumption had been reached. Basically, I have looked at the evidence provided by both sides to decide it is more likely than not that Mrs W was working less than 16 hours per week. Covea's own claims assessor's report failed to reach any firm conclusion on the level of Mrs W's work activities for the company.

I had considered her dog breeding activities, including the information she provided to the claims assessor about how she came to have puppies for sale. Again, I was satisfied that, on a balance of probability that this, together with her activities for the company, would most likely still amount to less than 16 hours per week.

Covea has highlighted that Mrs W's LinkedIn profile openly advertises her as the owner of the company. It was already known that she is a director of the company. And this information doesn't support an assertion that she was working more than 16 hours per week.

It has also provided a link to a website in which Mrs W is offering her services as a speech giver in relation to her lifestyle in running her particular type of company. Mrs W talks about giving up the corporate life to live her dream and how the company is a 'full time job'.

This information has given me pause for thought. Covea believes this shows Mrs W's intention to run her company whilst receiving claim payments, with no real plan of looking for a proper replacement job.

We asked Mrs W for her comments about this. She says that she only recently set herself up on this website to try and stimulate some work but that, so far, she has had no bookings. And she characterises the storyline she gives as being marketing speak.

This is another example of Mrs W appearing to be the 'face' of the company whilst maintaining that it is really her husband's business. I therefore understand why Covea would have concerns. But Covea's initial investigation didn't uncover this website, so I accept Mrs W's explanation that this is something she has undertaken recently. Therefore, it does not affect the claim period. And I'm not persuaded it is sufficient to demonstrate that she was not looking for alternative full-time employment during the claim period.

Covea has set out a number of comments that our adjudicator made in reaching his view. I can confirm that I considered every issue that the adjudicator covered off, even if I did not go into them in detail in my provisional decision. As Covea will be aware, our two-stage process means that the outcome can change once the case is put in front of an ombudsman.

I've thought carefully about the additional points that Covea has made. However, it has not caused me to depart from the outcome I reached in my provisional decision.

I agree that Mrs W failed to disclose that she was carrying out some unpaid work. I certainly understand why Covea would see this as a dishonest misrepresentation. However, as set out above, I need to consider whether that misrepresentation has resulted in her obtaining a benefit to which she was not otherwise entitled.

I remain persuaded that Mrs W's involvement with the company doesn't meet the definition of 'Work' and that she did meet the definition of being 'Unemployed'. As such, I think it is more likely than not that, if Mrs W had disclosed the nature of her involvement with the company, Covea would have paid out the claim in any event. So not telling Covea about her unpaid work did not improve Mrs W's position or affect the claim.

Putting things right

Covea should withdraw its requirement for Mrs W to return the benefit amount already paid out. It should reinstate the policy from the point it was cancelled and continue to assess the claim for the remaining available term, disregarding the unpaid work that Mrs W has undertaken. If the remaining claim is successful, Covea can retain the amount of any premiums due for that period from any further claim payments.

My final decision

My final decision is that I uphold Mrs W's complaint and require Covea Insurance plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 17 August 2023.

Carole Clark
Ombudsman