

The complaint

Miss M complains that Vitality Health Limited has unfairly refused a claim she made under her private medical insurance policy, on the basis that she had a pre-existing medical condition.

To resolve her complaint, she wants her claim to be paid in full, compensation for the stress Vitality caused her with its mishandling of her claim, and for Vitality to improve its claim processes for other policyholders.

What happened

Miss M has held her policy since 30 November 2023. It was taken out on a moratorium basis, which meant that pre-existing conditions from the previous five years wouldn't be covered.

Miss M contacted a Vitality GP in July 2024 after suffering with upper back pain, which worsened after eating. She then used her own GP to arrange tests, including imaging to ascertain the cause of her pain.

In September 2024, an ultrasound confirmed Miss M was suffering with multiple gallbladder polyps. The following month she met with Mr D, a consultant surgeon who proposed surgical removal of her gallbladder (cholecystectomy).

In November 2024, Vitality declined cover for the proposed surgery. It said this was because Miss M's medical evidence showed she had pre-existing conditions of acid reflux and heartburn. And when it asked her GP for further information regarding her symptoms, the GP said she had presented in July 2024 with symptoms thought to be related to gallstones. In Vitality's view, there was a confirmed link between acid reflux and gallstone conditions.

Miss M complained. She said she had first experienced symptoms relating to the need to remove her gallbladder in 2024. Any prior acid reflux was unrelated.

In November 2024, Vitality rejected the complaint. It said its medical teams all agreed that Miss M's condition was pre-existing. And the most recent information from Mr D hadn't discounted acid reflux being attributable to gallstones.

In December 2024, Miss M underwent the surgery at her own cost.

She thereafter brought her claim to this service, where it was reviewed by one of our investigators. He believed the complaint ought to succeed. He said he was satisfied that the evidence of Mr D showed that Miss M's diagnosis of gallbladder polyps was unrelated to her history of reflux. He therefore believed Vitality ought to approve the claim, and pay Miss M £150 to recognise the upset she had been caused by faults in the claim process.

Vitality disagreed with the investigator. It said it disputed the findings regarding the customer service, though it did accept the final response letter to the complaint didn't contain appropriate reasoning. In respect of the claim, it said it felt it had reached a fair conclusion.

And it also now noted the GP referral letter had recorded that, with reflection, Miss M now believed she'd suffered with intermittent right upper quadrant pain for years.

Our investigator did not change his view on the complaint. He said that he still felt on balance that Miss M hadn't suffered with a pre-existing or related condition prior to requiring her surgery – and the GP evidence was less persuasive than that of Mr D.

Vitality still disagreed. It said it accepted that gallbladder polyps are usually not symptomatic, but on occasion, they can cause right upper quadrant pain - particularly if the polyps are obstructing the bile ducts. It said it might be appropriate to seek further medical evidence from Miss M about the pain.

Miss M agreed with our investigator. She also noted that she still felt Vitality was unduly seeking to prolong matters, as it had already had access to her medical records.

As agreement could not be reached, Vitality asked for the complaint to be referred to an ombudsman.

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.

I've fully reviewed all the information before me, including the further comments the parties have made after our investigator's assessment. However, in reaching my findings, I've focused on what I consider to be the central issues. Our rules allow me to take this approach; it reflects the informal nature of our service, as a free alternative to the courts.

The relevant regulator's rules say, amongst other things, that an insurer must handle claims promptly and fairly. And it mustn't turn down claims unreasonably. Against that background, I've considered the law; the terms of the insurance contract; and the available medical evidence to decide whether I think Vitality handled Miss M's claim fairly. Having done so, I agree with the conclusion reached by the investigator. I'll explain why below.

The issue for me to determine is whether Miss M's policy terms precluded cover for her cholecystectomy. The policy contained a moratorium, which was defined as:

"The Moratorium Clause

We don't pay claims for the treatment of any medical condition or related condition which, in the five years before your cover started:

- you have received medical treatment for, or*
- had symptoms of, or*
- asked advice on, or*
- to the best of your knowledge and belief, were aware existed.*

This is called a pre-existing medical condition."

And a related condition is defined as:

"A related condition is any symptom, disease, illness or injury which reasonable medical opinion considers to be associated with another symptom, disease, illness or injury. It could be deemed to be the underlying cause of, or directly caused by,

another medical condition. For example, high blood pressure and heart disease, recurrent sore throats and tonsillitis. ”

It is understandable why an insurer may want to exclude cover for a cholecystectomy, where a policyholder has suffered with a history of biliary colic (upper right quadrant pain caused by an obstruction in the biliary tract, such as by gallstones) given there is an established link between the two. However, Miss M hasn't made a claim based on biliary colic, or for gallstones, but instead for cholecystectomy due to the presence of polyps.

Further, I do not agree with Vitality where it concluded that there was, or may be, medical evidence that Miss M had *received treatment for, had symptoms of or sought advice about* biliary colic or upper right quadrant pain. That would need to be the case in order for Vitality to rely on the exclusion I've set out above.

The evidence Vitality has now highlighted is the GP referral notes from 26 September 2024, where the GP wrote to Mr D. In that referral, the GP said *“I met [Miss M] again in the practice today, retrospectively she thinks she has had on and off right upper quadrant pain for years”*. However, in that same referral letter, the GP also says *“she had presented to the practice in the middle of July with spells of central back pain/upper abdomen. They had been present for a few months but becoming more persistent over the Spring/Summer period”*.

I am not persuaded that the reference to retrospect that Vitality now seeks to rely on is sufficient, on balance, to determine Miss M had a history of upper right quadrant pain in the five years before November 2023.

I say that noting that in the same referral, the GP gave a summary of Miss M's medical history since childhood, and though other minor conditions were mentioned (such as skin conditions), there was no documented history of any type of pain. And when Miss M originally met with Vitality's GP in July 2025, the history of the complaint was recorded as *“upper back and shoulder pain intermittently 2mths, worse last 2w”*.

Furthermore, when Miss M met with Mr D for the first time on 22 October 2024, he recorded that Miss M had recounted her medical history as:

“You have been having quite a lot of pain in your back, right upper quadrant and right shoulder. This has been happening since the beginning of the year. You have a longer history of what you describe as heartburn and reflux, and you have largely managed this by avoiding foods that upset you, and you do not take much in the way of medication.”

And in his follow up letter of 12 November 2024, he concluded:

“I agree with the statement that you have had mild reflux disease for many years, which you have coped with, avoiding the foods that upset you, you have been eating and drinking well and have been active and weight stable. However, more recently, new symptoms have developed”.

Vitality also wrote to Miss M's GP with a targeted report in November 2024. It asked (with replies underneath):

“We have been advised of a long history of heartburn and reflux. In your medical opinion, would you link these to your patient's current gallbladder issues?”
- Patient presented in July 2024 with symptoms thought to be related to gallstones

Prior to 30 November 2023, has your patient been seen regarding the above issues?

-No”

I believe that Miss M's GP would likely link right upper quadrant pain to the presumed issue of gallstones, if that were the case, given Vitality has explained they are often associated. And so, I am satisfied that Miss M hadn't reported before 30 November 2023 with such pain, given the GP's confirmation. And the balance of the other evidence does not show that Miss M had any such longstanding history relating to pain.

But, even if I am wrong about the presence of upper right quadrant pain, Mr D made clear in his clinic letter of 12 November 2024 that Miss M required surgery because of the multiple gallbladder polyps found on imaging, not gallstones or the pain itself.

Miss M has set out how Mr D has confirmed there is no causal relationship between reflux and the polyps that led him to recommend her cholecystectomy. Vitality also accepts that gallbladder polyps are usually not symptomatic, though it says that they can sometimes cause right upper quadrant pain if the polyps are obstructing the bile ducts. However, Mr D observed that Miss M's biliary ducts (the biliary tree being the network of ducts) were unaffected. He said in his 22 October 2024 letter that *“your ultrasound scan...has shown...multiple polyps within the gallbladder, but the biliary tree and the rest of the examination...showed nothing of note”*.

And in the November letter, Mr D said, *“I think taking your gallbladder out is a sensible plan because you are very young with multiple polyps, and this is just going to give problems later. However, as I discussed with you, I do not think your right shoulder pain will go away removing your gallbladder, because I think it is completely unrelated”*.

In these circumstances, I am not satisfied that Vitality has shown Miss M had treatment, symptoms or advice relating to gallbladder polyps (which necessitated her surgery) at any time before she sought medical advice in July 2024 because of a short term history of pain, which occurred after the policy inception date. Nor do I consider she was suffering from any symptom, disease, illness or injury which could reasonably be associated with gallbladder polyps before the cover began. It follows that I do not find it fair for Vitality to rely on a pre-existing or related condition exclusion under the moratorium clause to decline Miss M's claim for the cholecystectomy.

Turning to the claim process issues, I am pleased to note that Vitality accepts that it did not properly explain its reasoning for the claim refusal in the final response letter issued to Miss M in November 2024. I agree with that contention, and this failure caused additional concern to Miss M at what was already a difficult time for her given her surgery had been planned for that month. I agree with our investigator that some compensation ought to be awarded here.

What this service does is consider if a business has treated a complainant unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. As well as putting right any financial losses in a complaint, we also consider the emotional or practical impact of any errors on a complainant.

Though Miss M has asked for it, I can't recommend any undertaking in respect of Vitality's processes going forward, since we do not act in the capacity of the regulator. However, I believe compensation of £150 is merited in the circumstances where Vitality caused upset and frustration for Miss M in the manner in which it handled her claim declination, at a time when she was dealing with the stress and worry relating to further medical procedures.

Putting things right

I direct Vitality to cover the costs associated with Miss M's cholecystectomy, in line with the terms of her policy. As Miss M has paid for this treatment herself, Vitality must reimburse the costs she has incurred.

I also direct Vitality to pay:

- Simple interest of 8% per year from the date on which the payment (or each payment) was made by Miss M to the date of settlement.

If Vitality considers it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should confirm this deduction to Miss M. It should also give her a certificate showing this, if she requires. That way Miss M may be able to reclaim the tax from HM Revenue & Customs, if appropriate.

- £150 compensation to reflect the distress and inconvenience caused to Miss M.

My final decision

For the reasons explained, I uphold this complaint. I require Vitality Health Limited to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 12 September 2025.

Jo Storey
Ombudsman