

The complaint

Miss T is unhappy with what happened when she made a claim on her income protection policy with Vitality Life Limited.

What happened

In April 2023 Miss T took out an income protection through a broker whilst arranging her mortgage. The policy was underwritten by Vitality Life Limited (Vitality).

The application was submitted by the broker through Vitality's online portal and went live on 31 May 2023.

In January 2024 Miss T submitted a claim on her policy when she was unable to work following surgery on her back.

Vitality declined cover. They said Miss T hadn't answered the health questions on the application accurately in relation to her back when the policy was taken out. Vitality considered this to be a deliberate or reckless qualifying misrepresentation, so they voided the policy from inception, declined the claim and retained all the premiums Miss T had paid.

Miss T has explained she's been struggling financially without her policy providing cover. She's also unhappy with the customer service she experienced during her claim. Vitality offered £400 in compensation for the distress and inconvenience she experienced, but she didn't think this was enough. She said Vitality promised her physiotherapy which didn't transpire, and she was also now unable to use their gym discount to aid her recovery.

Our investigator looked at what had happened and agreed that Miss T should've disclosed her back pain - and if she'd done so the insurer would've added an exclusion for any injury to the spine. But she thought this was a careless mistake rather than deliberate, so she said Vitality shouldn't have cancelled her policy or retained the premiums. Instead, they should have retrospectively applied the exclusion and put the policy back in place. She felt the £400 compensation offered by Vitality was fair for the service issues Miss T encountered.

Vitality disagreed that Miss T had been careless with her misrepresentation. They remained of the view it was reckless and didn't think it was fair to reinstate the policy and return the premiums.

Miss T was also unhappy with the outcome. In summary she said:

- Her broker had filled out the application form on her behalf and she trusted his professional expertise
- She had made her broker aware that she was suffering from slight back discomfort after working long hours
- She disclosed her pre-existing condition of scoliosis prior to inception and Vitality was happy for the policy to proceed. They should have told her at the time they weren't going to cover it
- At the time of the application, the back discomfort was to the best of her knowledge

unrelated to scoliosis because she'd been told she'd made a full recovery. She provided medical evidence to support this

- She is now in financial hardship and has suffered significant anxiety and stress

So the case was passed to me to make a decision.

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 law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

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 thinks Miss T failed to take reasonable care not to make a misrepresentation when she disclosed problems with her back. I appreciate Miss T's position that she informed her broker about her health and she entrusted his professional expertise. But as our investigator has already explained, if she is unhappy with any actions of her broker she would need to raise a separate complaint to them about their involvement.

But in any event, Miss T has explained, in her opinion, the answers provided in her application by her broker are accurate. I understand her position that she believed she had fully disclosed her back discomfort when she answered "yes" to:

"have you had any pain or other problems relating to your back, neck, joints, bones or muscles in the last five years"

But she also should have answered "no" to this follow up question after disclosing her previous surgery:

"Have you made a full recovery with no ongoing symptoms or restrictions of any kind since surgery?"

I'm persuaded this is a clear enough question asked by Vitality to understand any problem, pain, symptoms or discomfort in the back area since surgery took place.

I appreciate Miss T was only suffering from slight discomfort on days when she worked long hours- so she didn't think it was related to her surgery. And I've carefully considered the supporting medical evidence she has provided that deemed her "fully recovered". But I still think it's reasonable for Vitality to conclude back discomfort (even if only slight) is a restriction following back surgery, that should have been disclosed at application. So I don't

think Miss T took reasonable care not to make a misrepresentation when answering this follow up question.

I'm also mindful that the documentation sent to Miss T also highlighted that symptoms of any kind would need to have been declared. And if there had been any changes in health since the policy application and the start date, these needed to be declared to Vitality. I appreciate Miss T was going through a difficult time when she was told she should have further surgery, but she still needed to take reasonable care during this time to keep Vitality informed about changes to her health – especially prior to the policy going live.

I understand Miss T's position that her pre-existing condition of scoliosis was disclosed and Vitality still agreed to put cover in place. But that was on the basis that she hadn't experienced any pain or restrictions since her surgery. Had Miss T also answered "yes" to experiencing discomfort or restrictions since surgery, Vitality has been able to demonstrate they still would have agreed to going ahead with the policy, but they would've applied the exclusion for any claim relating to problems with the spine. I explain this in more detail below.

Did a qualifying misrepresentation take place?

When a misrepresentation has taken place, it is for the insurer to evidence that it is a 'qualifying' misrepresentation. That is, that the insurer would have done something differently in regard to the policy if the correct information had been disclosed by Miss T.

Vitality has provided their relevant underwriting criteria to show they would have added the following exclusion on the policy if Miss T had disclosed her back discomfort.

"any disease or disorder of, or any injury to, the spine, its intervertebral discs, joints, nerve roots, spinal cord or supporting musculature and ligaments and any neurological complications"

This means I'm satisfied Miss T's misrepresentation was a qualifying one.

Vitality has said Miss T's representation was either deliberate or reckless because she was suffering from back pain at the time of the application, and she completed a hospital survey around the same time where she did disclose her back discomfort.

But Miss T wasn't aware at the point of application that her back discomfort was due to the screws loosening from her earlier scoliosis surgery. I'm persuaded at that time Miss T thought she was suffering from general backache from the type of work she does. And as she had made sure to disclose her pre-existing condition of scoliosis, I don't think her non-disclosure of back discomfort was deliberate or reckless. In the circumstances I think it would be reasonable to treat this misrepresentation as careless.

So I don't think Vitality acted fairly by avoiding Miss T's policy and retaining her premiums. These should be returned and the policy reinstated.

However, CIDRA reflects our long-established approach to misrepresentation cases. As explained above, had Vitality known about Miss T's back discomfort they would have added an exclusion on to the policy from the start. So I think it's fair that her claim is assessed with the exclusion in place.

The claim outcome

As any claim for problems with the spine would be excluded under Miss T's policy, I'm satisfied Vitality are acting reasonably by not paying Miss T's claim for her absence following back surgery.

I'm sorry to give Miss T news about her claim that I know will be disappointing. I appreciate the financial and emotional stress caused to her by not having an income. But for the reasons I've explained, it's fair the exclusion applies and there aren't any reasonable grounds I could ask the insurer to cover her claim.

Compensation

Vitality has offered £400 compensation for their poor service during the claim – including a difficult telephone conversation with Vitality and for the delay in providing an answer to Miss T's claim. It also reflects the additional stress and inconvenience she was put under at an already difficult time.

I've explained above why I also think the premiums Miss T has paid for the policy need to be returned to her and the policy reinstated. Although I understand this won't provide Miss T with cover for claims relating to her spine, she will have the benefit of cover for other illnesses that result in an eligible claim under the policy.

Taking the above into account I think Vitality's offer of £400 compensation is fair and in-line with our expectations for poor customer service of this kind, so I won't be asking them to award further compensation.

Putting things right

Vitality Life Limited need to put things right by:

- Apply the careless mis-representation remedy under CIDRA in relation to returning the premiums and reinstating Miss T's policy with the exclusion added
- Pay the £400 compensation for distress and inconvenience to Miss T if this hasn't already been paid.

My final decision

I uphold this complaint against Vitality Life Limited and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 28 July 2025.

Georgina Gill
Ombudsman