

The complaint

The estate of Mr S has complained that Scottish Friendly Assurance Society Limited declined a claim it made on Mr S's life assurance policy.

What happened

The background to this complaint is well known to the parties so I won't repeat it in detail here. In summary Mrs S took out life insurance on the lives of herself and Mr S in 2015. The estate of Mr S made a claim on the policy when Mr S sadly passed away in 2022. Scottish Friendly declined the claim as it said that Mr S hadn't answered the medical questions correctly when applying for the policy.

The estate brought its complaint here. Our investigator didn't recommend that it was upheld. Mrs S appealed on behalf of the estate. She said that her late husband wouldn't have intentionally made a misrepresentation.

As no agreement has been reached the matter has been passed to me to determine.

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.

I've summarised the background to this complaint and 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. I recognise that the estate of Mr S will be very disappointed by my decision, but I agree with the conclusion reached by our investigator. I'll explain why.

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.

Mr S was asked several questions during the sales process about alcohol. Initially he answered the following questions affirmatively:

Have you ever had symptoms of, been diagnosed with or treated for drug or alcohol abuse?

Have you used any non-prescribed drugs or sought treatment for, including counselling for alcohol abuse in the last ten years?

Mr S was then asked whether it was for drug or alcohol abuse. He asked for clarification of the term and explained *he* had asked to be referred for alcohol services. He was then asked if he currently drank alcohol. He answered 'yes'. He was told that his application for cover would be declined. There was further conversation about alcohol and the agent asked the first question above again. This time Mr S answered 'No' and was offered cover.

Scottish Friendly say that Mr S should have answered 'yes' as he did originally. It has reached this conclusion on the basis of the medical evidence. I won't repeat the evidence in detail here, but I note, for example, that in 2014 the medical records show that Mr S had a longstanding history of alcohol abuse and was advised to seek help from alcohol services. Mr S did request treatment for his alcohol intake and was on prescribed medication in the months prior to the application being taken out. His GP records also show that in May 2014 Mr S was attending a course to help reduce his alcohol intake.

I'm satisfied it was reasonable for Scottish Friendly to reach the conclusion it did as the evidence shows that the answer to both the first and second questions should have been affirmative.

Scottish Friendly has shown that had Mr S answered the questions correctly it would not have offered him cover. So I find that this was a qualifying misrepresentation under CIDRA.

Mrs S on behalf of the estate believes that Mr S wouldn't have intentionally made a misrepresentation. I can accept that the incorrect answers were not intentional, but the questions asked were clear and the answers given were incorrect. Additionally, Mr S was sent a copy of the answers and had the opportunity to correct them but didn't do so.

Scottish Friendly classified the misrepresentation as careless. I think that was fair. As it has shown that it wouldn't have offered cover if the correct answers had been given, this means that it was entitled to avoid the policy and return the premiums paid. This it has done.

I'm very sorry that my decision doesn't bring Mrs S and the estate more welcome news at what I can see is a very difficult time for them. But in all the circumstances I don't find that Scottish Friendly has treated the estate unfairly, unreasonably, or contrary to law in declining the claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 25 April 2024.

Lindsey Woloski
Ombudsman