

The complaint

Mrs R is unhappy that Scottish Friendly Assurance Society Limited:

- declined a claim for the critical illness benefit made on her personal protection plan which included life, combined life and critical illness and income protection cover ('the policy'); and
- cancelled the policy.

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 Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law.

CIDRA 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, it's for the insurer 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 several 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 has concluded that reasonable care wasn't taken when applying for the policy and answering questions about Mrs R's health and medical history. Had questions been answered correctly, Scottish Friendly says it wouldn't have offered the policy to Mrs R.

Scottish Friendly has therefore declined the claim Mrs R made on the policy for the critical illness benefit after she was sadly diagnosed with motor neurone disease. It's also cancelled the policy on the basis that it would never have been in place and agreed to refund the premiums paid for it.

I understand Mrs R's strength of feeling and can see that Scottish Friendly's decision to cancel the policy and decline her claim has greatly impacted her. I have a lot of empathy for what she's going through. I know she'll be very disappointed but for reasons I'll go on to explain, and having considered everything, I'm satisfied Scottish Friendly has acted fairly and reasonably.

Did Mrs R make a misrepresentation when applying for the policy?

Mrs R applied for the policy through a third party that was independent to Scottish Friendly and I'm satisfied that third party acted for Mrs R when submitting the application on her behalf.

Although the information needed to complete the application was gathered earlier by the third party, the application wasn't submitted to Scottish Friendly until around 22 June 2023.

I've set out below the relevant questions Mrs R was asked when applying for the policy and the answers given:

In the last 5 years have you had any of the following?
Please select all that apply.

...paralysis, seizures, tremor, loss of balance, loss of feeling, numbness, persistent and/or recurrent tingling or pins and needles...

It's reflected that Mrs R answered: 'none of the above'.

Apart from what you've already told us, are you currently?
Please select all that apply.

- Having or waiting for medical investigations or tests
- Waiting for any form of treatment to start...

It's reflected that Mrs R answered: 'none of the above'.

I'm satisfied these questions are reasonably clear and that Scottish Friendly has fairly concluded that they've been answered incorrectly at the time the application was submitted and received by Scottish Friendly.

That's because Mrs R's medical records reflect:

- she started having a tingling sensation in one of her hands in January 2023.
- in May 2023 she had shooting pain down the left side of her neck and left arm, and pins and needles in hands and possible numbness intermittently. There's also reference to her whole hand feeling weak and "struggling with altered sensation in left hand and some weakness".
- she visited her GP earlier on the same day the application was submitted (on her behalf to Scottish Friendly) where her symptoms since May 2023 were discussed and documented. Mrs R was referred for physiotherapy and it's reflected that if her symptoms get worse, she may need a MRI referral.

So, at the time the application had been submitted, I'm satisfied Scottish Friendly has fairly and reasonably concluded that a misrepresentation had been made.

Was this a 'qualifying' misrepresentation?

Had these questions been answered correctly, Scottish Friendly has provided underwriting evidence to support that it wouldn't have offered the policy at the time.

I'm satisfied that it's reasonably relied on this evidence, and I'm therefore persuaded that Mrs R's misrepresentation is what CIDRA refers to as a 'qualifying' misrepresentation.

Has Scottish Friendly acted fairly and reasonably by taking the action it did?

I'm satisfied that Scottish Friendly has fairly concluded that the misrepresentation was careless (as opposed to being deliberately or recklessly made).

I've looked at the actions Scottish Friendly can take in line with CIDRA if a qualifying misrepresentation is careless. I'm satisfied it can do what it would've done if the questions in the application referred to above had been answered correctly at the point the application was submitted to Scottish Friendly.

Scottish Friendly has cancelled the policy on the basis that it wouldn't have been offered at the time. I think it's acted fairly and reasonably by doing so as that's in line with the underwriting guidance provided.

I'm also satisfied it's fairly declined the critical illness claim on the basis that the policy wouldn't have been in place for the claim to have been made.

As the misrepresentation was careless, Scottish Friendly has also agreed to refund the premiums Mrs R paid for the policy. I think that's fair.

When deciding this complaint, I've taken into account all points made by Mrs R including what she says about not receiving Scottish Friendly's emails providing links for her to access information about the policy after it started, including the statement confirming the answers to the questions in the application ('the statement'). She says emails had gone into her junk mail. So, she never accessed the emails or saw the statement and couldn't check or correct the information which had been submitted on her behalf in the application.

However, I still think it's fair for Scottish Friendly to rely on the answers provided in the application it received around 22 June 2023 and assume that they were correct at the time the application was submitted.

I know Mrs R has also raised a complaint about the third party who submitted the application to Scottish Friendly on her behalf. That's been addressed separately by the Financial Ombudsman Service and doesn't form part of the complaint I've determined.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 21 April 2025.

David Curtis-Johnson
Ombudsman