

The complaint

Mr D complains that The Shepherds Friendly Society Limited (*'Shepherds Friendly'*) has unfairly declined his claim and cancelled his income protection policy.

What happened

Mr D applied for his policy through a third-party financial adviser in September 2019. The policy was accepted with an exclusion for temporomandibular joint disorder (*'TMJ'*), which was subject to review after twelve months. The policy provided income protection benefit for Mr D if, by reason of illness or injury, he was unable to perform the material and substantial duties of his own occupation. The benefit was payable from the first day of incapacity.

The following year, Mr D made a claim under the policy. At that time, Shepherds Friendly also asked Mr D questions about a diagnosis of otitis media (ear infection) which persisted from November 2014 to March 2015.

After receiving information from Mr D, Shepherds Friendly did not amend the policy further, since it was satisfied Mr D had resolved issues relating to his ear. However, it applied an exclusion to the policy for carpal tunnel syndrome (*'CTS'*). The claim was thereafter accepted by Shepherds Friendly, with a total claim paid to Mr D of £19,675.59.

In January 2024, Mr D asked Shepherds Friendly to remove the TMJ exclusion, which it agreed to do.

In February 2024, Mr D approached Shepherds Friendly via his adviser to make a new claim as he had been off sick since early that month. This related to a problem with his ears causing pain and dizziness which had persisted since December 2023. After reviewing the claim history and undertaking an interview with Mr D, Shepherds Friendly declined the claim.

Shepherds Friendly told Mr D it couldn't verify his lost income from his limited company. It also expressed concern that Mr D may have taken an overseas trip against medical advice, which impacted his ear condition. Further, it noted from Mr D's medical records that he'd had a longstanding issue with perforation in his left ear, which had previously caused recurrent ear infections. Had Shepherds Friendly known about this, it would have applied a policy exclusion for that issue in 2019. Since it felt Mr D had acted deliberately, Shepherds Friendly said it had reasonable grounds to void the policy altogether.

Mr D then complained. In August 2024, Shepherds Life partially upheld the complaint. It said if it had been told about Mr D's correct medical history, it couldn't have insured him by 2020 as its underwriters would not allow any policy to proceed with three policy exclusions.

However, it agreed that the investigation process had been unreasonable, and it should have taken better care in understanding Mr D's self-employment and his personal circumstances. It also accepted he had not deliberately misled Shepherds Friendly. On that basis, it would have usually returned the policy premiums (rather than withheld them for deliberate action) but Mr D had paid £2,783.78 in premiums – which was less than the claim

payment paid in 2020. Shepherds Friendly did not ask for a return of the claim payment, but it confirmed no refund was due.

Mr D brought his complaint to this service. He said he felt that Shepherds Friendly saw him as problematic and decided to terminate the contract because of this. He also said in questioning his income from his employment, he had been made to feel like a fraud.

Shepherds Friendly thereafter said it was prepared to pay Mr D £250 to reflect the impact of the service it had provided following the 2024 claim.

Our investigator did not believe Shepherd's Friendly needed to do anything more to resolve the complaint, other than pay the £250 compensation it had previously offered Mr D.

She noted that in his application for the policy, Mr D hadn't answered a question about conditions affecting the ears correctly. And she was satisfied that Shepherds Friendly was right to treat Mr D's failure to answer the question correctly as a qualifying misrepresentation – which meant it could amend the policy now. As it couldn't have insured Mr D at all, our investigator said that Shepherds Friendly had fairly cancelled his policy.

Shepherds Friendly agreed with the outcome reached by the investigator. However, Mr D disagreed. He provided a list of relevant legislation which he said was breached by Shepherds Friendly. He also said, in summary:

- He felt that relevant insurance law had been misunderstood by our investigator, and that no qualifying misrepresentation took place.
- Shepherds Friendly also had a duty under relevant law to treat its customers fairly when dealing with claims – and had this happened in 2020, it would not be cancelling the policy now.
- If there was an issue relating to ear conditions, Shepherds Friendly should have applied the policy exclusion in 2020.
- The £250 offered by Shepherds Friendly does not adequately reflect the emotional upset and reputational harm he has suffered.
- Shepherds Friendly didn't review the TMJ exclusion in 2020 as promised.
- He wants a formal review of Shepherds Friendly's internal practices, to ensure other policyholders aren't subjected to the same unfair treatment in the future.

Though she considered all the further comments made by Mr D, our investigator wasn't prepared to change her view on the complaint.

Mr D therefore asked for the complaint to be referred to an ombudsman. He made further submissions that he wanted considered. I have read these in full. In summary, Mr D said:

- He does not believe that the proportionate remedy set out under insurance law allowed Shepherds Friendly to cancel the cover altogether.
- There was no mention of a two-exclusion limit in his original policy terms and conditions, which demonstrates a lack of transparency.
- It is in violation of insurance principles set out by the Financial Conduct Authority ('FCA') to fail to consider the claim promptly and fairly.
- He did not deliberately conceal information at any time and merely forgot to disclose a childhood ailment.
- It is irrational to consider that he withheld information in 2019, to then file a claim many years later.
- He has suffered significant emotional distress by the policy being cancelled, and additional compensation should be awarded to him – in the range of £500 to £1,500.

Shepherds Friendly had nothing further to add.

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.

I'd like to thank the parties for their patience whilst this matter has awaited an ombudsman's decision. I'm aware I've set out the background to this complaint in less detail than the parties and I've done so using my own words. However, in reaching my conclusion I've focused on what I consider are the key issues. Our rules allow me to take this approach; it simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. It's since I don't need to comment on every individual argument to be able to reach what I believe is the right outcome.

It's also important for me to point out that we do not act in the capacity of a regulator. That remit falls to the FCA, where it may look at wider issues governing how businesses conduct their operations or exercise what may be commercial judgement on the provision of a particular service. This service's role is to investigate disputes and resolve complaints informally, including taking into account relevant laws, regulations, industry guidance such as that from the Association of British Insurers ('ABI') and best practice where applicable.

Having reviewed this complaint carefully, I agree with the outcome reached by our investigator – that means I cannot uphold the complaint beyond directing Shepherds Friendly to pay the £250 already offered to Mr D. I appreciate my decision will be a disappointment for Mr D but I'll explain my reasons for this outcome below.

The relevant law in this complaint 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 Mr D failed to take reasonable care answering the following medical question when taking out the policy:

"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:

- *Any condition affecting their ears or hearing, for example Meniere's disease, deafness?"*

When assessing the first claim, Shepherds Friendly obtained some medical evidence from Mr D. This showed he had a history of left-sided earache since childhood. However, when it wrote to Mr D on 19 October 2020 offering him a chance to elaborate on that and other medical records which hadn't been disclosed, Mr D explained that he didn't do anything

further about his ear as antibiotics resolved it and he'd forgotten this event occurred.

However, when reviewing the second claim, further medical notes were disclosed. And they set out that Mr D had suffered a left tympanic membrane injury causing perforation as a child. And the records also showed that Mr D had suffered with a left-sided ear infection in 2014, for which he was referred to an ear, nose and throat specialist in 2015.

I appreciate Mr D's explanation that he deemed the situation minor. And I can understand why he says he overlooked it. Nevertheless, in the light of the full medical evidence, I can't conclude that Shepherds Friendly treated Mr D unfairly by determining that the medical question should have been answered 'yes'. And overall, I don't consider that Mr D took reasonable care in answering the question. I say that noting how Mr D's 2023 medical records say he reflected on having been referred for surgery in 2015, though he declined it. And a hospital letter of 12 March 2015 says how Mr D "*gives a history of longstanding perforation in his ear*". On balance, I think Mr D should have reasonably been able to recall relevant medical history when asked a clear question relating to his ears.

I realise Mr D believes that Shepherds Friendly hasn't provided sufficient information to determine that his failure to answer the question positively amounted to a qualifying misrepresentation. However, 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 persuaded that the evidence shows it would have acted differently had the question been answered correctly.

If Mr D would have answered yes in 2019 to the above question, Shepherds Friendly would have had the opportunity to ask for more information including the cause of symptoms. Accordingly, if it had received the medical evidence that it did in 2024 (from before the policy began), this would have set out Mr D's complete medical history along with the record that potential surgery was not undertaken. Shepherds Friendly has shown that it would have applied a policy exclusion in 2020 for Mr D's left ear, which in combination with the two previous exclusions would have meant it had to decline to offer any insurance at all.

With reflection on Mr D's comments, Shepherds Friendly has treated the misrepresentation as careless rather than deliberate. I find that was fair – I haven't seen any indication from the response that Mr D gave that the incorrect answer was deliberate or reckless. Rather, I am persuaded that Mr D didn't show sufficient care when answering the question put to him at application stage or when he was given a further opportunity to revisit his medical history in 2020.

CIDRA sets out the remedies available to an insurer in the case of careless misrepresentation. CIDRA is concerned with disclosure and representations by a consumer to an insurer before a consumer contract is entered into or varied. And for careless misrepresentation, the insurer's remedies are based on what it would have done if the consumer had complied with the duty. If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims but must return the premiums paid.

However, the amount Shepherds Friendly paid in the first claim exceeds the premiums Mr D paid – and Shepherds Friendly isn't seeking to recover that balance. So, it follows that no premium refund is due.

I have read with care all the representations that Mr D has made, and I was sorry to learn how frustrating things have been for him. But I have to reach a decision by reference to what is, in my opinion, fair and reasonable in all the circumstances of the complaint.

In considering what is fair and reasonable I have taken into account, among other things, the law and regulations I've referred to. For the avoidance of doubt as I haven't concluded that Shepherds Friendly did anything wrong in relation to cancelling the policy on the grounds of misrepresentation, there is no basis for me to require it to make any payment to Mr D. And though Mr D contends otherwise, it did so in accordance with CIDRA.

Turning to the customer service issues, I agree with both parties that – in relation to the assessment of the claim – Shepherds Friendly made conclusions on the information it had seen regarding Mr D's income and self-employed occupation without seeking evidence from him. And I am pleased to note it has identified its failings in its final response letter, and apologised for approaching the claim process in that way. I agree that this unreasonable approach caused additional concern to Mr D at what was already a difficult time for him, and some compensation ought to be awarded for that.

Shepherds Friendly has also reflected on the compensation since the complaint was lodged here and it now agrees to offer Mr D £250.

What this service does is consider if a business has treated a complainant unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. As well as putting right any financial losses in a complaint (though there are none in this circumstance since I agree the policy was fairly voided), we also consider the emotional or practical impact of any errors on a complainant.

The ABI Code of Practice concerning misrepresentation for income protection products requires an insurer to - as far as possible - try to understand the reasons for misrepresentation. And Shepherds Friendly could have afforded Mr D that opportunity earlier than it did. Overall, I believe the proposed payment of £250 was reasonable in the circumstances where Shepherds Friendly's claim handling procedure caused undue upset and frustration for Mr D over a short-term period, which made him feel that he was being unfairly accused of acting fraudulently. This naturally was upsetting. I am satisfied the offer Shepherds Friendly has made is fair in the circumstances of that upset.

I recognise Mr D feels that the compensation ought to be higher, but when we consider awards of this nature, we do not fine or punish businesses; the FCA undertakes the role of regulator. Instead, we consider the impact upon a complainant. It may also be helpful for Mrs D to review the guidance available on our website which explains the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Putting things right

I believe that Shepherds Friendly has taken reasonable steps to resolve the complaint, by apologising to Mr D and by offering to pay him £250 for the upset he had been caused by the impact of its claim handling. I think this offer is fair in all the circumstances. I note Mr D did not accept this offer. So, my decision is that Shepherds Friendly should pay £250 to Mr D, as it hasn't been able to make that payment to him to date.

My final decision

For the reasons explained, I uphold this complaint in part. I do not uphold the complaint regarding the declined income protection claim or Shepherds Friendly's decision to void the policy because of misrepresentation. I believe it has acted fairly in the circumstances in showing it could not have offered Mr D insurance from 2020 onwards due to the number of policy exclusions it would have needed to apply to his cover.

However, I agree that Shepherds Friendly caused Mr D undue upset in the way it handled its investigation into Mr D's medical history and employment situation. I find that its offer to pay Mr D £250 as compensation for the impact of its customer service is reasonable in the circumstances.

I direct The Shepherds Friendly Society Limited to pay Mr D £250. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 July 2025.

Jo Storey
Ombudsman