

## **The complaint**

Mr A has complained about Vitality Health Limited's decision to reject his claim under his private medical insurance policy.

## **What happened**

Mr A had a private medical insurance policy with Vitality which started in July 2019. He made a claim under the policy in November 2019 for a problem with his knee and provided evidence of the problem from his current GP. Vitality wanted Mr A's medical records from his previous GP. He had some problems getting these records, partly due to the pandemic. He eventually got them in January 2022 and sent them to Vitality. By this time he'd already paid for a scan of his knee. Vitality reviewed the records, which showed Mr A had been treated for a knee problem before he took out his policy. Vitality's claims team checked the details recorded of the application made by Mr A. These suggested he hadn't declared the previous problem he'd had with his knee. Because of this, they referred the matter to their underwriting department.

According to Vitality's records Mr A contacted them on 11 February 2022 and said he wanted to cancel his plan. It was eventually cancelled on 21 February 2022. Mr A has said he only told Vitality to do this after he'd been told they wouldn't cover the problem with his knee. But it's not clear from the records Vitality have provided when he was told this over the telephone. All I can see is that Vitality issued a final response on Mr A's complaint about the delay with his claim on 12 March 2022. In this they said he'd chosen not to declare the previous problem with his knee when he took out the policy. And that the underwriters were going to write to him to find out why he failed to declare this. And – depending on his reply – the underwriters may decide to rewrite the terms of his plan and apply an exclusion for claims relating to a problem with the knee retrospectively. Vitality went on to explain that because he'd now cancelled the plan they did not need to complete this process.

Mr A responded to Vitality to explain that he'd answered all the questions he was asked relating to his medical history correctly when he took the policy out. And in July 2022 Vitality listened to a recording of the call Mr A made to take out the policy. After doing so, they acknowledged that Mr A had indeed told their agent about the previous problem with his knee. And they said they'd re-assess Mr A's claim without the retrospective exclusion relating to his knee.

Mr A asked us to consider his complaint and told us that he hadn't heard anything further from Vitality. Vitality told us separately that because Mr A had cancelled his plan they weren't going to be able to consider his claim further.

One of our investigators considered Mr A's complaint and gained Vitality's consent to consider everything that had happened with regards to Mr A's policy and claim, both prior to their final response in March 2022 and after it.

He issued his first view on the complaint in August 2022. In this he said Vitality should have identified much earlier that Mr A had declared the previous problem with his knee. And that he felt Vitality should have confirmed cover for Mr A's claim in November 2019. He further

explained that this meant he didn't think they should have turned it down. He said that because Mr A had cancelled his policy, Vitality should reinstate it and assess his claim, but this would be subject to Mr A paying the policy premiums he would have paid if his policy had continued.

He also said Vitality had taken far too long to assess Mr A's claim and that this had caused him distress and inconvenience. In view of this, he recommended they pay him £500 in compensation.

Mr A responded to the investigator's view. He informed him that he was in significant pain, so he'd had the operation he was told he needed following the scan on his knee in May 2022 and paid for this, along with physiotherapy sessions as a follow up. He also said he was concerned that if he paid the premiums to have his policy reinstated Vitality might then turn down his claim.

Vitality didn't agree with the investigator's view. They said – even if they'd realised from the outset that Mr A had declared the previous problem with his knee, they still would have needed him to provide his previous medical records. And – because he didn't do this until January 2022 – they couldn't have assessed and settled his claim prior to this. They explained that because Mr A cancelled his policy in February 2022 his claim wasn't reviewed as priority. They also said they should only have to pay £300 in compensation for distress and inconvenience. Plus, they said they wouldn't consider Mr A's claim until he'd paid the outstanding premiums. And that the monthly premium may have gone up when the policy renewed in July 2022 if his claim had been accepted.

Our investigator considered the comments of both parties and then issued a second view on Mr A's complaint. In this he recommended that Vitality consider Mr A's claim for the cost of the initial consultation and all the eligible treatment he'd received for his knee problem. And, if they decided his claim was covered, they should then reinstate the policy and pay his claim, less any premiums Mr A would have paid if he hadn't cancelled his policy. He explained that if Mr A wanted to claim for treatment received after his policy would have renewed, then Vitality could work out what the premiums would have been after this and deduct these from Mr A's claim. He stuck with his recommendation that Vitality should pay £500 in compensation for distress and inconvenience.

Mr A responded to say he appreciated the investigator's view and made some additional points. He reiterated his point that he'd only cancelled his policy once he was told that his claim would not be paid. And he thinks it's clear Vitality did have the opportunity to promptly identify he'd declared his previous problem with his knee much earlier, as once they'd tracked down the original sales call, they told him they'd proceed with the assessment of his claim.

Vitality have responded to say they don't agree with the investigator's recommendations. They maintain that – even if they'd realised Mr A had declared the previous problem with his knee when he took out his policy, they'd still have had to wait for his previous medical records before deciding whether to pay his claim. So, they dispute they had multiple opportunities to make a decision on his claim. They also don't think Mr A's policy should only be reinstated with him paying the outstanding premiums if they agree to pay his claim. They've said they could understand the investigator's suggested approach if Mr A had made the decision to cancel after the underwriting decision had been made to retrospectively add the exclusion. But he chose to do this before this had been made. And they'd have expected him to maintain his policy and keep up payments until they'd made this decision.

## **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, I've decided to uphold it for the same reasons as our investigator.

I've noted Vitality's point that Mr A cancelled his policy before being told they were going to turn down his claim. This is contrary to what Mr A has said, but the records provided by Vitality do suggest it is what happened. However, like our investigator, I don't think it alters the fact that Vitality should have realised much earlier that Mr A had declared the previous problem he'd had with his knee. And it's clear from this that they should have agreed to settle his claim much earlier. Also, I don't think Vitality should have stopped assessing Mr A's claim after he cancelled his policy. This is because they should have realised they'd made a serious error in suggesting he hadn't told them about his knee problem and that to treat him fairly, they needed to explain this and consider his claim, subject to him agreeing to reinstate the policy. The overall process may still have taken longer than normal due to delays getting Mr A's medical records, but Mr A wouldn't have experienced the significant level of distress and inconvenienced he experienced as a result of very poor administration and investigation by Vitality. So, I agree with our investigator that £500 in compensation for distress and inconvenience is fair and reasonable.

In view of Vitality's failure to deal with the matter properly, I also agree with my investigator that it is fair and reasonable for them to consider Mr R's claim for any treatment he received up to when his policy would have renewed on 13 July 2022. And if they consider it would have been covered by his policy if it had remained in force, they should pay what would have been due to him, which will reflect any excess payable under the policy. But Vitality can deduct any premiums Mr A would have paid between when he cancelled his policy and 13 July 2022. Vitality should also add interest to any amount due to Mr A, as he has paid for his treatment and so been deprived of money he should have had. In considering the claim Vitality will be entitled to expect Mr A to provide evidence of what treatment he received and what he paid for it.

If some of the treatment Mr A received was after the policy would have renewed on 13 July 2022 and this would have been covered by the policy if Mr A had renewed it, Vitality should then pay what would have been due to Mr A, less a deduction to reflect what he would have paid in monthly premiums from renewal up to the point his treatment ended. I appreciate what the policy terms say about cancelling the policy, but in view of what's happened, I think this is the fair and reasonable approach. Vitality should also add interest to any amount due to Mr A, again, because he has been deprived of this money. If nothing is due after the premium has been deducted then this will mean Vitality won't need to pay anything to Mr A for the treatment he received after 13 July 2022.

I have of course noted Vitality's point about it not being fair for them to have to assess the claim and pay what it is due less the premiums, as opposed to Mr A paying the backdated premiums and then them assessing the claim. But I think the approach I have set out is fair and reasonable because Vitality's handling of the whole issue was poor. And I don't think it would be appropriate to expect Mr A pay a significant sum without knowing what Vitality is going to pay in respect of his claim.

## **Putting things right**

For the reasons set out above, I've decided to uphold Mr A's complaint and make Vitality do the following:

- Consider Mr A's claim for any treatment he received up to when his policy would have renewed on 13 July 2022. And if they consider the treatment he received up to this point would have been covered by his policy if it had remained in force, they should pay what would have been due to him, which will reflect any excess payable under the policy. But Vitality can deduct any premiums Mr A would have paid between when he cancelled his policy and 13 July 2022 from the amount that would have been due in settlement of his claim. They should also add interest to the final amount due to Mr A at 8% per annum simple. This will be payable from the date Mr A paid the amounts due for his treatment to the date of actual payment.
- If some of the treatment Mr A received was after the policy would have renewed on 13 July 2022 and this would have been covered by the policy if he had renewed it, Vitality should then pay what would have been due to Mr A, less a deduction to reflect what his monthly premiums would have been after renewal up to the point his treatment ended. They should also add interest to any amount due to Mr A at 8% per annum simple from the date he paid the amounts due to the date of actual payment. If nothing is due after the premium has been deducted then this will mean Vitality won't need to pay anything to Mr A for the treatment he received after 13 July 2022.
- Vitality must also pay Mr A £500 in compensation for distress and inconvenience.

Vitality must tell Mr A if they have made a deduction for income tax from the interest due. And, if they have, how much they've taken off. They must also provide a tax deduction certificate for Mr A if asked to do so. This will allow Mr A to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

### **My final decision**

My final decision is that I uphold Mr A's complaint and order Vitality Health Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 February 2023.

Robert Short  
**Ombudsman**