

The complaint

Mr C is unhappy that Vitality Life Limited ('Vitality') cancelled two personal protection policies (which included life cover and cover for serious illness) – 'the policies' - after inception.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

That includes all relevant industry regulations and The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied that it's relevant law. I've also taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer. And 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 (so, Vitality in this case) has to show it would have offered the insurance 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 has concluded that Mr C didn't take reasonable care when applying for the policies. Had he done so, and not misrepresented his answers to certain questions, it says neither of the policies would've been offered to him at that time.

I can understand why Mr C is upset that the policies were subsequently cancelled; the previous cover he had in place was cancelled after the policies started.

So, I know Vitality's decision has impacted him and he says he's been unable to get similar cover elsewhere.

I also know Mr C will be disappointed but for reasons I'll go on to explain, I'm satisfied that Vitality has acted fairly and reasonably by cancelling the policies.

Did Mr C make a misrepresentation when applying for the policies?

In around April 2023, Mr C made applications for the policies through an independent third party.

Mr C was asked:

In the last five years have you had any of these?

...Chron's, colitis, IBS or anything else affecting your stomach, bowel or digestive system.

I'll refer to this as 'the bowel question'. And it's reflected that he answered 'no'.

Mr C was also asked:

Have any of these applied to you in the last 3 years? You don't need to include things you've already told us about.

- I've taken or been prescribed treatment for 4 weeks or more.
- I've been asked to attend a follow-up or regular reviews with a GP, hospital or clinic.
- I've been advised to see a specialist or to have any tests, scans, investigations or counselling.

I'll refer to this as 'the tests question'. It's reflected that Mr C answered 'no'

I'm satisfied that the bowel and tests questions are reasonably clear.

Based on the answers given on the application, Vitality provided cover the same day the applications were made.

Mr C told our investigator that after receiving written confirmation of the questions he'd answered, he wondered whether he should've made Vitality aware of a medical issue. So, he contacted the third party to discuss and was told that Vitality should be made aware.

Later that day, and after the policies had been incepted, I'm satisfied that the third party contacted Vitality to tell it about a colonoscopy screening Mr C had many years back which had caused some damage to his rectum. It's reflected that since then, Mr C experienced mild pain when passing stools and in recent years he'd asked for medical advice to see if there was anything that could be done.

In principle, I don't think it was unreasonable for Vitality to want to know more about this medical issue, arrange a telephone conversation to discuss and thereafter, obtain further medical information.

Based on what Mr C had said and the medical information obtained, I'm satisfied that Vitality fairly and reasonably concluded that Mr C didn't take reasonable care when first applying for the policies and before the policies were incepted. I'm persuaded that he made a misrepresentation, and he should've answered 'yes' to the bowel question and / or the tests question.

Although the colonoscopy took place longer than five years before the policy was taken out, he was still having symptoms affecting his rectum. It's reflected that Mr C said that he needs to go to the toilet immediately and it's difficult to tell if he has emptied his bowel completely.

The medical information also reflects that a colorectal referral was made in around the summer of 2022, and it's reflected that Mr C was having alternating constipation then diarrhoea.

Was Mr C's misrepresentation a 'qualifying' misrepresentation?

Looking at the underwriting information provided by Vitality in conjunction with the medical records and information provided by Mr C, I'm satisfied that had Mr C answered the bowel and tests questions correctly, the policy wouldn't have been offered at the time.

I know Mr C would like to see this evidence, but I'm satisfied that it's commercially sensitive. However, I hope it assures him to know that it has been independently reviewed. Further, in my experience of determining these types of complaint, it's usual for policies not to be offered when there are outstanding medical investigations at the time of application.

I'm therefore persuaded that Mr C's misrepresentation is what CIDRA refers to as a 'qualifying' misrepresentation.

Has Vitality acted fairly and reasonably by taking the action it did?

Vitality has refunded the premiums paid for the policies, so I'm satisfied that it's treated the qualifying misrepresentation as having been carelessly made (as opposed to deliberately or recklessly made) otherwise Vitality would've been able to have retain the premiums. I think that conclusion is fair and reasonable.

I've looked at the actions Vitality can take in line with CIDRA if a qualifying misrepresentation is careless.

I'm satisfied it can do what it would've done had reasonable care been taken to answer the bowel and tests questions correctly. As I'm satisfied that neither policy would've been offered to Mr C at the time, so I'm satisfied that Vitality has acted fairly, and in line with CIDRA, by cancelling the policy and offering to refund the premiums.

Service issues and delays

Based on what I've seen, I'm satisfied that it took Vitality just under a month to substantively take any action based on the information provided by the third-party hours after the policies were incepted, and that involved arranging a telephone discussion with Mr C.

Vitality hasn't provided any compelling reason for this lack of progression, and I'm satisfied it caused an unreasonable delay.

I'm also satisfied that it unreasonably delayed reviewing Mr C's medical records, once received so I think it's decision to cancel the policies should've reasonably been made much sooner, rather than around five months after the policies first started.

There's also been discussion around whether Vitality unreasonably delayed requesting and accessing Mr C's medical records. Given the time that has passed, Vitality says it can't provide us with evidence of communications around accessing Mr C's medical records. Even if I accepted that Vitality (and its agents) did delay accessing his medical records, that would've delayed the outcome by a further few weeks.

I'm satisfied that the main reason Mr C was upset was because the policies have been cancelled. For the reasons set out above, I'm satisfied Vitality acted fairly and reasonably doing this. So, although he would've had an answer much sooner if there hadn't been delays, I'm satisfied that he would've always been disappointed by its decision.

However, I'm satisfied that the delay would've been unnecessarily frustrating for Mr C and put him to some inconvenience by having to liaise with Vitality more than would otherwise have been necessary. I find that Vitality should pay £200 compensation to Mr C to reflect the impact of the unreasonable delays it caused.

I don't agree that Vitality should've paused or cancelled the policies upon receipt of the information from the third party shortly after the policies went live.

In principle, I don't think it was unreasonable to carry out further investigations – including obtaining further information – to decide whether Mr C not answering the bowel and tests correctly would've impacted its decision to offer the policies (and if so, on what terms). Until those investigations were complete, Vitality wouldn't have known. I wouldn't have reasonably expected Vitality to cancel the policies pending the outcome of that investigation in case its decision to offer the policies wasn't impacted.

I know the cover Mr C had in place before applying for the policies was cancelled and he says this took place within around a couple of weeks of the policies starting. However, he told our investigator that the third party had said that the policies had been accepted, the medical issues that were disclosed after the policies started were relatively minor and that it might affect the premium he's required to pay. That didn't end up being the case, but I do think Mr C was reasonably aware that Vitality was looking into the issue further. And he was free to retain the cover he had in place until Vitality had concluded its investigations, and a decision had been made about whether the policies were impacted.

If Mr C had answered the bowel and tests questions correctly when first applying for the policy, I've got no reason to doubt that the policies wouldn't have been offered at the time and the subsequent investigations which did take place, would've taken place before Vitality decided to offer the policies. But the policies had already started based on the answers to the questions in the application.

My final decision

I partially uphold this complaint and direct Vitality Life Limited to pay Mr C £200 compensation for distress and inconvenience.

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

David Curtis-Johnson
Ombudsman