

## **complaint**

Mrs J has complained about Friends Life Limited's decision to terminate her claim under her employer's group income protection insurance policy.

## **background**

Mrs J was a member of her employer's group income protection insurance policy which was held with Friends Life. The policy would pay benefit, after a waiting period of 26 weeks, if Mrs J was unable to perform her occupation due to illness or injury.

In 2009, Mrs J stopped working due to chronic fatigue syndrome (CFS). Her employer made a claim under the policy on her behalf. Friends Life accepted the claim and, after the waiting period, began paying benefit.

Mrs J's claim remained in payment until 2016. Friends Life undertook a review of the claim. As part of that review it arranged for Mrs J in January 2016 to be interviewed by a nurse and in June 2016 to undergo an Independent Medical Examination (IME) by Dr M, a consultant in occupational medicine. Dr M concluded that Mrs J was able to return to work for 12 to 16 hours a week and that she should be able to build up to full-time working within three months.

Friends Life provided Dr M with further evidence on Mrs J's levels of activity gathered through internet searches and surveillance footage. Based in particular on the internet search evidence which showed that Mrs J was undertaking a variety of runs on a frequent basis, Dr M revised his opinion. He concluded that Mrs J was capable of returning to work for 25 hours a week, building up to full-time working over a period of four to six weeks.

In light of Dr M's conclusions, Friends Life advised Mrs J's employer in October 2016 that it was terminating her claim with immediate effect though it would consider paying proportionate benefit for a period of time if she were to return to work. Friends Life further advised the employer that it felt Mrs J had deliberately misled both the nurse and Dr M over the extent of her capabilities. As a result, it said it was removing Mrs J from cover under the policy meaning she would not be able to make a linked claim under the policy in the event of future absence.

Mrs J appealed against Friends Life's decision. She provided a report by Dr V, an occupational health physician, who was commissioned by her employer to assess her in January 2017 and who concluded she was medically unable to work.

Friends Life wouldn't change its position. Mrs J therefore referred her complaint to us.

I issued a provisional decision explaining why I was minded to uphold this complaint in part. My findings were as follows:

*"I have noted the court case [this was a court case to which Mrs J's husband had referred and in which Friends Life had been found to have acted unfairly]. However, we consider each complaint based on its own merits. I don't think the decision of the court is binding on Friends Life in this particular case.*

*For Friends Life to terminate the claim, it needed to show that Mrs J was no longer medically prevented from performing either her occupation or another occupation to which she was*

*suited. Based on the advice of Dr M, Friends Life considered that Mrs J was capable of returning to her normal occupation for 25 hours a week and that she could build up to full-time working within four to six weeks. I'm satisfied that this was Dr M's clear opinion after he had examined Mrs J and considered all the evidence so, on the face of it, Friends Life's decision was reasonable.*

*Mrs J's husband has challenged Dr M's expertise in CFS. However, he is an occupational health consultant and has confirmed he has plenty of experience in dealing with people suffering from CFS. I think it likely that an occupational health consultant would have this experience and see no reasonable grounds for disputing his competence.*

*Mrs J's husband has pointed to the other medical evidence on file. I have considered this. However, while there is no doubt that Mrs J had at times been severely limited by her CFS, she hadn't been seen in the CFS clinic for nearly a year at the time she underwent the IME, nor was there anything in her recent GP notes to indicate her continued incapacity. So I don't think there was any recent evidence to counter Dr M's opinion.*

*When she appealed against Friends Life's decision, Mrs J provided the January 2017 report by Dr V. Friends Life sent this to Dr M for his comment. Dr M pointed out that Dr V wasn't necessarily at consultant level. Furthermore, unlike Dr M, he appeared to have produced his report without seeing Mrs J's medical records (or, indeed, the results of the internet searches and Dr M's own reports). I think that these factors mean more reliance should be placed on Dr M's opinion than on that of Dr V.*

*Overall, I'm satisfied it was reasonable for Friends Life to rely on Dr M's opinion and to terminate the claim on the basis that Mrs J was no longer incapacitated under the terms of the policy.*

*The terms of the policy allow Friends Life to remove an employee from cover if that employee has failed in their duty of utmost good faith by supplying Friends Life with misleading, incorrect or incomplete information. Friends Life said that Mrs J had failed to disclose to either the nurse in January 2016 or Dr M in June 2106 about the extent of her running activities. In particular, it said Mrs J had told Dr M she hadn't taken part in any running events since 2013. However, internet searches showed that she had continued to run since that time including in some organised events and had completed a marathon in April 2016. She had also done a run of just over 10km in May 2016 which was eight days before she attended the IME. Friends Life thought Mrs J had made a conscious effort to mislead the nurse and Dr M. It decided on this basis to remove her from cover under the policy.*

*I acknowledge Dr M says, after checking his handwritten notes, that Mrs J had denied doing any running since 2013 and also says her level of activity as shown in the internet searches was inconsistent with her presentation at the IME. However, Mrs J has a different recollection and says she wasn't specifically asked by Dr M about her running. She says she disclosed her running activity to the nurse in January 2016 and therefore questions why she would have sought to hide this from Dr M.*

*I note that Mrs J told the nurse she regularly exercised in the gym, including sometimes on the running machine, though this doesn't really reflect the true extent of her running activity as revealed by the internet searches. However, for Friends Life to remove Mrs J from cover it has to show she deliberately misled it so as to benefit under the policy. While there are inconsistencies between Mrs J's account of her limitations and her running activity as shown*

*in the internet searches, in the absence of anything to show exactly what question was asked in the two interviews I don't think Friends Life has done enough to show that Mrs J deliberately misled it. I therefore think it was unfair for Friends Life to have removed her from cover. While I understand that she has since left her employment and so cover cannot be reinstated, I nonetheless agree with the investigator that Friends Life's accusation and action will have caused Mrs J distress for which it should pay her compensation of £500.*

*The investigator further recommended that Friends Life should pay Mrs J the amount it would have paid to her employer in proportionate benefit had she attempted a return to work. Friends Life said it couldn't comply with this because under the terms of the policy benefit had to be paid directly to the employer as it was the policyholder. I don't accept Friends Life's argument on this point. The benefit would ultimately have gone to Mrs J and she is no longer employed by the policyholder so the money can't now be paid through that route. I see no reason why Friends Life wouldn't be able to pay Mrs J directly the amount she would have received in proportionate benefit even if it wants technically to call this sum compensation rather than benefit.*

*However, Friends Life has also argued that proportionate benefit is payable only if someone returns to work and since Mrs J didn't ever attempt to return to work it shouldn't have to pay her anything. The investigator's argument was that Friends Life had removed Mrs J's cover before she could attempt a gradual return to work. However, while Friends Life had removed Mrs J from cover so as to prevent any linked future claim, it specifically invited her employer to apply for proportionate benefit in the event that she attempted a gradual return to work.*

*So while I think Friends Life's decision to remove Mrs J from cover was unfair, I don't think this should have affected Mrs J's decision on whether to return to work. Given that I'm satisfied Mrs J was capable of returning to work but chose not to attempt this, I don't think Friends Life should have to pay her the amount it would have paid in proportionate benefit had she made such an attempt."*

I invited both parties to comment on my provisional decision.

Mrs J's husband responded on her behalf to say she didn't accept the provisional decision. He made the following points:

- It was the wrongful withdrawal of cover which led to Mrs J's dismissal by her employer and therefore it was invalid for Friends Life to say it couldn't pay benefit beyond the end of her employment.
- Dr M's approach showed that he was either incompetent to assess CFS or was biased in favour of Friends Life.
- The court case which he had previously highlighted had certain elements which were identical to his wife's case and therefore I had been wrong to ignore it.
- His wife's CFS fluctuated in its effect on her physical and mental well-being and she had never been in a position where she could have returned to work with any consistent level of performance.

Friends Life didn't comment on my provisional decision.

### **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the opinion that this complaint should be upheld only in part.

Mrs J remained in employment while her claim was being paid. I think the termination of her claim therefore indirectly led to her dismissal. But I've said I was satisfied that Friends Life acted fairly in terminating her claim. I think Friends Life acted unfairly in removing Mrs J from cover under the policy but I don't see how that was linked to her dismissal. In any case, I have explained that I don't think Friends Life was required to pay proportionate benefit even up to the time of her dismissal.

I have already explained why I'm satisfied that Dr M was competent to assess Mrs J. The further comments which Mrs J's husband has made don't persuade me to change my mind on this point, nor do they cause me to think that Dr M was biased.

I have already explained how each case is judged on its own merits. The court case to which Mrs J's husband refers may have similarities to this complaint but it isn't identical in every respect. The court's findings don't bind Friends Life in this complaint.

I am aware of how CFS sufferers may have good days and bad days. I am confident that Dr M will have understood the fluctuating nature of the condition when he reached his conclusion that Mrs J was able to return to work.

In view of the above, and the fact that Friends Life hasn't offered comment, I see no reason to depart from the findings in my provisional decision.

### **my final decision**

For the reasons given above, my final decision is that I uphold this complaint in part. I require Friends Life Limited to pay Mrs J £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 18 May 2019.

David Poley  
**ombudsman**