DRN-5241077

The complaint

Mr A complains that Vitality Health Limited changed the cover for weight loss surgery when his Personal Healthcare Plan renewed in October 2024.

What happened

Mr A took out a personal private medical insurance policy in October 2023, which was underwritten by Vitality. The policy included cover for weight loss surgery once a policyholder had been covered by the plan for more than 12 months.

But when Mr A received his renewal documents in September 2024, he noted that the eligibility criteria for weight loss surgery had changed. Mr A was particularly unhappy because a policyholder would now need to be insured under the plan for more than three years before they'd be eligible for weight loss surgery.

So Mr A complained to Vitality. He felt he'd been mis-sold the policy. And he didn't think it had been fair for it to change the terms.

Ultimately, Vitality agreed a transitional period for policyholders who'd been covered under the old plan terms. It considered the plan terms allowed it to make changes to the policy at each renewal. But it said that Mr A (and other members in the same situation) could make a claim for weight loss surgery which took place in the second plan year and which was performed ahead of the next renewal. In Mr A's case, it said he'd need to make a weight loss surgery claim before his next renewal date on 26 October 2025, after which point, the three year term would apply.

Mr A remained unhappy with Vitality's decision and he asked us to look into his complaint. He was also concerned that Vitality was still selling the old plan terms to new customers.

Our investigator didn't think Vitality needed to do anything more. She felt it was reasonably entitled to change the policy terms at renewal and that Vitality had provided evidence to show that the new terms would apply to all policies which renewed after 1 October 2024 and all new policies which were taken out after 1 October 2024. She thought its transitional offer was fair.

Mr A disagreed. He said that when he'd taken out the plan, it was on the understanding that the 12-month eligibility clause would apply after each renewal. He felt he was being forced into a 'use it or lose it' situation. And he said he was being forced into something he wasn't prepared for, or financially ready for. He considered the eligibility change should only apply to new customers.

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 sorry to disappoint Mr A, I don't think Vitality has treated him unfairly and I'll explain why.

When making my decision about what I think is fair and reasonable in the circumstances of Mr A's complaint, I've taken into account the terms and conditions of his contract with Vitality, as well as other relevant considerations such as the law and industry rules and principles.

First though, I must make our role clear. We're not the industry regulator and we have no power to tell an insurer how it should operate or what risks it should and shouldn't cover. Generally, we think an insurer is entitled to decide what risks it wants to insure and the contract terms it wishes to offer. And we'll generally consider that this is a matter of an insurer's commercial judgement. So I can't tell Vitality to change its policy terms or to change how it applies those terms and to whom. What I can do in this case though is to check that Vitality has exercised its commercial judgement fairly. That means I can consider whether Vitality has shown that it treated Mr A in the same way as any of its other customers in similar circumstances to his own and that it hasn't singled him out in any way.

I've first considered the terms and conditions of Mr A's policy, as these form the basis of his contract with Vitality. The policy sets out the plan conditions, which include the following term:

'Providing premium payments are maintained, this plan will last for one year at a time. We have the right to alter the terms of your plan at each annual renewal date, including premium rates and cover. Before each annual renewal date we will tell you the premium rates and plan terms that will apply for the next plan year. We will also tell you of any changes to your cover and the plan terms for the next plan year. We will always give you reasonable notice of any changes to your plan terms.'

I think the policy terms make it clear that the plan will last for one year at a time. I also think the contract makes it clear that Vitality can and may change the plan terms at each renewal date. And that it will communicate any changes to the cover with reasonable notice. In my experience, most, if not all, private medical insurers include very similar terms in their policies.

Mr A's plan year runs from 26 October of each year until 25 October of the next. There's no dispute that under the 2023-24 policy terms, Mr A would've been potentially eligible for weight loss surgery after he'd been insured under the plan for 12 months. I've seen nothing to suggest that Vitality didn't provide Mr A with cover in line with the contract terms during the relevant policy year. So I don't think I could fairly conclude that it ought to refund his premiums.

However, Vitality made a commercial decision to change the weight loss eligibility criteria for plans which renewed after 1 October 2024 and for new customers who took out policies after 1 October 2024. As I've set out above, this change meant a policyholder needed to have been covered by their plan for three years before they could be eligible to make a weight loss surgery claim. And I find that under the terms of the contract, Vitality was reasonably entitled to change the weight loss cover it provided when it offered Mr A renewal terms.

When Vitality sent Mr A's renewal documentation - around a month before the policy was due to renew - it included a document headed 'IMPORTANT CHANGES TO YOUR PLAN'. Page two of that document set out the following change:

'Weight Loss Surgery

In the Weight loss surgery section, we have updated the eligibility criteria. To be eligible, you will now need to be on cover for a minimum of three years (previously one year), have a BMI greater or equal to 35 and have been diagnosed with at least one of the conditions listed. We explain that you will also need to provide evidence that you have made a concerted attempt to lose weight, through non- surgical means, during the three years prior to your initial weight loss consultation.'

In my view, Vitality gave Mr A reasonable notice of the change to the policy terms ahead of the renewal date to give him a chance to think about whether or not he wanted to go ahead with renewing the contract. I'm also satisfied that the changes were communicated in a clear, fair and not misleading way. So I think Vitality actions are in line with its rights and responsibilities under the insurance contract. And Mr A did go ahead with renewal.

I've gone on to consider whether I think Vitality's singled Mr A out in any way. It's provided me with underwriting evidence which sets out the term change and which makes it clear that the eligibility criteria change would apply to both renewing and new customers from 1 October 2024 onwards. I'm afraid I can't share this evidence with Mr A, as it's commercially sensitive and therefore, it's confidential. But I can reassure Mr A that having checked the evidence carefully, I'm satisfied that Vitality has treated Mr A in the same way it would have treated any of its other customers in similar circumstances to his own.

Despite the change to its contract at the 2024 renewal, Vitality offered customers in Mr A's situation a one year transition period in which to make a weight loss claim before the three year term applied. In my view, this was a very fair response from Vitality. I appreciate Mr A feels that he's being rushed into surgery in order to benefit from this offer and I sympathise with his position. But I think Vitality has given Mr A a fair opportunity to benefit from the old terms before the plan renews in 2025.

Overall, I think Vitality was reasonably entitled to change the weight loss eligibility terms and that it's communicated these in a clear and understandable way. I'm also satisfied it's made Mr A a fair transitional offer. So I'm not directing Vitality do anything more.

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 A to accept or reject my decision before 24 February 2025.

Lisa Barham
Ombudsman