DRN-4436899

The complaint

Mr W, who also acts on behalf of the estate of Mrs W, is unhappy with the service he and the late Mrs W received from Vitality Health Limited following a claim they made on a private medical insurance policy.

What happened

Mr W and the late Mrs W were covered under Mr W's employer's group private medical insurance policy.

Mrs W was diagnosed with terminal cancer and claimed on the policy. Since the Financial Ombudsman Service began to consider this complaint Mrs W has sadly died.

Mr W complains that the 'advanced cancer cover' Vitality says it offers is misleading. He said that he had to raise money via crowdfunding for Mrs W's treatment. Mr W also complains that Mrs W wasn't able to utilise a benefit to visit a spa retreat and says that Vitality caused distress by the way they treated Mr and Mrs W.

In their final response letter Vitality highlighted that there is no cover for treatment that is not established medical practice in the UK. They explained that 'Advanced Cancer Cover' has been named in this way because they think it covers treatment that isn't commonly available on other Private Medical plans, for example preventative treatment. They also thought the terms and conditions were detailed clearly within the plan. Vitality also said the spa retreat was a complimentary offer made available to cancer patients who had recovered from treatment for safety reasons. They apologised if their previous response appeared dismissive and confirmed that Mr W's concerns had been escalated. However, they said there would be no changes to the relevant literature and correspondence. Mr W complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold Mr W's complaint. He didn't think Vitality had acted unreasonably by naming the benefit 'Advanced Cancer Care'. And he thought Vitality had fairly relied on the policy terms when declining to cover some of Mrs W's treatment. Whilst he didn't think it was unreasonable for Vitality not to offer the spa retreat, he thought Vitality should pay £150 compensation for providing misleading and incorrect information on several occasions.

Mr W didn't agree. In summary, he highlighted that treatment should be appropriate to the most accurate diagnosis and based on the most up to date treatment at the time. He questioned how a new treatment became established medical practice in the UK. Mr W commented that a consumer might reasonably expect a treatment which wasn't available on the NHS, due to economies of scale, to be available through a private policy. He emphasised that the NICE guidelines are guidelines and that the NHS could deviate from them (which they did in Mrs W's case). Finally, Mr W reiterated that Mrs W's diagnosis, and cause of death, was Grade 4 Astrocytoma, not Glioblastoma Multiforme (GBM) and that the £150 compensation was insulting in the circumstances.

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.

At the outset I'd like to offer my condolences to Mr W and his family. I have a great deal of empathy for what they've been through and I'm very sorry for their loss.

While I've summarised the background to this complaint and Mr W's submissions to us, I've carefully considered all that's been said and sent to us. Within my decision though, I haven't commented on each point that's been raised and nor do our rules require me to do so. Instead, I've focused on what I think are the main issues which are central to the outcome of this complaint.

Is the cover unfairly described as 'Advanced Cancer Cover'?

I don't think it was unfair or unreasonable for Vitality to describe the policy as 'Advanced Cancer Cover'. Vitality has explained that they've expanded this level of cover to include, for example, preventative treatment which historically hasn't been available.

I fully appreciate that it would have been very disappointing that Mrs W's treatments weren't fully covered. But insurance policies don't cover every eventuality and are designed to cover specific risks. It's not uncommon for insurers to place restrictions on treatments which aren't established medical practice and, for example, to limit cover for treatment abroad or experimental treatments.

Although other insurers may have offered cover for Mrs W's treatment it doesn't mean that Vitality was unreasonable when they decided not to do so. Insurers have different terms and conditions. They also offer cover for different benefits. There are a wide range of reasons why some insurers may agree to cover a condition, and others don't. So, I don't think this means Vitality has acted unreasonably.

I also think the policy terms make it clear what the scope of cover is and the benefits available under this section of cover. So, I think Mr and Mrs W had enough information to decide if the policy was right for them.

Was it unreasonable for Vitality not to offer Mrs W a spa retreat?

The offer of a spa retreat is a complimentary benefit offered to policyholders who have recovered from cancer. Unfortunately, as Mrs W received a terminal diagnosis, she was not able to utilise this benefit.

Vitality say that they don't offer this benefit to patients who haven't recovered due to safety issues, particularly bearing in mind the nature of the spa environment and that cancer patients may have issues with immune suppression.

Mr W says that he and Mrs W visited facilities offered by the same provider, using a Vitality discount and no concerns were raised about Mrs W attending. I appreciate that Mr and Mrs W chose to do that and had input from their treating team about the safety of this. However, that was at their own risk.

I don't think it follows that Vitality's position to restrict this benefit to patients who have recovered is unreasonable. That's a commercial decision they are entitled to make and, in any event, I'm satisfied Vitality has provided a reasonable explanation for their decision not to offer this benefit to policyholders such as Mrs W. I appreciate that Mrs W's treating team were happy for Mrs W to go, but I don't think that means Vitality's restriction of the benefit was unfair or unreasonable. This wasn't something specific to Mrs W but something it applied to all policyholders in her position.

Was it unreasonable for Vitality to decline to cover some of Mrs W's treatment?

The relevant rules and industry guidelines say that Vitality has a responsibility to handle claims promptly and fairly. And, they shouldn't reject a claim unreasonably.

The policy terms and conditions say there is no cover for:

> 'Treatment that is not established medical practice in the UK
>
> The plan does not generally cover drugs and treatment that is not considered to be established medical practice in the UK, or where there is insufficient evidence of safety or effectiveness.
>
> This includes drugs that are used outside the terms of their UK or European licence or treatment that has not been reviewed and approved for general use in the NHS.
>
> However, we may consider a contribution towards the costs of such treatment where this is part of a properly controlled UK clinical trial or where we believe there is adequate evidence that the treatment is safe and effective. We would expect any treatment to be recommended by an appropriate multidisciplinary team (MDT). An MDT is a group of professionals from one or more clinical disciplines who together make decisions regarding recommended treatment of individual patients. You must contact us before undergoing treatment to check what we will cover.'

There's also information on Vitality's website about Advanced Cancer Cover. It says:

> Does Vitality cover cancer drugs that haven't yet been approved by NICE?
>
> If there's enough evidence of their effectiveness, we cover the use of new drugs or other treatments, even if they've not yet been reviewed or recommended by NICE (The National Institute for Health and Care Excellence). However, we don't cover the use of drugs outside the terms of their licence in the UK; or experimental drugs with no evidence of effectiveness; or any treatment not considered clinically appropriate in the UK.

I think Vitality has given a reasonable explanation for their decision not to authorise some of the treatments Mrs W sought cover for. I'll refer to the four treatments as 'Treatment O', 'Treatment I', 'Treatment D' and 'Treatment P'. Based on the evidence I've been provided with I'm satisfied they fairly considered the evidence available including relevant clinical study data. I'm satisfied that their decision was reasonable, and evidence based.

The evidence provided by Vitality demonstrates that Treatment I and Treatment D were not licensed in the UK or Europe at the time Mrs W applied for the benefit for any condition. Treatment P held a licence for multiple tumours but was not licensed for use for astrocytoma.

Vitality didn't think that Treatment O was eligible for cover on the basis that it wasn't established and proven practice within the UK and wasn't recommended for use in the NHS. They noted the NICE guidelines had rejected the use of tumour treating fields in the UK on both economical and clinical efficacy grounds. However, they offered a contribution towards Treatment O of £20 000 on the basis of phase three clinical study data which was available. As Mrs W didn't utilise this benefit Vitality agreed that this contribution could be utilised towards other preferred treatments as a gesture of goodwill. I think that was reasonable in the circumstances.

I've considered everything that Mr W has said about treatment being appropriate and based on the most up to date treatment at the time. I've also thought about his comments that a consumer might reasonably expect treatment which isn't covered on the NHS to be covered under a private policy and that the NICE guidelines are just guidelines. However, these comments haven't changed my thoughts about the overall outcome of this complaint.

I think the reasons Vitality have given demonstrate that they fairly considered the available evidence about whether the treatment was established medical treatment, safe and effective. I don't think that having a private medical insurance policy means that treatment the NHS refuses to cover ought to be paid for – I think it's reasonable that there are parameters to that. And, in any event, I think Vitality has fairly applied the terms in this case.

Although there is discretion to depart from the NICE guidelines, I think Vitality has given persuasive reasons why they chose not to in relation to the treatments they declined to cover. I can also see that they considered sources other than the NICE guidelines, including information provided by the treating team. And, as I've outlined above, they also agreed to make a payment towards some of the treatment on the basis of some of the clinical evidence provided.

Did Vitality provide good customer service?

Vitality acknowledges that there were occasions where their staff used different terminology. They also acknowledged during a call with Mr W that Mrs W had been told that she wouldn't be eligible for the spa benefit 'yet' when she had a terminal diagnosis. I can understand why that was very upsetting in the circumstances. It is also clear from the calls that Mr W was finding the communication by email frustrating and at times he was struggling to speak with the people he needed to.

I think Vitality responded to Mr W's feedback about the communication – they agreed to give feedback to a staff member, discussed whether a new case manager would be appropriate and acknowledged the importance of calling Mr W rather than emailing him.

Vitality also escalated Mr W's feedback about the product literature and terms to the relevant team. I'm satisfied they appropriately acknowledged the feedback Mr W gave. However, I don't think it would have been reasonable to make immediate or significant changes to the overall product design and literature. That's something that would have an impact on a lot of customers and would need careful consideration and reflection. So, I don't think Vitality acted unreasonably in relation to this feedback.

Taking all of the above into account I think the £150 compensation fairly reflects the distress and inconvenience caused by the service issues and the impact on Mr and Mrs W during a very difficult and challenging time.

Putting things right

Vitality needs to put things right by paying £150 compensation for the distress and inconvenience caused by the customer service issues.

My final decision

I'm partly upholding Mr W and the estate of Mrs W's complaint about Vitality Health Limited and direct them 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 W and the estate of Mrs W to accept or reject my decision before 27 December 2023.

Anna Wilshaw
Ombudsman