DRN-4012668

The complaint

Mr F complains because Vitality Health Limited ('Vitality') cancelled his private medical insurance policy.

All references to Vitality include the agents appointed to administer the insurance on its behalf.

What happened

Mr F held a private medical insurance policy, provided by Vitality, since 2017.

Mr F's policy renewed on 1 February 2022. On 15 February 2022, Vitality sent Mr F a letter saying his direct debit for the premium payments had been cancelled and he'd need to complete and return a direct debit mandate within 14 days to make sure his cover remained in place. Mr F received this letter and says he returned the direct debit mandate to Vitality on 23 February 2022.

Vitality says it wrote to Mr F on two occasions in March 2022, saying that it didn't have an active direct debit instruction in place for his policy and asking for direct debit details to be returned to it within 14 days so Mr F could make sure he remained covered. Mr F says he didn't receive these letters.

On 27 April 2022, Vitality wrote to Mr F to say his insurance policy had been cancelled with effect from 31 January 2022, because it hadn't received the outstanding premium payments. Mr F received this letter.

Unhappy Mr F complained to Vitality. Vitality said it hadn't received Mr F's completed direct debit mandate until May 2022, by which time Mr F's policy had already been cancelled. Vitality said it wouldn't re-instate Mr F's policy due to the timescales involved and his previous payment history, but that Mr F could take out a new private medical insurance policy with it if he wished.

As Mr F remained dissatisfied, he brought the matter to the attention of our service. One of our investigators looked into what had happened and said she thought Vitality had acted in line with the terms and conditions of Mr F's policy, and that Vitality hadn't acted unfairly by cancelling the insurance. A second investigator subsequently told Mr F he agreed with the outcome reached by our first investigator. Mr F didn't accept our investigators' findings, so the complaint was referred to me to decide, as the final stage in our process.

I asked Vitality to provide more evidence about Mr F's complaint, and I addressed this new evidence in my provisional decision dated 15 February 2023. My provisional decision said:

'I don't agree with the outcome our investigators reached, and I'll explain why.

The terms and conditions of Mr F's policy say:

> *'We can cancel, refuse or renew or change the terms of your plan … at any time if*

any of the following happen:

…

- *you commit a breach of the terms of your plan. A breach will include, among other things:*

- *the non-payment of premiums when they are due. We may, at our discretion, reinstate cover if any outstanding premiums are paid within seven days of our telling you that we have cancelled your plan due to non-payment.'*

Mr F's premiums weren't paid when they were due, so, under a strict application of the policy terms and conditions, Vitality was entitled to cancel his policy.

Mr F has repeatedly referenced what he considers the legal position to be and, while the law is a relevant consideration in making my decision, it's not determinative and I'm not bound to follow it. However, my overriding remit is to make a decision based on what I think is fair and reasonable in all the circumstances. So, I can direct a business to depart from a strict interpretation of the policy terms and conditions if I think it's fair and reasonable to do so.

I've carefully considered the timeline of what happened in this case. I can't conclude with any certainty exactly if and/or when letters were posted and/or received. Instead, I must base my decision on the balance of probabilities (i.e., what I think is most likely to have happened in the circumstances), taking into account all the available evidence.

I acknowledge that the terms and conditions of Mr F's contract with Vitality say:

> *'we do not accept proof of posting an application form, claim form or premium payment as proof that we have received it'.*

But our service would generally think it's fair and reasonable to consider that if one of the parties to a complaint can demonstrate that it's likely a letter or document was sent, then they've complied with whatever their obligations in that regard might be.

Mr F has provided a signed copy of a completed direct debit mandate dated 23 February 2022. The completed direct debit mandate has the same reference numbers (PRUHL22341 and V30697569_000000139) as the letter dated 15 February 2022. Mr F has provided proof of postage dated 23 February 2022 for a letter addressed to Vitality, using the correct postcode set out on the direct debit mandate.

Vitality says that items of post are scanned on its internal systems on the day of receipt, and Vitality has now provided evidence to show that Mr F's completed direct debit mandate was scanned on 3 May 2022. I note this was within seven days of Vitality informing Mr F that it had cancelled his policy (although reinstatement of a policy within this timeframe is stated to be at Vitality's discretion). But, in any event, I'm satisfied it's more likely than not that Mr F returned his completed direct debit mandate to Vitality on 23 February 2022.

As I think Mr F has demonstrated that he most likely posted this document on 23 February 2022, I don't think it's fair to hold Mr F responsible for any delay by Vitality – whatever the cause may have been – in receiving and/or in uploading the completed direct debit mandate onto its systems.

Having said that, I'm also satisfied that Vitality sent Mr F a letter dated 4 March 2022. The letter displays Mr F's address, says that Vitality doesn't have an active direct debit instruction for his insurance policy and asks for direct debit details to be returned to it within 14 days.

Vitality has also provided a letter dated 21 March 2022, again displaying Mr F's address, saying the same thing. I've now seen evidence from Vitality's internal systems showing that these letters were printed, so I'm satisfied that it's more likely than not that these letters were sent. Just as I don't think Mr F is responsible for any delays by Vitality in receiving the completed direct debit mandate, Vitality isn't responsible for any failure by Mr F to receive the letters which I'm satisfied were sent to him in March 2022. And I don't think it's reasonable in these circumstances to expect Vitality to have phoned Mr F before cancelling his policy, given that I'm satisfied it had already sent him three letters about the matter.

Vitality has pointed out that Mr F failed to contact it to confirm if it had received the completed direct debit mandate. It may have been helpful if Mr F had done this and/or if Mr F had regularly checked his bank statements to ensure the relevant payments were being made to Vitality, but I don't think his failure to do these things means it was fair for Vitality to cancel his insurance policy in circumstances where I'm satisfied that Mr F returned the completed direct debit mandate when he was first asked to do so in February 2022.

Vitality has also mentioned Mr F's previous payment history but, based on the information I've seen, I don't think this is relevant to whether Vitality acted unfairly or unreasonably when cancelling the policy in 2022. Mr F has referred to ongoing issues with his bank cancelling direct debits to Vitality, which he says have now been resolved, so I'm satisfied this offers a reasonable explanation as to why the direct debit may have been cancelled in 2022.

Having taken into account all the circumstances of this individual complaint, I don't think Vitality acted fairly and reasonably when it cancelled Mr F's policy and refused to reinstate it.

So, I think it would be fair and reasonable in the circumstances for Vitality to reinstate Mr F's policy, with no break in cover, upon the payment by Mr F of all the premiums dating back to February 2022. If there is any subsequent dispute about the amount of backdated premiums due, then Mr F would need to raise this with Vitality as a new complaint in the first instance.

I don't currently intend to award compensation for any distress and inconvenience experienced by Mr F in this case. I think there's more Mr F could have done to check that Vitality had received his direct debit mandate and I'm satisfied that the provisional direction which I intend to make provides a fair and reasonable outcome for both parties in the circumstances.

Mr F has also mentioned Vitality's delays in responding to his complaint. However, Vitality provided referral rights to our service in its email of 11 July 2022, as required by the regulator, so I don't intend to address this point any further.'

Vitality didn't agree with my provisional decision. It repeated a number of submissions about Mr F's previous payment history and the timing of what happened in this case. Vitality said, in the event that my provisional decision remains unchanged, it won't allow Mr F to pay the outstanding premiums by instalments and if Mr F's premium payments aren't made going forward, it reserves the right to cancel the policy without allowing reinstatement.

Mr F said he largely agreed with my provisional decision but asked that I consider directing Vitality to waive some of the premiums due and/or offset some of the premiums as compensation.

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.

I've already addressed the arguments surrounding Mr F's previous payment history and the timing of when Mr F contacted Vitality in my provisional decision.

My provisional decision also explained why I didn't intend to award any compensation to Mr F, and I remain satisfied that it wouldn't be fair or reasonable to make such an award in this case. I don't think there are any reasonable grounds upon which I could fairly direct Vitality to waive any of the premiums which would otherwise have been paid for this policy. If Mr F wants his policy reinstated, then he needs to pay the premiums in full and I don't think it's unreasonable for Vitality to determine how it wants any such payment to be made.

Putting things right

Vitality Health Limited needs to put things right by reinstating Mr F's policy with no break in cover, subject to the payment by Mr F of all the premiums dating back to February 2022.

My final decision

I'm upholding Mr F's complaint against Vitality Health Limited, and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 April 2023.

Leah Nagle
Ombudsman