

## **The complaint**

Mrs D and Mr D have complained that Scottish Friendly Assurance Society Limited declined Mr D's critical illness claim.

## **What happened**

Mr and Mrs D took out a life and critical illness policy in 2017. Sadly in 2024 Mr D had a stroke and made a claim under the critical illness policy. Scottish Friendly declined the claim. It said that had Mr D answered the application question regarding cancer correctly, it would not have offered cover. It declined the claim, cancelled the policy and returned the premiums paid. Unhappy, Mr and Mrs D referred their complaint to our service.

Our investigator didn't recommend that it be upheld. It didn't find that Scottish Friendly had acted unfairly.

Mr and Mrs D appealed. Mr D said that he answered all the application questions to the best of his knowledge at the time. He said that when he was treated abroad in 2002, his condition was referred to as bladder tumour not bladder cancer. He said that he didn't knowingly provide false information and disagreed with the classification of the misrepresentation as deliberate or reckless.

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.

First, I'd like to reassure Mr and Mrs D that while I've summarised the background to his complaint, I've carefully considered all that's been said and sent to us. In this decision though I've focused on what I consider to be the key issues. Having done so, whilst I'm very sorry to disappoint Mr and Mrs D, I agree with the conclusion reached by the investigator. I'll explain why.

The relevant 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 contract terms; regulatory rules; good industry practice; and the available evidence, to decide whether I think Scottish Friendly treated Mr and Mrs D 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.

Scottish Friendly has said that Mr D failed to take reasonable care when answering the following question: *Do you currently have, or have you ever had Cancer, Leukaemia, Hodgkin's Disease, Lymphoma, Brain or Spinal Tumour?*

Mr D answered 'no' but the medical records showed he had bladder cancer in 2002. Scottish Friendly asked Mr D about this and he explained that the cancer was non-invasive, the tumour was removed and he had no recurrence. He said that he read the question incorrectly in error.

However in response to our investigator's view Mr and Mrs D emphasised that Mr D hadn't been informed prior to taking out the policy that the tumour had been malignant and the records cited as being evidence of cancer originate several years later. They felt that the terminology was altered from tumour to cancer in the UK without the medical records from abroad where the tumour was diagnosed.

Nevertheless on the basis of the evidence before me I don't find that it was unfair for Scottish Friendly to conclude that Mr D had failed to take reasonable care when answering this question. Of course if Mr D wishes to submit to Scottish Friendly contemporaneous medical evidence from the time of the tumour diagnosis he can do so.

I must consider therefore whether Mr D's answer to this question would have made a difference. I can't share the commercially sensitive underwriting information, but I'm satisfied Scottish Friendly has shown by the relevant underwriting criteria that had it been aware of Mr D's cancer diagnosis it wouldn't have offered critical illness cover. This means that the misrepresentation was qualifying under CIDRA.

Scottish Friendly has classified the misrepresentation as deliberate or reckless. Mr D feels that this is unfair. But as the question was clear, I don't find it was unfair to say it was reckless. But in any event Scottish has followed the remedy for careless misrepresentation – that is it has declined the claim and refunded the premium paid. So I'm satisfied that the actions it has taken were in line with CIDRA.

I do appreciate Mr D's point that his cancer diagnosis was not related to his stroke. This is not in dispute. But I'm satisfied that if the question had been answered correctly, he wouldn't have been offered the policy at all. It follows that there is no basis for me to require Scottish Friendly to reinstate the policy or to pay the claim.

I'm sorry that my decision doesn't bring Mr and Mrs D welcome news.

### **My final decision**

For the reasons given my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 20 October 2025.

Lindsey Woloski  
**Ombudsman**