

The complaint

Mr T complains that ActiveQuote Limited (AQ) mis-sold him an income protection insurance policy.

What happened

In April 2022, Mr T spoke with AQ's adviser because he wanted to take out a policy which would provide protection for his mortgage if he became unable to work due to accident, sickness or unemployment. During the call, Mr T told AQ's adviser that he had a permanent employed role, but that he also owned his own business. The adviser recommended that Mr T should take out an accident, sickness and unemployment income protection insurance policy. Mr T accepted the adviser's recommendation and took out the policy.

Unfortunately, Mr T was later made redundant from his permanent role and so he looked into making a claim on the policy. However, he learned that in order to make a successful unemployment claim, he'd need to be totally unemployed. As he also owned an actively-trading business, Mr T wasn't totally unemployed and therefore, couldn't make a claim on the policy.

Mr T was unhappy with the advice he'd been given by AQ and so he complained. AQ accepted that its adviser should have clearly highlighted the unemployment terms to Mr T at the time of sale and so it offered to pay him £300 compensation.

Remaining unhappy with AQ's offer, Mr T asked us to look into his complaint. He considered that AQ should pay him compensation equivalent to the amount he'd have been paid out for a valid unemployment claim, together with a refund of premiums.

Our investigator felt that AQ had mis-sold the policy to Mr T. She considered that the unemployment terms should have been drawn to his attention at the time of sale. So she recommended that AQ should refund the premiums Mr T had paid for the policy, together with interest.

However, she didn't agree that AQ should pay Mr T compensation to the value of any successful claim. That's because she didn't think there was any policy available on the market which would have covered Mr T's employment situation. So she didn't think he'd have been able to take out an alternative policy which would have paid out in Mr T's circumstances.

AQ accepted the investigator's view.

Mr T said he was prepared to accept a premium refund as a start. He agreed that he'd have been unlikely to have been able to find alternative cover. However, he said he'd been reassured by AQ's adviser that he would be covered by the policy and he'd paid premiums to prevent the stress and financial burden if he became unemployed. He didn't think it was material whether he could have found alternative cover elsewhere – he felt it would be fair and reasonable to direct AQ to make good its advice.

The complaint's been passed to me to decide.

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 done so, whilst I'm sorry to disappoint Mr T, I agree with our investigator that the fair and reasonable outcome to this complaint is for AQ to pay Mr T a refund of his policy premiums, together with interest. I'll explain why.

The relevant regulator's rules set out the obligations placed on brokers (and insurers) when they sell contracts of insurance. It's common ground that AQ advised Mr T to take out this policy. So AQ was required to carry out an assessment of his demands and needs and to ensure that its recommendation was suitable for him. It also needed to give Mr T enough clear, fair and not misleading information so that he could decide if the policy was right for him.

I've listened carefully to the sales call between Mr T and AQ's adviser. Mr T clearly explained the type of cover he wanted and he explained his employment situation. The adviser understood Mr T had two roles and the cover he was looking for. I'm satisfied that AQ's adviser knew that Mr T wanted to protect his mortgage if he lost his permanent job. However, under the terms of the policy the adviser recommended, Mr T would only have been able to make a successful unemployment claim if he not only lost his employed role, but also if his own business totally ceased trading. So I find that the policy the adviser recommended was clearly unsuitable for Mr T's identified needs. Nor did the adviser highlight the unemployment terms to Mr T during the sales process.

In my view, if Mr T had known the policy wouldn't provide the cover he wanted it to, I think it's unlikely he'd have taken it out at all. As such then, I'm satisfied that AQ's adviser did mis-sell the income protection insurance policy to Mr T. So I now need to consider what I think fair compensation should be and I'll explore this further below.

Mr T feels strongly that his financial loss is equal to the value of a valid unemployment claim – broadly £20,000. He therefore considers that AQ should pay him compensation of around this sum to make good on the advice he was given. I've thought about this very carefully. However, in deciding what I think fair compensation should be, I need to consider what, if any, financial loss AQ's mis-advice has caused Mr T to suffer. I don't think it would be fair, reasonable or proportionate for me to direct AQ to pay Mr T compensation to the value of his claim if he would never have been able to find an insurance policy which would have covered his situation. That's because his claim could never have been paid out, irrespective of any assurance AQ gave him that his situation would be covered.

In my experience, most, if not all, income protection insurers will only pay unemployment claims where a policyholder is totally unemployed. This means that in order for Mr T to have been able to make a successful unemployment under most, if not all, income protection insurance policies, he'd have needed to have been made unemployed from his employed role *and* his own business would have needed to have ceased trading. So it follows that I don't think Mr T would have been able to find an income protection insurance policy which would have covered his particular situation. Mr T appears to accept this point. And therefore, I don't think it's likely, on balance, that he'd have been able to make a successful claim on *any* policy at the point he was made redundant from his employed role. As such then, I don't think I can fairly or reasonably find that Mr T's actual loss in these circumstances is the value of a valid unemployment claim.

Instead, I think that if AQ had told Mr T that the policy wasn't suitable for him, he'd have chosen not to take it out at all. So I find that Mr T's actual financial loss is the premiums he paid for the cover during the insured period, together with interest at an annual rate of 8% simple to reflect the time Mr T was without that money. Therefore, I'm satisfied that in all the circumstances of this complaint, AQ's agreement to refund Mr T's premiums plus interest is fair compensation to put right its errors in mis-selling this policy.

It's now open to Mr T to decide whether or not to accept this award. I must make it clear that if Mr T chooses to accept my decision, it will become legally binding on both parties. This means it's very unlikely that Mr T could pursue the matter any further in court.

My final decision

For the reasons, I've given above, I find that ActiveQuote Limited mis-sold Mr T an income protection insurance policy.

I direct ActiveQuote Limited to refund the premiums Mr T paid for the policy, together with interest at an annual rate of 8% simple, from the date each premium was paid until the date of settlement.

If ActiveQuote considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 December 2023.

Lisa Barham
Ombudsman