

The complaint

Mr R complained that The Shepherds Friendly Society Limited declined to meet a claim under his income protection policy.

What happened

The facts are well known to the parties and not in dispute, so I won't repeat them in detail here. In summary Mr R made a claim under his policy following a slip on ice in January 2022 whereby he injured his back.

Shepherd's Friendly didn't feel he met the policy definition for a claim to be met. Mr R then provided further information which persuaded our investigator that the complaint should be upheld – but Shepherd's Friendly didn't change its mind.

I issued a provisional decision on 19 January 2023 and said as follows:

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

Having done so I am minded to uphold this complaint. I'll explain why.

Mr R's policy provides that benefit will be paid if the policyholder is incapacitated. It says:

2.1 For the purpose of the contract between you and us, you suffer from an incapacity and are incapacitated if you are not fit and able to work in your own occupation as a result of physical or mental illness or injury, provided that such physical or mental illness or injury is not due to a pre-existing condition.

2.4 Fit and Able – Whether you are fit and able to work in your own occupation is a question of fact. We will determine this question by reference to the evidence you provide and in consultation with any medical and employment advisors who we may choose to instruct.

2.5 Own occupation is the occupation you are engaged in and from which you derive an income at the start of your incapacity.

You will need to establish any physical or mental illness or injury to our satisfaction.

In January 2022 Mr R was signed off work by his GP due to back pain. However he declined to have an x-ray at that time and was awaiting physiotherapy. As there was a lack of evidence as to whether his back pain incapacitated Mr R from his occupation throughout the deferred period his claim was not admitted.

Mr R felt that Shepherd's Friendly should have obtained a medical report however his policy does clearly show that the onus is on him to prove his claim. So I understand why Shepherd's Friendly declined his claim originally and I don't think that was unfair.

However in September 2022 Mr R attended a physiotherapist who identified all Mr R's lumbar spine movements were severely limited by pain. They said he was unable to sit for longer than 15 minutes maximum and standing was limited to 10 minutes due to pain.

Mr R works as a sales manager and his employer has confirmed his role involves driving to visit clients all over the country. It has also confirmed that he covers around 55,000 miles per year.

It is unfortunate that Mr R wasn't able to see a physiotherapist earlier. I can see that an NHS referral was made by his GP in May 2022 but due to delays he wasn't given an appointment and eventually decided to pay privately. In September last year he did see a physiotherapist who reported that in their opinion his condition meant he was unable to perform his occupation at that time.

Shepherd's Friendly didn't believe that the physiotherapist's evidence was enough to retrospectively support a claim from the end of the deferred period. I understand the concern. But Mr R was also being signed off by his GP and it was hoped that the matter would resolve with pain killers. It's clear that this didn't happen. It might have been prudent to require imaging as part of the ongoing investigation into his symptoms – but I don't find that the lack of such evidence means that Mr R hasn't provided enough evidence to show his claim should now be admitted.

On the evidence before me I'm satisfied that it is more likely than not that Mr R was prevented from working in his occupation due to his back condition during the waiting period and beyond.

For this reason I am minded to find that Shepherd's Friendly should admit Mr R's claim from the end of his eight week waiting period. It is entitled to review the claim in order to determine if/when Mr R became fit and able to work in his own occupation.

If Mr R continued to pay premiums, he would be entitled to have them refunded in accordance with his policy terms.

Finally to any benefit payment that was due to Mr R before the receipt of the physiotherapist's report in September 2022 interest at 8% simple should be added from September 2022 until settlement.

Interest should be added at 8% simple to any payments due from September 2022, from the date they became due until settlement.

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.

As both parties agreed with my provisional findings there is no need for me to revise them.

Shepherd's Friendly indicated that it was in the process of requesting financial information from Mr R's employers in order to identify any financial responsibility it had to meet. This is fair.

Putting things right

For the reasons explained in my provisional decision and adopted here I require Shepherd's Friendly to admit Mr R's claim from the end of his eight week waiting period.

It is entitled to review the claim in order to determine if/when Mr R became fit and able to work in his own occupation.

If Mr R continued to pay premiums, he would be entitled to have them refunded in accordance with his policy terms.

Finally to any benefit payment that was due to Mr R before the receipt of the physiotherapist's report in September 2022 interest at 8% simple should be added from September 2022 until settlement.

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My final decision

My final decision is that I uphold this complaint and I require The Shepherds Friendly Society Limited to put things right as indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 March 2023.

Lindsey Woloski
Ombudsman