

The complaint

Mrs T and Mr T complain about Scottish Friendly Assurance Society Limited's decision to decline Mr T's claim for total and permanent disability (TPD) benefit under their life and critical illness policy. They also complain about delays in dealing with the claim.

What happened

In summary, in September 2001, Mrs T and Mr T took out joint life and critical illness cover. Their policy expired in September 2022.

Mrs T and Mr T initially contacted Scottish Friendly in October 2020, after Mr T was diagnosed with Covid-19. However, the policy didn't provide cover for Covid-19 or long Covid. So Scottish Friendly said it would consider a claim for total and permanent disability. This claim was submitted in July 2022.

In October 2022, Mrs T complained about the time taken to assess the claim. Scottish Friendly responded to the complaint in November 2022, saying it hadn't identified any fault on its part. It also clarified that it was awaiting further evidence from Mr T's GP and an independent medical examination.

In February 2023, after obtaining and reviewing further medical evidence, Scottish Friendly declined the claim, saying the policy definition hadn't been met. Mrs T and Mr T appealed the decision, but Scottish Friendly maintained its position, issuing a final response on this matter towards the end of February 2023.

Mrs T and Mr T brought their concerns to the Financial Ombudsman Service. An investigator looked into things for them, but didn't uphold the complaint. He said Scottish Friendly had fairly declined the claim. He acknowledged the claims process had had an impact on Mr T and Mrs T, but didn't think Scottish Friendly had caused any avoidable delay or added to the distress and inconvenience Mr T and Mrs T were already experiencing.

Mrs T and Mr T later provided additional medical evidence - an occupational health report dated March 2023. Scottish Friendly considered this additional evidence but confirmed it didn't change the claim decision.

As Mrs T and Mr T remained unhappy, their complaint has come to me for a final decision. To clarify, my decision deals with the issues and evidence referred to above. I'm aware Mrs T and Mr T have recently provided another occupational health opinion, dated October 2023. But our investigator has confirmed to them that the scope of my decision regarding the claim complaint is limited to the evidence on which Scottish Friendly based its claim decision and its review of the further evidence provided in March 2023.

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 appreciate the significant efforts Mrs T and Mr T have made to evidence and support their complaint. I've reviewed everything provided. I've focused particularly on the points and evidence I consider material to my decision. So, if I don't refer to a specific point or piece of evidence, it's not because I haven't read and thought about it. Rather, I don't consider it changes the outcome of the complaint.

Declined claim

There's no dispute Mr T has health issues which have significantly impacted his life and ability to work. He's been unwell for some time and I was sorry to hear about that. However, this alone is not sufficient for the claim to be paid. A successful claim for total and permanent disability requires the following policy definitions to be met:

'Total, permanent and irreversible disability as a result of sickness or accident and therefore totally incapable of being employed or engaging in any paid occupation at all, such condition having persisted for a continuous period of at least six months.'

'Permanent means that the condition is expected to last throughout life, irrespective of when the cover ends or the life assured retires.'

'Irreversible means that the relevant condition cannot be cured by medical treatment and/or surgical procedures used by the National Health Service in the UK at the time of the claim.'

I've reviewed the medical records and the report prepared by the independent medical examiner, Dr W. I know Mrs T and Mr T have raised concerns about this report. But I can see that Dr W is a consultant occupational physician with extensive experience. And I note his opinion was based on a review of Mr T's medical records as well as a 2.5 hour meeting/examination with Mr T at home. Mrs T was also present. I also note that Dr W was instructed by Scottish Friendly after its Chief Medical Officer advised getting an independent, specialist opinion, because the existing medical evidence didn't support the policy definitions being met. The report is comprehensive and I'm satisfied Dr W is an independent medical professional.

In Dr W's opinion, Mr T's main physical problem was profound physical deconditioning as well as a history of significant psychological trauma from his acute illness, and significant psychological reaction to his subsequent symptoms and inability to recover. Dr W considered that Mr T's continued attribution of his entire problems to the physical effects of Covid-19 rather than his subsequent response, was a significant barrier to recovery. Dr W commented on treatment options and acknowledged that recovery was likely to take years rather than months. He concluded:

'As there is no medical reason why Mr T should remain permanently unable to undertake his [job], or any less physically demanding role, it would be inappropriate to consider him eligible for a total and permanent disability claim. Doing so would reinforce his illness behaviour and have a negative impact on his motivation to engage with rehabilitation.'

I've also looked at the occupational health management referral report, dated March 2023, provided by Mrs T and Mr T. I understand the report followed a referral from Mr T's

employer. For the purposes of the report, the assessor spoke to Mr T by telephone and recorded Mr T's ongoing symptoms. The assessor concluded:

'In my opinion, Mr T is unfit for work in any capacity, due to his ongoing mental and physical symptoms which are now long term.'

Regarding prognosis, the assessor comments:

'I am unable to predict a timescale for any improvement as this will depend on his response to any future treatment. Given Mr T's progress over the last three years, the prospects of a return to his previous role is uncertain.'

Scottish Friendly reviewed the report to see if it altered its claim decision, but concluded that it didn't. It remained of the view that the definitions for permanent and irreversible disability had not been met.

In summary, from what I've seen, Scottish Friendly obtained Mr T's GP and hospital records, as well as a specialist report from an independent medical examiner. Whilst I acknowledge that Mrs T and Mr T disagree with the specialist report, I think Scottish Friendly investigated and assessed the claim reasonably. It also reviewed the further evidence they provided, which I note also doesn't confirm Mr T will never work again. I'm satisfied it acted reasonably in this regard. It was entitled to rely on the specialist opinion, which didn't confirm that Mr T met the policy terms necessary to qualify for total and permanent disability. So overall, I don't think Scottish Friendly treated Mr T unfairly in declining his claim.

Delay

I've no doubt Mrs T and Mr T have found the experience of making a claim upsetting and inconvenient. Mr T's health and circumstances have changed significantly over the past three years and I accept that the impact of these changes has been substantial for both Mr T and Mrs T.

I've thought about how Scottish Friendly has dealt with Mrs T and Mr T, and whether there were avoidable delays that exacerbated an already challenging and difficult time. But Scottish Friendly was entitled to explore the claim fully and seek further medical evidence before making its decision. I've not seen evidence of avoidable delays.

So overall, I don't think Scottish Friendly has treated Mrs T and Mr T unfairly in respect of Mr T's claim.

My final decision

For the reasons given above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 24 November 2023.

Jo Chilvers
Ombudsman