

The complaint

Mrs M is unhappy with the way in which Vitality Life Limited handled a claim made on a life insurance policy she jointly held with her husband, Mr M, after he sadly died. That includes only paying a proportion of the life benefit, delays and customer service issues.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my decision.

What I've decided – and why

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Vitality's decision to proportionately settle the life benefit

When determining this issue, I've taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

I've also considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law in this case. CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Vitality has only paid part of the life benefit detailed on the policy schedule. It says Mr M didn't take reasonable care when answering certain questions when applying for the policy and he acted carelessly when doing so. Had he answered questions around alcohol consumption correctly, Vitality says it would've still offered the policy to Mr and Mrs M. However, it would've cost more. So, it's paid the life benefit in proportion to the premium they paid for the policy (in comparison to what they should've paid for it).

I know Mrs M will be very disappointed, but I'm satisfied Vitality has acted fairly and reasonably by doing this. I'll explain why.

Having considered the electronic record of submission provided by Vitality and generated after the third-party intermediary who sold the policy to Mr and Mrs M for the policy had submitted policy application, I'm satisfied that Mr M answered questions about his alcohol consumption as follows:

Alcoholic drinks quantity per week -15

Have you ever been advised to reduce your alcohol intake because you were drinking too heavily? – No

Further, Vitality's letter dated July 2019 addressed to be Mr M and enclosing the confirmation schedule reflecting the answers given by him to certain questions when applying for the policy says:

If you are happy that the information in the confirmation schedule is complete and correct you do not need to do anything further.

If you need to advise us of any changes or errors, please complete section 2 at the end of schedule and return to us...

I've seen nothing which convinces me that Mr M contacted Vitality to say that that any answers to the questions in the confirmation schedule were incorrect.

The confirmation schedule contains a duty of disclosure declaration which includes:

I, the applicant declare that, to the best of my knowledge and belief, the information on this form is true and complete...

The confirmation includes the following question:

Have you ever been advised to reduce your alcohol intake because you were drinking too heavily?

It reflects that the answer is 'no'.

CIDRA says that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. And that a failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation.

I'm satisfied that Vitality has fairly concluded that the answer to this question was incorrect and that Mr M made a misrepresentation.

An extract from his GP notes dated December 2007 reflects: "lifestyle advice regarding alcohol says he drinks approx. 3 cans per night and binge drinks periodically..."

Whilst the entry doesn't explicitly say that Mr M was advised to reduce his alcohol intake, I'm satisfied that Vitality has reasonably concluded on the balance of probabilities and based on the context of the GP entry that the lifestyle advice given regarding alcohol was to reduce his intake. Particularly given what's detailed about his alcohol consumption at the time.

I'm persuaded the answer to this question mattered to Vitality. It's provided underwriting evidence that it would've requested a report from Mr M's GP and given what's reflected about his general alcohol consumption over a significant period of time, I'm satisfied from the

underwriting evidence that it would've charged more for the policy. So, I'm persuaded the misrepresentation was a 'qualifying' one.

Vitality has concluded that Mr M's misrepresentation was careless. Taking into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products and what amounts to being careless, I find that it has acted fairly and reasonably by reaching that conclusion.

I've looked at the actions Vitality can take in line with CIDRA if a qualifying misrepresentation is careless. I'm satisfied it can do what it would've done if the alcohol question referred to above had been answered correctly.

As Mr and Mrs M's policy would've cost more, I'm satisfied that Vitality has acted fairly and reasonably – and in line with CIDRA – by not paying the life benefit in full but instead paying the benefit in proportion to the premium they paid for the policy and what they ought to have paid for the policy if Mr M hadn't misrepresented his answer to the alcohol question referred to above. It also paid interest on the reduced life benefit payment which I think is fair and reasonable and reflects the period in which Mrs M was without that money.

Other issues

Vitality has an obligation to handle claims fairly and promptly.

It accepts that there were times when it unnecessarily delayed progressing the claim which caused delays. This resulted in Mrs M contacting Vitality for updates on a number of occasions, sometimes waiting an unreasonable amount of time to talk to one of Vitality's representatives, being kept on hold and not receiving call backs as promised.

I'm satisfied that this would've caused her significant and unnecessary upset and frustration over many weeks at a time when she was vulnerable and going through a very difficult time, so soon after Mr M's sad death.

She was also put to the unnecessary trouble of having to contact Vitality a number of times and her upset and frustration would've, I find, been exacerbated by not receiving the call backs as promised each time.

Vitality has offered £300 total compensation.

I don't think this amount fairly reflects the impact on her. I find that Vitality should pay Mrs M £600 compensation for the cumulative distress and inconvenience its errors caused her. That includes not initially explaining why it had reduced the life benefit and just confirming the reduced amount it would be paying. This resulted in Mrs M, reasonably, having to question why the life benefit had been reduced – and by so much.

Mrs M's also unhappy that Vitality cancelled the policy when the claim was made for the life benefit. However, from what I've seen, I'm satisfied that although Vitality may have stopped collecting monthly direct debit payments for the payment shortly after the claim was made, the policy only ended after the original claims decision was made. I'm satisfied that was fair and reasonable, and in line with the policy terms.

Putting things right

I direct Vitality to pay Mrs M £600 compensation for distress and inconvenience. It can deduct from this amount the £300 it's already offered to Mrs M, if this has been paid.

My final decision

I partially uphold this complaint and direct Vitality Life Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 January 2025.

David Curtis-Johnson
Ombudsman