DRN-5076683

The complaint

Mr H complains about the way Vitality Health Limited handled a claim he made on a group private medical insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

On 1 January 2023, Mr H was added to the cover Vitality provided under his employer's group private medical insurance policy. When Mr H's employer had initially taken out the contract with Vitality, it agreed that each group scheme member would be responsible for paying the first £200 of any claim. This £200 was called the policy excess. Mr H's employer gave Vitality Mr H's work email address for correspondence purposes.

Later that month, Mr H made a claim on the policy, which Vitality agreed to cover. It passed on limited details about Mr H's cover to its third-party treatment provider, which I'll call N, so that N could arrange treatment with Mr H.

In March 2023, Mr H got in touch with Vitality to ask it to amend his email address to a personal email address. So Vitality changed its records to reflect Mr H's request.

After Mr H underwent treatment, N sent Vitality invoices for the costs he'd incurred. Vitality paid the treatment costs in line with the policy terms, less the policy excess of £200 which Mr H needed to pay. Vitality sent Mr H billing statements by post, which set out what it had paid and how much Mr H would need to pay N directly.

Some months later, N contacted Mr H by email to request the payment of the outstanding £200 excess for his treatment. Mr H was very unhappy about things and he complained. He thought Vitality was responsible for paying the outstanding amount to N. And he felt Vitality had breached data protection regulations by sharing his work email details with N.

Vitality didn't agree it had done anything wrong. It said that Mr H's policy paperwork made it clear that he'd need to pay the first £200 of any claim and it also said the excess had been explained to him during calls. It also said its notes indicated that, during a later claim, it had checked with Mr N which email address it should send on to another provider and he'd confirmed it should use his work address. In any event, it said it had only given N limited information about Mr H's policy. And it said its contract terms made it clear that it might need to share information with third parties.

Mr H was still unhappy with Vitality's position and he asked us to look into his complaint.

Our investigator didn't think Mr H's complaint should be upheld. She felt the policy terms made it clear that Mr H would need to pay a £200 excess. And she thought Vitality had set-up Mr H's policy membership using the email address it had been given. She didn't think there was evidence to show that Mr H had asked Vitality to change his email address until after it had already passed on information to N. And she didn't think Vitality was responsible

for any of N's actions.

Mr N disagreed and so the complaint's been 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.

Having done so, whilst I'm very sorry to disappoint Mr H, I don't think Vitality has treated him unfairly and I'll explain why.

First, I'd like to reassure Mr H that while I've summarised the background to this complaint, I've carefully considered all that he's said and sent us. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

The relevant regulator's principles say that financial businesses must pay due regard to the interests of their customers and treat them fairly. I've taken those rules into account, amongst other relevant considerations, such as the regulator's rules, principles and the policy terms, to decide whether I think Vitality treated Mr H fairly.

It seems to me that there are three main issues for me to consider. First, whether Vitality was reasonably entitled to deduct a £200 excess from the claim payments it made to N. Secondly, whether it was reasonable for Vitality to pass on Mr H's details to N. And third, whether Vitality's responsible for any actions on N's part. I'll consider each issue in turn.

Was it fair for Vitality to deduct £200 from the amount it paid N for Mr H's treatment?

When Mr H's employer took out the policy with Vitality, it contractually agreed that policy members would need to pay the first £200 of each claim. The policy terms explain what Vitality means by an excess. The handbook says an excess is*:*

'The first amount which must be paid by you before we make any payment for treatment covered by this plan. Only one excess is payable in each plan year for each insured member and insured dependant. This excess resets at the beginning of each new plan year.'

And I can see that Mr H's membership certificate clearly states, on page two:

'Excess type: Per person, per plan year

Excess level: £200.'

So I think the policy terms and Mr H's policy documentation make it clear that Mr H was responsible for paying the first £200 for any treatment he received during the policy year. This means that while Vitality agreed to authorise treatment with N, it was entitled to deduct the first £200 of Mr H's treatment costs from the total cost of Mr H's treatment.

It's unfortunate that Vitality can't provide us with a copy of the call of 27 January 2023, when Mr H first called to make his claim. But it has been able to send us its call notes. These show that Mr H was '*advised XS'.* So on balance, I think it's most likely that Vitality did also tell Mr H that he'd need to pay the first £200 of the cost of any treatment he underwent.

I'd add too that Vitality has sent us copies of billing statements it sent to Mr H in May 2023, to the same address he's given us, which re-stated the excess amount, the amount Mr H

needed to pay to N, and N's details, to allow him to make the payments. So I think it did enough both to highlight the excess to Mr H before he incurred treatment costs and it gave him enough information about how to pay the outstanding excess to N.

Overall, I don't think there are any reasonable grounds upon which I could find that Vitality is responsible for paying Mr H's excess to N. It will be for Mr H to get in touch directly with N to make payment.

Did Vitality administer Mr H's details fairly?

I understand how strongly Mr H feels that Vitality didn't handle his details correctly. I've thought about this carefully.

Vitality has provided us with a copy of the request it received from Mr H's employer to add Mr H to the group scheme. This request included Mr H's work email address. So I think it was reasonable for Vitality to act on the employer's instruction, as the policyholder, and set-up Mr H's policy membership using his work email address.

The contract terms explains that in some situations, Vitality might need to pass on information about a member's care to a third party. Page 45 of the policy terms states:

'We may have to give some information about your plan and about your health or medical status to those involved in your treatment or care, (and/or your representative if you have consented to us doing this). Any such disclosure will be done confidentially unless you specifically instruct us otherwise.'

As N was the third-party provider which would be offering Mr H treatment, I don't think it was unfair or unreasonable for Vitality to send it some information about Mr H's cover.

I appreciate Mr H feels that Vitality shouldn't have sent N his work email address. I can see from Vitality's records that Mr H got in touch with it to make his claim in late January 2023. It seems Mr H began treatment in late March 2023. Vitality's records show that Mr H asked it to change his email address to his personal account in mid-March 2023 and I can see it did so. But given the date he began treatment, it seems most likely that Vitality would've already sent N Mr H's referral, *before* Mr H asked it to change his email address. So I don't think I could find, on balance, that Vitality passed on the incorrect information to N or handled his details inappropriately.

Is Vitality responsible for N's actions?

Mr H has complained about some of N's actions too – in particular, its communications with him and the way it's chased up payment of the outstanding excess amount. However, like the investigator, I don't think Vitality is responsible for any of N's actions, either in the way it communicated with Mr H, his treatment or its billing. That's because the terms of Vitality's policy say:

'Our liability under this plan is limited to paying for treatment or services in respect of eligible claims under this plan…

We will not be held liable to you or any insured dependant for any loss, harm or damage of any description resulting from lack of availability or from a defect in the quality of any treatment or service offered or provided by such provider. This plan represents the whole and only agreement between you and Vitality Health relating to the provision of private medical insurance.'

While I understand Mr H has concerns about N's actions, I think the terms of the private medical insurance contract makes it clear that Vitality isn't responsible for anything N may have done. And, as the investigator explained, we have no power to consider a complaint about N itself. That's because it isn't a regulated financial business and nor does it provide the regulated activities our service has the jurisdiction to consider. So if Mr H remains unhappy with N's actions, he'll need to complain to it directly.

In summary, whilst I sympathise with Mr H's position, I don't find that Vitality has done anything wrong which it needs to put right.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 December 2024.

Lisa Barham
Ombudsman