

The complaint

Mr G complains about the decision by Vitality Health Limited to turn down his private medical insurance claim, and apply a retrospective exclusion.

What happened

In September 2022 Mr G switched his private medical insurance cover to Vitality. His broker arranged the switch.

In January 2023 Mr G made a claim for treatment as he was experiencing bilateral knee pain. Vitality thought Mr G had failed to disclose previous issues with his knees when taking out the policy. It said if it had known the information, it would have added an exclusion for disorders of both knees and related conditions.

Vitality therefore added the exclusion retrospectively and turned down the claim. Unhappy with this, Mr G brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for Vitality to conclude there had been misrepresentation, and therefore apply the exclusion and turn down the claim.

Mr G didn't accept our investigator's findings and so the matter has been passed to me for a 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.

As this complaint concerns misrepresentation, I've considered the matter in accordance with the principles set out under 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.

As part of the application, Mr G (or his broker on his behalf) was asked:

'In the last 3 years, have you or any other person to be insured:

- *Experienced symptoms;*
- *Received any advice from a healthcare professional;*
- *Received treatment or have treatment planned or expected;*

for any physical, mental health or psychiatric condition?'

The application explained that 'treatment' meant:

'medical care (including diagnostics and tests), investigations, surgery, medication (including over the counter), therapy or advice, provided for an illness, disease, injury or ailment?'

I think the question was clear, and the answer given by Mr G/his broker was 'yes'.

The application then asked:

'When did you...last experience symptoms, receive advice from a healthcare professional, or receive any treatment (including prescribed or over the counter medication) relating to the following?...Please advise us of the most recent time period for each condition.'

The application then listed various conditions, including 'arthritis, joint pain or injury'.

A note accompanied this which said *'This excludes fully resolved symptoms which have lasted for less than one week in total, and do not result in any limitation of activity. Recurring episodes of the same condition must be declared even if each episode lasts for less than one week. You must tell us about any current symptoms regardless of how long they have lasted.'*

Again, I think the question was clear. Mr G/his broker answered *'Not in the last three years or never'*.

I've looked at Mr G's medical history. I see that in the three years before taking out the policy, Mr G had experienced recurring pain in both knees, sought medical advice for this, and had received treatment. I'm satisfied that Mr G/his broker therefore ought to have answered 'yes' to the above question regarding arthritis, joint pain or injury, and so there was misrepresentation.

Mr G says that Vitality was already aware of his knee problems, as he'd made a claim under a previous policy he'd held with Vitality. However, as our investigator has explained, we would not expect an insurer to cross-reference claims made under past policies. Regardless of any previous claims made, Mr G still needed to take reasonable care to answer the questions asked correctly.

Vitality has shown this Service that if it had known of Mr G's previous knee problems, it would have applied an exclusion for disorders of both knees and related conditions. That means the misrepresentation was qualifying, according to CIDRA.

I agree with Vitality that the misrepresentation was careless, as I appreciate that Mr G was not attempting to deliberately mislead Vitality.

The remedy available to Vitality under CIDRA is that it can apply the exclusion retrospectively to the policy, as it has done. It follows that it was appropriate for Vitality to turn down the claim, as this fell under the exclusion.

My final decision

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 G to accept or reject my decision before 14 September 2023.

Chantelle Hurn-Ryan
Ombudsman