

## **The complaint**

Mrs R is unhappy that Scottish Friendly Assurance Society Limited declined a claim made on her husband's life and critical illness insurance policy ('the policy') after he died.

Mrs R is the trustee of the trust set up for the policy benefit.

I'll refer to Mrs R's husband as Mr P.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

That includes the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

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. 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 (in this case Scottish Friendly) 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.

Scottish Friendly says Mr P failed to take reasonable care when applying for the policy, in particular when answering a question about his weight. If he'd answered this question correctly, it says the policy wouldn't have been offered to him.

I have a lot of empathy for the situation Mrs R finds herself in and I know she'll be very disappointed, but I'm satisfied Scottish Friendly has acted fairly and reasonably in this case by cancelling the policy and declining the claim for the life benefit. I'll explain why.

When applying for the policy Mr P was asked many questions about his lifestyle, health and medical history and that included giving his height and weight.

I'm satisfied on the balance of probabilities that Scottish Friendly sent Mr P a document which included a statement of facts, which says "this is what you've told us about yourself and what we've based your cover and premiums on...if there are any mistakes, inaccuracies or omissions it may invalidate your cover so call us immediately on...." I've seen nothing which persuades me that Mr P did contact Scottish Friendly to say there were any mistakes in the statement of facts and his weight is recorded as 9 stone, 2 pounds. I'm satisfied that this is most likely reflects the answer Mr P gave when applying for the policy.

I'm also satisfied that Scottish Friendly has concluded on the balance of probabilities that Mr P hadn't accurately disclosed his weight and he'd made a misrepresentation. That's because around the same time of applying for the policy, Mr P registered as a new patient at a GP surgery and he's given his weight as 51.15kg which equates to around 8 stone, 0 pounds. Mrs R says the information given to the GP surgery is most likely because Mr P was unfamiliar with the metric system, and she says his weight was around 9 stone at the time.

However, the height given by Mr P in the GP registration form (in centimetres) and in the insurance statement of facts (in feet and inches) do match. So, I'm not persuaded by what Mrs R says about that.

Mrs R also says that Mr P may have mistyped 8 stone instead of 9 stone on the GP registration form because they're close together on a keyboard. However, I'm not persuaded by that argument as the reference to his weight being 8 stone, 0 pounds is based Mr P giving his weight in kilograms (51.15kg), so I don't think an error is likely to have occurred in the way Mrs R says.

Looking at the medical records for the 2 to 3 months after Mr P applied for the policy, his weight fluctuates between around 7.5 stone and just over 8 stone. In June 2022 there's mention of him losing weight over the past 3 to 6 months but I think the medical evidence is inconclusive as to what his weight would've been when applying for the policy in April 2022.

It seems to me that Mr P could've been losing weight for three months before applying for the policy and his weight started stabilising around 8 stone during the time of applying for the policy and thereafter. Alternatively, his weight could've significantly dropped from around 9 stone when applying for the policy to around 8 stone two to three months later.

However, as there's nothing in his medical records confirming that Mr P was 9 stone, 2 pounds when applying for the policy, and given the lower weight he gave when registering with the GP around the same time as applying for the policy, I'm satisfied Scottish Friendly has fairly concluded that he incorrectly answered the weight question. I think that's more likely than him incorrectly (and otherwise, seemingly at random) putting his weight as 51.15kg (which equates to 8 stone, 0 pounds) when registering with the GP if that wasn't his weight. Particularly as his weight was recorded as around 8 stone in his medical records 2 to 3 months later.

I'm satisfied the answer to the weight question mattered to Scottish Friendly and along with his height, this factored into his body mass index (BMI). Based on the underwriting evidence Scottish Friendly has provided, if Mr P declared his weight as being 8 stone, 0 pounds, his BMI score would've been too low to offer the policy to him. So, I'm satisfied that it wouldn't have offered the policy on this basis.

Scottish Friendly has concluded that Mr P's misrepresentation was careless rather than deliberately or recklessly made. I'm satisfied that's fair and reasonable given that he provided a different weight when registering with his GP around the same time as applying for the policy.

I've looked at the actions Scottish Friendly can take in line with CIDRA. It's entitled to act as it would've done had the correct information been disclosed by Mr P (about his weight). As I'm satisfied Scottish Friendly wouldn't have offered him the policy, I'm satisfied that it's fair and reasonable for it to cancel the policy and it doesn't have to pay the claim as it can treat the policy as if it never existed. That's what Scottish Friendly has done here.

It's also offered to refund the premiums Mr P paid for the policy since the date it started. I think that's fair and reasonable and if a payment for the refunded premiums hasn't been paid, Mrs R should contact Scottish Friendly for it to make this payment.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R as trustee of Mr P's Trust to accept or reject my decision before 30 October 2024.

David Curtis-Johnson  
**Ombudsman**