

The complaint

Miss W has complained that The Shepherds Friendly Society Limited trading as Shepherds Friendly unfairly stopped her income protection benefit and also requested repayment of some benefit.

What happened

Miss W has an income protection insurance policy, underwritten by Shepherds Friendly, which pays a benefit if Miss W is unable to work due to illness or injury. It accepted a claim in 2021.

In March 2023, Shepherds Friendly reviewed the claim and suspended benefits whilst it requested and reviewed Miss W's medical evidence and her income. It then told Miss W she wouldn't receive any further benefit and also requested repayment of overpayments.

Miss W complained and unhappy with Shepherd Friendly's response, referred her complaint to the Financial Ombudsman Service.

Our investigator looked into the complaint. He didn't think Shepherds Friendly had acted fairly. He recommended it should reinstate the benefit and pay interest plus £300 compensation for distress and inconvenience.

Shepherds Friendly disagreed and in summary, has said it doesn't think it has acted unfairly as the medical evidence is lacking and doesn't support incapacity.

And so 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 insurers should handle claims promptly and fairly. And shouldn't unreasonably reject a claim. When a claim is in payment, the onus is on Shepherds Friendly to show that Miss W is no longer incapacitated.
- The background to this matter is well known to both parties and has been set out in some detail by our investigator. So I won't repeat everything here. Instead, I will focus on what I consider to be key to my conclusions.
- The policy defines incapacity as follows: *"If you are incapacitated such that you are not able to do your 'own occupation' due to physical or mental illness or injury and as a result have a complete or partial loss of income."*

- The policy also defines 'own occupation' and says: "*You will be considered not able to do your own occupation if you are totally unable to perform all the essential duties of that occupation.*"

The claim termination

- In a case where a claim has been accepted and is in payment, when terminating a claim, the burden shifts to the insurer. So that means it is up to Shepherds Friendly to prove that Miss W no longer meets the definition of incapacity. I am not satisfied that Shepherds Friendly has done this as it simply relied on a lack of medical intervention to reach a decision on incapacity. And I don't think this demonstrates that Miss W is now able to perform all the essential duties of her occupation.
- I would usually expect to see an appropriately qualified and independent medical expert instructed to carry out an examination and review medical records and treatment before concluding whether Miss W remains incapacitated or not. This would involve giving careful consideration to Miss W's occupation, her duties and any limitations. But this was not done. Shepherds Friendly said there was a lack of objective medical documentation but this does not prove that Miss W has sufficiently recovered to be able to return to her occupation.
- The available medical evidence shows that Miss W has continued to be signed off by her GP and a psychologist also concluded that she faced significant challenges. I haven't seen any evidence that Miss W's health has vastly improved or that a medical expert has concluded that she can return to work.
- So based on the above, I think it would be fair and reasonable for Shepherds Friendly to reinstate and backdate the claim from when payments were suspended. However, Shepherds Friendly is entitled to review the claim regularly and request information from Miss W.

Request for further evidence and information

- Shepherds Friendly has asked Miss W to provide further medical evidence that she may have from any private treatment as well as evidence of income from rental properties. I think this is a reasonable request. If Miss W has further medical evidence, she should provide this to Shepherds Friendly for review.
- In relation to rental income, Shepherds Friendly says it would deduct this from any benefit. And the policy allows this to happen under section 3.7 which says: "*If you are in claim and are also in receipt of other income or income replacement benefit from any other source including other insurance policies we will deduct that amount from the maximum benefit amount and pay you the balance.*"
- I don't think Shepherds Friendly has done anything wrong by taking Miss W's rental income into account. Miss W's bank statements showed that she was in receipt of rental income and so Shepherds Friendly was entitled to take this income into account. Miss W says that the income is not reflective of her net profit. Shepherds Friendly agreed to review this point further on production of accounts and documentation which will show Miss W's net profit. Without this information, I think it is fair for Shepherds Friendly to take the rental income into account. If Miss W is able to provide the relevant information and documentation to show her net profit, I would expect Shepherds Friendly to review and recalculate the benefit amount due, to decide whether any overpayment has been made.

Compensation for distress and inconvenience

- Miss W has been deprived of monthly benefit at a challenging time and has felt worried and upset at Shepherd Friendly's decision. It also suggested that Miss W didn't properly engage with treatment but overall, she only missed one session and had agreed flexibility with the provider and Shepherds Friendly. Shepherds Friendly also made unhelpful comments relating to the spending shown on her bank statements which caused Miss W upset and frustration. I award £300 compensation for the distress and inconvenience caused to Miss W.

My final decision

For the reasons set out above, I uphold this complaint and direct The Shepherds Friendly Society Limited trading as Shepherds Friendly to do the following:

- Reinstate and backdate Miss W's claim and benefit payments
- Add 8% simple interest per year, calculated from the date the monthly benefit was due, to the date of payment
- Pay £300 compensation to Miss W for the stress and inconvenience caused to her

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 23 December 2024.

Shamaila Hussain
Ombudsman