

Determination

Case number: 611558

4 April 2019

Overview

1.1. Complaint

This complaint is about the insurance premiums that the complainant has paid for his insurance cover through the Fund from 1 December 2013 to 21 June 2018. The complainant was paying insurance premiums based on a 'standard' occupation grouping (or 'work rating') during this period. This was a higher risk rating. He says he should have been paying insurance premiums based on a 'professional' work rating because he worked more than 80% of his time in an office environment. He successfully applied for a change of his work rating to 'professional' on 21 June 2018.

The financial firm (trustee) says it disclosed enough information about the work ratings to alert the complainant to apply for a change.

The decision under review is the trustee's decision not to refund the difference in the insurance premiums paid by the complainant under the 'standard' work rating and the insurance premiums that would have been paid by the complainant under the 'professional' work rating during the period 1 December 2013 to 21 June 2018.

The case manager provided the parties with a preliminary assessment on the issues. The preliminary assessment was that the trustee's decision was not fair and reasonable and that the trustee should refund the difference to the complainant.

1.2 Issues and key findings

I have independently reviewed the AFCA file, the material relied on by the case manager and the further submissions from the parties to make my own decision. I agree with the case manager's preliminary assessment.

Did the trustee provide clear disclosure to the complainant about the work ratings?

In circumstances where the Fund's 'standard' work rating is for higher risk workers, the trustee must clearly disclose that fact. This is because the complainant, as an ordinary reasonable person, did not associate the word 'standard' with 'higher risk'.

Instead, the trustee placed an onus on the complainant to apply to change his work rating by disclosing the criteria of the two ratings he could change to: 'low risk' and 'professional'. However, the complainant could not fully appreciate the need to make

a change without a clear understanding of the types of work intended to be covered by the 'standard' work rating.

Is the trustee's decision not to refund the difference in premiums fair and reasonable in the circumstances?

The trustee's decision not to refund the difference in premiums is not fair and reasonable in its operation to the complainant in the circumstances because he did not have sufficient information from the trustee's disclosures to alert him to apply to change his work rating.

1.3 Determination

The determination sets aside the trustee's decision and substitutes AFCA's decision that the trustee credit the complainant's account with the difference in the insurance premiums paid by the complainant under the 'standard' work rating and the insurance premiums that would have been paid by the complainant under the 'professional' work rating during the period 1 December 2013 to 21 June 2018, together with earnings at the rates that applied to his account over that period.

2 Reasons for determination

AFCA's review power and procedural fairness

In determining superannuation complaints, AFCA must:

- comply with its rules and the Corporations Act
- consider whether the trustee's decision was fair and reasonable in its operation in relation to the complainant
- not make a determination that is contrary to law or to the trust deed or the insurance policy.

The issue is whether the decision under review was fair and reasonable, based on all of the information obtained by AFCA.

In reaching my determination, I have reviewed the AFCA file and considered all the material provided by the parties. Additionally, I am satisfied the material I have relied on has been provided to all parties and they have had an opportunity to respond.

2.1 Did the trustee provide clear disclosure to the complainant about the work ratings?

The 'standard' work rating was the default rating under the insurance policy

Under the group life policy with the Fund's insurer, a Fund member who does not nominate an occupation grouping is defaulted to the 'standard' occupation grouping (or work rating).

This was a higher risk work rating, since the premiums were approximately twice the amounts payable for the other occupation groupings.

The other occupation groupings under the policy are 'professional' and 'low risk'.

The trustee provided disclosures to the complainant about his 'standard' work rating

The trustee provided information to the complainant in a brochure entitled 'About your new account' on 28 August 2013, when the complainant was transferred from the Fund's corporate division to its industry division. The information included a boxed text headed 'Is the Standard work rating right for you?' The text box wording was as follows:

Cover costs are based on a Standard work rating, but you could pay less for your cover if your work is classified as a Low Risk or Professional work rating. If you spend at least 80% of your time in an office environment (excluding travel from one job to another) and don't do any manual work, you may be eligible for a Low Risk or

Professional rating. You can apply for a different rating when you get your new member number.

The complainant's annual member statements for the periods 30 June 2014 to 30 June 2018 also disclosed that his work rating was 'standard'.

The trustee also included information about the work ratings in its 'Insurance in your super' guide, referred to in its Product Disclosure Statement. The guide provided information about the 'low risk' and 'professional' work ratings and how to apply for them (see section 3.2). It also included a table of premium rates.

The 'standard' work rating was not true to label

The complainant says the label 'standard' does not suggest 'high risk'. I agree that 'standard' would suggest a median risk rating to an ordinary reasonable person.

The Fund markets itself to a wide membership demographic (as opposed to a particular high risk industry sector), so there is nothing obvious about the Fund or its membership to indicate to the complainant that a high risk work rating would be its 'standard' default rating.

The trustee puts the onus on individual members to apply to change their work rating if the 'standard' work rating is not applicable to them. Because the 'standard' work rating is higher risk, disclosure documents must be very clear about the types of work intended to be covered by the 'standard' work rating so that Fund members are fully informed about their choices.

The trustee's disclosures did not explain the 'standard' work rating

None of the trustee's disclosures explained the types of work intended to be covered by the 'standard' work rating or that it was in fact a higher risk work rating.

Without this explanation, the complainant was not alerted of the need to apply for a change.

The only indication that the 'standard' work rating was a higher risk rating was that the premiums payable for this rating were more than double the premiums paid for the 'professional' work rating and approximately twice the premiums paid for the 'low risk' work rating.

If, for example, the trustee's disclosures had clearly stated "the standard work rating is applicable to blue collar workers", the complainant could have easily recognised that the 'standard' work rating was not applicable to him. Instead, the trustee described the characteristics of the 'low risk' and 'professional' ratings and assumed the complainant would apply for a change if those characteristics appeared applicable to him. In other words, the trustee disclosed by implication what work types the 'standard' work rating was **not** intended to cover, rather than what it **was** intended to cover.

2.2 Was the trustee's decision not to refund the difference in premiums fair and reasonable in the circumstances?

The complainant successfully applied to change his work rating once he knew what 'standard' meant

The complainant says he learned the meaning of 'standard' from speaking with a friend and then applied to change his work rating on 21 June 2018. When the complainant applied to change his work rating to 'professional', he was successful.

On the balance of probabilities, I am satisfied that, if the complainant had had sufficient information to make an informed decision about the types of work intended to be covered by the three work ratings, he would have successfully applied for a 'professional' work rating when he was first transferred to the industry division of the Fund.

In these circumstances the trustee's decision is not fair and reasonable

The trustee's decision not to refund the difference in premiums is not fair and reasonable in its operation to the complainant in these circumstances because he did not have sufficient information from the trustee's disclosures to make a fully informed decision to change his work rating at an earlier point in time.

In order to remove the unfairness and unreasonableness of the trustee's decision, AFCA sets aside the trustee's decision and substitutes AFCA's decision that the trustee credit the complainant's account with the difference in the insurance premiums paid by the complainant under the 'standard' work rating and the insurance premiums that would have been paid by the complainant under the 'professional' work rating during the period 1 December 2013 to 21 June 2018, together with earnings at rates that applied to his account during that period.

3 Supporting information

3.1 Group Life Policy

Clause 18.1.3

An insured member who does not nominate an occupation grouping at the time he or she receives cover under this condition 18.1.3 will be deemed to belong to the Standard occupation grouping until such time as their occupation grouping is varied under the terms of this policy.

Clause 2

Occupation grouping means any of the following occupation groupings and in relation to an insured member means the occupation grouping which applies at the time cover commences or recommences in respect of them or the time their application to alter their occupation is accepted:

- A Professional – an insured member in respect of whom we have received evidence satisfactory to us and relevant to the criteria agreed between you and us by which we identify the insured member’s status as a Professional*
- B Low Risk - an insured member in respect of whom we have received evidence satisfactory to us and relevant to the criteria agreed between you and us by which we identify the insured member’s status as Low Risk*
- C Standard – an insured member who does not fall within either of the occupation groupings set out in paragraph A or B*

3.2 Insurance in your super guide

Could you pay less for cover?

What’s your individual work rating?

The type of work you do determines your individual work rating – Standard, Low Risk or Professional. This makes a difference to how much you pay for cover.

Your work rating will be Standard, unless you apply to change it. If you spend at least 80% of your time in an office environment and don’t do any manual work, you may be eligible for a Low Risk or Professional work rating, which means your cover will cost less.*

...

Changing your work rating

To check your work rating, log into your account and go to My insurance.

- To apply for a Low Risk or Professional work rating log into your account and go to My insurance or complete the Change your work rating form at [website address]*
- If your work rating change is approved, the cost of your cover will reduce from the date your application is accepted.*

Questions we'll ask to see if you're eligible for a Low Risk or Professional work rating

1. Are the usual activities of your job 'white collar'?
 - This means you spend more than 80% of your job doing clerical or administrative activities in an office-based environment, or
 - You're a professional using your university qualification in a job that has no unusual work hazards (some examples of unusual work hazards include: working underground, working underwater, working at heights or working in the air)
2. Are you earning \$100,000 or more a year from your job?
3. Do you have a university qualification?
4. Do you have a management role in your company?

We'll also need to ask your occupation when you apply.

**When you join, your employer may negotiate a Low Risk or Professional work rating. You can check by logging into your account.*