

The complaint

Mr B complains that Vitality Health Limited unfairly declined his private medical insurance policy and that the policy was mis-sold. My references to Vitality include its agents which include the business that sold the policy to Mr B.

What happened

In June 2019 Vitality sold Mr B private medical insurance through a sales call. In the call Mr B told Vitality he took a named medication for his depression and anxiety.

Vitality recommended Mr B have a policy on moratorium underwriting. In summary that meant he wouldn't be covered for treatment of existing medical conditions for two years from the start of the policy. After the two year period there could be cover for his conditions if he met the criteria set out in the policy terms. Vitality offered, and Mr B bought, the optional mental health policy cover which provided additional services for mental health conditions for an additional premium.

In autumn 2021 Mr B claimed under the policy for mental health support after he had personal difficulties. Vitality declined the claim. It said the claim was for his pre-existing condition of depression/anxiety. And as he'd continued taking his medication for depression/anxiety he hadn't been two years medication free since he took out the policy, so under the policy terms there was no cover for the claim.

Mr B complained to us. In summary he said:

- Vitality unfairly declined the claim because the moratorium period doesn't mention medication and also his claim related to grief induced trauma which was a separate condition from his depression.
- In declining the claim Vitality had discriminated against him contrary to the Equality Act 2010.
- Vitality mis-sold the policy as he'd told it he was taking medication for his long-term invisible disability of depression and he hadn't indicated he would stop taking the medication.
- He wouldn't have taken out the mental health cover if he'd known it wouldn't cover his depression/anxiety.
- He wants Vitality to refund the premiums for his mental health cover and the remaining policy premiums as compensation for his distress and inconvenience.

Our investigator said Vitality fairly declined the claim but it had mis-sold the additional mental health cover element of the policy. She recommended Vitality refund Mr B the premiums for the mental health cover plus interest.

Mr B accepted our investigator's recommendation. Vitality didn't accept it should pay any refund. It said it was clear about the policy criteria during the policy sale. Also Mr B didn't say the sole reason he took the additional mental health cover was due to his depression/anxiety and he could have claimed for another mental health condition.

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 claim

The relevant industry guidance says Vitality must handle claims promptly and fairly and must not unreasonably decline a claim.

As Mr B accepted our investigator's findings I understand he's accepted Vitality fairly declined the claim. But for the avoidance of doubt I've considered whether Vitality did fairly decline the claim and I think it did. I'll explain why.

The policy says under the heading 'Your guide to our moratorium clause - How do you exclude cover for pre-existing conditions?':

'We don't pay claims for the treatment of any medical condition or related condition which you have received medical treatment for, had symptoms of, asked advice on or to the best of your knowledge and belief were aware existed in the five years before your cover started (a 'pre-existing' medical condition).

However, subject to the plan terms and conditions, a pre-existing medical condition can become eligible for cover providing you have not...

• taken medication (including prescription or over-the-counter drugs, medicines, special diets or injections), for that pre-existing medical condition or any related condition for two continuous years after your cover start date'.

I've listened to the claim call. Mr B told Vitality that since 2016 he'd been taking the named medication for diagnosed depression and anxiety and he continued to take the medication. He explained the sad circumstances which had led him to having an anxiety attack which led to making the claim for mental health support under the policy.

I think Vitality reasonably understood Mr B had continued to take his medication for his depression/anxiety throughout the two years from the start of the policy. So he hadn't met the above policy criteria for cover for his depression/anxiety.

Mr B says his need to claim was because of symptoms caused by his bereavements and other difficult issues for him, which were separate to his depression/anxiety which was well managed. But the policy defines a 'related condition' as:

'Any symptom, disease, illness or injury which reasonable medical opinion considers to be associated with another symptom, disease, illness or injury. It may also be known as an 'underlying cause' or 'condition arising therefrom'.

In the claim call Mr B told Vitality he'd had an anxiety attack. I haven't seen any independent medical evidence that Vitality acted unfairly in treating Mr B's claim as being for mental health support due to an escalation in his depression/anxiety, even if they were sadly triggered by his very difficult circumstances.

Our investigator correctly explained that it's not our role to say whether a business has acted unlawfully or not. Whether or not Vitality acted contrary to the Equality Act 2010 is a matter for the courts to decide. Our role is to decide what's fair and reasonable in all the circumstances, taking into account the relevant law and good industry practice. Under the Equality Act 2010 insurers can make decisions about providing cover based on risk, including when there is a greater risk as the result of a disability. So I think Vitality could fairly include Mr B's disability as a factor in deciding whether to provide cover, and if so on what terms.

From the evidence I've seen I think Vitality acted fairly in saying the moratorium policy terms criteria applied to Mr B's pre-existing condition of depression/anxiety. And I think Vitality acted fairly in saying that the claim related to his depression/anxiety. As Mr B continued to take the medication for his pre-existing condition of depression/anxiety in the two years after the start of the policy I'm satisfied that Mr B's claim wasn't covered by the policy terms and Vitality reasonably declined the claim.

Did Vitality mis-sale the policy or additional mental health cover to Mr B?

The relevant industry guidance says Vitality should ensure the policy is suitable for the demands and needs of a consumer and provide clear, fair and non-misleading information.

I've listened to the sales call. During the call Vitality asked Mr B if he took any medication and Mr B said he was taking named medication for his depression and anxiety. Vitality told Mr B that based on the information he'd given it recommended a moratorium underwriting based policy and it correctly told Mr B the terms of the moratorium.

But I think the additional mental health cover was mis-sold to Mr B. I'll explain why.

When Vitality and Mr B discussed the optional mental health cover Vitality told Mr B he would need to wait for two years to use the cover but it recommended he have it for the future because his depression/anxiety could come back. Mr B responded that the cover might be worth having and building up the two years.

But Mr B had already told Vitality he was taking medication for depression/anxiety and I don't think Vitality made it clear enough to Mr B that it wasn't just a case of waiting two year for those conditions to be covered. I think that at the point Vitality sold Mr B mental health cover it should have been very clear that to have cover for his depression/anxiety he needed to have a two year period without taking medication/advice/ treatment, including the medication he was currently taking, for those conditions to be covered.

I don't accept Vitality's suggestion that Mr B might not have taken out the mental health cover for his depression/anxiety. The sales conversation between Vitality and Mr B centred on his potential need for the cover due to those conditions. I'm satisfied that it's more likely than not Mr B took out the optional mental health cover to get additional support for his depression/anxiety. When he found out the policy didn't cover those conditions he cancelled the whole policy.

At the time Mr B took out the policy he'd been taking medication for his depression/anxiety for about three years. He's told us the conditions were well managed on the medication so he had no plans to stop the medication, which I accept. I'm satisfied that if at the time the mental health cover was sold Vitality had given clear information to Mr B that from the policy start date he needed to have a two year period without taking his medication to be covered then he wouldn't have bought the mental health cover.

As I find Vitality mis-sold the optional mental health cover I think it should refund to Mr B the premiums for the mental health cover plus interest as I've set out below.

I don't think the entire policy was mis-sold to Mr B. The policy provides wide benefits Mr B could have used regardless of his pre-existing depression/anxiety. There's no basis for me to say Vitality must refund all the policy premiums to Mr B.

Mr B asked for compensation for his inconvenience of making the complaint and his distress at the claim decline. I don't generally award compensation for the inconvenience a consumer has in making a complaint and there's no reason for me to do so in this case. I understand Mr B was distressed by Vitality's decline of his claim at a very difficult time for him. But as I think Vitality fairly declined the claim I can't reasonably say it must pay him compensation for his distress its claim decline caused.

Putting things right

Vitality must refund to Mr B all the premiums he paid for the optional mental health cover under the policy, plus interest as detailed below.

My final decision

I uphold this complaint and require Vitality Health Limited to refund to Mr B all the premiums he paid for the optional mental health cover under his private medical insurance policy. Interest* must be added at 8% simple a year from the date of payment of those premiums to the date of settlement.

*If Vitality Health Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 February 2023.

Nicola Sisk
Ombudsman