DRN-3973164

The complaint

Mr R complains about how Vitality Health Limited dealt with a claim against his 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, in 2021, Mr R took out private medical insurance with Vitality. The plan renewed in April each year. Mr R's hospital option under the plan was '*Consultant Select'*, which meant that Mr R needed to contact Vitality before having treatment so that it could arrange for him to see a consultant on its panel. Only treatment authorised in advance is covered.

In March 2022, Mr R saw a consultant eye surgeon, Mr M. On 7 April 2022, Mr R phoned Vitality about a claim for bilateral cataract surgery scheduled for 5 May 2022, with Mr M. Vitality said that it was happy to authorise his claim. It said that as the claim was within the first 12 months of Mr R's plan, it required information from Mr R and his GP, but it was '*more than sure'* that everything would be fine.

On 26 April 2022, Mr R sent Vitality the information from his GP. On 28 April 2022, he called Vitality to see if it had reviewed the information. Vitality said that it hadn't done so and that it was currently working on e-mails received on 22 April 2022. It said that it was likely that it could revert to him the following Tuesday - which was 3 May 2022. Mr R says that Vitality told him to pay Mr M directly. I'll refer to that in more detail below.

On 28 April 2022, Mr R paid for the surgery with Mr M. Soon after he'd done so, Vitality contacted Mr R again and said that it doesn't recognise Mr M. It said that it still works with the hospital Mr M operates in, but authorisation would have been for another consultant there. Mr R wasn't happy about that and asked about cancelling his plan. On 29 April 2022, Vitality assessed Mr R's claim.

On 5 May 2022, Mr R had the operation with Mr M. He subsequently pursued his complaint.

Vitality accepts that in the initial call on 7 April 2022, it should have told Mr R that it doesn't recognise Mr M and offered him alternative consultants. It says that on 28 April 2022 – one week before his planned surgery - it told Mr R that treatment with Mr M wasn't covered and offered alternative consultants, but Mr R said he wanted to remain with Mr M. Vitality offered Mr R compensation of £250 in relation to its service failures.

Mr R says that if Vitality had told him during his first call on 7 April 2022 that it would not cover his claim for surgery with Mr M, he would have chosen an alternative course of action. He wants Vitality to settle his claim.

One of our investigators looked at what had happened. He didn't think that Vitality had done enough to put matters right. The investigator said that Mr R's plan provides that

treatment by a provider it doesn't recognise isn't covered. He said that Vitality had declined the claim in accordance with the terms of the plan. But the investigator said that Vitality made a mistake in failing to tell Mr R on two occasions that his claim for treatment by Mr M wouldn't be covered.

The investigator said that Vitality's errors hadn't caused Mr R financial loss. That's because he thought that Mr R would have proceeded with the treatment by Mr M even if Vitality hadn't made the errors. He thought that Vitality's offer of compensation of £250 was insufficient and recommended compensation of £350 in relation to Mr R's distress and inconvenience.

Vitality accepted the investigator's recommendation, but Mr R didn't. He said, in summary, that he was aware of the terms of the plan, so he phoned Vitality to ask if it covered treatment by Mr M. It said '*yes*' and later told him to pay Mr M directly and claim it back. After he'd paid Mr M, Vitality said that the treatment by Mr M wasn't covered and didn't offer alternatives. He asked for a manager or supervisor to call him back, but he didn't receive a call. So, no one at Vitality suggested that he ask for a refund from Mr M. Mr R says that he didn't ask Mr M for a refund as the operation was days away and he didn't think he'd get his money back.

Mr R didn't think that Vitality's offer of £250 or the investigator's recommendation of £350 was sufficient. He said that if he'd received treatment from a specialist recognised by Vitality, it would have paid at least £6,000 for his claim.

Mr R reiterated that if Vitality had said from the outset that it didn't recognise Mr M he may well have changed consultant, as he had time to satisfy himself about alternative consultants recognised by Vitality. He said that he paid for treatment with Mr M, as that's what Vitality told him to do.

Mr R asked that an ombudsman consider the matter, so it 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 terms and conditions

The starting point is the terms and conditions of the plan. Subject to the plan's terms and conditions, Mr R's has cover for eligible treatment. There are various exclusions, the relevant one for the purposes of this complaint is as follows:

'*EXCLUSIONS – WHAT'S NOT COVERED*
Below we've set out the exclusions that apply to this section of your plan.[…]
[…]
TREATMENTS AND TESTS
*We will not pay for the following **treatments**:*

- *[…]*
- *any **treatment** provided by, or undertaken whilst under the care of, a consultant, therapist or complementary medicine practitioner or other clinician who is not recognised by us for the **treatment** being provided. […]*'

has the claim been declined unfairly?

The relevant rules and industry guidance say that Vitality has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably. I'm upholding Mr R's complaint because I don't think that Vitality treated him fairly or reasonably, but I don't think that means that Vitality is obliged to reimburse Mr R for excluded treatment. I say that because:

- Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions. The onus is on the consumer to show that the claim falls under one of the agreed areas of cover. If the event is covered in principle but is declined on the basis of an exclusion the onus shifts to the insurer to show how that exclusion applies.

- Vitality didn't recognise Mr M at the time of Mr R's claim. So, it acted in accordance with the terms and conditions of the plan when it told Mr R that it didn't recognise Mr M. But that's not the end of the matter as it's common ground that Vitality made errors in that it failed to tell Mr R during his initial call on 7 April 2022 and in the first of two calls on 28 April 2022 that it didn't recognise his consultant, Mr M. When mistakes like this happen, we look at the effect of the error on the individual.

- I've listened to the recordings of the relevant phone calls between Mr R and Vitality. Based on what I've seen and heard, I think, on balance, that if Vitality had set out the true position at the outset, Mr R would have wanted to pursue treatment with Mr M in any event. In Mr R's first call to Vitality on 7 April 2022, he said words to the effect that Mr M was the best in his field and if you are going to have eye surgery, you want the best consultant in the country.

- In the second phone call of 28 April 2022 - when Vitality told Mr R that it didn't recognise Mr M but worked with other consultants at the same hospital - Mr R said that if he was going to have eye surgery he was going to do it with the best consultant in the country, not someone recommended by Vitality. He said that other consultants may not be as good as Mr M. That's consistent with his view on 7 April 2022. It seems to me that Mr R didn't want to pursue treatment with another consultant. That's what Mr R said in his complaint to Vitality.

- I'm conscious that by the time Vitality set out the true position to Mr R, he had already paid for his surgery with Mr M. Mr R says that Vitality told him to pay Mr M directly and claim it back. But it was Mr R who said that he couldn't wait for Vitality to assess his claim and that he would have to pay for the surgery himself. Vitality told Mr R to keep receipts and proof of payment and, as long as it can support the claim, it would look at reimbursement. I appreciate that Mr R was concerned about possibly waiting until two days before his scheduled surgery for approval by Vitality, but Vitality didn't tell him to pay Mr M, then seek reimbursement.

- When Vitality told Mr R, correctly, that it didn't recognise Mr M it told him that it recognised the hospital that Mr M operated in and would have authorised other consultants there. So, whilst Vitality didn't offer names of consultants it recognised it said that there would be alternatives.

- In the particular circumstances here, I don't think that Vitality was at fault in failing to suggest to Mr R that he ask for a refund from Mr M. It was clear from the content and tone of Vitality's conversations with Mr R that he wanted to pursue treatment with Mr M.

- Mr R is right to say that if Vitality had authorised treatment with a consultant it recognised, it would have settled that claim. But in the particular circumstances of this case, I don't think that means that Vitality should pay Mr R's claim up to the value of the amount it would have paid if he had treatment with a recognised consultant. I'll explain why.

- Mr R's plan doesn't provide for settlement of a claim for treatment by an unrecognised consultant up to the value of a claim for treatment by a recognised consultant.

- There was a calendar week - four working days, deducting the weekend and bank holiday - between Mr R being made aware of the true position and his planned surgery. I think that there was time for alternative arrangements to be made so that Mr R's claim was within the terms and conditions of his plan. That may have delayed the surgery, but Mr M's report of 23 March 2022 doesn't indicate that Mr R required urgent surgery. So, it seems to me that Vitality could have arranged treatment with a consultant on its panel, in accordance with the plan terms and conditions. As I've said above, I don't think that Mr R wanted to pursue treatment with another consultant. I don't think that there are any grounds on which I can fairly direct Vitality to settle a claim for treatment that's excluded in the plan.

- Mr R was no doubt concerned to learn that his planned treatment wasn't covered by his plan at what was already a worrying time. Considering everything, I think that compensation of £350 is fair and reasonable in this case. In reaching that view, I've taken into account the nature, extent and duration of Mr R's distress and inconvenience caused by Vitality's errors in this case.

Putting things right

In order to put things right, Vitality should pay Mr R compensation of £350 in relation to his distress and inconvenience.

My final decision

My final decision is that I uphold this 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 Mr R to accept or reject my decision before 13 June 2023.

Louise Povey
Ombudsman