

The complaint

Miss O, Mr O and Mrs O complain that Vitality Health Limited wrongly turned down a claim they made on a personal private medical insurance policy.

As Mr O brought the complaint to us, I've referred mainly to him throughout.

What happened

Mr O took out a personal private medical insurance policy in December 2022 to provide cover for his family. Vitality says the policy was taken out through a broker. The contract was provided on full underwriting terms.

In January 2023, Mr O's child saw a private GP, who referred them to a private ear, nose and throat (ENT) consultant for investigation. So in February 2023, Mr O made a claim on the policy.

Vitality turned down the claim. It initially treated the policy as if it were a moratorium policy. And it also wrongly concluded that Mr O's child's symptoms had existed before the policy began. Mr O was unhappy with Vitality's decision and he therefore decided to cancel the policy in March 2023.

In early May 2023, Vitality reviewed the claim. And it concluded that it had turned down Mr O's claim in error. It said it would have accepted the claim up to the point of diagnosis. It apologised to Mr O for the error and it offered him two settlement options. The first was to reinstate the policy with a waiver of two months' premiums. If Mr O chose to accept that option, Vitality said he'd need to pay the remaining outstanding premiums and it would assess a claim for his child's proposed treatment. Alternatively, Vitality offered to pay Mr O £500 compensation.

Mr O didn't accept Vitality's offer and he asked us to look into his complaint. In brief, he said he would accept £500, together with a waiver of premium; if Vitality also agreed to pay for a private appointment his child had had in March 2023 and if it assured him that there would be no further delays in providing treatment.

Our investigator felt that Vitality had already made a fair offer to settle Mr O's complaint. So he didn't think it needed to do anything more.

Mr O disagreed and I've summarised his response. He didn't think that the investigator had addressed his complaint points – including that he'd paid for his child to see an ENT consultant. He didn't think the settlement figure was reasonable, or that it covered the costs he'd incurred. And he felt that the policy had been mis-sold to him.

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 sorry to disappoint Mr O, I think Vitality has already made a fair offer to settle his complaint and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. In this case, Vitality already acknowledges that it made clear errors in the way it handled Mr O's claim and that it unreasonably turned the claim down. It's clear that Vitality's handling of the claim put Mr O to unnecessary time, trouble and inconvenience. I don't doubt how frustrating and upsetting it was for Mr O and his family when the claim was incorrectly turned down. Vitality has made an offer to settle Mr O's complaint and so I need to consider whether I find its offer to be fair and reasonable in all the circumstances.

Vitality has offered Mr O two settlement options to choose from:

- a) If he decides to reinstate the policy, it will waive two months' of the outstanding premium balance, although Mr O would need to pay any further remaining outstanding premiums to bring the policy up to date. Vitality has also said that if the ENT consultant Mr O's child saw is registered with it, it will pay for the initial consultation, even if the consultant isn't on Mr O's 'consultant select' panel; or
- b) If he chooses not to reinstate the policy, it will pay him £500 compensation.

I've thought about this carefully. Generally, I think that before an insurer agrees to accept and pay for treatment, it's entitled to be satisfied that the policy premiums are up-to-date and that any proposed treatment is covered by the policy terms. It seems that were the policy to be reinstated, the premiums since March 2023 would be outstanding. In this case, Vitality has agreed to waive two monthly premiums of £259.80 per month. This is equal to a waiver of around £519. In my view, this is a fair and reasonable amount of effective compensation to reflect what I think is the likely impact of Vitality's errors on Mr O and his family. So I don't think Vitality needs to waive any further premium.

It's clear Mr O feels strongly that Vitality should cover the medical costs he's incurred. But I don't think I could reasonably direct Vitality to reinstate Mr O's policy and to pay the claim if premiums remain outstanding. As such, I don't think I could fairly tell Vitality to consider the costs of Mr O's child's private appointment *unless* the policy is reinstated and Mr O pays any backdated premiums remaining after two months' premium has been waived. It isn't clear whether the ENT consultant Mr O's child saw is on Mr O's 'consultant select' panel. But Vitality has told us that even if they're not, it will cover the costs of the initial consultation, so long as the consultant is registered with it. In my view, this is a fair and reasonable position for Vitality to take. It's offered to potentially step outside a strict interpretation of the policy and to potentially pay consultant costs 'off-list'. In the event that Mr O opts to reinstate his policy, it would be for Vitality to determine whether or not these costs are covered.

I'd add too that should Mr O choose to reinstate the policy; I think Vitality would be reasonably entitled to assess whether any treatment planned for Mr O's child is covered by the policy terms and conditions.

If Mr O decides *not* to reinstate the policy, then Vitality has offered £500 compensation. I've considered whether I think this sum is fair. And I think it is. As I've set out above, Vitality accepts it considered the claim using the wrong underwriting terms and Mr O to put to some considerable time, trouble and inconvenience. He also suffered likely frustration, disappointment and upset when, in early March 2023, Vitality initially declined to pay for a referral which ought to have been authorised. Vitality didn't correct its mistake for around a

further two months, by which time, Mr O had already understandably arranged a private appointment for his child. So I think an award of £500 compensation is fair, reasonable and proportionate to reflect the considerable distress and inconvenience Vitality likely caused Mr O and his family.

It seems Mr O also now has concerns about the way the policy was sold to him. Vitality has told us that the policy was sold by a broker, so Mr O would need to direct a complaint about the sale of the policy to the business which sold it to him. Even if Vitality did sell the policy though, Mr O would need to give it an opportunity to look into a complaint about the policy sale before we could potentially consider that issue. So, in either event, it wouldn't be appropriate for me to consider the sale of the policy as part of this decision.

Overall, as I've explained, I think Vitality has given Mr O two fair and reasonable options for settlement of his complaint. It's open to him to contact Vitality to accept one of those options, should he now wish to do so. However, despite my natural sympathy with Mr O's decision, I'm not telling Vitality to offer anything more in settlement of this complaint.

My final decision

For the reasons I've given above, my final decision is that Vitality has already made a fair offer to settle Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O, Mr O and Mrs O to accept or reject my decision before 20 October 2023.

Lisa Barham
Ombudsman