

## The complaint

Mr K complains Exeter Friendly Society Limited unfairly declined his claim and accused him of working while he was unwell.

## What happened

Mr K works as an events manager at a hospitality venue. In early January 2023, he took out an income protection policy via a broker. The policy is underwritten by Exeter Friendly and is designed to pay a benefit after a deferred period of one week, in the event Mr K is unable to work due to illness or injury.

The policy defines incapacity as follows:

*“... you are able to claim when you are totally unable to work due to illness or injury. We only consider your ability to carry out your own occupation when we assess your claim”.*

And illness or injury is defined as:

*“Any illness or injury which results in you being totally unable to work in your own occupation for a period of time. This does not include being unable to work as a direct result of self-elected treatment that is not medically required”.*

In July 2023, Mr K contacted Exeter Friendly to make a claim. He said he was not working and had been signed off work by his GP. The GP’s note stated *“symptoms of depression following bereavement”*.

Exeter Friendly requested medical records from Mr K’s GP. It initially said there wasn’t enough medical evidence to support that Mr K met the policy terms of incapacity. But it was willing to pay benefits for one month, if Mr K provided his tax returns to evidence his earnings.

Mr K disagreed with Exeter Friendly’s assessment of his claim. He said he thought he had pushed a self-diagnosis of depression being caused by his bereavement. He said he had since spoken with the GP again, and they thought there was a deeper issue, there could be a chemical imbalance, and Mr K said he had been prescribed medication and therapy.

Exeter Friendly noted that the further advice Mr K said he’d received from his GP was not shown within the medical records it had received. It showed bereavement counselling had been offered but Mr K had not taken this up. And Exeter Friendly decided to arrange an Independent Medical Examination (IME) to assess Mr K’s symptoms and condition.

The IME took place in September 2023 and a report was provided to the insurer around four weeks later. The IME said he thought Mr K was dissatisfied with his lifestyle and might benefit from therapy and medication. However he didn't think Mr K was suffering from a mental illness which would prevent him from working.

Also in September 2023, Exeter Friendly instructed a private investigator to conduct surveillance outside Mr K's home address and the hospitality venue where he worked as an events manager, as it had concerns that Mr K was working. The surveillance report was provided to Exeter Friendly in mid-October. This showed that a man had been seen entering and exiting Mr K's address. And it showed another man outside the hospitality venue. The private investigator's report stated the results of the surveillance were inconclusive. It said they could not confirm that the man photographed outside Mr K's place of work was Mr K, based on a comparison of the photograph with Mr K's identification. And, they stated the man photographed at Mr K's home address, was not thought to be the same person that they had photographed outside Mr K's place of work.

Exeter Friendly wrote to Mr K on 11 October 2023 as his policy was two months in arrears – it said it'd not received the premiums due in early September and October and asked him to make a payment.

In late October 2023, Exeter Friendly sent Mr K a letter about the claim which stated the following:

- following receipt of the IME report, the claim was not accepted as Mr K was not thought to meet the policy terms of incapacity;
- desktop research had found Mr K was a director in seven active businesses, and it asked him to explain why this information was not previously disclosed; and
- the insurer stated it had *"evidence that you have been working while claiming that you are too ill to work. You were seen working [at place of work] during the period that you have been claiming"*. And it went on to ask Mr K to explain this and said it would then consider if the policy should be cancelled.

Mr K responded to Exeter Friendly in early November 2023. He clarified the directorships were mostly companies where he received no income, had resigned, or the companies were dissolved. He also said that he had not been working, and the duties the man seen outside his place of work was said to be carrying out, were of no relevance to his role as an events manager. He also said he thought his mental health issues had been mistaken for dissatisfaction with his lifestyle, and asked for a second medical opinion.

Around the same time in early November 2023, Exeter Friendly lapsed Mr K's policy as his premiums had not been paid since August 2023.

Later in November 2023, Exeter Friendly wrote to Mr K again and said:

- the claim was not medically supported, and it didn't think it was necessary to arrange any further medical assessment;

- it accepted most of Mr K's directorships were no longer active, but listed one company which it said was still operational at the start of the claim and said Mr K should have declared this;
- it said it had strong evidence Mr K was working whilst making his claim, and said due to this and the active directorship, it had decided to cancel the policy; and
- lastly it said it would pass Mr K's claim for review.

It seems Exeter Friendly didn't provide Mr K with a copy of the surveillance report it was relying on. And Mr K later raised a subject access request to obtain this.

Following Exeter Friendly's above letter on 23 November 2023, Mr K said he didn't receive any further updates. He called the insurer in mid-March 2024 and advised he would be contacting this service. Exeter Friendly said it failed to pass Mr K's case for review, as it told him it would in November 2023. Following Mr K's call, the case was reviewed and a response was sent in early April 2024.

In its final response Exeter Friendly apologised for the delay in responding and offered £100 in compensation. It maintained its position that the claim was not medically supported. And said it had intended to cancel the policy as it thought Mr K had misrepresented information about his employment and illness. However it found it had already lapsed the policy on 6 November 2023 due to non-payment of premiums.

Unhappy with the response, Mr K brought his complaint to this service.

After this service contacted Exeter Friendly, it made a new offer to settle the complaint. In addition to the £100 compensation, it gave Mr K the option of a full refund of premiums, or having his policy reinstated. If he wanted to have the policy reinstated he would need to bring the premiums up to date, but Exeter Friendly said it would waive three months of payments.

The case has now been passed to me to decide.

### **My provisional decision**

I issued a provisional decision to both parties as follows.

#### *"The incapacity claim"*

I've looked at the relevant rules and industry guidelines, which say Exeter Friendly has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

Having reviewed the medical evidence provided, I'm satisfied it was reasonable for Exeter Friendly to decline Mr K's claim on the basis that he'd not met the policy definition of incapacity.

In making a claim, the burden of proof sits with the consumer to evidence that they're incapacitated in line with the policy terms. Having reviewed the available medical evidence, whilst I appreciate the GP deemed Mr K unfit for work, I'm not persuaded

this sufficiently demonstrates he was incapacitated by an illness. I've noted Mr K told Exeter Friendly he had a follow-up with his GP where further comments on a diagnosis were made, and treatment was prescribed. But I've not seen any evidence of this in the form of records or a report from the GP. And having asked Mr K if he has any further medical evidence he can provide, he confirmed he does not. So I've been unable to take this into consideration.

After Mr K disputed Exeter Friendly's decision on the claim in August 2023, the insurer decided to arrange an IME. As I've said, it was Mr K's responsibility to evidence he had a valid claim, so I don't think Exeter Friendly was obligated to arrange and pay for an IME. And I think the fact that it did so demonstrates it was acting fairly when assessing this element of Mr K's claim.

In the IME report, the consultant said their opinion was that Mr K was not suffering from a mental illness which would prevent him from working. Rather they thought the symptoms he described were related to dissatisfaction with his lifestyle. I'm satisfied that as the IME is a consultant psychiatrist, it was fair for Exeter Friendly to place more reliance on this expert's opinion on mental health, and give more weight to it than the GP's opinion. And so I think it's reasonable that Exeter Friendly relied on the IME's opinion that Mr K was not incapacitated by an illness during the deferred period. And so it follows that I don't think the insurer needed to accept and pay Mr K's incapacity claim.

#### The surveillance evidence

The results of the surveillance report were clearly stated to be inconclusive. The private investigator could not confirm that either of the men observed during the surveillance were Mr K. Despite this, Exeter Friendly told Mr K it had evidence that he was working at the hospitality venue whilst claiming he was too unwell. The insurer also told Mr K it might cancel his policy for this reason.

Exeter Friendly said it had evidence of Mr K working at the hospitality venue in its letter on 24 October 2023 and again on 23 November 2023, after Mr K has responded refuting this. And in the second letter, Exeter Friendly referred to this as "*strong evidence*". It said it had cancelled Mr K's policy due to the surveillance evidence, and also due to one Directorship which it had found to be active at the start of the claim period, and not previously declared.

In misrepresenting the results of the surveillance evidence it had obtained, I think Exeter Friendly treated Mr K unfairly and mis-led him. I think this would have been highly distressing and confusing for Mr K, particularly at a time when he was unwell. And because he had not been provided with a copy of the surveillance report to understand the evidence Exeter Friendly claimed to hold.

#### Mr K's other Directorships

Exeter Friendly asked Mr K about a series of Directorships it had found he held and Mr K provided explanations which the insurer accepted. However it maintained Mr K should have declared a Directorship in one particular company, because he had not resigned from this role until August 2023, which meant he still held this position at the start of his incapacity claim.

The insurer relied on this as part of its reason for stating it would cancel Mr K's policy in its letter on 23 November 2023. I don't think this was fair. As I've already explained, I've found Exeter Friendly could not fairly cancel Mr K's policy based on

the inconclusive surveillance evidence. If it wanted to cancel the policy due to Mr K having not declared the other Directorship he held during the first one to two months of the claim period, I think it's reasonable to expect that the insurer would have first carried out some more investigation into this, such as finding out whether Mr K had been undertaking any work for that company or receiving any income from it, since his incapacity claim began.

### Non-payment of premiums

Exeter Friendly said it didn't receive the premium payments due at the start of September and October 2023. I've seen evidence it wrote to Mr K about this after the October payment wasn't received. As Mr K didn't bring his premiums up to date, when the next premium became due on 6 November 2023, the insurer lapsed the policy.

The policy terms state that premiums will be waived once a claim is accepted. And in regard to missed premiums: *"If you miss two months' premiums or more we will cancel your policy with effect from the last paid premium"*.

As Mr K's claim wasn't accepted, I'm satisfied that he needed to continue paying the policy premiums in September and October 2023. And as he had not made payment for the two missed premiums by the date the next premium was due, I'm satisfied Exeter Friendly was entitled to lapse the policy.

However I've not seen evidence that Exeter Friendly informed Mr K his policy had lapsed at the time. I've been provided with a copy of the letter it sent in October 2023, asking Mr K to make a payment. But I've not seen that Mr K was told his policy had lapsed on 6 November 2023, and this was not stated within the letter the insurer sent him on 23 November 2023, stating that his policy had been cancelled due to a misrepresentation. Based on the evidence of communications Exeter Friendly has provided, it seems Mr K was not told his policy had lapsed until the insurer sent its final response letter in April 2024.

I think Exeter Friendly needed to communicate more clearly with Mr K and should have informed him his policy had lapsed straightaway. And I don't think it treated him fairly when it advised it had cancelled the policy due to a misrepresentation, considering the policy had already lapsed prior to this, due to non-payment. I think this would have added to the overall confusion and distress caused to Mr K.

### Delays

Exeter Friendly first told Mr K that it had evidence of him working and that it might cancel the policy in October 2023. And in its second letter around a month later, in November 2023, Exeter Friendly said it had decided to cancel the policy, but also said the claim would still be reviewed.

An avoidable delay of around four months followed, as Exeter has accepted it failed to pass the case to for review, and this was not done until Mr K got in contact in March 2024. I think this delay was unreasonable and Mr K wasn't provided with any meaningful updates during this period.

Exeter Friendly offer Mr K a payment of £100 in respect of this delay. But I don't think this sufficiently recognises the length of the delay, and the overall impact of this on Mr K, as he had been set an expectation in late November 2023 that his claim would be reviewed again.

### Putting things right

As I've explained, I've found Exeter Friendly has treated Mr K unfairly in its handling of the surveillance evidence and investigation of his other active Directorship. And it caused unnecessary delays between November 2023 and March 2024 when Mr K received no updates on the review he was told would be carried out. Exeter Friendly also failed to tell Mr K his policy had lapsed on 6 November 2023, and later incorrectly advised him his policy would be cancelled for a different reason.

Exeter Friendly offered Mr K a payment of £100 in respect of the delays. And after he brought his complaint to this service, it accepted it didn't have the right to cancel the policy based on the surveillance evidence. Because of this it offered Mr K the option to have his policy reinstated (he would need to bring the premiums up to date, but the insurer said it will waive three months of premiums), or a full refund of the premiums back to the policy inception in January 2023.

I don't think it would be fair for me to direct Exeter Friendly to reinstate the policy, as I think the insurer was entitled to lapse it due to the missed premiums. And, I don't think it would be fair or reasonable for me to direct a refund of policy premiums in the circumstances of this case. I say that because Exeter Friendly was on risk since January 2023, and had Mr K made a claim which was medically supported, I would expect this would have been paid.

Ordinarily in these circumstances, our service's approach would be to award a payment to recognise the distress and inconvenience caused to the consumer by the actions of the business. And so I've considered what I think is an appropriate level of award to recognise the impact of Exeter Friendly's claim handling on Mr K. Having done so, I think Mr K was caused considerable distress and worry by the insurer's handling and investigation of evidence, as well as its poor communications and unnecessary delays. And so I intend to direct Exeter Friendly to pay Mr K £750 in total compensation – this includes the £100 already offered."

### **The response to my provisional decision**

Mr K disagreed with my provisional decision. He maintained the insurer should pay his claim and issue a letter admitting the various aspects of mishandling. He said he should be awarded substantially higher compensation and requested a review of the insurer's practices in regard to other claimants. He also made the following points:

- I'd not given appropriate weight to elements of his complaint;
- he explained further the severity of his illness and offered to provide accounts from family and friends;
- the IME's report was flawed and the insurer should have agreed to his request for a second opinion;
- the insurer's accusations of fraud were fabricated and a deliberate attempt to reject his claim;
- his directorships were handled unfairly; and
- the insurer intentionally caused delays so it could lapse the policy.

Exeter Friendly also responded to my provisional decision. It provided a copy of a letter it sent to Mr K on 6 November 2023, confirming his policy had been lapsed.

## **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.

And I've considered again my provisional findings in light of the responses.

Mr K has made multiple additional points, and I can assure him that I've considered them all. However many of the points Mr K has made relate to matters I've already covered in my provisional decision, so I won't comment on these again.

The Financial Ombudsman Service is not a regulator – that's the role of the Financial Conduct Authority. And so it's not a matter for this service to review any other claims Exeter Friendly has handled. Within this complaint I've concentrated on the matters relating to Mr K's individual circumstances.

I've considered the additional comments Mr K has made about his illness. However this has not changed my opinion that the claim was not supported by sufficient medical evidence. Mr K has offered further testimony of his own, and that of friends and family. However, I still think it's fair that the insurer relied on the available evidence from medical professionals in the form of Mr K's GP records and the report produced by the IME. Should Mr K have wanted to seek further medical opinion and provide it to the insurer as evidence, he was free to do so. But my opinion has not changed that Exeter Friendly was not obligated to instruct a second IME.

Mr K has said he thinks Exeter Friendly deliberately delayed his claim so that the policy would be lapsed once he could no longer afford the premiums. However I've not seen evidence which supports this. The delays I identified occurred from 23 November 2023 until March 2024, and Mr K's policy was lapsed due to non-payment on 6 November 2023, which was prior to this.

Having considered all that Mr K has said, I've not been persuaded that I should increase the amount of compensation for distress and inconvenience. And I don't think it would be reasonable for me to direct Exeter Friendly to issue the letter Mr K has asked for. The insurer had already stated that it made an error in its handling the surveillance evidence and it made an offer to settle the complaint due to this. And I commented in my provisional decision on the areas where I'd found the insurer to have acted unfairly.

I've also considered the information supplied by Exeter Friendly in response to my provisional decision.

I'd previously seen a copy of the letter the insurer sent Mr K in October 2023 about missed premiums. And I accept Exeter Friendly has now demonstrated it sent Mr K a further letter confirming the policy was lapsed on 6 November 2023. However, this is still at odds with the contents of the letter of 23 November 2023, which stated the contract had been cancelled due to misrepresentation. So I'm still of the opinion that the insurer should have communicated more clearly with Mr K on these issues.

The points raised by both parties haven't changed my mind. So I see no reason to depart from the conclusions set out in my provisional decision and summarised above.

## **My final decision**

For the reasons I've given, it's my final decision that I uphold this complaint and direct Exeter Friendly Society Limited to pay Mr K £750 in total, in respect of the overall distress and inconvenience caused.

Exeter Friendly Society Limited must pay the compensation within 28 days of the date on which we tell it Mr K accepts my final decision. If it pays later than this, it must also pay interest on the compensation, from the date of my final decision to the date of payment, at 8% simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 April 2025.

Gemma Warner  
**Ombudsman**