

The complaint

Mrs M complains that Vitality Health Limited misled her when she made a claim against her private medical insurance plan.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mrs M has membership of a group, private medical insurance plan via her employer. The plan renews in July each year.

In June 2020, Mr M phoned Vitality and enquired about cover for a talking therapy. I understand that Vitality authorised eight sessions of therapy. Mrs M says that Vitality told her that "*only a fraction*" of the £250 excess due under the plan would apply to her treatment. She says that Vitality told her that a new excess would be applied after renewal but again, she was told that "*only a fraction*" of it would apply.

Mrs M says that, based on what Vitality told her, she decided to proceed with private treatment. Vitality subsequently asked Mrs M to pay £500, which was two excess amounts of £250. Mrs M complained to Vitality about that.

In response to Mrs M's complaint, Vitality said that it had listened to the relevant phone call. It apologised for confusion about how the excess would apply to the billing which led Mrs M to believe that she wouldn't pay the excess in full. Vitality paid Mrs M compensation of £100. Mrs M didn't think that was enough.

Mrs M says that Vitality treated her unfairly and that it misled her. She wants Vitality to charge her "*only a fraction*" of the excesses due under the plan, in accordance with the information it gave her and to compensate her for her time and stress.

One of our investigators looked at what had happened. He said that a fair resolution here was for Vitality to reimburse one excess of £250 and pay Mrs M compensation of £50 in relation to her distress and inconvenience. The investigator subsequently said that Vitality could deduct the compensation of £100 it had already paid Mrs M.

Vitality accepted what the investigator said but Mrs M didn't. She said that she didn't think she'd have to pay a £250 excess because of what Vitality had told her. Mrs M said that if she'd known the true position, she would have chosen NHS treatment. She said that Vitality didn't treat her fairly and that she was vulnerable and worried at the time. Mrs M thought that "*a fraction*" of the excess would be, say, £125. Vitality wasn't prepared to proceed on that basis.

As there was no agreement between the parties, the complaint was 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.

the relevant plan terms and conditions

The starting point is the terms and conditions of the plan, the relevant parts of which are as follows:

“EXCESS - PER PLAN YEAR

Please refer to your certificate of insurance to see if this excess applies to you.

The first amount which must be paid by you before we make any payment for **treatment** covered by this plan. (Only one excess is payable in each **plan year** for each **insured member and insured dependant**. This excess resets at the beginning of each new **plan year**.”

has Vitality treated Mrs M unfairly?

The relevant rules and industry guidance say that Vitality has a responsibility to handle claims promptly and fairly. I don't think it did that here and I'll explain why:

- It's not in dispute that Mrs M's plan provides for an excess of £250 per person per plan year. Vitality correctly told Mrs M that if the treatment continues over the renewal date of the plan, a further excess will be applied. The central issue here is what Vitality told Mrs M about *how much* of the excesses due under the plan she'd be asked to pay.
- Where things are not clear, and evidence is incomplete or contradictory – as some of it is here – I make my findings on what I think is most likely to be the case. I take into account the evidence available to me and the wider surrounding circumstances.
- Mrs M says that she was told that she'd have to pay “*only a fraction*” of the excesses due under the plan. Unfortunately, the recording of the relevant phone call is no longer available. So, in considering this matter, I've taken into account Mrs M's recollection of what was said, Vitality's notes made at the time of the call and its comments about the content of the phone call after it had listened to it in response to Mrs M's complaint.
- Vitality accepts that it wasn't clear when Mrs M asked for information about making a claim. In notes made by Vitality after it had listened to the recording of the phone call, it said that the person who dealt with Mrs M's enquiry gave an example and said that if a session was £100, Mrs M wouldn't be expected to pay the £250 excess due under the plan, it would be a fraction of that, and if she had two sessions up to renewal she'd pay a fraction of that. That's not in fact the case, as Mrs M would pay for the sessions up to the excess amount. I can see why Mrs M was confused. Also, Vitality acknowledges that it could have told Mrs M that if her sessions were all before or all after renewal, she'd only have to pay one excess.
- When mistakes like this happen, we don't necessarily direct the business to act as if the incorrect information were true. We look to see the effect of the error on the individual. Here, Mrs M says that, based on what Vitality told her, she decided to proceed with private treatment, rather than pursue treatment from the NHS. But I don't think it would be fair and reasonable to direct Vitality to waive all but “*a fraction*” of the excesses. That's because the excesses were correctly due under the plan and Mrs M had the benefit of private treatment, rather than waiting for treatment in the NHS.

- I think that if Vitality had correctly told Mrs M about planning her treatment before or after the renewal date so as to incur only one excess, it's likely that Mrs M would have delayed initiating treatment slightly. Considering everything, I think a fair and reasonable outcome here is for Vitality to waive one of the excesses due under the plan.
- Mrs M was no doubt disappointed and distressed to discover the true position. I think that Vitality should also pay Ms M compensation of £50 in relation to that. In reaching that view I've taken into account the nature, extent and duration of the distress and inconvenience caused by Vitality's errors here. In calculating compensation, Vitality can take into account the compensation of £100 it has already paid to Mrs M.

Putting things right

In order to put things right, Vitality should now:

- reimburse one excess of £250
- pay Mrs M compensation of £50 in relation to her distress and inconvenience
- deduct from the total payment above the £100 it has already paid.

My final decision

My final decision is that I uphold Mrs M's complaint. Vitality Health Limited should take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 10 June 2022.

Louise Povey
Ombudsman