

The complaint

Mr T and Mr W are unhappy that Vitality Corporate Services Limited mis-sold them a life insurance policy.

What happened

Vitality sold Mr T and Mr W a VitalityLife Essentials Plan, which included a wellness optimiser ('the plan'), in 2019.

The plan works by providing policyholders with 'Vitality' status and the starting status is bronze. By tracking the policyholders' steps with an activity tracker, they can boost their Vitality status to silver, gold or platinum. The higher status, the greater the discounts and rewards the policyholders can qualify for.

By including the wellness optimiser, Vitality recalculates the plan premium based on the policyholders' Vitality status each year (bronze, silver, gold or platinum) and their wellness status (which is based on a yearly health check measuring things like BMI, blood glucose, blood pressure and cholesterol). Depending on the results of the yearly health checks, the policyholders can reach select, healthy or everyday status. Their wellness status is then combined with their Vitality status and that impacts how the premium is calculated each year (ranging from a 4% increase to a 1% decrease).

However, if an annual health check is not carried out, the policyholders can't advance higher than 'everyday' wellness status, and even if they reach platinum Vitality status, their premium will increase by 1%.

Mr T and Mr W are unhappy that they weren't given clear information about the way in which the wellness optimiser worked, and that they needed to pay for the annual health checks each year, costing £10 each, at the time the policy was taken out but having since increased to £12.50 each per year.

Mr T and Mr W complained to Vitality about the sale of the policy. Vitality partially upheld their complaint and offered to pay them £150 compensation as it agreed that its representative should've provided them with clearer information over the phone, as part of the sales process.

Unhappy, Mr T and Mr W brought a complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't think Vitality had to do anything more to put things right, so she didn't uphold their complaint.

Mr T and Mr W disagreed and raised several points in reply. These didn't change our investigator's opinion so the complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision in October 2024. I said:

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At the outset, I acknowledge I've only summarised the points made by Mr T and Mr W – and in my own words. I won't respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to be able to fulfil my statutory remit. When selling the plan, Vitality provided advice to Mr T and Mr W. So, it had to ensure that the plan was suitable for them. Vitality also had to provide clear, fair and not misleading information about the key features of the policy.

Having listened to the recordings of calls I've been given, I'm satisfied that the plan Mr T and Mr W ended up with was, in principle, suitable for their needs. It provided appropriate cover for a premium that was seemingly affordable for them. And Mr T confirmed during one of the calls that he and Mr W would likely use some of the rewards and discounts they could earn through the Vitality status scheme. They also had the potential to reduce their yearly premium in future years with the wellness optimiser.

The crux of the complaint is that Mr T and Mr W say they weren't given clear, fair and not misleading information about the way in which the wellness optimiser worked (in conjunction with their Vitality status), that they'd each need to pay for the yearly health check to progress from 'everyday' status and that the cost of those health checks could increase over time (which they have done). And that the information Mr T was given over the phone was different to the information contained in Vitality's letter dated November 2019, enclosing the plan schedule, projected future premiums, plan documents and terms and conditions.

However, I'm currently satisfied that I don't need to make a finding on whether Mr T and Mr W were given clear, fair and not misleading information about the wellness optimiser and yearly health checks taking into account the entirety of the sales process. That's because, even if I concluded that Vitality didn't act fairly and reasonably in this respect, I'd need to consider what Mr T and Mr W would've done, if they'd been provided with clearer information.

I can't know for sure what would've happened but, on the balance of probabilities, I think it's more likely than not that Mr T and Mr W would've still opted to have taken out the plan (on the same terms and with the wellness optimiser).

I'm satisfied that Mr T and Mr W wanted life cover and having listened to the calls, I'm also satisfied that cost was an important factor for them.

Vitality has provided evidence – which I've got no reason to doubt is accurate and I accept – that if Mr T and Mr W had chosen a VitalityLife Essentials plan without adding the wellness optimiser, the starting cost would've been around £20 more each month. And a VitalityLife plan that wasn't optimised would've cost around £40 more per month.

So, even if I were to find that Mr T and Mr W should've been given clearer information about the wellness optimiser and health checks (and in particular that the health checks would cost at least £10 each per year and that price could increase in future), I'm not convinced that this would've put them off taking out the policy, given its starting cost and plan benefits. Particularly given the cost of the available policies would've been higher.

If Mr T and Mr W would like to remove the wellness optimiser, they're entitled to do so under the terms and conditions of the plan. They're free to contact Vitality about this if they want to explore this further. I understand from Vitality that if they chose to remove the wellness optimiser cover will continue on the same basis, but the premium would increase.

Other issues

In its final response dated May 2023, Vitality accepts that its' representative didn't confirm that the health checks would be chargeable throughout the plan (on a yearly basis). And although it said that this information was provided in documents received following the phone calls, it also says information should've been given over the phone. Vitality said internal feedback would be provided and offered £150 compensation to Mr T and Mr W which I understand was rejected by them at the time.

I accept being given this information over the phone could've avoided some of Mr T and Mr W's subsequent confusion about the how the wellness optimiser works. I'm satisfied £150 compensation fairly reflects the impact on them.

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I invited both parties to provide any further information in response to my provisional decision.

Vitality had nothing further to add.

Mr T and Mr W replied, disagreeing with my provisional decision. In summary they said:

- Life insurance policies should be seen as a long-term purchase. They explained why, if the position had been properly explained to them, the balance between an 'optimiser' policy and a fixed price policy would've shifted. And they wouldn't have gone ahead with the policy they ended up purchasing (taking into account the likely costs going forward).
- Even if I was still to conclude that Mr T and Mr W would have gone ahead with the policy anyway, I was invited to award compensation on the basis that Vitality led them to believe that the wellness optimiser benefits could be obtained without the need to pay for a health check. I was invited to direct Vitality to provide the benefits of the policy without having to undertake the yearly health checks, to provide free health checks or award a sum of money to be used in future to fund these health checks.
- The £150 offered by Vitality is compensation for its delay in investigating the complaint (even though the sum was first discussed (and not accepted by Mr T and Mr W) in relation to the mis-selling complaint. So, this compensation doesn't take into account the impact of Vitality's failings when selling the policy.
- The difference in starting cost between the policy they ended up with and the other policies discussed around the time of sale was around £20 per month. Taking into account the cost of the yearly health checks and the need to complete all requisite exercise thresholds each year to avoid significant increases in the premium, Mr T and Mr W would've taken a longer-term view of the lifetime cost of the policy in deciding how to proceed.
- Five years later, the monthly cost of the policy is already more than the monthly cost of the VitalityLife plan (as opposed to Essentials plan) that was available at the time.

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.

That includes all points made by Mr T and Mr W in response to my provisional decision (although I have only summarised these above). Whilst I know they will be very disappointed; the further points haven't changed my thoughts on this complaint.

For the following reasons, and for reasons set out in my provision decision (an extract of which is set out above and forms part of my final decision) I don't think Vitality has to do anything more than pay Mr T and Mr W the compensation offered in the final response letter in the sum of £150.

- The evidence provided by Vitality – which I'm persuaded by – supports that had Mr T and Mr W taken out the VitalityLife policy in 2019 (rather than an Essentials policy) the premium (whether optimised or not) would've continued to increase each year. As the starting premium for this policy was around £20 more every month compared with the policy Mr T and Mr W was sold, I'm remain satisfied that had Mr T and Mr W been given clearer information over the phone, they would've still chosen to take out the policy they ended up with.
- When making this finding I've taken into account Mr T and Mr W's submissions around why they wouldn't have but I'm not persuaded by these. If they viewed the policy as a longer-term purchase, I think they would've opted for the policy with the lower starting premium even if that meant they each would have to pay for a yearly health check. At that stage, there were many variables which could've impacted the price of the policy (and other available policies) but with the inclusion of indexation, the premiums for all policies would've increased each year.
- So, I find it wouldn't be fair and reasonable for me to direct Vitality to pay for the yearly health checks going forward or for these health checks to be waived. I'm satisfied on the balance of probabilities that Mr T and Mr W would've ended up with the policy they had and if they wanted the opportunity to move to a different status, they would've always needed to pay for the yearly health checks.
- I've considered that during one of the phone calls between Mr T and Vitality's representative, Mr T was told that the VitalityLife policy would only cost around £2 to £3 more than the Essentials policy per month. That's less than the amount Vitality has disclosed to the Financial Ombudsman Service. However, it looks like this was said before Mr T had answered detailed questions about his and Mr W's medical history and is likely, in my experience, to have also impacted the price of the VitalityLife policy because, as the representative explained at the time, the VitalityLife policy allowed Mr T and Mr W to increase the benefit without going through the underwriting process again in the event of specific life events.
- I'm only considering matters up to the date of the final response letter. Having considered the contents of the final response letter, I'm satisfied that the £150 offered by Vitality was in recognition that Vitality's representative didn't clarify the cost of the health checks within the initial sales calls and the delay in providing a response to Mr T and Mr W's concerns. I think £150 compensation offered for the confusion caused by Vitality's representative not being clearer as well as the impact of the delay in providing a complaint outcome is fair and reasonable.

My final decision

Vitality Corporate Services Limited has already made an offer to pay Mr T and Mr W £150 compensation. I'm satisfied this offer is fair in all the circumstances.

So, my decision is that Vitality Corporate Services Limited should pay Mr T and Mr W £150 compensation for distress and inconvenience (if it hasn't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mr W to accept or reject my decision before 23 December 2024.

David Curtis-Johnson
Ombudsman