



## Case study: Health Insurance

### TERMINATION OF GROUP HEALTH INSURANCE PURCHASED BY A TRUST

Themes: Off-shore trust, group health insurance, effect of local insurance legislation, cancellation of group policy, CIFO decision based on balance of probabilities

This complaint relates to the cancellation of a group insurance plan arranged through an off-shore trust for expatriate employees of a Japanese company when the plan members were no longer employed by the company.

A trust was established in the Cayman Islands on 21 September 2001. The trust beneficiaries were expatriate employees of a Japanese financial institution. In October 2001, the trust purchased a group health insurance policy for the benefit of its members and their dependents.

On 25 August 2016, the insurer advised the trust that they would be terminating the group policy.

The insurer had become aware that the 47 remaining members of the trust were no longer employed by the Japanese financial institution, and so concluded that they were ineligible for continued group plan coverage.

The trust disputed the impending termination of the policy arguing that continued employment with the Japanese financial institution was never a pre-requisite for group insurance plan membership. The trust asserted on behalf of the beneficiaries that the policy was always intended to be portable in order to ensure that members continued to receive cover after they left the Japanese financial institution or retired.

In the provisional assessment, the CIFO case handler recommended the complaint not be upheld based on two key grounds:

1. That the trust was a means by which the Japanese financial institution could obtain a group medical insurance policy for its non-Japanese employees; and,
2. That the trustee was aware, or ought to have been aware, that the group insurance policy was not portable and would not cover the members when they left the Japanese financial institution or retired.

The trustee asked for a review of the case handler's conclusion by the Ombudsman. The Ombudsman considered that, while there was some persuasive evidence which supported these two grounds, the evidence was circumstantial and not conclusive because the Japanese financial institution had not been named in the insurance policy and related 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 in the circumstances.

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. The

Ombudsman does not need to be satisfied 'beyond a reasonable doubt', which is a higher threshold generally reserved for criminal matters.

In insurance matters, it is often helpful to look at the wording of the policy itself when considering what would be fair and reasonable in the circumstances. CIFO considered that the trust purchased a group policy from the insurer 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 were not themselves policyholders, but CIFO could not conclude that they were the employer. On balance, the Ombudsman considered that the Japanese financial institution was the employer under the group plan. Therefore, CIFO found that in order to have remained eligible for coverage, members of the trust must have been active employees of the Japanese financial institution working a minimum of 30 hours a week.

CIFO found that Japanese insurance regulations prevented the Japanese financial institution from contracting with the insurer directly and necessitated the use of the trustees to act as the policyholder in their stead.

CIFO therefore decided that this group insurance contract did not prevent the insurer from terminating coverage once members had left employment with the Japanese financial institution or retired.