Ombudsman determination
CIFO Reference Number: 17-000033
Complainant: [The complainants]
Respondent: [Company X]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.[1]

The complaint relates to the termination of a group health insurance policy purchased by the Trust.

Background

The Trust was established in the [redacted for anonymisation purposes] on 21 September 2001. The members were expatriate employees of [redacted for anonymisation purposes], a [redacted for anonymisation purposes] financial institution, and the trustees were [redacted for anonymisation purposes].

In October 2001, the Trust purchased a group health insurance policy for the benefit of its members and their dependents. The policy was originally sold and managed by [Company X's] office in the [redacted for anonymisation purposes], but responsibility was later transferred to the [jurisdiction 2] office in 2013.

On 25 August 2016, [Company X] advised the Trust that they would be terminating the group policy. [Company X] had become aware that the 47 remaining members of the Trust were no longer employed by [the employer], and so concluded that they were ineligible for further coverage.

The Trust disputed the impending termination of the policy, arguing that employment with [the employer] was never a pre-requisite for membership. The Trust asserted that the policy was always intended to be portable, in order to ensure that members continued to receive cover after they left [the employer] or retired.

In support of their claim, the Trust highlighted the lack of any reference to [the employer] in the policy documents. The named policyholder was their trustee, [redacted for anonymisation purposes], and not [the employer]. The Trust therefore concluded that [Company X] did not have the right to cancel the policy.

[Company X] defended their decision, noting that they had dealt extensively with [the employer] from the outset and considered the Trust to be a means by which [the

[1] Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

employer] could provide medical insurance to its expatriate employees. [Company X] considered that [the] Trustees was a proxy for [the employer], because [redacted for anonymisation purposes] law prevented [the employer] from contracting with a foreign insurer if they did not have a local office in [redacted for anonymisation purposes]. [Company X] was therefore of the view that eligibility for the policy relied on continuing employment with [the employer].

CIFO's Initial View

The case handler initially assigned to the complaint established that the individual members of the trust had a sufficiently close relationship with [the employer] in order to bring a complaint to CIFO, which was the following:

> 6.11 *The complainant was a beneficiary, or had an actual or prospective beneficial interest, or had the right to benefit from a claim, under an insurance contract taken out (or intended to be taken out) where the relevant provider carried on relevant business in respect of the contract, or the complainant attempted to enter into that relationship.*

During the initial investigation, the case handler found evidence which suggested that an employee/employer relationship was a key eligibility requirement of the policy. Throughout the policy documentation, the policyholder was referred to as the 'employer' and the insured individuals as 'employees'. In addition, eligible members were clearly defined as

> '*all active [redacted for anonymisation purposes] expatriate, third country national employees of the employer regularly working a minimum of 30 hours a week*'.

The case handler noted that [the] Trustees was named as the policyholder but found that they could not be the employer for the purposes of the policy because they did not employ any members of the Trust. The case handler concluded that this supported [Company X's] position that [the] Trustees were a proxy for [the employer].

The case handler found that the Trust's assertion that the policy was intended to cover employees who left [the employer] or retired did not reconcile with the original intention of the trust, which was evidenced within a draft trust agreement dated 17th May 2001, which stated the following:

1. *The Bank has certain [redacted for anonymisation purpose] employees (Employees) whose composition may change from time to time, and for whom it wishes to provide private medical insurance, and*
2. *Those employees and their families require a type of medical coverage that the Bank is unable for legal reasons to purchase itself, and*
3. *The desired coverage must be purchased as a group insurance contract.*

The case handler also viewed email correspondence from 2000, prior to the establishment of the policy, wherein [Company X] advises that they do not offer continuation products. In regard to retirees, [Company X] states the following:

'*…once these employees terminated their employment with [the employer] they would no longer be considered an active fulltime employee and would not be eligible for the plan as there is no employee/employer relationship'*

The case handler also noted that the policy itself did specifically exclude retirees, because it required members to be active employees working a minimum of 30 hours a week.

Turning to the argument that [the employer] already provided an insurance policy for its employees, the case handler concluded that the [Company X] policy provided additional benefits, which was supported by the draft trust agreement and email correspondence from October 2004, wherein [the employer] is considering adding their Chairman to the policy for the following reason:

'*the local plan does not cover him when he travels out of [redacted for anonymisation purposes]'.*

On the basis of the above, the case handler concluded that there was sufficient circumstantial evidence to suggest that the policy was purchased for the benefit of expatriate employees of [the employer]. Because the policy required members to be '*employees of the employer',* the case handler concluded that it was reasonable to infer that coverage would end once members left employment with [the employer].

The Trust's Appeal

The Trust disagreed with the case handler's conclusions, and the case was escalated to me for a final determination.

The Trust considered that [the employer] could not be have been connected to the insurance policy in any form, as this would have been a breach of [redacted for anonymisation purposes] regulations regarding foreign insurers. Therefore, the Trust asserted that the group was a means by which the individual members, and not [the employer], could obtain an insurance policy of their choice.

In regard to [the employer's] actual involvement, the Trust considered this to be minimal and extended only to general support for the concept and some initial assistance at the outset of the policy.

The Trust maintained that the [Company X] policy was useless to the members while they were employed at [the employer] because they already received coverage from the bank. Therefore, in the Trust's view, the primary motivation behind the [Company X] policy was its portability.

The Trust noted the use of the terms 'employer' and 'employee' within the policy but considered that the term 'employer' was a boilerplate term and 'employee' should be read as 'member'.

On the basis of the above, the Trust reasserted their view that [Company X] had no basis to terminate the insurance policy for its members.

Findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

The case handler's recommendation not to uphold the complaint was based on two key presumptions:

1. That the Trust was a means by which [the employer] could obtain a group medical insurance policy for its [redacted for anonymisation purposes] employees; and,
2. That the Trust was aware, or ought to have been aware, that the policy was not portable and would not cover the members when they left [the employer] or retired.

I consider that there is persuasive evidence which supports these two presumptions but note that it is circumstantial and not conclusive, because [the employer] has not been named in the policy documentation.

Where evidence is missing, incomplete, or conflicting, CIFO will apply the balance of probabilities test in order to reach a decision which is fair and reasonable.

The balance of probabilities test is a judgement as to which version of the facts is more likely than not to be true, taking into account all the circumstances of the case and the available evidence. I do not need to be satisfied 'beyond all reasonable doubt', which is a higher threshold generally reserved for criminal matters.

On balance, I agree with the two presumptions above, and find that [Company X] have not acted unreasonably in this matter.

It is clear that the Trust purchased a group policy from [Company X] which was intended for employers and their employees. Eligibility for this policy required members to be active employees of the employer, working a minimum of 30 hours a week.

[The] Trustees was the policyholder, but I cannot conclude that they were the employer. On balance, I consider that [redacted for anonymisation purposes] was the employer. Therefore, I find that in order to have remained eligible for coverage, members of the Trust must have been active employees of [the employer] working a minimum of 30 hours a week.

I am satisfied that [redacted for anonymisation purposes] insurance regulations prevented [the employer] from contracting with [Company X] directly, and necessitated the use of [the] Trustees to act as the policyholder in their stead. I do not consider that it

would be fair and reasonable to conclude that this arrangement prevented [Company X] from terminating coverage once members had left [the employer] or retired.

I find that there is sufficient evidence to suggest that coverage was always intended to rely upon a member's employment with [the employer], and that the Trust was aware, or ought to have been aware, that the policy was not portable and did not cover retirees.

I therefore do not uphold the Trust's complaint.

Decision

My final decision is that I do not uphold this complaint.

Next steps for the [redacted for anonymisation purposes] Trust

You must confirm whether you accept this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **20 March 2018**. The determination will become binding on you and [Company X] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 20 March 2018, please contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise you and [Company X] of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 20th February 2018