

The complaint

Ms A has complained that Vitality Life Limited unfairly declined her critical illness claim and said it would avoid her policy.

What happened

In November 2024 Ms A bought a life with serious illness policy underwritten by Vitality Life through a price comparison site. She made a serious illness claim in December 2024 following a breast cancer diagnosis.

When reviewing the medical evidence provided in support of Ms A's claim, Vitality Life said she'd failed to disclose a fibroadenoma by incorrectly answering a question about her medical history. It considered her actions to be a reckless qualifying misrepresentation and said that entitled it to decline her claim and avoid her policy.

Ms A said she'd genuinely misinterpreted the question and needed the policy to cover a partial loss of income during her treatment. But Vitality Life maintained its position, so Ms A brought her complaint to this service.

Our investigator agreed Ms A hadn't answered the question correctly, but thought the misrepresentation was careless. They said Vitality Life was entitled to decline the claim because it had shown it would have placed a breast cancer exclusion on the policy, and said even if Vitality did avoid the policy the claim outcome would have remained the same.

Ms A disagreed with our investigator's opinion and reiterated why she had misinterpreted the question. She also said other decisions from this service supported her position, Vitality Life hadn't met its regulatory requirements, the situation wasn't reflective of her professional character and integrity, and she felt discriminated against.

I issued a provisional decision. That provisional decision now forms part of this final decision, and it read as follows:

"Ms A has set out her position at length – it's clear she feels very strongly about what has happened. Before I set out my findings, I want to highlight that I won't address each individual point made. Instead, I will focus on those matters I consider central to the outcome of this complaint and for the following reasons I am not currently intending to uphold it:

- *Vitality Life has a responsibility to handle claims both promptly and fairly and not reject them unreasonably.*
- *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 must 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 several 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 Life thinks Ms A failed to take reasonable care not to make a misrepresentation by failing to answer 'yes' to this question:*

"Apart from any condition you have already told us about in this application, have you had any of the following in the last 5 years:

Lump, cyst, growth or skin lesion of any kind, or a mole or freckle that has bled, become painful, itchy, changed colour, increased in size or that you have been advised to monitor (including photographic surveillance)?"

Ms A thinks the question wasn't clear. She says it was long, complex and contained multiple qualifying causes.

I appreciate Ms A's position, but I think the question was clear. It asked about a lump, cyst, growth or skin lesion "of any kind". And the parts referring to a mole or freckle bleeding, becoming painful, itchy, changing colour, increasing in size or being monitored were further examples of information Vitality Life wanted to be made aware of. I don't think they took away from the first part of the question or limited its scope in any way.

- *In line with CIDRA, the standard of care that must be taken when answering such questions is that of a reasonable consumer. Ms A has provided a detailed explanation about why she didn't declare her fibroadenoma, including English not being her native language, not having any support when applying for the policy, and the situation not being reflective of her character or integrity.*

I acknowledge English isn't Ms A's native language, but I'm satisfied that she must have been aware that the medical questions asked were relevant to the insurer. If she felt that she needed support to answer the questions she could have sought assistance. And as I set out above, I am satisfied with a clear question being asked. The policy was also sold on a non-advised basis, so it was for Ms A to decide whether the policy was right for her.

Ms A did have a fibroadenoma. She had sought medical advice about it just two months prior to applying for her policy. And she had noted pain and possible changes to it as well. Ms A also told us she thought the question only related to lumps that were changing, symptomatic or being monitored. But given the medical evidence suggested her fibroadenoma was symptomatic two months before taking the policy out, it follows that Ms A would have answered the question positively if this was her interpretation of it too.

Taking the above into account alongside the standard of care CIDRA requires here, I don't think it was unreasonable of Vitality Life to find that Ms A hadn't taken reasonable care.

- *Vitality Life has provided evidence from its underwriters to show it would have done something different had it been given the correct information. Namely, it would have*

offered the policy but with a breast cancer exclusion. So, I'm satisfied Ms A's misrepresentation was a qualifying one.

- *Vitality Life classified Ms A's misrepresentation as reckless. I've thought about whether this was reasonable. Considering Ms A does have a fibroadenoma and had, only very recently before applying for her policy, sought medical advice on it referring to changes and pain, I'm not currently minded to find that Vitality Life's classification was unreasonable.*
- *As I'm satisfied Ms A's misrepresentation should be treated as reckless I've looked at the actions Vitality Life can take in accordance with CIDRA. They are:*
 - *Avoiding the policy and keeping the premiums*
 - *If there's a claim, not having to pay it as effectively the policy never existed*
 - *Looking to recover any costs it's paid to a third party on any claim after the misrepresentation.*

Within its final response letter Vitality Life told Ms A it would be avoiding her policy. As it is entitled to do that I do not intend to interfere with its position. It did, however, tell Ms A that it would refund her premiums. In accordance with CIDRA that is more than is required of Vitality Life. While I find a premium refund to be more than reasonable in the circumstances, I will not interfere with its decision to do this

- *Ms A has pointed to other decisions from this service which she says support her position. I thank Ms A for taking the time to provide these, but each complaint is determined on its own merit. The matters I am deciding here are in relation to the specifics of Ms A's complaint and again for the reasons given above I'm satisfied a qualifying misrepresentation occurred.*
- *I am sorry Ms A feels she's suffered emotional and financial harm. While I empathise with her circumstances and wish her well as she progresses through her treatment, I don't think it was unreasonable of Vitality Life to conclude that a qualifying misrepresentation occurred here.*
- *Ms A also feels Vitality Life has discriminated against her given her individual circumstances and what has happened. I can understand why Ms A feels this way but having looked at all the evidence I don't think Vitality Life has done so. Nor do I think Vitality Life has treated Ms A unfairly, unreasonably or contrary to law or regulation. I hope it helps Ms A to know someone impartial and independent has looked into her concerns.*

I realise Ms A will likely be disappointed with the above and I am sorry to disappoint, but I currently find Vitality Life's position to be reasonable."

Responses to the provisional decision

Vitality Life didn't make any further submissions.

Ms A responded at length. She set out her disagreement and provided a number of explanatory reasons which she felt supported her position including referencing caselaw. In summarising her response Ms A asked that I reconsider 4 questions. They were:

- Whether it was fair to call her misunderstanding reckless?

- Whether the question wording was clear to someone in her position?
- Whether the breast cancer exclusion was proportionate and medically justified?
- Whether the policy outcome was fair under ICOBS and CIDRA?

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.

Before I set out my findings, I would like to reassure Ms A that I've only summarised the responses received above. I have however carefully considered everything that has been said even if I don't explicitly refer to it below. Like the provisional decision, this final decision will only focus on those matters I consider central to the outcome of this complaint.

Ms A has said she didn't answer carelessly or with the intention to mislead. She's explained she was told she needed a policy in place when buying her home, she'd taken the policy out with good faith, and without fully understanding the nuances of insurance underwriting or how benign conditions might impact further claims. Miss A has also said the pain she'd previously experienced was generalised breast pain and provided a letter in support of that.

It's clear that Ms A strongly disagrees with the categorisation of her misrepresentation. I must bear in mind however that even with the additional things taking place that she's described, Ms A was aware of her fibroadenoma at the point she purchased her policy. And the medical evidence made available to Vitality Life which was dated just two months prior to that purchase had also said:

"You are known to have a fibroadenoma in the medial part of your left breast and recently you think it may have gotten bigger in size. In addition you have also been struggling recently with quite troublesome left-sided breast pain particularly focussed on the nipple area...."

So even if Ms A's pain were generalised, the information she misrepresented to Vitality Life concerned a lump that she was both aware of and had recently sought investigation for. I think a reasonable consumer would have understood that to have been important to their health. And so, notwithstanding what Ms A has said about why she misrepresented, I remain of the opinion that it wasn't unreasonable of Vitality Life to classify her misrepresentation as reckless.

Ms A's continuing strength of feeling about the clarity of the question itself is evident too. She has again provided much commentary about its structure and why she interpreted it in a particular way. And she has also shared concerns about whether I have previous experience of questions like the one she was asked, or a specific first language, that means I would view its clarity differently.

Whilst I thank Ms A for taking the time to set out her thoughts on this matter, having considered everything she's said I am not persuaded to depart from my provisional findings.

The question had asked about a lump, cyst, growth or skin lesion of any kind. The parts of the question that referred to a mole or freckle bleeding, becoming painful, itchy, changing colour, increasing in size or being monitored were further examples of information Vitality Life wanted to be made aware of. And I remain of the opinion that didn't take away from the first part of the question or limit its scope in any way.

I also think it important to highlight that even if a misrepresentation had not occurred and Ms

A had answered the question positively, she would not have had cover for breast cancer given Vitality Life would have excluded it from cover.

Ms A thinks that exclusion is disproportionate and has provided a letter which says there's no increased risk of breast cancer with a fibroadenoma. As an insurer Vitality Life was entitled to determine its own appetite for risk and has shown it wouldn't have chosen to provide cover for breast cancer had it known Ms A had a pre-existing lump in the same body part. That was a risk-based commercial decision for it to make and I'm not persuaded I can fairly conclude it was disproportionate. In declining this claim and avoiding the policy Vitality Life acted in line with the remedies available to it through CIDRA and I don't think it was unfair or unreasonable of it to do so.

Throughout her communication with this service Ms A has spoken about her personal standing and character. She's shared information about the importance of this in her work, provided a character reference, explained she's going through one of the most difficult experiences of her life, and has said she never imagined her misrepresentation would be punished so harshly.

I empathise with Ms A's circumstances and am sorry to hear she feels punished. I would like to reassure her that my findings aren't in any way intended to take away from her current situation. My role has been to decide if Vitality Life acted both fairly and reasonably and in accordance with the relevant rules and regulations. For all the reasons given above I think it did and will not be interfering with its position on this occasion because of that.

My final decision

My final decision is that I do not uphold this complaint against Vitality Life Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 1 December 2025.

Jade Alexander
Ombudsman