DRN-5165011

The complaint

The estate of Mr M is unhappy with Vitality Health Limited (Vitality) in how it handled his claim under his private medical insurance policy.

The estate of Mr M is being represented by Mr K and Mr L.

I'll refer to the late Mr M as Mr M throughout this decision.

What happened

Mr M had a private medical insurance policy which he took out in February 2014, and which was renewed automatically each year since. Vitality was the underwriter.

In May 2022, Mr M was unfortunately diagnosed with cancer while he was in NHS care. He wanted to switch to private care using his policy.

He contacted Vitality to access private care under his policy. But Vitality said the consultant Mr M was seeing didn't have admitting rights at the private hospital. So, Mr M had to use the NHS hospital as his policy provided cover for a 'local' hospital option only and didn't include hospitals in central London.

In May 2022, Mr M complained to Vitality about the delays caused in providing information to him about accessing private care. In September 2022 to October 2022, Mr M and his partner tried to switch again to a different private hospital, but this was unsuccessful.

In mid-October 2022, Mr M was admitted into a hospice. Vitality upgraded his cover to a wider hospital list which gave him access to the private hospitals he wanted to use. However, Mr M sadly passed away in November 2022 and so he couldn't use the upgraded cover.

The estate of Mr M made a complaint to Vitality for the delays caused in him accessing private care, for providing incorrect information and causing significant stress. Vitality said Mr M's policy didn't cover him for the London hospital or the other hospital and said there would be a 40% co-payment if he wanted to upgrade his cover. Vitality also explained that the medical information it received from the consultants stated his health wasn't stable and a transfer wouldn't have been suitable for him. And it recognised there were delays in Mr M's complaint being dealt with, so it did upgrade the cover at no extra cost to the full hospital list until the next renewal. This would have allowed Mr M access to the hospitals he needed as a private patient in a private facility and as a private patient within an NHS hospital. This unfortunately couldn't be utilised.

Unhappy with Vitality's response, the estate of Mr M brought the complaint to this service. Our investigator partly upheld the complaint. She agreed there were delays caused by Vitality in its complaint handling. Mr M made a complaint to it in May 2022 and a response wasn't issued until November 2022. But she thought the information Vitality provided wasn't incorrect and Mr M didn't have the appropriate level of cover that he wanted. So, given that the situation with his health was already difficult, our investigator recommended Vitality pay

£200 compensation for the distress and inconvenience caused.

The estate of Mr M disagreed and 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.

The relevant rules and industry guidelines say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Mr M's complaint.

At the outset, I want to acknowledge and understand that the whole situation was very distressing and upsetting for Mr M and his family. And I have every sympathy for the difficult time he went through. I'm very sorry for the sad loss.

I also acknowledge that I've summarised this complaint in far less detail than the estate of Mr M has, 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 our service allow me to do this as we are an informal dispute resolution service.

I can see issues have been raised about the care specialists, NHS waiting times and the lack of admitting rights. I can't comment on these issues, as my role and remit only allows me to look at the actions of Vitality.

I've started by looking at the terms and conditions of Mr M's policy and the certificate of insurance.

Mr M had a policy which provided cover under the 'local' hospital list. The policy terms refer to this list as:

> *'Local: this includes all the hospitals in the UK's largest groups as well as a number of local providers. It does not include hospitals in central London. '*

Whilst Mr M wanted to have private care in a certain hospital, unfortunately there was no cover for this under his policy. Vitality offered a 40% co-payment for him to be able to have access to an upgraded cover. And the second hospital that Mr M wanted to make use of didn't unfortunately have the appropriate facilities for him.

Vitality responded and said whilst it does its best to provide details of consultants that are registered with it, it isn't made fully aware of their admitting rights into hospitals. The consultant whose care Mr M was under didn't have the admitting rights and therefore Mr M wasn't able to be treated as a private patient. And I understand at the time, Mr M didn't want to change consultants. And when a new consultant was reached out to, he didn't think it was appropriate to switch a patient when he was already being provided with the care he needed.

Having reviewed everything carefully, I agree that Vitality delayed providing a response to the complaint made by Mr M. He made the complaint in May 2022 and the response was provided in November 2022. I don't think this was fair.

I've also considered the ongoing communication between Mr M and Vitality between May 2022 and November 2022, and I don't think Vitality provided incorrect information or

didn't respond to the points raised by Mr M. Ultimately, Mr M wanted private care facility, but he didn't have the level of cover for what he wanted. Vitality provided alternatives and while this might not have been to Mr M's satisfaction, I don't think the options provided were incorrect or inappropriate. I can see that Vitality paid a claim for the NHS hospital cash benefit during this time. I acknowledge Vitality upgraded the cover much later and the estate of Mr M says this was too late. However, I don't think Vitality had to do this at all; Mr M didn't have the full hospital list cover on his policy. Vitality upgraded the cover because of the delay in its response to Mr M's complaint – I think this was fair.

So, I think for what happened, £200 compensation is fair and reasonable for the delays caused by Vitality in responding to Mr M. Vitality provided acknowledgements, but I think it could have done better.

Mr M's estate says it would like this service to investigate the handling of this situation and Vitality's wider provision of private healthcare services. And the failures in its handling have contributed to Mr M's untimely death and such inadequacies could cause harm to others. As I've said above, I understand the whole situation has been very difficult which ended in the sad loss of Mr M. But our role isn't to look at the broader patterns of behaviour, any mismanagement, or any wider provisions of a business – that's the role of the Financial Conduct Authority (FCA) as the regulator. I can only look at the individual merits of a complaint and the evidence available to me to decide what's fair and reasonable.

Overall, whilst I agree that Vitality could have provided better service in its complaint-handling, I'm not persuaded that it provided incorrect information or miscommunicated information to Mr M. In recognition of its failings in not dealing with the complaint in a timely manner and bearing in mind that Mr M was already unwell and suffering, I think £200 compensation is fair and reasonable in the circumstances of this complaint.

Our service cannot make an award to the estate of the deceased consumer for distress and inconvenience. However, we can award compensation to the deceased consumer (Mr M) for any distress and inconvenience they experienced during the relevant period.

In this case, I'm satisfied Mr M suffered distress and inconvenience as he made the complaint to Vitality in May 2022, and he didn't receive a response until November 2022.

I also wanted to clarify that the estate of Mr M and his personal representatives are unlikely to be able both to accept an award from the Financial Ombudsman Service and then go on to claim damages in the courts in relation to the same or overlapping matters.

Without giving them legal advice, once a matter has been determined or settled, parties are normally prevented from pursuing their claim again, even if they miss out on full compensation. This can apply where a complainant accepts an award from the Financial Ombudsman Service.

I say this because the Financial Ombudsman Service does not look at complaints that an estate, or the relatives or the dependents of a bereaved person, have suffered loss or bereavement because a person has died and should be paid compensation for it. So, any award of redress that I might ultimately make in this case would not include any element of that kind of compensation.

If such a decision were accepted by Mr M's personal representatives, or they settled the complaint in any other way, that could stop them from later seeking any further compensation (such as damages for dependent's losses or for bereavement) that they might otherwise have wished to seek in the courts. I cannot advise the estate of Mr M what they

ought to do. But this is a matter for them to consider, having obtained any legal advice they feel is appropriate.

I've carefully thought about what's happened here and in summary, I'm satisfied that £200 compensation is fair and reasonable for the distress and inconvenience caused to Mr M.

Putting things right

Vitality needs to put things right by:

- Paying the estate of Mr M £200 compensation for the distress and inconvenience caused to Mr M by its poor complaint-handling.

It must do this within 28 days of the date on which we tell it the estate of Mr M accepts my final decision. If it takes longer, Vitality must give a meaningful update setting out the timeframe when it will settle the claim.

My final decision

For the reasons given above, I partly uphold Mr M's complaint Vitality Health Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr M to accept or reject my decision before 16 January 2025.

Nimisha Radia
Ombudsman