

## The complaint

Mr J is unhappy about the way British Friendly Society Limited ('BFSL') dealt with his claim.

## What happened

Mr J has a short-term income protection insurance policy with BFSL which pays a benefit for a maximum of one year per claim if he can't work due to illness or injury. There is a deferred (waiting) period of one week.

Mr J made a claim which was paid for the maximum period of one year between July 2021 and July 2022. Whilst he was off from work, Mr J contacted BFSL and told them he had a second, unrelated health problem which was going to require surgery and time off work. He had been experiencing pain since September 2021. BFSL asked Mr J to send details of the new condition once he knew more about it. On receiving the further information, BFSL said the claim wouldn't be covered.

Mr J complained but BFSL maintained it had correctly declined the claim.

Unhappy, Mr J brought his complaint to this Service.

Our investigator looked into the complaint and didn't think BFSL had treated Mr J fairly. She recommended that BFSL reassess Mr J's second claim and also pay him £250 compensation.

BFSL disagreed and in summary, made the following comments:

- It will need proof of earnings to show that Mr J returned to work for 3 days and if a second claim period is payable, his benefit level will be assessed against his new earnings.
- The policy doesn't provide cover if a policyholder returns to work against the advice of a doctor.
- BFSL spoke to Mr J in May 2022 and he said he didn't expect to be able to return to work before surgery. There is no evidence that he did return to work or that his GP advised him he could return to work.
- Mr J said he tried to return to work but wasn't able to due to his ongoing injury. BFSL says this isn't a new incapacity and it is clear that Mr J wasn't fit to return to work.
- The terms say Mr J needs to be working and earning an income at the start of incapacity to receive benefit.

As an agreement couldn't be reached, the case has been passed to me for a final 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.

Having done so, I think this complaint should be upheld in part. I'll explain why.

The relevant rules and industry guidelines say an insurer should handle claims promptly and fairly. And shouldn't unreasonably reject a claim. It should also provide appropriate advice and guidance.

I issued my provisional decision on 31 May 2023 in which I said:

### The policy terms

I'll start by setting out the policy terms and definitions which are relevant to my decision.

Deferred period is defined as follows:

*"This is the period, starting on day one of your incapacity, during which time no benefit payments are made. Benefit payments will start once the deferred period has expired. The deferred period (if any) that is applicable to your policy is shown in your policy schedule."*

Day one is defined as follows:

*"This means the first day that you are unable to work due to incapacity in the opinion of your Doctor."*

Incapacity is defined as follows:

*"This means that you are totally unable to carry out your occupation due to physical or mental illness or injury resulting in a complete or partial loss of income."*

### *"5.11 – Claiming again after returning to work*

*Protect (Short Term) policy only. The length of time for which benefit payments will be made for each period of incapacity will be limited to 1,2 or 5 years depending on which benefit payment period you have chosen. After the benefit payment period (1,2 or 5 years) has expired, all benefit payments will cease. Before you can claim again for the same incapacity, you must have returned to your occupation for a continuous period of at least 26 weeks without suffering from a recurrence of the original illness or injury and your chosen deferred period will apply. If you need to claim again for a different incapacity, your chosen deferred period will apply."*

### *"5.8 – Amount of benefit payable when you claim*

*If we accept your claim and you are working in your normal occupation or occupations when incapacity starts, we will pay the full amount of benefit..."*

I will now set out the key events to determine whether BFSL declined Mr J's second claim fairly.

- April 2022 – Mr J contacted BFSL about his new injury. He also provided a sick note to cover the period 24 April 2022 to 1 August 2022 for his initial

incapacity.

- May 2022 – BFSL emailed Mr J and advised that after the benefit payment period of one year, all benefit payments would cease and before he could claim again, he must have recovered from the current incapacity, returned to his occupation and be in receipt of an income. It also said it would need definitive medical evidence to show that the new incapacity wasn't related to his current incapacity. It said Mr J would need to be certified as fit enough to return to work following the current problem.
- Before the end of the one-year benefit period, BFSL wrote to Mr J and confirmed his claim would reach its maximum term on 28 July 2022. It said: *"Before you can claim again, you must have returned to your occupation for a continuous period of at least 26 weeks without suffering from a recurrence of the original illness or injury and your chosen deferred period will apply."*
- BFSL also said: *"My understanding is that even though your payment under your short-term Protect policy will end on the 28 July 2022, you will not be fit enough to return to work at that point, as you are now waiting for...surgery."*
- 3-5 August 2022 – Mr J attempted to return to work on reduced duties.
- 31 August 2022 – Mr J emailed BFSL and said he had asked his GP for a fit note but he was told to just go back to work, which he did. But his return to work failed as he wasn't able to carry out his duties due to the current injury. He had seen a consultant in July who had injected him to provide pain relief and was due for a further review in October to discuss a further injection or an immediate operation.
- September 2022 – Mr J provided BFSL with a scan and a letter from his consultant. BFSL said Mr J's symptoms were first documented six months ago and he would have needed to have returned to work without any ongoing symptoms or treatment which may prevent him from working and it needed evidence of a regular income.
- 14 September 2022 – BFSL emailed Mr J and said his second medical issue appeared to be present over the last six months and was now preventing him from returning to his insured occupation. He attempted to return to work between 3-5 August 2022 but this was unsuccessful. It said *"...you will need to have been in receipt of a regular income from work related activity at the point of your more recent injury or illness occurring. Such medical conditions which develop during your initial incapacity period are unlikely to be supported until you have demonstrated an ability to return to work in your usual capacity prior to your original injury or illness."* It said Mr J could appeal and provide further evidence.
- 15 September 2022 – Mr J emailed BFSL and said he had a genuine medical problem which warranted a new claim. He felt his current medical issue occurring whilst under a previous claim warranted discretion. His new medical issue was preventing him from returning to work in the long term.
- 22 September 2022 – BFSL emailed Mr J and said his return to work between 3 and 5 August 2022 wasn't viewed as being a successful return to work, it did not have evidence of earnings or that Mr J was fit to return to work whilst experiencing symptoms of his current medical issue. It said it needed to be

satisfied that his current incapacity was not the same or a related medical issue to his previous incapacity. It said as Mr J was found to have issues of osteoarthritis in September 2021 it concluded that the current medical issue related to this.

- Mr J replied and said he had recovered from his initial incapacity but his new issue was preventing him from returning to work.
- October 2022 – BFSL’s final response says the assessment of any new claim would be based on Mr J’s occupation, duties and hours at the time. It maintained Mr J wasn’t eligible for a second claim.

Having considered everything carefully including the available medical evidence, I agree that there is a question over whether Mr J was fit enough to return to work in August 2022. And so I think this needs to be probed further. As Mr J is making a new claim for incapacity, the onus is on him to prove his incapacity. Based on the policy terms, the start of Mr J’s incapacity would be ‘day one’ and the deferred period starts on day one of the incapacity. The medical evidence suggests Mr J was already incapacitated from the second condition before his first claim ended. This is based on the scan he provided to BFSL and the consultant’s letter dated July 2022 which confirms Mr J was given an injection to help ease the pain and that a further review would take place in three months’ time.

BFSL has suggested the second medical problem started during the first claim period. And I think it could have given clearer advice and guidance to Mr J when he started making enquiries about a second claim.

The policy terms say that Mr J can make a claim for incapacity with a maximum benefit period of one year. This means that if he remains off work due to illness, he won’t be eligible to make another claim until he has returned to work. This is confirmed in the title of section 5.11.

Mr J did attempt to return to work in August 2022 but by his own admission, this was unsuccessful as he wasn’t able to carry out his duties due to his second injury. This suggests that Mr J wasn’t fit to return to work at the time. So Mr J would need to demonstrate, through medical evidence, that he was fit to return to work between 3 and 5 August 2022 but then became incapacitated on 6 August 2022. BFSL also asked for evidence of Mr J’s earnings between 3 and 5 August 2022 but I can’t see that this has been provided.

Based on the current medical evidence, I’m not satisfied that Mr J returned to work following the end of his first incapacity or that he only became incapacitated on 6 August 2022. For that reason, I don’t think BFSL unfairly declined the second claim. If Mr J has additional medical evidence from his GP or specialist to show that his second medical issue only started on 6 August 2022 and that he wasn’t incapacitated by it before this date, then he should send this to BFSL for consideration.

However, I do think BFSL could have provided better advice and guidance to Mr J about his ability to make a second claim. And it could have been clearer about his second medical issue. It said it concluded that the second condition was osteoarthritis and said it needed to be satisfied that it wasn’t related to the first issue. There is no evidence that Mr J’s second issue was related to the first issue. And I’m satisfied that Mr J provided sufficient evidence to show this. So I think BFSL confused matters by referring to Mr J’s osteoarthritis unnecessarily. And this would have caused frustration to Mr J for which I think £250 compensation is reasonable.”

Both sides have responded to my provisional decision. BFSL has accepted what I have said. Mr J has provided further medical evidence and photos in relation to his second incapacity.

In summary, he has made the following comments:

- He has provided photos and letters to show the injury was separate to his initial reason for incapacity.
- He could have provided evidence of an income but BFSL never asked for this. And he couldn't provide his back to work status through a GP but this has been highlighted as something that should have been done.
- The whole point of the complaint is that the injury happened before the end of the first claim period.
- He was advised to wait for his initial claim to end before making a new claim.
- He was pressured by BFSL to try to go back to work.
- He was told not to worry about income as BFSL could use its discretion and use his past income but later decided it wouldn't do this.
- He was unable to work following the operation and was incapacitated until March 2023. BFSL should have supported him during this time.
- He was given an option to freeze cover but then he would be unable to claim. BFSL knew this and this benefitted BFSL which was disappointing and stressful.
- BFSL had no grounds to decline the second claim as he met all the criteria. And it should have used its discretion. He feels BFSL has tried to confuse him.

I've carefully considered all the available medical evidence, circumstances and Mr J's submissions. I will respond to the points which I think are key to my decision. I accept Mr J has provided evidence to show his second incapacity isn't related to the first one.

Mr J says he could have provided evidence of an income but BFSL didn't ask for this. And that his GP wouldn't provide a fit note. He also says the whole point of his complaint is that the injury happened before the end of his first claim period. But his policy doesn't allow concurrent claims for different conditions. It is a short term policy. Mr J has been paid the maximum amount of benefit following his initial incapacity. And so there is no further cover for Mr J under the terms of the policy until he demonstrates that he is fit enough to return to work. In relation to the GP note, if the GP doesn't provide official fit notes, Mr J could have asked for a letter supporting his return to work and explained this is a requirement of his insurance policy. But that is a matter between him and his GP and not something the insurance company can be held responsible for. In relation to the income requirements, this is something Mr J could have provided to BFSL as part of the appeals process.

Mr J is unhappy with the advice and guidance he was given. I agree that BFSL could have provided better advice and guidance to Mr J and this caused him frustration. I don't think BFSL pressured Mr J to go back to work. It explained that he would have to go back to work before being eligible to claim again. And BFSL provided information about freezing the policy which is an option under the policy. Mr J chose not to freeze his policy as this would limit his ability to claim. As the consequences of freezing the policy are clear within the terms, I don't think BFSL did anything wrong here.

Mr J says BFSL had no grounds to decline his second claim. But I disagree with him. He wasn't eligible to make a second claim under the terms of the policy, as set out above. I can't fairly ask BFSL to use its discretion to pay a claim outside of the policy terms. And so I don't see any reason to depart from my provisional decision, which I now adopt as my final decision.

### **My final decision**

For the reasons set out above, I uphold this complaint in part and direct British Friendly Society Limited to pay Mr J £250 compensation for the frustration caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 July 2023.

Shamaila Hussain  
**Ombudsman**