

The complaint

Ms C is unhappy that The Shepherds Friendly Society Limited declined a claim she made on her income protection policy.

What happened

Miss C took out an income protection policy in mid-September 2024. She claimed on the policy later that year, but the claim was declined as Shepherd's Friendly said that Miss C's claim was linked to a pre-existing condition which was excluded under the terms of the policy. They also said Miss C hadn't accurately declared her weight and, had she done so, the policy wouldn't have been offered.

Miss C complained to Shepherds Friendly. In their final response letter they said they agreed there wasn't enough evidence that Miss C had failed to accurately declare her weight. However, they thought that Miss C's medical records demonstrated that she'd had symptoms of severe tiredness and feeling unwell prior to her application to take out the policy. So, they maintained their decision to decline the claim.

Once Shepherd's Friendly had issued their final response letter our investigator looked into what happened and upheld Miss C's complaint. She was satisfied Miss C had taken reasonable care when answering the questions asked. So she didn't think Shepherd's Friendly had acted fairly when declining the claim. She recommended they reinstate the cover and reassess the claim in line with the remaining policy terms, remove any record of the avoidance from any relevant databases and pay Miss C £250 compensation.

Miss C accepted the investigator's recommendation, but Shepherd's Friendly didn't agree. They said the exclusion relating to pre-existing medical conditions applied although it hadn't been specifically referenced in their final response letter. They also raised concerns that Miss C hadn't accurately declared information about her mental health. They asked an ombudsman to review the complaint. So, the complaint was referred to me to make a 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.

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.

Shepherd's friendly thinks Miss C failed to take reasonable care not to make a misrepresentation when she answered the medical screening questions. The relevant question says:

Do any of the following statements apply to your client?

They currently have an appointment to consult with a health professional for a new symptom or medical complaint, or they are experiencing any form of symptom or medical complaint for which they have not previously consulted any doctor, nurse, or specialist.

Miss C answered that question 'no'. Shepherd's Friendly says that Miss C ought to have answered that question 'yes'. Miss C had, according to her NHS GP notes, some blood tests in August 2024 which indicated she had low levels of a particular hormone. That said, it's not clear when the results of these tests became available to Miss C and the information about the tests is limited. Miss C then saw a private GP in October 2024, after taking out the policy, on two occasions with symptoms of tiredness which later led to her diagnosis of an autoimmune condition. Her medical notes contain different timeframes as to when she started experiencing the symptoms. So, I don't think it's very clear what symptoms she was experiencing at or around the time of the application. And, I also bear in mind that Miss C was diagnosed with a condition which the NHS describes as 'rare disorder'.

Furthermore, the question asked Miss C if she had an appointment to consult with a health professional for a new symptom or medical complaint. I think it was reasonable that Miss C answered that aspect of the question 'no' because I don't think Shepherd's Friendly has demonstrated that, at the point of the application, she had an appointment in place to consult a medical practitioner for a new symptom or medical complaint. The second part of the question asked if Miss C was experiencing any form of symptom or medical complaint for which they have not previously consulted any doctor, nurse or specialist. But, I don't think Shepherd's Friendly has demonstrated that Miss C answered that question incorrectly either.

I've also considered that Shepherd's Friendly has drawn attention to the following statement on the application form. It says:

Your client has confirmed they are happy to continue knowing that this exclusion applies to their plan:

You will not be covered under this income protection plan for any symptom, disease, illness or injury you have experienced within the last three years, regardless of whether you have been diagnosed or not. We call these pre-existing conditions. You'll only be able to claim for pre-existing conditions once you've been symptom and medication free, and not consulted a medical professional, for a continuous period of two years after taking out this plan.

Miss C answered 'yes' to this statement. However, Miss C wasn't specifically asked about her medical history and symptoms she'd experienced within that time period. It was open to Shepherd's Friendly to ask questions about symptoms, diseases, illnesses or injuries Miss C had experienced within the last three years. But the application process didn't explore this information in detail. So, whilst Miss C confirmed she understood the exclusion applied to her plan, she didn't have the opportunity to disclose information about her own conditions which may be impacted by the exclusion. Therefore, I'm not persuaded that this information,

presented in this way, means that Miss C failed to take reasonable care in the circumstances of this case.

I appreciate that Shepherds Friendly considers that Miss C may have failed to declare information about her mental health which may have impacted the decision to offer cover. However, this wasn't specifically included within their decision to decline the claim or in their final response letter. I'm also aware that this is disputed by Miss C and that she may wish to provide further information. So, I'm not currently persuaded this has been properly explored by Shepherds Friendly or that it is fair and reasonable to decline the claim on this basis.

Taking all of the above I'm not persuaded that Shepherds Friendly has demonstrated that Miss C failed to take reasonable care. I am not satisfied, based on the evidence presented, that they've demonstrated a qualifying misrepresentation was made by Miss C. So, based on the current information Shepherds Friendly have provided in support of their decision, I don't think they fairly declined the claim and voided the policy.

I think it's fair and reasonable for Shepherds Friendly to reassess Miss C's claim in line with the remaining policy terms on the basis that she didn't make a misrepresentation about her medical history. It's open to both parties to provide further information and evidence during the reassessment of the claim. If Miss C is unhappy with the outcome of the claim reassessment, then she may be able to make a further complaint to the Financial Ombudsman Service.

Miss C hasn't received a good level of service from Shepherds Friendly. They initially said she'd not accurately declared her weight but then said this couldn't be evidenced. And, she's also had a lot of worry about her claim being covered because Shepherds Friendly thought she'd not accurately declared her medical history. Based on the information that's currently available I don't think that was a fair and reasonable conclusion to reach. So, it's caused Miss C a lot of distress and inconvenience at an already difficult time. She's also experienced financial difficulties and had to use a food bank to support her family. Therefore, I think they need to pay Miss C £250 compensation to reflect the impact on her.

Putting things right

Shepherds Friendly need to put things right by:

- Reinstating the policy and reassessing the claim in line with the remaining policy terms
- Removing any record of the policy avoidance from any internal and external databases
- Paying Miss C £250 compensation for the distress and inconvenience caused.

My final decision

I'm upholding this complaint and direct The Shepherds Friendly Society Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 10 July 2025.

Anna Wilshaw
Ombudsman