

The complaint

Ms K has complained that The Shepherds Friendly Society Limited as Shepherds Friendly declined an income protection claim.

What happened

The background to this complaint is well known to both parties so I won't repeat it in detail here. In summary Ms K took out an income protection policy through an adviser in September 2022. In November 2023 she made a claim but Shepherds Friendly declined the claim and cancelled Ms K's policy.

Unhappy, Ms K referred her complaint to this service. Our investigator didn't recommend that it be upheld. She didn't think that Shepherds Friendly had acted unfairly.

Ms K appealed. She said that the investigator's view was completely unfair and wrong. Ms K also said that Shepherds Friendly had increased her premium without advising her and without her permission. She also said that she was charged unfairly during the assessment of her claim. I haven't commented further on these points as they didn't form part of Shepherds Friendly final response. This focused on the rejection of her claim, which is what I have considered here.

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.

Although I've summarised the background to this complaint and some sensitive 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. I recognise that Ms K will be very disappointed my decision, but I agree with the conclusion reached by our investigator. I'll explain why.

The regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the relevant law, the policy terms and the available evidence, to decide whether I think Shepherds Friendly treated Ms K fairly.

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 has said that Ms K failed to take reasonable care answering the medical questions when taking out the policy.

She was asked the following questions:

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:

- *Anxiety, depression or any mental illness that's required treatment or counselling, or chronic fatigue syndrome?*
- *Chest pain, palpitations or irregular heartbeat, paralysis, numbness, persistent tingling or pins and needles, tremor or facial pain other than dental pain, memory loss, dizziness or balance problems?*
- *Any illness, injury or disability that's kept them off work for a continuous period of 2 weeks or more?*

In assessing the claim Shepherds Friendly requested Ms K's GP records. These showed that the questions should have been answered positively. Shepherds Friendly felt that Ms K should have disclosed in answer to the above questions her recurrent tonsillitis, mental health symptoms and the period off work and symptoms of palpitations requiring ongoing referrals.

Additionally Ms K was asked:

Has any proposal to this or any other company for life, income protection or personal sickness and/or accident insurance been declined or offered accepted at other than normal terms?

In the past five years, has your client made any claims on income protection, mortgage protection, payment protection, or waiver of premium contracts, currently or previously held?

Regarding the questions about her health, I do appreciate that Ms K didn't wish to remember what happened in previous years, particularly regarding her mental health. Nevertheless in the light of the medical evidence before me I can't conclude that Shepherds Friendly treated Ms K unfairly by concluding that these medical questions should have been answered 'yes'.

Additionally with regard to other proposals and claims, these questions should also have been answered positively as Ms K had held a policy with another insurer. That insurer issued standard terms which were then modified, but ultimately a claim was rejected for non-disclosure. I understand that Ms K didn't recall this earlier policy, as she has said she started again and didn't want to think about this period and her former employment, it makes her ill. But I'm satisfied that clear questions were asked, and it was incumbent on Ms K to take reasonable care in answering the questions on the application form, however hard this might have been for her.

In all the circumstances I don't find Shepherds Friendly wrongly concluded that Ms K had

failed to take reasonable care not to make a misrepresentation.

So I've gone on to look at what Shepherds Friendly would have done had the questions been answered correctly. I'm satisfied that the misrepresentation was a qualifying one. I can't share the underwriting evidence that Shepherds Friendly has provided as it is commercially sensitive. But I'm satisfied that the evidence shows it would have acted differently had the questions been answered correctly. There would have been a mental health exclusion, exclusions for palpitations/arrhythmia and tonsillitis/pharyngitis. So if the questions had been answered correctly the underwriting outcome would have been different.

Shepherds Friendly has said that the misrepresentation was deliberate or reckless and has cancelled the plan. I find that it has shown that the misrepresentation does fall into this category. I'm not persuaded that Ms K *deliberately* tried to deceive Shepherds Friendly, but I do agree that in not wanting to think about the past she disregarded the importance of giving accurate answers. It is reasonable to find that Ms K would have understood that the information sought was relevant to Shepherds Friendly. So I'm satisfied that it was fair to conclude the misrepresentation was reckless. This being so I find that the action Shepherds Friendly took is in line with the legislation referred to above.

I have read with care all the representations that Ms K has made, and I can see that she is going through an extremely difficult time, both with her health and her financial situation. But I have to reach a decision by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. In considering what is fair and reasonable I have taken into account, among other things, the law and regulations referred to above. Having done so I don't uphold this complaint, for the reasons given. For the avoidance of doubt as I haven't concluded that Shepherds Friendly did anything wrong, there is no basis for me to require it to make any payment to Ms K. I'm very sorry that my decision doesn't bring Ms K welcome news.

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 Ms K to accept or reject my decision before 28 October 2024.

Lindsey Woloski
Ombudsman