

The complaint

Mr H complains that The Shepherds Friendly Society Limited has turned down a claim he made on an income protection insurance policy and that it's cancelled the contract.

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mr H was insured under a personal income protection insurance policy, which was designed to replace his income if he became unable to work due to illness or injury.

In October 2021, Mr H suffered a fall while he was at work. He suffered arm and leg injuries and was signed-off work. So he made a claim on the policy.

Shepherds Friendly investigated Mr H's claim. As well as Mr H's claim form and testimony, it obtained information from his employer, including a RIDDOR investigation report carried out by the Health and Safety Officer and CCTV footage of the accident. Ultimately, having considered all of the available evidence, Shepherds Friendly concluded that Mr H's claim wasn't covered by the policy terms. And it also considered that he'd provided it with misleading information. So it cancelled Mr H's policy and kept his premiums.

Mr H was unhappy with Shepherds Friendly's decision and he asked us to look into his complaint.

Our investigator didn't think Shepherds Friendly had treated Mr H unfairly. She felt it had been reasonable for Shepherds Friendly to rely on the RIDDOR report and the CCTV evidence to conclude that Mr H's claim wasn't covered by the policy terms.

Mr H disagreed. In summary, he thought the documentation the investigator had relied on was slanderous. He felt everything Shepherds Friendly had done was directed to ensuring the claim was declined and the policy was cancelled. He felt Shepherds Friendly had ignored evidence and he referred to its handling of both this claim and a previous claim on the policy. He said he'd answered all of its questions honestly.

The complaint's been passed to me to decide.

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.

Having done so, whilst I'm very sorry to disappoint Mr H, I don't think Shepherds Friendly has treated him unfairly and I'll explain why.

First, I must make it clear that this decision will only consider whether I think it was reasonable for Shepherds Friendly to turn down Mr H's claim and cancel his policy. I appreciate Mr H is unhappy with the way Shepherds Friendly handled the claim and the way

it handled a previous claim on the policy. However, those complaint points have already been addressed separately by this service and so I won't be commenting on them here.

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 terms of Mr H's policy and all of the available evidence, to decide whether I think Shepherds Friendly handled Mr H's claim fairly.

The policy terms and conditions

I've first considered the policy terms and conditions as these form the basis of Mr H's contract with Shepherds Friendly. I've listed what I consider to be the key terms below. First, I've set out what Shepherds Friendly means by incapacity:

*'For the purposes of the contract between you and us, you suffer from an Incapacity and are Incapacitated if you are not fit and able to work in your Own Occupation as a result of physical or mental illness or injury, **provided such physical or mental illness or injury is not self-inflicted, and provided it does not arise out of or in connection with, and is not aggravated by, any of the following:***

...

- ***Any failure to follow the current regulations relating to health and safety at work.*** (Emphasis added).

Shepherds Friendly has included a section in the contract called 'Claims'. This includes the following:

'We will not pay a claim that we consider to be fraudulent. When we assess a claim, we rely on the information we are given. If you or any agent acting on your behalf has deliberately or recklessly made untrue statements, or failed to provide us with an accurate and complete picture of your circumstances, we may refuse your claim or, if we have already paid sums to you, we may look to reclaim those sums from you and stop paying any further sums to you. We may also cancel the plan without refunding any premiums you have already paid.

- *We will not pay a claim where we reasonably consider you have misled us.*
- *We may not pay a claim if your physical or mental illness or injury arises out of, or in connection with, an accident that was as a result of your own negligence (something you did or failed to do).'*

Shepherds Friendly considered the available evidence and considered that Mr H's accident appeared to be self-inflicted and that he hadn't followed health and safety at work regulations. It also felt that Mr H had provided it with misleading information. So I've gone on to look at the available evidence to decide whether I think this was a fair conclusion for Shepherds Friendly to draw.

The available evidence

I've carefully considered the testimony provided by Mr H. He told Shepherds Friendly that he'd fallen while on his employer's premises and had suffered arm and knee injuries. Mr H's version of events was corroborated by another employee who was walking with him at the time and I've seen a copy of the applicable witness statement. This evidence, on the face of it, would seem to support Mr H's claim that he suffered an accidental injury. But I must consider all of the available evidence to determine whether I think Shepherds Friendly acted

fairly and reasonably when weighing up all of the relevant information and taking the actions it did.

Given Mr H's injuries and his being signed-off work, his employer was required by the workplace safety regulator, the Health and Safety Executive, to carry out an investigation and produce a RIDDOR report. A Health and Safety Officer (HSO) began their investigation around a week after Mr H's fall. And the resulting RIDDOR report is dated 9 December 2021. I've set out below what I think are the HSO's key conclusions:

'There is CCTV of the incident showing (Mr H) walking along the pathway with (witness). (MR H) is nearest to the yard ...At first (Mr H) can be seen walking a few feet from the edge before drifting more towards to the edge while talking to (witness). The incident takes place at the very bottom of the CCTV but (Mr H) can be seen looking down before falling forward into the yard area...

Watching the CCTV it is interesting the nature in which (Mr H) falls. Approaching the area of the incident (Mr H) is talking and looking at (witness). He then appears to look down at the area of the disturbed ground, before taking a step towards it and then going forward. Also when slowed down (Mr H) when he moves to the left his left leg is actually up in a raised position, and his body making an unusual diagonal turn to the left. The witness also appears to be looking at the area of the incident prior to (Mr H) falling and then does not seem to react unexpectedly but walks towards (Mr H) in a casual way. This appears to be an unnatural fall as usually the leg / body will more crumple under as the foot and balance are affected. However it may have been that (Mr H) would be trying to protect himself...

It is also worth noting that (Mr H) had just been investigated for an incident...and was due to have been seen in a meeting regarding this with his manager...on (day following the accident)...

Also (Mr H) must also take responsibility for his own safety and be aware of his surroundings.

Watching the CCTV and also bearing in mind the previous incidents involving (Mr H) there is a feeling that the incident may have been "created" due to the nature of the meeting taking place later the next day.'

Mr H's employers also disputed liability for a legal claim Mr H had made against it. I've seen a copy of a letter the employer's solicitors sent to Mr H's solicitors, in January 2022, which included the following:

'The investigation found that the footpath was clearly lit and that your client had not been sufficiently mindful of his surroundings...

The author of the report had further concerns as to the nature of your client's fall, how he walked towards the edge of the path and in the knowledge that he was due to (have a meeting) the following day. Our client reserves its position as to the investigator's opinion but attaches the CCTV footage which led to the comments contained within the report.'

Shepherds Friendly also reviewed the CCTV footage and agreed with the HSO's findings. I can confirm that I've looked closely at the footage, too.

It's clear that there is contradictory evidence about what happened and the way Mr H's accident happened. So I need to decide whether I think it was fair for Shepherds Friendly to place more persuasive weight on the RIDDOR report and the CCTV footage than Mr H's testimony and the witness statement. On balance, I think it was. That's because Mr H's

employer was required, by the regulator, to undertake an investigation and compile a RIDDOR report. And Shepherds Friendly felt the CCTV footage supported the HSO's findings. So I don't think Shepherds Friendly acted unreasonably by finding the conclusions of the RIDDOR report more persuasive overall.

As such, I don't think it was unfair for Shepherds Friendly to find, on balance, that Mr H's injuries were self-inflicted, rather than accidental. And that he hadn't complied with workplace regulations. Nor do I think it was unfair for Shepherds Friendly to consider that Mr H had provided it with recklessly misleading or untrue information during the life of the claim.

This means then that while I sympathise with Mr H's position, I don't think it was unfair for Shepherds Friendly to turn down his claim and cancel his policy. I'm mindful too that the policy terms entitle Shepherds Friendly to retain Mr H's premium, as it has done.

In its final response to Mr H's complaint, Shepherds Friendly told him it was prepared to consider new evidence he might wish to provide in support of his claim. It remains open to Mr H to provide Shepherds Friendly with any new evidence he may wish to send to it for review.

Finally, I note Mr H referred to his understanding that this policy was intended to cover his lost pension. As I've explained above, this policy is intended to replace a policyholder's lost income if they're unable to work due to incapacity. It isn't intended to be a pension replacement product.

Overall, I don't think Shepherds Friendly acted unfairly when it turned down Mr H's claim and cancelled his policy. So I'm not directing it to do anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 February 2024.

Lisa Barham
Ombudsman