

The complaint

Mr S is unhappy that The Shepherds Friendly Society Limited stopped paying a claim made on his income protection insurance policy.

What happened

Mr S had the benefit of an income protection policy which can pay out a maximum monthly benefit if he's incapacitated as defined by the policy terms, after an initial waiting period.

In 2020, Mr S made a claim under the policy. Shepherds Friendly accepted that Mr S was incapacitated and started paying the monthly benefit.

Shepherd Friendly continued to review the claim and in 2021 received information from the employment agency through which Mr S was employed reflecting that he wasn't employed at the time of the incident which led to him being unable to work. His last day of employment was around ten weeks before the incident which led to the claim. So, it ceased paying the monthly benefit under the policy.

Mr S didn't think that was fair and he brought a complaint to the Financial Ombudsman Service to investigate.

In early 2022, our investigator didn't uphold Mr S's complaint. He concluded, based on the further information obtained by Shepherds Friendly, it had fairly relied on the policy terms to stop paying the claim. That's because he wasn't earning an income at the time, he became incapacitated.

Many months later, Mr S provided our Service with further information from two companies which reflected that he'd worked for them and received payment for certain periods in the couple of months before the incident which led to his claim.

As this information hadn't been available at the time the monthly benefit ended, or when our investigator issued their view, the Financial Ombudsman Service set up a new complaint and provided this information to Shepherds Friendly to consider. This information didn't change Shepherds Friendly's decision and it maintained its decision to cease paying the claim.

Our investigator concluded that Shepherds Friendly's continued position was fair given that the information provided didn't show that Mr S was working at the time he became incapacitated.

Mr S then provided bank statements showing that he received two payments from one of the companies which had provided a letter confirming that he'd done work for it in March 2020, the month before his incapacity. These payments were made around a week before and a week after the incident which led to his claim. He also provided a further signed (but undated) letter from the operations manager of that company reflecting that Mr S had been employed by it when "he experienced incapacity" and provided the date when that occurred.

In light of this further information, our investigator upheld the complaint and recommended Shepherds Friendly to reinstate the claim and make backdated payments of the monthly benefit to the date on which it stopped paying the monthly benefit.

Mr S accepted this outcome. Shepherds Friendly didn't and requested an Ombudsman's decision. So, the complaint was passed to me to decide.

I issued my provisional decision in July 2023 explaining why I wasn't intending to uphold Mr S's complaint. An extract of my provisional decision is set out below.

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Shepherds Friendly has an obligation to handle claims fairly. And it mustn't unreasonably decline paying a claim.

At the outset, I want to confirm that I haven't looked at whether Shepherds Friendly acted fairly and reasonably by stopping the monthly benefit in 2021. A view was issued by our investigator early in 2022, explaining why he didn't think Shepherds Friendly had acted unfairly based on the information available at the time. And that complaint wasn't referred to an Ombudsman then and was closed, as being resolved by our Service, a month later. The crux of the complaint I've determined is whether Shepherds Friendly has acted fairly and reasonably by maintaining its decision to end the monthly benefit based on new information provided by Mr S.

The relevant policy terms and conditions

The policy terms and conditions say at section 6:

You must be engaged in paid employment or earning through self-employment when the Incapacity starts and you must suffer a complete or partial loss of income as a direct consequence of not being fit and able to work in your Own Occupation. If you are not in paid employment or earning through self-employment when Incapacity starts, you may instead qualify for House Persons Benefit, if you meet the requirements for that benefit. (See Section 18, House Persons Benefit). If you do not suffer a loss of income from your employment or self-employment, you will not be entitled to any Benefits under the plan

And benefits will not be paid: if you do not suffer any loss of income as a direct consequence of your incapacity

Further page 15 of the policy terms and conditions say:

We will not pay a claim where you have failed to establish to our satisfaction, or to the satisfaction of our medical or other advisers that:

...you have suffered a loss of income from your employment or self-employment as a direct consequence of your Incapacity

Incapacity to defined as: "you are not fit and able to work in your Own Occupation as a result of mental illness or injury..."

Own Occupation means: "the occupation(s) you are engaged in and from which you derive an income at the start of your incapacity..."

Has Shepherds Friendly fairly maintained its decision to stop paying the monthly benefit?

In light of the further information more recently provided by Mr S, I still think Shepherds Friendly has acted fairly and reasonably by maintaining its decision to stop paying the monthly benefit under the terms of the policy. I'll explain why.

- Mr S has provided a signed, but undated, letter on headed paper from a company confirming Mr S was employed by it when he first experienced incapacity at the end of April 2020 ('the undated letter'). Mr S's bank statements from around that time also reflect that he received around £1,900 and £1,750 from that company around a week before and a week after the date on which the incident took place which led to his claim being made. I understand why Mr S says that these documents taken together support him being in paid employment/self-employment around the time he became incapacitated.
- However, the bank statement shows the money going into his account on 17 April and 1 May 2020. That's when there were extensive national restrictions in place due to the Covid-19 pandemic (commonly known as 'lockdown') and the government was advising everyone to stay at home, and to work from home wherever possible.
- Our investigator has tried several times to contact the company who provided the undated letter to understand what the payments were for, how the company was impacted during the early part of the Covid-19 pandemic and its operations. He hasn't been able to speak to anyone. But our investigator has been able to contact the author of the undated letter on the telephone number they provided at the bottom of the undated letter. They've told our Service they weren't employed by the company in early 2020, so couldn't confirm Mr S was working there then, although they did recall being asked to provide the undated letter on behalf of another director.
- The company Mr S was said to have worked for at the time was in the leisure and travel industry, I think it's reasonable to presume they would've been significantly impacted by the lockdown as the government advice was to stay at home and people weren't permitted to meet anyone from outset their household, let alone travel for recreational purposes. Because of the government advice in place, and the time of the payments, I'm not persuaded there's sufficient evidence that Mr S was earning an income from work he was carrying out for that company at the time he became incapacity. He may have received payments, but I don't know what for. On the balance of probabilities, I don't think there's enough evidence to conclude that Mr S was engaged in paid employment or self-employment at the time of his incapacity. And the policy doesn't pay a benefit if there's no loss as a direct consequence of Mr S' incapacity. So, I don't think it would be fair to direct Shepherds Friendly to reinstate the claim and made backdated payments to Mr S from the date on which it ceased paying the benefit.
- I've also taken into account that the initial letter provided by that company dated October 2022 doesn't make any reference to payment being made to Mr S on 17 April or 1 May 2020 or for any work done by him during the month the incident took place which led to his claim. It only reflects that Mr S received two payments (for lesser amounts) for hours worked the month before that, in March 2020.
- So, I've placed less weight on the contents of the undated letter, particularly as its author wasn't employed at the time Mr S was said to still be working for the company in April 2020. And I don't know why it refers to a later employment period, not mentioned in the October 2022 letter.

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I invited both parties to provide any further information they wanted me to consider.

Mr S replied saying it was unfair to assume that because of the nature of the industry he was employed in that he was at home during lockdown. During this time, the company he worked for was still active doing school runs and transporting key workers to and from work. He also provided a letter dated 31 July 2023 from a director of the company he said he was working for immediately before he became incapacitated. This letter reflects:

- The previous two letters had been drafted with their authority and both authors of those letters have since left the company's employment.
- Mr S started employment with the company in June 2019; originally as coach driver and promoted to an office position. This position was held by Mr S until he became incapacitated at the end of April 2020 and was no longer able to carry out his duties.

Our investigator forwarded a copy of this letter to Shepherds Friendly for comment. It raised concerns about the validity of the letters received and explained why. Shepherds Friendly also provided a copy of the claim form completed by Mr S in May 2020 which reflects that Mr S said he'd not worked since February 2020 and made no reference to the employment with the company he now says he was working for immediately before becoming incapacitated.

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.

For the reasons explained in my provisional decision (an extract of which is set out above and forms part of my final decision) and for reasons I'll go on to explain, I don't uphold Mr S's complaint.

I've placed less weight on the contents of the letter provided by the company Mr S says he was working for immediately before he was incapacitated dated 31 July 2023. That's because this letter, although stating that Mr S was employed up to 24 April 2020, contradicts other information I've been provided, which I've placed more weight on.

Mr S's original claim form dated May 2020 – so shortly after he became incapacitated at the end of April 2020 - reflects his last working date to be early February 2020. If Mr S had been in paid work until the end of April 2020, I think it's reasonable to assume that he would've put the date in April 2020 as his last working day.

Further, the date he put on his claim form also contradicts what's said in other letters provided by companies reflecting Mr S worked for them in March and April 2020.

Shepherds Friendly has also provided a copy of a GP certificate dated 16 March 2020 reflecting that Mr S was unfit to work from that date to 19 April 2020. So that also contradicts information provided by various companies reflecting that Mr S was working for them in the weeks leading to him becoming incapacitated. Whilst the GP certificate may have been submitted by Mr S in support of a different income protection claim, I still think it's relevant evidence for me to consider as it relates to whether Mr S was in paid work during the relevant period.

Mr S says he returned to work before the date on which the GP certificate was due to expire. That may be the case but as Mr S has previously also sought to rely on a letter reflecting that he received payment for work on 20 March and 31 March 2020 – only a few days after

the date of his sick note - I think it's reasonable for Shepherds Friendly to refer to the discrepancy. Particularly as his claim form also supports that he wasn't working after the beginning of February 2020.

Due to the overall conflicting information, I'm satisfied Shepherds Friendly has acted fairly and reasonably by maintaining its decision to end the monthly benefit.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 October 2023.

David Curtis-Johnson
Ombudsman