

The complaint

Mr R is unhappy that Vitality Life Limited (Vitality) declined his income protection claim and applied a retrospective exclusion to his policy.

What happened

The background to this complaint is well-known to both parties. So, I've simply set out a summary of what I think are the key events.

Mr R took out an income protection policy in January 2021. The aim of the policy is to pay a monthly benefit in the event the insured becomes unable to work due to injury or illness. The policy has a deferred period of 13 weeks and Vitality is the underwriter.

Mr R contacted Vitality in February 2024 to make a claim. He reported he had lost vision in his eye on 16 December 2023. The lens in his eye became detached and Mr R was unable to work. Mr R was working as a self-employed consultant which was mostly computer based.

He had his first surgery on 10 January 2024 and a second one on 17 January 2024. Following a recovery period, there was a delay in getting the correct glasses which meant Mr R was unable to get back to work until 17 May 2024.

Vitality declined the claim as it didn't think Mr R met the definition of incapacity for the full deferred period. It said the evidence didn't support that Mr R was medically unable to work within the deferred period, with reasonable aids and/or adjustments.

Mr R appealed the decision. Vitality maintained its position to decline the claim - it said the medical evidence indicated that Mr R had made a full recovery following surgery.

Additionally, Vitality applied an exclusion to the policy and offered Mr R £200 compensation for the delays caused. This was later increased to £500.

Unhappy, Mr R brought his complaint to this service. Our investigator partially upheld the complaint. She said the exclusion applied by Vitality for 'blindness' was unfair so this should be removed from the policy. And she thought the £500 compensation offered was fair and reasonable for what happened. She didn't think Vitality had declined the claim unfairly as Mr R hadn't met the definition of incapacity as per the policy terms and conditions.

Vitality responded and agreed to remove the exclusion it had applied on Mr R's policy. It also accepted the recommendation by the investigator to pay Mr R £500 compensation for the delays and customer service issues on the complaint. It maintained its decision to decline the claim.

Mr R disagreed with the investigator's findings and said the claim had been unfairly declined. He asked for the complaint to be referred to an ombudsman. So, it was passed to me to decide.

I issued a provisional decision to both parties on 29 May 2025. I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this income protection policy and the circumstances of Mr R's claim, to determine whether I think Vitality treated him fairly.

I note that Vitality has accepted our investigator's findings in relation to removing the exclusion from Mr R's policy for 'blindness', which it applied retrospectively. I also note that Vitality has agreed to pay Mr R £500 compensation for the delays and customer service provided in handling the claim. Vitality should put right these two aspects of the complaint as they are no longer in dispute from either party. I've set this out below in the putting things right section.

The issue that remains in dispute is whether Vitality has declined the claim fairly and in line with Mr R's policy terms and conditions.

So, I've started by looking at the policy document as this forms the basis of the insurance contract between Mr R and Vitality.

Page 2 sets out the cover available for income protection on Mr R's policy. This states:

'B2 Income Protection Cover

Income Protection Cover pays you a regular income if you become incapacitated and cannot work, and your incapacity meets our definitions.

B2.1 When we will pay

We will pay if you become ill, injured, or disabled, and your incapacity meets one of the following definitions:

A standard definition means that illness or injury makes you unable to perform the material and substantial duties of your own occupation. These are the duties that are normally needed to do your own occupation and that cannot reasonably be omitted or modified by you or your employer.'

Mr R's deferred period ended on 16 March 2024, and he returned to work on 17 May 2024. Vitality declined the claim because it thinks Mr R could have returned to work sooner within the 13-week deferred period. It said Mr R could have made some adjustments to his work which enabled him to start work sooner than 17 May 2024.

For the claim to be successful, Mr R has to show his claim is valid under the terms and conditions of the policy. In other words, he must demonstrate that he is unable to perform the material and substantial duties of his own occupation due to injury or illness. The policy states the deferred period is 13 weeks. So, the medical evidence needs to show that Mr R

couldn't carry out those duties from 16 December 2023 to 16 March 2024 and beyond, up to 17 May 2024.

For the avoidance of doubt, I'm not a medical expert. So, it's not for me to reach any determinations about Mr R's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed the available medical evidence to decide whether I think Vitality acted fairly and reasonably in declining Mr R's claim.

I've been provided with medical evidence relating to Mr R's condition for consideration.

I've considered letters from Mr R's Consultant Ophthalmic Surgeon:

- The letter dated 26 January 2024 was a follow-up from the two surgeries Mr R had on his right eye. Mr R's visual acuity was noted as 6/12, it stated that the eye was settling down well, and he was asked to return in six weeks for removal of stitches.*
- The letter dated 9 April 2024 states that Mr R's vision was still recovering, stitches had been removed, whilst he had odd sensations, the retina appeared healthy, but the surgeon had asked Mr R to obtain new glasses to balance the two eyes.*
- The letter dated 11 March 2025 was in support of Mr R's appeal to Vitality. It explained that Mr R had double vision in April 2024 and that he didn't have adequate near vision capabilities to conduct work requiring near/intermediate vision such as computer use for any useful duration.*

In April 2024, Vitality's Chief Medical Officer (CMO) was asked to do a desktop review of Mr R's medical information. The CMO said the visual acuity of 6/12 on the right eye was compatible with working. And the left eye visual acuity was 6/9.5 and compatible with driving as per the DVLA guidelines. The claim was appealed and referred to Vitality's underwriters and reviewed again by the CMO. The claim was declined following the review based on the CMO's medical opinion that there was no objective medical evidence to support Mr R's incapacity past January 2024.

The GP letter dated 4 June 2024 stated that the eye surgery resulted in a healing phase in which Mr R's vision was severely affected such that he could not work.

The Optometrist sent two letters:

- A follow up letter dated 11 May 2024 (from an appointment on 19 April 2024) which stated that Mr R needed glasses not only for distance but was fully reliant on spectacles for VDU and reading. His unaided visual acuities were around 6/12.*
- A letter dated 24 October 2024 explained more about Mr R's condition at the time of his appointment on 19 April 2024. It said Mr R was struggling to adapt to his new visual situation where he had lost all his close-up vision, and it would have been challenging for him to be effective at work in the period immediately following surgery.*

I've considered Mr R's visual acuity at 6/12 for his right eye as this seems to be the primary point raised by the CMO in concluding that Mr R was capable of working. I've thought about what visual acuity of 6/12 means in general terms. Information on various online search engines says whilst certain tasks can be more challenging, it's possible to adjust distance, the text size and screen magnification on a computer and in order to reduce eye strain regular breaks are recommended. However, some people with 6/12 vision might find it challenging to read fine print or see details on a computer screen without corrective lenses.

It's clear that Mr R required a four-to-six-week recovery period following surgery on 17 January 2024. On 9 April 2024, Mr R's surgeon said the eye was still recovering but the stitches had been removed. The surgeon also said Mr R should obtain new glasses to balance the vision in the two eyes. Based on medical opinion, and on a best-case scenario, it's possible that Mr R would have been able to start work on 9 April 2024. However, the surgeon said Mr R would need glasses to balance the vision in the two eyes.

So, I've considered whether it was possible for Mr R to start work on 9 April 2024. Mr R has shown that he went to see his Optician on 11 April 2024 and new glasses were ordered on 14 April 2024. He also went to see the Optometrist on 19 April 2024 for a second opinion on vision issues who confirmed that Mr R was fully reliant on glasses for VDU and reading. There were issues with receiving the corrective glasses and that caused a delay which meant that Mr R didn't receive them until 17 May 2024.

Mr R's treating consultant said he needed corrective glasses to balance the vision in the two eyes. And the Optometrist said Mr R was fully reliant on glasses for the VDU and reading. Whilst I understand the CMO's opinion was that a 6/12 visual acuity was sufficient for Mr R to be able to start work even if on a reduced and adjusted capacity, this assessment was a desktop review. As such the review doesn't carry the same weight and is less persuasive than the opinions of Mr R's treating specialists who were seeing him face to face and regularly. They therefore understood Mr R's visual capability and taking into account that Mr R's own occupation was predominantly computer based, I can see why waiting for the glasses to start work was reasonable. And Mr R started work on the same day as he received his glasses. That further adds weight that the glasses were needed for Mr R to balance the two eyes, which then allowed him to work. The medical evidence Mr R has provided seems entirely in line with what happened and what his treating specialists recommended. I find this to be plausible as well as reasonable.

I've thought about Vitality's comments that Mr R could have started work sooner and within the deferred period as he could have made adjustments to his computer screen. But I'm not persuaded, based on the evidence from Mr R's treating specialists, that this would have been advisable for Mr R. I don't think it was unreasonable that Mr R didn't start work until he received his corrective glasses on 17 May 2024.

The ultimate test here is whether Mr R met the definition of incapacity as per the terms and conditions of his policy. In the circumstances of this complaint and based on the medical evidence, I'm satisfied that he has met this definition.

My intention is to require Vitality to put things right as set out in the section below.

I now invite both parties to provide their comments by 12 June 2025.

Mr R and Vitality both responded and accepted my provisional 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.

Having reviewed everything, including the responses I've received, I see no reason to depart from the findings and outcome set out in my provisional decision.

I note that Vitality said as Mr R was first absent on 16 December 2023 and has a three-month deferred period on his policy, the benefit due is from 16 March 2024 to 16 May 2024.

Vitality also said the premiums for the claim period will be refunded and 8% simple interest per annum will be added on the total amount (the benefit payment and the premium refund). And £500 compensation will be paid to Mr R.

Vitality should also note that it agreed to remove the 'blindness' exclusion it applied to Mr R's policy. It should arrange to remove this if it hasn't already done so.

I've these out below in the next section.

Putting things right

I direct Vitality to put things right as follows:

- Remove the exclusion added to Mr R's policy for 'blindness'.
- Settle Mr R's income protection claim starting 16 March 2024 until 16 May 2024.
- Refund any premiums Mr R has paid during the claim period.
- *Add 8% simple interest per annum on the total amount (benefit payments and premium refunds).
- Pay Mr R £500 compensation for the handling of the claim.

Vitality Life Limited must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per annum.

*If Vitality Life Limited considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr R how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I uphold Mr R's complaint about Vitality Life Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 July 2025.

Nimisha Radia
Ombudsman