

## **The complaint**

Mr M complains that Vitality Life Limited has turned down an incapacity claim he made on a personal income protection insurance 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 M is insured under a personal income protection policy. The policy provides cover for Mr M's own occupation and includes a deferred period of one month.

Unfortunately, in January 2022, Mr M was signed-off work for a month by a GP who recorded that he was suffering from work-related stress. This followed Mr M hearing a racist slur at work, which caused him a great deal of distress. Mr M made an incapacity claim on his policy. Vitality accordingly requested information about Mr M's claim, including his medical records from his GP.

Mr M was subsequently signed-off by his own GP, who noted that Mr M was suffering from depression. Mr M was referred for talking therapies and prescribed anti-depressant medication.

Despite chases from Vitality, Mr M's GP didn't send it Mr M's medical records until April 2022. At that point, Vitality appointed an independent medical examiner (IME), a consultant clinical psychologist, to visit Mr M. The IME didn't think that Mr M was off of work because of a formal mental illness. Instead they considered that Mr M's condition was due to work-related stress. And they felt that Mr M was fit to return to work. On that basis, Vitality concluded that Mr M hadn't met the policy definition of incapacity and it turned down his claim.

Mr M appealed. He felt the IME had left out important information from their report and that they'd caused him significant additional upset. He provided a report from a consultant psychiatrist, Dr N, who'd diagnosed Mr M with anxiety and depression. Dr N had recommended that Mr M should undergo eye movement desensitisation and reprocessing therapy (EMDR) and they considered that Mr M wasn't fit for work.

Vitality considered Dr N's report and it wrote to Dr N to ask for further information. Based on Dr N's response, Vitality maintained its claims decision. It still wasn't satisfied that Mr M had met the policy definition of incapacity. However, it did recognise that it hadn't handled Mr M's claim as well as it should've done and that there'd been delays in responding to him. So it sent Mr M a gift hamper, along with offering him a total of £300 compensation.

Mr M remained unhappy with Vitality's decision and he asked us to look into his complaint. He provided both this service and Vitality with a further report from the psychologist who'd led Mr M's EMDR sessions. This report stated that it would've been detrimental for Mr M to return to work at the time they first saw Mr M in June 2022. Mr M had been able to successfully return to work in August 2022, following EMDR treatment.

Our investigator didn't think Mr M's complaint should be upheld. While she sympathised with Mr M's position, she didn't think there was enough medical evidence to show that he'd met the policy definition of incapacity throughout the deferred period and afterwards. Instead, she felt the evidence indicated that Mr M was most likely suffering with work-related issues, rather than a defined medical condition. So she thought it'd been fair for Vitality to turn down Mr M's claim. And she was also satisfied that Vitality had offered Mr M fair compensation for its failings in the handling of his claim.

Mr M disagreed and I've summarised his response. He felt that facts hadn't been properly presented and that Vitality had dragged out the claim so that the investigator had been unable to see whether or not he should genuinely have been off work. Mr M felt the IME had been appointed with the intention of allowing Vitality to turn down the claim and he reiterated that he felt bullied by the IME. Mr M queried why Dr N's evidence wasn't sufficient to show he met the definition of incapacity, given it showed he'd been given a diagnosis, was on anti-depressant medication and had been referred for EMDR. He also questioned why Vitality hadn't requested his GP records for the period after April 2022, which he considered would support his position. He provided a detailed timeline of events, which showed the number of claims handlers and staff who'd been involved in the assessment of his claim and he set out the delays he'd experienced in being given a definitive decision on it. And he added that there'd also been a delay in Vitality issuing its final response to his complaint.

The complaint's been passed to me to decide.

### **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 done so, whilst I'm very sorry to disappoint Mr M, I think it was fair for Vitality to turn down his claim and I'll explain why.

First I'd like to reassure Mr M that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent us. I'm very sorry to hear about the circumstances that led to Mr M needing to make a claim and I don't doubt how upsetting and worrying the situation has been for him and his family. Within this decision though, I haven't commented on each and every point he's made and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

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 the policy and the available medical and other evidence, to decide whether I think Vitality handled Mr M's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mr M's contract with Vitality. Mr M made a claim for incapacity benefit, given he wasn't fit for work. Vitality provided cover for Mr M's own occupation. So I think it was reasonable and appropriate for Vitality to consider whether Mr M's claim met the policy definition of incapacity.

I've turned then to look at Vitality's definition of 'incapacity'. This says:

*'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 be reasonably omitted by you or your employer.'*

This means that in order for Vitality to pay incapacity benefit, it must be satisfied that it was Mr M's illness which prevented him from carrying out the material and substantial duties of his own occupation, for the entirety of the deferred period and afterwards. The policy doesn't cover Mr M being unable to work at a specific workplace or for specific clients. Vitality needs to be satisfied that Mr M would be unable to carry out the material and substantial duties of his own occupation at any workplace or for any employer.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mr M's responsibility to provide Vitality with enough evidence to demonstrate that his illness had led to him being unable to carry out the duties of his own occupation for the full one month deferred period and afterwards.

Vitality assessed the evidence Mr M provided in support of his claim, including with clinical staff. While it sympathised with Mr M's position, it concluded that he wasn't suffering from a mental illness which prevented him from carrying out the generic material and substantial duties of his own occupation. Instead, it felt that Mr M was suffering with a reaction to the racist slur and other issues at work, which most likely didn't amount to a defined medical problem. So I've next looked at the available medical and other evidence to assess whether I think this was a fair conclusion for Vitality to reach.

I've first considered the medical certificate issued by the GP on 16 January 2022. This signed Mr M off work until 13 February 2022 and the reason for absence was stated to be '*stress at work*.' This medical evidence covered broadly the entirety of Mr M's one-month deferred period and doesn't indicate that Mr M was suffering with a diagnosed medical condition at this point.

Mr M's GP issued fit notes which stated that Mr M wasn't fit to work due to depression and anxiety – which can be defined medical problems. So I think it was reasonable and appropriate for Vitality to appoint an IME to assess Mr M's condition. I'd reassure Mr M that I've seen no evidence to indicate that the IME was appointed with any intention of allowing Vitality to decline the claim. Based on all I've seen; I think the IME was separate and independent of Vitality.

The IME concluded that Mr M was affected by a mixed anxiety and depressive reaction, but that he wouldn't meet the criteria for a substantive health problem. The IME stated that Mr M's '*presentation and narrative account did not suggest he was formally ill in mental health terms*.' The IME added that they '*did not observe obvious mental health symptoms when (they) assessed Mr M. I would describe Mr M as sensitive to criticism and his reaction to what has been happening is essentially work-related stress*.'

Additionally, the IME stated that: '*As far as I am able to determine, his sick leave is due to work-related stress and not a formal mental illness or problem. I did not detect any other factors affecting him*.'

Based on the IME's evidence, I think it was reasonable for Vitality to conclude that Mr M wasn't suffering from an illness which prevented him from carrying out the material and substantial duties of his own occupation. And so I think it was fair for Vitality to conclude that Mr M hadn't met the definition of incapacity at this point.

Mr M provided evidence from Dr N and so I find it was appropriate and reasonable for Vitality to take the evidence of a consultant psychiatrist into account. Mr N's first letter of June 2022 states that Mr M had mixed anxiety and depressive disorder. The letter said that Mr M's '*current episode does appear to have been triggered by work-related stress and his reaction to overhearing a racist slur about him*.' The report stated that Mr M was not fit for work and

referred to his continuing to take medication and being referred for a course of EMDR.

Dr N provided a further letter to Mr M's GP on 7 July 2022. This included the following:

*'Still does not feel ready to return to work. Worry about not being able to cope with triggers at work. Not worked since mid-January.'*

Following its review of Dr N's evidence, Vitality asked Dr N for further information. Dr N wrote to Vitality in August 2022. The letter said that Dr N had diagnosed Mr M with mixed anxiety and depressive disorder – he was suffering from moderate depression and severe anxiety. The letter stated the following:

*'I first met (Mr M) on 1 June 2022, when he presented with a 6 month history of anxiety and depression following a racial incident at work. There had also been a background of his feeling anxious at work due to a sense that he was being micro-managed by his clients.'*

Subsequently, Mr M provided evidence from the psychologist who'd carried out the EMDR with him. This report was dated 30 September 2022. The psychologist stated that Mr M would not have been fit to work when they saw him in June 2022 and that Mr M had suffered from symptoms of depression. The letter also included the following:

*'The incident at work had resurrected issues of feeling very betrayed that were linked to previous incidents in (Mr M's) life...In addition, it is also clear that the place or work where the racist comments had been made rendered the place of work a barrier to his returning... I have no doubt that the demands of his job and home life were a contributing factor to his fatigue'*

I've thought very carefully about all of the evidence that's been provided. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive. It's clear that Mr M was suffering from symptoms which can also be indicative of a significant mental health condition. I'm conscious that Mr M was prescribed medication and referred to EMDR therapy by a consultant psychiatrist, who diagnosed him with anxiety and depressive disorder.

But, taking into account the totality of the medical and other evidence available to Vitality, I think it was reasonable for Vitality to conclude that the evidence showed that Mr M was suffering from an understandable reaction to the very difficult situation in which he found himself and the racist slur he overheard. And that the main reason for Mr M's absence was likely the workplace stress he was experiencing as opposed to a mental health condition. It also appears, from the psychologist and IME's accounts, that Mr M's main triggers were workplace issues. And so I think this evidence points towards the cause of Mr M's upsetting symptoms being the workplace issues and slur he experienced. I think it indicates too that he was suffering from an understandable reaction to his personal circumstances, rather than a functionally impairing mental illness which prevented him from carrying out his role.

This means I don't find that Vitality acted unfairly when it decided that Mr M wasn't suffering from a significant mental health condition, during the deferred period, or indeed afterwards, which prevented him from carrying out the material and substantial duties of his occupation. On this basis then, I don't think it was unfair for Vitality to conclude that Mr M's absence wasn't due to an incapacity in line with the policy definition. Instead, I think it fairly concluded that Mr M's absence was more likely due to workplace stress and a reaction to his circumstances.

I appreciate that Mr M feels that Vitality handled his claim poorly and prejudiced his position

in terms allowing us to decide whether he was genuinely off work. Vitality acknowledges that it didn't handle Mr M's claim as well or promptly as it could and should have done. I don't doubt this was upsetting and frustrating for Mr M, but I don't think he was prevented from providing evidence or having his claim fairly assessed. Vitality has sent Mr M a hamper and it's offered him compensation of £300. In my view, this is a fair and reasonable award and it's open to Mr M to contact Vitality to accept it should he now wish to do so.

Mr M is unhappy that Vitality only obtained medical reports up until April 2022. If Mr M would like to obtain further medical evidence in support of his claim, he is able to do so and to accordingly send this on to Vitality for review. If he's unhappy with the outcome of any further assessment of any new evidence, he may be able to make a new complaint about that issue alone.

Overall, despite my natural sympathy for Mr M's position, I find it was fair and reasonable for Vitality to turn down his income protection claim.'

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 August 2023.

Lisa Barham  
**Ombudsman**