DRN-3648468

Financial Ombudsman Service

The complaint

Mr D complains that Vitality Life Limited has acted unfairly when undertaking telephone advice regarding a life assurance application in January 2022. He says Vitality tried to sell him far more cover than the £300,000 he was seeking. He also says he was asked personal and financial information beyond what was necessary to complete his application.

To resolve his complaint, Mr D wants compensation for being asked inappropriate questions and for the unlawful recording of his data, which was unnecessary for the purpose of producing a life cover quote.

What happened

Mr D submitted a life insurance quotation on Vitality's website. This was followed up by an initial referral call from Vitality on 28 January 2022. Mr D then consented to be transferred to a Vitality adviser to discuss personal protection needs on an advised-sale basis.

Mr D became unhappy during the call with the content of the adviser's questions, and the length of time the call was taking. He therefore terminated the call after 45 minutes. However, Vitality's adviser had been able to prepare two life assurance quotes for Mr D – one for £300,000 and another for £602,749. These were both issued that same day, with offer expiry dates of 27 February 2022.

Following the call, Mr D sent an email to Vitality's adviser on 30 January 2022. He said he ended the call because he felt the line of questioning was highly inappropriate and largely unnecessary. He said he was very concerned that Vitality was seeking financial information from him, and it was unethical to do so. He made a subject access request, and asked for a copy of all the information Vitality held about him under the General Data Protection Regulations ('*GDPR*').

Mr D also said:

- he questioned why Vitality asked about the value of his home;
- he questioned why it was appropriate to ask about cover for his buy to let mortgages;
- the adviser was fishing for the highest possible value for life cover;
- he was quoted for over £600,000 per month – presumably because he had said an extra £50 monthly premium had no bearing on his expenses;
- the adviser turned a 20 minute quote telephone call into a 45 minute fact finding session;
- he wasn't given time to reflect at the end of the call;
- he asked about specific sporting activities that he undertook, which was intrusive.

Vitality treated Mr D's concerns as a complaint and acknowledged receipt via email.

On 15 February 2022, Vitality supplied Mr D with the outcome of his subject access request.

On 22 February 2022, Mr D emailed Vitality in relation to his complaint. He asked if, while it investigated the complaint, another adviser would complete the quote process for him.

Vitality then issued a final response letter to the complaint dated 10 March 2022.

Vitality rejected the complaint. It said it did not offer a non-advised brokerage service where it could merely quote for life assurance. It only provided advised services. The information the adviser asked was wholly necessary; it was used solely for the purpose of building a recommendation for Mr D. The information obtained was not used or sold to third parties.

Vitality also disagreed that the call was overly long. It felt its adviser had acted reasonably; it explained how life insurance can be complex and it offered a range of products to suit different purposes, lifestyles, incomes and preferences. It took time for the adviser to establish Mr D's particular circumstances to give a tailored, appropriate recommendation.

Vitality said it had been necessary for the adviser to enquire as to what Mr D did to stay active – this was relevant to the beneficial add-on that allows customers to manage their premiums based on their Vitality 'status'; it was therefore reasonable to put that to Mr D.

Finally, Vitality offered for Mr D to reapply for cover, but explained that he could only do so by undergoing an advised sales process – it could not quote for life insurance without undertaking advice, as it did not offer that service.

Mr D brought his complaint to this service. He said that he took the view that Vitality was populating its own records to make future referrals and therefore profiting from unsuspecting applicants. It was not acceptable for Vitality to question him under the guise of seeking life cover, in order to push unwanted financial services onto him.

Mr D also said that whilst it may now be the case that there is a difference between advised and non-advised sales, Vitality had a duty to make that clear to potential customers.

An investigator from this service reviewed the complaint, but he didn't think it ought to succeed. He said the sale of the policy was undertaken on an advised basis. The adviser had explained what this meant and asked questions which allowed an understanding of Mr D's financial circumstances. This was necessary to make him appropriate recommendations.

The investigator also noted that during the call Mr D had agreed to a higher quote being shared with him. And though the call did take longer than originally quoted, Mr D felt able to raise this at the time. He thereafter chose to end the call of his own volition. In summary, the investigator did not believe that Vitality had acted unfairly or inappropriately.

Mr D said he wanted to have his complaint referred to an ombudsman. he made some additional comments:

- Vitality won't erase his personal data relating to his properties and other non-vital information;
- he remains surprised that it was allowed to ask so many questions when arranging life cover of that level;
- he would also have greater peace of mind if Vitality would simply erase his data;
- he also didn't get a reply from Vitality when he asked about moving forward with the policy via email (though it has since done so) – the investigator hadn't answered that;
- nonetheless, he has now taken out another policy elsewhere;
- it did still take a long time to set up, but the broker he used didn't ask as many inappropriate questions as Vitality did;
- and when he refused to answer certain questions, the cover was still approved;
- he felt forced to give answers, otherwise he wouldn't receive a quote;

- he is now left in a position without appropriate insurance.

The investigator said that the email Mr D referred to was a request for Vitality to redo the quote process. But he did not believe Vitality needed to complete another quote for Mr D – as it had already done so. He therefore remained of the view that Vitality hadn't done anything wrong.

Mr D reiterated that he now held a policy of the same value as the one he sought with Vitality – but the sales broker had not unfairly pressured him. The issue wasn't with the cover, its with the sales adviser at Vitality, who acted inappropriately. He had no qualms about sharing medical information – but Mr D remained concerned that Vitality's adviser had been fishing for financial information beyond what was required.

Mr D also said that he thought our investigator's approach was naïve; he had repeatedly explained to Vitality that he wanted a quote for life assurance of a specified amount – nothing more, nothing less. His personal financial information was not relevant to that.

Vitality told our investigator it was happy for Mr D to have copies of the two telephone calls relating to the sale. It said it otherwise had no further comments to make.

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 looked at all of the evidence including the two telephone calls, I am of the view that this complaint cannot succeed. I know my decision won't be what Mr D has hoped for, but I'll summarise my reasons for reaching this conclusion below.

It is now clear to both parties that Mr D did not want to receive financial advice – what he actually wanted was a quote from a sales broker on a non-advised basis.

To be clear for Mr D, a non-advised sale means that the business merely provides information about the relevant insurance or investment being sought by the potential customer. The adviser cannot make any personal recommendations and it is left for the customer to decide how to proceed.

An advised sale differs considerably from that. There are regulatory guidelines around advised sales that businesses must comply with, provided by the Financial Conduct Authority ('*FCA*'), specifically in its Conduct of Business Sourcebook ('*COBS*').

To make a recommendation, a business must obtain the necessary information regarding the potential customer's knowledge and experience, their financial situation and their objectives – which in Mr D's case was to have sufficient life assurance protection.

To do this, the business must obtain enough information from the customer in order to understand essential facts about their circumstances and the business must believe that:

- the service or recommended transaction meets the customer's recorded objectives;
- that the customer is able to meet the financial obligation of the recommended investment or insurance products; and
- the customer has the necessary experience or knowledge to understand what they are taking out.

There is no requirement on how the business carries out its assessment, although it must have a process that is 'fit for purpose'. Often this type of information is recorded on a ‘fact find’ or a questionnaire, such as the record retained by Vitality and supplied to Mr D as part of his subject access request.

I note that the adviser did make it explicitly clear to Mr D during the call at the earliest stage that he offered “*an advised service*”. He then went on to explain exactly what this meant – that it was a “*focused protection review*” where he would ask Mr D questions about his personal and financial circumstances, take into account his budgetary requirements, and then go on to recommend an appropriate solution to Mr D’s documented needs, if that was possible from Vitality’s range of protection policies, rather than a full market analysis.

The adviser then asked Mr D if he was happy to proceed on the basis of limited telephone information, and a follow-up summary recommendation and quotes via email. Mr D confirmed he accepted this, and an assessment including questions about Mr D’s circumstances followed thereafter.

I can also see that as a direct follow up to the call, the adviser sent Mr D details of the advice process, which set out:

> “*THE SERVICE YOU WILL RECEIVE*
>
> *When it comes to buying Life, Income Protection, Serious Illness Cover and other Protection Products, everyone’s needs are different.*
>
> *My role is to guide you through the range of options available through Vitality Life Limited in order to help create a plan that will suit your individual requirements and budget.*
>
> *We will discuss your protection needs and I will assess your lifestyle and financial situation to ensure my advice is suitable.*
>
> *Finally, I will assess affordability so that I can produce a Suitability Letter and my personal recommendation.*
>
> *I will advise and make a personal recommendation for you after fairly assessing your needs for Protection Insurance.*
>
> *My advice is not based on a fair analysis of the market but only offers advice and information on Vitality Life Limited plans.*”

I realise that Mr D became progressively frustrated and concerned about the questions he was asked during the call – but that was not the fault of Vitality. Mr D had an expectation that he would undergo a sales broker call – where no detailed analysis of his financial circumstances would be undertaken. Be that as it may, Vitality does not offer a non-advised or sales broker service. Mr D was free to decide to end the call, and he eventually did so.

The adviser correctly stated that he was obliged to ask for information as part of Vitality’s advised service, and that he had a duty of care to ensure he made a relevant and affordable recommendation, tailored to Mr D’s needs and preferences. If he hadn’t done so, Mr D could have complained that he was insufficiently advised.

Mr D then later asked if the quote process could be reinstated – but it could never have been offered on a non-advised basis; and Vitality explained that clearly in its final response letter.

Even if I believed Vitality had acted unfairly in relation to the advised sales call (which I do not), it is not part of my function to direct Vitality on how it undertakes sales and advice services to its customers. This service is not a regulator; that is the duty of the FCA.

Finally, I do appreciate that Mr D continues to hold concerns about how Vitality holds his personal data. Vitality says it couldn't have answered any request from the Financial Ombudsman Service and remain compliant with FCA regulations if it did not retain the information about the advice – because Mr D has gone on to complain about it.

Vitality also stated that under Article 17 of the GDPR it was able to refuse a request from a customer regarding the right to be forgotten – because it is not an absolute right. Businesses are able to retain personal data to the extent necessary for the defence of any legal claim. Since complainants that reject decisions of the Financial Ombudsman Service are free to lodge the matter in a relevant court, Vitality said it could not delete its records relating to Mr D until any court limitation period expired.

Unfortunately for Mr D, I am not able to make findings on whether Vitality's actions are a GDPR breach or not. Our role is one of informal dispute resolution. That may sometimes overlap in relation to the provision of a regulated activity – such as advice about life assurance. But the specific concern Mr D holds is one of data retention and the right to be forgotten. That falls within the remit of the Information Commissioner's Office ('*ICO*'), and Mr D can contact that organisation about data protection issues, if he requires.

My final decision

I am not able to uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 July 2023.

Jo Storey
Ombudsman