

## **complaint**

Mr G complains that AXA Insurance UK Plc stopped paying a PPI claim he made for unemployment benefit, and that it demanded that he repay all the benefits paid so far.

## **background**

Mr G made a claim for unemployment benefits under his PPI policy. AXA paid benefits for several months. However it then received information that made it suspect that Mr G was still working. It also discovered that Mr G had been a majority shareholder in his employer up until just before he became unemployed, and that he had given up a directorship role voluntarily. It said this meant his claim was invalid from the start. It also accused him of submitting a fraudulent document about the length of his employment, in support of his claim.

Our adjudicator said that AXA had stopped the claim unfairly. AXA didn't agree and so the matter has come to me for a decision.

## **my findings**

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

Under the policy Mr G was entitled to claim unemployment benefits if he became unemployed. Mr G has presented evidence that he had become unemployed and so entitled to claim benefits under the PPI policy. This was in the form of a letter from the new controlling director. And he also gave evidence that he was receiving Jobseeker's Allowance.

As Mr G had shown that he had a reason to claim under the policy, it was for AXA to show that the claim wasn't valid. If AXA believed it was entitled to refuse to pay, it needed to show that Mr G's evidence of unemployment was false; or that he fell foul of an exclusion in the policy.

I don't think AXA has done this, under a reasonable interpretation of the policy.

AXA hasn't challenged the claim that Mr G was actually made redundant. Nor has it questioned the Jobseeker's Allowance evidence.

Instead it has said that Mr G became voluntarily unemployed, which is excluded under the policy:

*"What is not covered... the insurer will not pay benefit for Unemployment... caused by Your resignation, voluntary Unemployment, voluntary redundancy..."*

AXA says that Mr G in reality made the decision to end his employment. This is because Mr G was previously a majority shareholder and the director of the company. Mr G says he became an employee of the company seven months after incorporation, because this is when it started trading. Four months after this he reduced his shareholding to 20%, giving most of his shares to another employee. That person became sole director. Very shortly afterwards, the new director signed a letter to Mr G saying he was being made redundant because of the trading situation.

AXA also says that Mr G was self-employed as defined by the policy because he had been a director of a company in which he owned more than 25% of the shares. As a self-employed person the policy required him to show that his business had “ceased to trade”:

The policy has following definition:

*“Ceased to Trade [means] you are entirely out of paid work because Your business has failed or the business of which You are a controlling director has failed and You must have provided accounts to cessation and Your last tax return has been placed with Your local tax office.”*

However, at the time the claim technically started, Mr G was no longer legally in control of the company, and didn’t make the official decision to end his employment. And he was no longer “self-employed” as defined by the policy. This means he complied with the conditions under the policy to claim.

I can understand why AXA became suspicious that Mr G’s claim was not valid. It looks very much as though Mr G had arranged his affairs so that he would be eligible to claim under the policy. And it received some information suggesting that the business might still be working. However, whilst a suspicion justifies further investigation, good evidence is needed to reach a conclusion that a claim is invalid or even fraudulent.

The conditions under the policy that AXA has imposed on self-employed people put a significant burden on policyholders. It requires them to give up all hope of resuscitating their business, because it requires final accounts and tax returns to be filed. But at the same time it requires claimants to actively seek new employed or self-employed work.

In the face of such strict (and arguably contradictory) requirements, I do not think it was necessarily unreasonable for Mr G to arrange his affairs so that he complied with the letter of the policy. For me the question is whether he was genuinely unemployed, or was instead dishonest about his claim.

The purpose of the policy was to provide cover for mortgage expenses if Mr G lost his employment. Mr G says that he did lose his employment – both technically, because he received a redundancy letter and stopped being paid, but also in reality because the business was not viable.

AXA hasn’t shown that Mr G was working for remuneration in this or any other business during his claim. Nor has it shown that Mr G redundancy was truly voluntary. If his business was no longer viable, it was not his voluntary choice to stop being employed by it. AXA hasn’t shown that the business was viable, and that therefore the change in share ownership, and Mr G’s resignation as director, and his redundancy were an attempt to claim benefits unjustly or even fraudulently.

AXA also says that Mr G breached the condition that he must not work during a claim. It says this because he admitted attending a trade fair. Mr G says he attended the weekend fair to try and promote the products of his company in order to try and create employment for himself. He says he was not paid for this. He says he didn’t know this would invalidate his claim, especially as he was allowed to do this under Job Seeker’s Allowance rules as part of looking for employment.

Mr G says he was not remunerated for this activity and AXA hasn't shown that he was. Further the policy required Mr G to be "actively seeking alternative Employment or Self Employment..." And so I do not see that Mr G stopped being eligible to claim because of that activity.

AXA hasn't, as far as I can see, sought evidence to show how viable the business really was, both before and after the claim. AXA instead refused the claim mainly on the basis that the unemployment was voluntary. I do not think it would be fair for AXA to now open up that new front.

AXA referred to possible fraud. However, the only evidence AXA has put forward of the alleged fraud is the letter of redundancy. This says that Mr G had started as an employee about four months before he was made redundant – whereas AXA had discovered that he started as a director a year before. Mr G says his date of employment is accurate, because that is when he started being paid by the company. I can see that this is a possible explanation. And so I do not think AXA has given strong enough evidence to support its claim that this shows dishonesty.

### **my final decision**

I uphold this complaint. I require AXA Insurance UK Plc to stop seeking to reclaim the benefits paid so far. And it should reconsider Mr G's continuing claim on the basis that he was so far eligible to claim unemployment benefits under the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 November 2015.

Timothy Bailey  
**ombudsman**