

The complaint

Mr M is unhappy that Vitality Health Limited (Vitality) declined his private medical insurance policy and cancelled the cover.

What happened

Mr M took out a personal private medical insurance policy on 28 February 2023 via an online method. The policy is underwritten by Vitality and was taken out on a moratorium basis. This meant that Vitality didn't cover pre-existing medical conditions Mr M had in the five years before his membership began on 28 February 2023. And until he has been a member for two years in a row and had a period of two years in a row trouble-free from that symptom.

In March 2023, Mr M went to see his GP who provided a referral letter to see an orthopaedic consultant. Vitality requested medical evidence from Mr M's GP as the claim was within six weeks of taking out the policy. It reviewed the information, declined the claim and also cancelled the policy.

This was because it thought Mr M took out the policy with the intention of making a claim. Vitality relied on a provision which says that it's entitled to cancel cover from the outset in the event that an insured provides information that's wrong or incomplete. It also thought that Mr M had the opportunity to inform Vitality of his symptoms when he made the claim for a condition that he knew could potentially be ineligible.

Unhappy with Vitality's decision to decline, Mr M brought his complaint to this service. He says there was no intention to mislead Vitality. Our investigator looked at what happened. She didn't think that Vitality had acted unreasonably in declining the claim and in cancelling Mr M's membership. The investigator says Vitality reviewed Mr M's medical history which showed he had symptoms before his membership began and that wasn't consistent with what he had told Vitality. She said the plan doesn't cover pre-existing conditions and includes a provision that Vitality may cancel membership in certain circumstances which are relevant here. The investigator thought Vitality had acted in line with the policy terms and conditions. The evidence suggested that Mr M had a pre-existing medical condition within the five years prior to taking out the policy in February 2023.

Mr M disagreed with the investigator. He says he had no intention to be dishonest or misrepresent information. He wasn't aware of the terms and conditions related to pre-existing medical conditions and Vitality should have just declined the claim. Mr M says Vitality has been harsh in calling him dishonest and he's unhappy with the cancellation of the policy and the premium not being refunded.

He asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

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.

It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made. This isn't intended as a discourtesy to Mr M. Rather it reflects the informal nature of our service, it's remit and my role in it.

When making my decision, the law is a relevant consideration which I've taken into account. But I'm not bound by legal precedent. Regulatory rules and industry guidelines say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've also taken these rules into account. But, my overriding remit is to decide what I think is fair and reasonable in the overall circumstances of Mr M's complaint

The relevant terms and conditions

The starting point is the terms and conditions of the plan, the relevant parts of which say on page 35, as follows:

"Dishonesty/Fraud

We believe our customers are honest, and the contract between us is based on mutual trust. Representations including statements and information provided by you or any insured dependants are relied on in assessing the terms of cover.

In the event that any of the information provided by you or any insured dependants is wrong or incomplete we may have the right to cancel cover with effect from inception and/or to decline claims made under the plan.

If any claim is in any respect dishonest or fraudulent or if any dishonest or fraudulent means or devices are used by you, any member of your household or anyone acting on your or their behalf to obtain benefit under your plan [...] then all benefits under your plan may be lost and you may have to return to us any payments already made as a result of any dishonest or fraudulent actions.

*Vitality Health is involved in a number of initiatives to detect and prevent insurance fraud. If fraud is suspected, we may exchange information about you with other insurance companies, fraud prevention agencies and the Police.
[...]"*

Has Vitality acted unfairly or unreasonably?

I've carefully considered the relevant rules and industry guidance along with all of the evidence provided to me. Having done so, I'm not upholding Mr M's complaint because I don't think Vitality has treated Mr M unfairly or unreasonably. I say that because:

- Vitality has provided evidence which shows that Mr M attempted to make claims for conditions he had suffered from prior to taking out the policy. These conditions would therefore be excluded under the policy which was taken out on a moratorium basis and which state that any pre-existing medical conditions from the previous five years since inception wouldn't be covered. And Vitality can review an exclusion for a pre-existing medical condition after two years if Mr M was trouble free of symptoms.
- Vitality has provided notes of Mr M's medical conditions in 2020 and the information in relation to previous policies Mr M held with it which I've considered. A referral letter from Mr M's GP in September 2020 shows that Mr M presented with wrist pain and

swelling and that he had surgery for this eight to ten years ago. It says Mr M's wrist was becoming problematic again and had started to act up. This confirms that symptoms relating to his right wrist were present in 2020.

- I've also seen the medical records provided by Mr M's GP from 2023. These show Mr M had a consultation with his GP about his wrist in March 2023. Mr M said he'd had an operation around ten years ago and it was causing him problems again. The GP said the history of the symptoms to the wrist were difficult to establish and he therefore provided a referral to a private orthopaedic consultant. This shows Mr M suffered with a pre-existing medical condition within the five years prior to taking the policy out in February 2023. Based on this information, I don't think Vitality acted unfairly or unreasonably in declining Mr M's claim.

- The letter from the orthopaedic consultant dated April 2023 says:

"He [Mr M] has done really well over the fifteen years but slowly over the last few years the right wrist has started to deteriorate and he has now got constant pain with aching and discomfort whilst typing and increasing numbness in the fingers...."

This shows Mr M suffered pain to his right wrist within five years prior to taking out the policy.

- Vitality has shown that there were inconsistencies in the information Mr M has provided. Mr M would have had the opportunity to inform Vitality of his pre-existing symptoms bearing in mind there has been a history of pain on his right wrist. I haven't seen any evidence that Mr M did inform Vitality of this.
- I acknowledge Mr M's comments that his intention wasn't to be dishonest or misrepresent information. He says he wasn't aware of the terms and conditions related to pre-existing medical conditions and Vitality should have just declined the claim. I appreciate this but when Mr M made the claim, he did have the opportunity to provide accurate information regarding the symptoms he had on his wrist, and I can't see that he did this. I can't comment on what awareness Mr M had about whether the terms and conditions related to pre-existing medical conditions. But, I can say that there is sufficient evidence that Mr M did suffer from symptoms on his wrist in the previous five years of the policy being taken out. And this is what I'm looking at here.
- In all the circumstances of this complaint, I'm currently satisfied that it isn't unfair or unreasonable for Vitality to apply the above condition and to cancel the policy back to the date of inception to 28 February 2023. And I don't require it to return any premiums.
- It's not for me to determine whether a claim is dishonest or fraudulent – that's a matter for the courts. We're an informal alternative to the courts; we're impartial and we're not able to call or cross examine witnesses. Our role is to consider all of the evidence we receive, decide what's relevant (and what isn't) in reaching a fair outcome, and come to a conclusion on how we think the dispute should be settled. Here, I think, on balance, that Vitality didn't act unfairly or unreasonably in cancelling Mr M's cover. It follows that I don't require Vitality to do anything further.

My final decision

For the reasons given above, I don't uphold Mr M's complaint about Vitality Health Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 6 June 2024.

Nimisha Radia
Ombudsman