

## The complaint

Mr B complains that Vitality Health Limited declined his request to remove an exclusion in relation to his private medical insurance plan.

## What happened

In summary, in January 2022, Mr B took out a private medical insurance plan underwritten by Vitality. The plan was on a full medical underwriting basis, which meant Vitality asked Mr B questions about his health. Mr B told Vitality he'd recently had investigations for pain in his lower back. Vitality excluded cover for any further investigations or treatment due to any disorders of the lumbar and sacral region of the spine, and related conditions. It told Mr B the exclusion was reviewable after the second renewal.

In December 2023, Mr B completed Vitality's exclusion review request form. Vitality declined Mr B's request to remove the exclusion. It said Mr B has a chronic condition of his lower back and sacral area. Mr B's plan renewed in January 2024 with the same exclusion as before.

Mr B says when Vitality told him the exclusion would be reviewed, he understood it would be removed. He says his medical condition and fitness are better than they were in 2021. Mr B says he's offered to undergo any test Vitality require. He says Vitality is reneging on what it said when he took out the plan. Mr B says a review that will never result in the exclusion being removed is a lifetime exclusion. Mr B wants Vitality to remove the exclusion.

In response to Mr B's complaint, Vitality reviewed the matter again and maintained its decision. Vitality accepted Mr B was told at the outset the exclusion could be reviewed after two years and says it shouldn't have suggested a review. That was because Mr B's pre-existing condition was associated with a degenerative disc disease. Vitality said a review doesn't guarantee the removal of an exclusion.

One of our Investigators looked at what had happened. He didn't think Vitality had treated Mr B unfairly in maintaining the exclusion. The Investigator said Vitality was entitled to decide which risks it is prepared to accept and the level of cover it wishes to offer. He thought Vitality had treated Mr B the same as other customers in his position.

The Investigator thought Vitality had misinformed Mr B about its review of the exclusion. He said whilst Vitality hadn't guaranteed the exclusion would be removed from Mr B's plan, it did say it would consider the position if Mr B went two years symptom free. Vitality says it shouldn't have suggested a review because of the nature of the underlying cause of the exclusion. The Investigator said this matter was important to Mr B and Vitality's actions caused a loss of expectation. He recommended Vitality pay Mr B compensation of £250.

Vitality agreed with the Investigator's recommendation, but Mr B didn't. He said Vitality promised to review the exclusion but there's been no real review. Mr B says he should

have been told at the outset that the exclusion will never be removed. He says Vitality mis-sold the plan to him and if it had told him the exclusion would remain he wouldn't have purchased the plan and would have remained with his previous insurer. Mr B says he wants Vitality to conduct a medical review and take a fresh view of the exclusion, which he would like removed from his plan.

The Investigator considered what Mr B said but didn't change his view. The Investigator said he'd considered Mr B's current complaint about his request that Vitality review the exclusion. He said if Mr B considers the plan was mis-sold to him, he needs to take that up with Vitality in the first instance.

As there was no agreement between the parties, the complaint was passed to me to decide.

In this decision, I'm dealing with the complaint Mr B made to Vitality which led to its final response of 8 March 2024. That complaint is about Vitality's decision to decline Mr B's request to remove the exclusion. If Mr B wants to complain the plan was mis-sold to him, he should take that up with Vitality in the first instance. If he's not satisfied with its response, Mr B may refer the matter to this service.

### **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 taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say Vitality must act to deliver good outcomes for retail customers.

Vitality says it made an error at the outset in telling Mr B it would review the exclusion at the second renewal. That's because Mr B has a chronic condition and Vitality's membership guide provides it will not review or remove an exclusion for a chronic condition. When mistakes like this happen, we look at the effect of the error on the individual.

Mr B says he expected Vitality to remove the exclusion after two years. That's not what Vitality promised to do. Vitality said it could *review* the exclusion at the second renewal. That's not the same as saying it will *remove* the exclusion. I don't think Vitality is at fault for Mr B's expectation it would remove the exclusion.

Vitality did, in fact, review the exclusion at the second renewal. I appreciate Mr B thinks no real review took place, but I'm satisfied Vitality considered Mr B's exclusion review request form and came to its decision to decline Mr B's request, based on its underwriting criteria. I think Vitality was entitled to do that. Based on what I've seen, Vitality treated Mr B the same as other individuals in his position.

Mr B says if he'd known the true position, he wouldn't have taken out the plan. Mr B was aware he'd have no cover for any further investigations or treatment due to any disorders of the lumbar and sacral region of the spine, and related conditions, for at least two years. As I've said above, Vitality didn't promise to remove the exclusion. So, Mr B was content to proceed with the exclusion in place and a review - not a removal - of the exclusion at a future date. On balance, I don't think I can safely conclude Mr B wouldn't have taken out the plan if Vitality had told him the exclusion would remain in place.

I think Mr B was disappointed to discover the review shouldn't have been mentioned at the outset. Vitality has agreed to the Investigator's recommendation of compensation of £250. I

think that's fair and reasonable. In reaching that view, I've taken into account the nature, extent and duration of Mr B's distress and inconvenience caused by Vitality's error in this case.

### **Putting things right**

In order to put things right, Vitality should pay Mr B compensation of £250 in relation to his distress and inconvenience.

### **My final decision**

My final decision is that I uphold this complaint in part. Vitality Health Limited should now take the step I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 October 2024.

Louise Povey  
**Ombudsman**