

## The complaint

Mr S has complained that Arch Insurance (UK) Limited declined a claim for unemployment that he made on his mortgage payment protection insurance policy.

## What happened

Mr S's job came to an end in September 2022 and so he contacted Arch to register a claim for unemployment. Arch declined the claim on the basis that Mr S had entered into a settlement agreement with his employer. It therefore deemed that he had made himself voluntarily unemployed, which is not covered under the policy terms.

Our adjudicator's view was that Arch had acted fairly in declining the claim and he therefore did not uphold the complaint. Mr S disagrees with the adjudicator's opinion and so the complaint has been passed to me for a decision.

## 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.

In doing so, I have taken account of the law, relevant rules and regulations, and good industry practice.

I've decided not to uphold Mr S's complaint and I'll explain why.

In the policy document, under the heading '*Unemployment exclusions*', it states that a claim cannot be made if:

*'you voluntarily leave your last employment...'*

Mr S has explained that he was recruited by the company slightly less than a year before to head up certain projects. But unfortunately, those proposed projects didn't come to fruition and so a decision was made to restructure the business and delete his post. He says he was not offered an alternative role and that he had no choice but to leave, meaning that he was essentially made redundant.

In a scenario where a post is being deleted, it might be expected that an employee would be given a notice of redundancy. The signing of a settlement agreement tends to signify that an alternative outcome has been negotiated. At face value, a settlement agreement shows that there has been a mutual agreement between an employer and an employee to part ways, with no apportioning of blame. As the employee is an equal party to the agreement, it is reasonable for insurers to generally view that as the employee leaving voluntarily.

However, relationships between parties, and the issues that come into play when a job is ending, can sometimes be complex. As such, I would expect Arch to try to look behind the reasons for any settlement agreement, to determine whether the circumstances more closely resemble a redundancy situation. In this case Arch has taken steps to do that.

Although Arch was given a copy of the settlement agreement, it doesn't detail the reasons for Mr S's employment coming to an end.

Arch contacted Mr S's former employer, asking it to complete a questionnaire which included questions such as whether the unemployment was voluntarily undertaken or whether it was compulsory redundancy. It also asked questions around the circumstances of the settlement agreement being reached. The employer declined to complete the questionnaire and said it was bound by the terms of the settlement agreement to not comment any further.

In response to this, Arch provided proof of Mr S's consent for the employer to release relevant information. When the employer failed to respond, Arch sent them a copy of a letter from Mr S that set out his version of events, asking the employer if it could confirm it as accurate. When the employer again didn't respond, Arch called them. The employer said that it couldn't get into a discussion about the statement Mr S had made and that the *'problem is they are not complete'*.

So, although Mr S has provided his personal testimony about what happened and that he was given no option but to leave, it is reasonable that Arch would need some evidence to corroborate this. Despite its efforts, it has been unable to secure this information. And Mr S hasn't provided any documentary evidence that he did not leave his employment voluntarily.

Mr S has more recently forwarded us an email in which his ex-employer confirms that he was never offered the option to continue in his current role or an alternative role. But that doesn't paint the full picture of how he came to part ways with his employer. It is reasonable that Arch would need a fuller understanding of the circumstances in order to agree the claim.

Mr S says the settlement agreement was used to end his employment in a 'clean' manner. But it is unclear to me why being issued with a redundancy notice, due to a restructure, would not also be considered to be 'clean', from Mr S's point of view. However, I do understand that senior executives sometimes prefer to leave by means of a settlement agreement, rather than being made redundant.

I appreciate Mr S says the employer wanted to limit any future claims that he might wish to bring against them. This is common in settlement agreements, with the employee usually receiving something (usually a payment) in return. I note that Mr S received a 'termination payment' of £15,000 in addition to his six months' pay in lieu of notice.

Mr S has talked about there being no alternative, other than the possibility of claiming for unfair dismissal. But he did not have to enter into a settlement agreement, which would have presumably meant he would then have been issued with a redundancy notice.

Mr S has asked that, if he chose to leave voluntarily, then why would a settlement agreement be required. But a settlement agreement is what is used to set out the terms when someone agrees to leave their job by mutual agreement.

Mr S has highlighted a previous case I wrote in which I upheld a complaint where the complainant had also signed a settlement agreement. He says that his situation broadly aligns with the circumstances in that case. For obvious reasons, the evidence presented in that case is confidential. But what I can say is that there was a great deal of documentary evidence in that case that led me to decide that the insurer had reached the wrong outcome in concluding that the complainant had made himself voluntarily redundant.

In this case, Arch had a lot less information to base its assessment on. And I'm satisfied that the information it did receive was insufficient to conclude that Mr S had been made involuntarily unemployed. Therefore, it was reasonable for Arch to decline the claim.

### **My final decision**

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 October 2023.

Carole Clark  
**Ombudsman**