

The complaint

Mr A complained that The Shepherds Friendly Society Limited trading as Shepherds Friendly declined to meet an income protection claim and then cancelled his policy.

What happened

The background to this complaint is well known to the parties so I won't set it out in detail here. In summary Mr A took out an income protection policy through a financial adviser in August 2018. He declared some medical conditions and his application was accepted.

In August 2022 Mr A had to stop work as he needed a hip replacement and had carpal tunnel syndrome. Shepherds Friendly assessed his claim but considered that he had failed to answer the application questions correctly. It said this was deliberate or reckless, cancelled his policy and retained Mr A's premiums. Unhappy, Mr A complained to our Service. Our investigator agreed that there had been a qualifying misrepresentation but felt it was careless. She recommended that Mr A was refunded his premiums. Shepherds Friendly didn't agree so the matter has been passed to me to determine.

For completeness I would add that although the policy was taken out through a financial adviser, this decision only concerns Shepherds Friendly, who underwrite the policy.

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.

Firstly, I'm aware I've summarised the background to this complaint. No discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I've fully reviewed the complete file.

Having done so I agree with the conclusion reached by the investigator for these reasons:

- The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer. And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.
- CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or

careless. Shepherds Friendly thinks Mr A failed to take reasonable care not to make a misrepresentation when applying for cover. Accordingly I've looked carefully at the questions asked together with the medical evidence in order to determine whether Shepherds Friendly's approach was fair.

- When taking out the policy in August 2018 the application form asked: *Apart from anything your client has already told us about in this application, in the last 12 months have they: Had any medical condition, illness or injury that your client is currently receiving treatment for or have received treatment for over a continuous period of four weeks or more?* It is clear from the medical records that following hip surgery in August 2017 Mr A was suffering from cellulitis for which he was prescribed medication for some months. But in reply to follow up questions Mr A responded that all was fine now and that there were no problems. In the light of the medical evidence I'm satisfied that this was incorrect and it was fair for Shepherds friendly to conclude this question should have been answered differently – including the cellulitis diagnosis and treatment.
- Additionally the form asked: *Apart from anything your client has already told us about in this application, during the last 5 years have they seen a health professional for: Any lupus, fibromyalgia, gout or any type of arthritis, neck, back, spine or joint trouble, for example rheumatoid arthritis, sciatica?* Mr A disclosed his hip replacements. It is apparent from an orthopaedic review shortly before the policy was taken out in 2018 that he was suffering from pain in his lumbar spine for which he was referred to physiotherapy.
- As well as back pain the medical records show in 2017 Mr A was also experiencing some pain in his knee. I find it was reasonable for Shepherds Friendly to conclude the answer to the above question wasn't complete.
- For commercial reasons I can't share the underwriting evidence I've seen, but I am satisfied that had Mr A answered the questions correctly he wouldn't have been offered cover. This means that the misrepresentation was qualifying. Shepherds Friendly has classified this misrepresentation as deliberate or reckless and has retained his premiums. However I'm not persuaded it has shown that the misrepresentation does fall into this category. I can see that Mr A *did* answer questions about his health. He said he believes he completed the application fully and didn't knowingly withhold any information. I don't find that Shepherds Friendly has shown that Mr A knew the answers he gave were untrue or misleading or didn't care (was reckless) as to whether this was so. There is nothing before me to show that the omissions were anything other than careless.
- In these circumstances and in line with the remedies detailed in CIDRA, Shepherds Friendly is not obliged to meet the claim, as it would never have offered Mr A cover if the questions had been answered correctly. However, in line with the legislation I find it should return Mr A's premiums.
- I note that it became apparent at the claim stage that Mr A had been over-insured. This was not the fault of Shepherds Friendly. But as it was not on risk for the full amount of cover Mr A was paying for, I would generally find it to be reasonable for the extra premiums to be refunded with interest from when a financial business became aware of the situation. Here though as Mr A's claim doesn't succeed and I anyway require Shepherds Friendly to return the premiums paid, this issue has been overtaken. Nevertheless I agree that Shepherd's Friendly should pay interest on the refund of premiums from the claim decline until settlement.

My final decision

My final decision is that I uphold this complaint in part. I require The Shepherds Friendly Society Limited trading as Shepherds Friendly to:

- Refund Mr A the premiums he paid.
- Add simple interest to this sum at the annual rate of 8% from the date of the claim decline decision, or from the date paid if later, until settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 September 2023.

Lindsey Woloski
Ombudsman