

## **The complaint**

Mr A has complained that The Shepherds Friendly Society Limited declined his income protection claim and voided his policy.

## **What happened**

Mr A took out an income protection policy with The Shepherds Friendly Society ('Shepherds Friendly') in December 2022. The policy would provide a benefit in the event he was unable to work in his own occupation due to illness or injury. It had an exclusion for any claims relating to back pain, including sciatica.

The policy was taken out through a financial adviser – but in this decision I'm considering only the actions of Shepherds Friendly and am not considering any aspects of the complaint Mr A has made which are about the adviser's action or omissions.

In December 2023, Mr A submitted a claim to Shepherds Friendly as he'd been signed off work due to mental health issues. Following a review of his medical records, Shepherds Friendly declined the claim and voided his policy. It said he didn't disclose certain details about his medical history when applying for this policy, and if he had, it wouldn't have offered him cover. Shepherds Friendly voided the policy and retained the premium paid.

Unhappy, Mr A referred the matter here. Mr A said the matters were insignificant and unrelated to his current condition. He's said that as they were not specifically enquired about during the set-up of the policy, he inadvertently omitted them.

Our investigator didn't agree that the claim should be met, but he felt that Shepherds Friendly should return the premium that Mr A had paid. It agreed to do so. Mr A appealed.

## **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'm aware I've summarised the background to this and some medical details, 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've fully reviewed the complete file and the representation that Mr A made after the investigator issues his assessment.

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 says that Mr A didn't answer some questions correctly when taking out his policy. I note that Mr A understood that his policy commenced before it did on the basis of information he had received from his financial adviser. So I don't find that it would be reasonable to say Mr A needed to tell Shepherds Friendly about the mental health issues that occurred in the period between when he thought cover had commenced and when it actually did commence.

As far as is relevant here, Mr A answered negatively to the following:

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 condition affecting their eyes or vision, not wholly correcting by spectacles, lenses or laser treatment, for example cataract or blindness?

Apart from anything your client has already told us about in this application in the last 12 months have they:

- Been referred to or had any investigations in hospital, for example biopsy, scan or ECG?

Apart from anything your client has already told this about in this application, do they have any medical condition or symptom that:

- Are they experiencing any symptoms or complaints for which they have not yet consulted any kind of doctor, nurse, or specialist?

I have not disregarded the submission that English is not Mr A's first language, but I find that the questions were clear. Shepherds Friendly considered the medical evidence in the form of Mr A's GP notes. It was not obliged to request medical information from Mr A's GP before offering cover. The obligation in CIDRA is on the consumer, here Mr A, to take reasonable care when answering the questions asked. This is to be determined in the light of all the relevant circumstances.

Shepherds Friendly said that Mr A should have answered the first question positively as he had been experiencing headaches for three weeks along with blurry vision. This was within 14 months of his application. But on balance I accept Mr A wasn't diagnosed with any condition and the matter resolved itself. So I find it wasn't unreasonable for Mr A to answer negatively to this question.

With regard to the second question, Mr A had MRI scans of his ankle and knee in 2021. Shepherds Friendly observed that these injuries had been monitored over a few months. I find it was reasonable for Shepherds Friendly to conclude that the answers here should have been positive.

With regard to the third question above, Mr A had seen his GP in February 2023 and advised that he had a 3-4 month history of skin lesions on his face. These were yet to be investigated – again I'm satisfied it was reasonable for Shepherds Friendly to conclude the

answer to the third question above question should have been 'yes'.

Shepherds Friendly has shown that had the questions been answered correctly, it wouldn't have offered cover when it did. I can't share the commercially sensitive underwriting evidence but I'm satisfied that the application would have been postponed until the investigation into the skin lesions was complete. Unfortunately, by this time Mr A's mental health had deteriorated. This would have meant that a mental health exclusion would have been added, in addition to exclusions for his back, ankle and knee. I'm satisfied this would have meant that the application would have been declined.

In all the circumstances I'm persuaded that the misrepresentation was a qualifying one under CIDRA. Shepherds Friendly treated the misrepresentation as deliberate or reckless. Under CIDRA a deliberate or reckless misrepresentation would entitle it to cancel the policy without returning the premium paid.

However Mr A has explained why he answered the questions as he did. He felt that the skin issue was minor, and it didn't cross his mind that it would prevent him from working. He also made the point that issues relating to blurry vision and the skin condition are unrelated to his claim. But as indicated, I'm satisfied that the questions were clear and Mr A wasn't asked whether his conditions would prevent him from working. I have disregarded Mr A's blurry vision and do understand that the skin issue is unrelated to his claim. I also note that Mr A did disclose two other health issues. But had he answered *all* the questions correctly he wouldn't have been offered a policy at that time.

Nevertheless I find that Mr A's inaccurate responses were careless rather than deliberate or reckless. This means that Shepherds Friendly can cancel the policy (as it has shown that it wouldn't have offered cover if the questions had been answered correctly) but must return the premium paid.

Mr A has also referred to the information about pre-existing conditions on Shepherds Friendly's website. This explains moratorium underwriting – whereby a proposer can get income protection cover even if they have pre-existing health conditions, as long as they've had no symptoms or treatment in the past three years. This doesn't therefore apply to Mr A or make any difference to the outcome of this complaint.

In all the circumstances I don't find that Shepherds Friendly treated Mr A unfairly, unreasonably or contrary to law by declining his claim and cancelling his policy. But I find that the misrepresentation was careless, which means it must return the premium he paid. I note that it has agreed to do so. I am sorry that my decision doesn't bring Mr A welcome news.

### **My final decision**

My final decision is that The Shepherds Friendly Society Limited should return to Mr A the premium he paid, plus simple interest at 8% per year from the date each payment was made until settlement.

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 September 2024.

Lindsey Woloski  
**Ombudsman**