

## **The complaint**

Mr and Mrs S complain that Vitality Health Limited's private health insurance policy wasn't fit for their purpose and about its service. My reference to Vitality includes its agents.

## **What happened**

Mr and Mrs S took out private health insurance insured by Vitality through a broker. The policy was to cover from 1 December 2021 to 30 November 2022.

Mr and Mrs S previously had a health insurance policy with another insurer, which I'll refer to as X. They say they switched to Vitality's policy as the broker told them they would get the same cover as X's policy at a lower price. Vitality's policy was written on a continued personal medical exclusions (CPME) basis which meant the underwriting was carried over from their previous policy with X.

Mr and Mrs S complain that the Vitality policy wasn't 'fit for their purpose'. In summary they say:

- They weren't able to access Vitality's online service as they needed to enter a security code sent to them by text that had to be used within 15 minutes. Due to the poor mobile signal where they lived they didn't get the code until several hours too late.
- When Mrs S spoke to Vitality about the problem on 30 December 2021 it didn't call back on 4 January 2022 when it said it would. Mrs S had to call Vitality and was only given a one off solution to access the online service as the Vitality representative used her own mobile phone to get the code for them to use. Vitality didn't offer any alternative for how to access its system. When they bought the policy they weren't told Vitality operated through an online system.
- Mrs S couldn't get through to Vitality when she phoned it many times on 3 and 4 February 2022.
- On 7 February 2022 Mrs S spoke to Vitality to request a pre-authorisation code for a referral to a consultant for her cough. Mr and Mrs S were unhappy Vitality asked her questions about her symptoms and wanted her medical information, which they thought might lead to a potential breach of patient confidentiality. They were also unhappy the Vitality representatives Mrs S spoke to weren't medical clinicians.
- They were concerned Vitality might potentially sell Mrs S' personal medical information.
- Vitality didn't send them policy documents. It had incorrectly said they had selected contact through its online 'member zone' but they asked for paper documents when they bought the policy.

- The policy didn't provide what they thought they had bought.

Due to the above issues Mr and Mrs S cancelled Vitality's policy in February 2022. They returned to X for health insurance. They said they'd paid the backdated premiums for X's policy so paid premiums to both insurers for the 1 December 2021 to 22 February 2022 period. Mr and Mrs S want Vitality to refund the premiums from the start of its policy.

Vitality didn't agree to refund the premiums. In summary it said:

- When it made its 'welcome call' to Mrs S on 30 December 2021 it said it would call her back on 4 January 2022 with a solution to activating the online 'member zone'. It accepted it didn't call her back at the agreed time and apologised.
- When Mrs S called on 4 January it set up her access to the online member zone using the one-time security code. From then on to access the member zone, policy benefits and policy documentation Mrs S just had to log in with her email address and the password she'd set-up, there would be no need to input a security code again. Mrs S had confirmed in the call she could access her apps. After 4 January 2022 Mr and Mrs S didn't tell it they couldn't access the online member zone.
- It accepted it had a high number of telephone calls when Mrs S tried to call on 3 and 4 February 2022.
- Mr and Mrs S' poor mobile phone signal at home was outside of its control. The contact preferences had been set to email, so Mr and Mrs S should have been told by the broker when the policy was sold that all of the information about the policy would be on the online member zone.
- When Mrs S registered her claim on 7 February 2022 it had asked her relevant questions and for relevant medical documents so it could make a claim assessment and decide if her claim was covered. The policy terms said it could ask for a policyholder's medical information.
- It wouldn't breach the privacy of, or sell, a policyholders' private medical information.
- It had waived the usual £40 administration fee for cancellation of the policy. It had offered a hamper to acknowledge Mr and Mrs S' distress and inconvenience due to not calling her at the agreed time and the long call wait time but Mr and Mrs S had rejected the offer.
- It wouldn't refund the policy premiums as it had provided cover from 1 December 2021 to the policy cancellation on 22 February 2022.

Our investigator said Vitality should pay £100 compensation for Mr and Mrs S' distress and inconvenience due to its service issues. Vitality didn't need to refund the premiums as it had been on risk for claims in the relevant period. Mr and Mrs S had made a complaint to us about X because X had excluded pneumonia from cover under its renewed policy as Mrs S had told it she had pneumonia during its policy lapse period. Mrs S had made a pre-authorisation claim to Vitality for a cough on 7 February 2022 and although she chose not to progress the claim under that policy Vitality had been on risk during the time Mr and Mrs S paid premiums for its policy.

Neither party agreed our investigator's recommendation. Vitality said it shouldn't have to pay the £100 compensation. Mr and Mrs S said:

- As they weren't sent the policy document they didn't know about the policy term Vitality relied on to ask for Mrs S' medical information.
- They'd bought the policy with Vitality on the basis they would have the same cover they had with X, with no exceptions.

- They hadn't been able to use the online member zone for the Vitality policy and as the policy wasn't fit for their needs the premium should be refunded.

### **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.

Mr and Mrs S bought Vitality's policy through a broker. From the evidence I've seen that broker was independent, not acting on Vitality's behalf. That means some of the issues Mr and Mrs S have raised - that they were wrongly told Vitality's policy was a 'like for like' with X's policy, their contact preference being set to email and how the policy worked online which didn't suit them – are issues they need to complain to the broker about. On the evidence I have Vitality isn't responsible for those issues. And it isn't responsible for the mobile signal problems Mr and Mrs S had at their home.

I think Vitality should pay Mr and Mrs S £100 compensation for their distress and inconvenience due to the service issues it is responsible for. It doesn't need to refund the policy premiums. I'll explain why.

Vitality accepts it didn't call back Mrs S on 4 January as arranged. It also accepts Mrs S wasn't able to contact it by phone for two days, which wasn't acceptable particularly as she wanted to make a claim. Mrs S was clearly frustrated and annoyed by both events. Vitality offered a hamper to acknowledge the distress and inconvenience but I think that instead of the hamper a compensation payment for £100 is more appropriate and a reasonable amount in all the circumstances.

I think the remainder of Vitality's service was fair and reasonable for the following reasons:

- After Mr and Mrs S' initial problem in accessing the online member zone, which they only told Vitality about on 30 December, it resolved the problem in the 4 January call. Vitality said Mr and Mrs S didn't need to input a texted security code for future access. I've no evidence Vitality made that clear to Mrs S in the 4 January call, which would have been reasonable to do. However, I've also no evidence Mr and Mrs S contacted Vitality after 4 January to say they were still having online access problems until they complained. So I think Vitality wasn't responsible for any access problems before 30 December 2021 and after 4 January 2022 as it didn't know about, and had no opportunity to fix, the problem.
- When Mrs S called to make her claim I'm satisfied that the medical information Vitality asked for was in line with the policy terms and reasonable. Mr and Mrs S say they weren't sent the policy terms. But as Mr and Mrs S' contact preference had been set to email (by the broker it appears) Vitality reasonably sent them the policy documents through the online member zone. Even if the email contact preference was set up by Vitality, there's no record of Mr and Mrs S telling Vitality they didn't have access to the policy documents before the 30 December or after the online access was set up on 4 January until they complained. I think Vitality reasonably understood Mr and Mrs S had access to the policy documents until it was told otherwise.
- The relevant policy terms say:

*'Getting authorisation for your treatment*

*Sometimes, particularly if you claim in the first one or two years after joining us, we may need you to send us a fully completed claim form to help us assess your claim. We will normally ask for details of your medical history for at least the previous five years, with sections for both you and your GP to*

*complete....we will be unable to assess the claim or pay for any treatment before we receive the claim form'.*

As Mrs S wanted to make a claim two months after she took out the policy Vitality could fairly ask her for all the information set out in the policy terms, but it asked for less. Where a claim is made on a recently taken out CPME policy it's not unusual for insurers to ask for similar information. Mrs S says X wouldn't have asked for the medical information but, even if that's correct, that doesn't mean Vitality's request was unreasonable.

- Mrs S says she could speak to medical clinicians if she claimed on her previous policy with X and she didn't want to speak to Vitality's non-medical staff about her medical matters. But it's not unusual for insurers to have non-medical staff to ask for medical information so they can do an initial assessment of the eligibility of a claim against the policy terms. It's for Vitality to decide which staff it uses to obtain the information but I don't think the process was unusual or unreasonable.
- I've seen no evidence to support Mr and Mrs S' concerns that giving Mrs S' medical information to Vitality would mean patient confidentiality might be breached and that Vitality might sell Mrs S' personal medical information. Vitality says its privacy notice would have been one of the documents sent to Mr and Mrs S though the online member zone. I've explained above that I think Vitality didn't do anything wrong in sending Mr and Mrs S the documents online.
- Mr and Mrs S decided not to continue the policy as it didn't suit them, which was their choice to make. I note Vitality waived the usual £40 administration fee for cancellation of the policy, which was fair in all the circumstances.

The issue of whether Vitality should refund the premiums for 1 December 2021 to the date of policy cancellation on 22 February 2022 depends on whether Vitality was at risk of claims during that period and on the evidence I've seen I think it was.

The policy payment schedule from X, dated 7 February 2022, that I've seen says the premium payment for X's renewed policy started from 21 February 2022. So on that evidence Mr and Mrs S weren't paying two lots of premiums from 1 December 2021 to 21 February 2022.

Even if Mr and Mrs S did pay the backdated premiums on X's policy, so were paying both insurers and were insured by both insurers for that period, X applied an exclusion for pneumonia to its policy as Mrs S told X she had pneumonia in December 2021, during X's lapsed policy period. So I think Vitality would have been on risk for a claim, for at least that condition, subject to the policy terms and conditions.

In Mr and Mrs S' complaint about X Mrs S has now raised that she told X the wrong date about when her pneumonia started, she should have said it started in November 2021 so was covered by her policy with X. I understand Mr and Mrs S have raised a new complaint with X about that issue.

If the result of X's investigations is that it removes the exclusion for pneumonia on its policy from 1 December 2021 and Mr and Mrs S have evidence from X that they were fully covered by X for the period 1 December 2021 to 22 February 2022 they can send that new evidence to Vitality and ask it to reconsider their request for refund of its premiums.

On the evidence I have Vitality doesn't need to refund the policy premiums from 1 December 2021 to 22 February 2022.

## **Putting things right**

Vitality must pay Mr and Mrs S £100 compensation for their distress and inconvenience caused by its service issues.

**My final decision**

I partially uphold this complaint and require Vitality Health Limited to pay Mr and Mrs S £100 compensation for their distress and inconvenience caused by its service issues.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 22 March 2023.

Nicola Sisk  
**Ombudsman**