

## **The complaint**

Mr and Mrs D are unhappy that Vitality Health Limited trading as Vitality Health (Vitality) declined their travel insurance claim.

Any reference to Vitality includes all its agents.

## **What happened**

Mr and Mrs D have worldwide annual multi-trip travel insurance. Vitality is the underwriter.

The policy covers Mr and Mrs D and their two children.

Mr and Mrs D, with their two children, went on their 13-day road trip as planned on 2 August 2022. Mrs D was selected for random Covid-19 testing upon arrival at their destination. They stayed the first night and day in the hotel as they had planned. Later, Mrs D was informed that she had tested positive for Covid-19 and had to isolate.

Mr and Mrs D and their family found alternative accommodation. They drove 13 hours to another part of the country and stayed there for the remaining part of Mrs D's isolation period. Mrs D informed Vitality of what had happened and kept it updated on their situation.

After the isolation period, the family booked different accommodation to where Mrs D had isolated for the eight days. They also changed their return flight from the original city they'd booked to one near where they stayed. They returned to the UK on the same day that they'd initially planned, and the trip return date stayed the same although from a different location.

Upon their return, Mr and Mrs D submitted a claim to Vitality. It initially accepted the claim to cover Mrs D's portion of the quarantine accommodation costs. After a further review, Vitality said the information given to Mr and Mrs D on the telephone by one of its advisors wasn't clear when explaining the cover that was available. So, Vitality offered to also pay Mr D's costs for the quarantine accommodation and the flight amendment fees they incurred. The offers were made as a gesture of goodwill.

And after a third review, Vitality declined the claim altogether because it says Mrs D should have isolated near or at the destination city they arrived and followed the government's guidelines. If they had done this, the additional costs, including the flight amendment fees, would not have been incurred. So, Vitality didn't think the claim was covered and says there are inconsistencies in Mr and Mrs D's account of what happened, compared to the evidence it has.

Unhappy with Vitality's response, Mr and Mrs D brought their complaint to this service. They say they want Vitality to accept their claim and settle it fully to cover the cost of the original holiday, the additional quarantine accommodation, the travel expenses and additional costs they incurred. They would also like to be compensated for the trouble and upset they been put through.

Our investigator looked into the complaint. She upheld it and recommended that Vitality

re-assess the full claim Mr and Mrs D made. She thought the exclusion applied by Vitality for contracting Covid-19 as a known event since March 2020 wasn't fair or reasonable. She said there isn't anything specific in the exclusion that says costs related to contracting Covid-19 will be excluded.

She said it wasn't fair for Vitality to exclude the claim because of lack of enjoyment as Mr and Mrs D's costs include various unused and non-refundable bookings which are insured costs.

She also recommended that Vitality pay £300 compensation for errors made which could have been avoided and for the trouble and upset caused.

Vitality didn't agree with the investigator's assessment and asked for the complaint to be reviewed by an ombudsman. It maintained the full claim is declined. So, the complaint was passed to me.

I issued a provisional decision on 23 August 2023. I said the following:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*The key dispute on this complaint is that Vitality has declined Mr and Mrs D's full claim on their travel insurance policy. I have to therefore decide whether the claim has been declined fairly and in line with their policy terms and conditions.*

*It is important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr and Mrs D. Rather it reflects the informal nature of our service, its remit and my role in it.*

*The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS').*

*ICOBS says that insurers should act honestly, fairly and professionally in accordance with the best interests of their customers, and that they should handle claims promptly and fairly.*

#### *The policy terms and conditions*

*I've started by looking at the terms and conditions of Mr and Mrs D's travel insurance policy as this forms the basis of their contract with Vitality.*

#### *Exclusion for Covid-19 being a known event*

*Vitality has applied an overall exclusion to the policy and says this applies to all parts of the benefits on the policy.*

*These exclusions on Mr and Mrs D's travel policy are on page 14. They include:*

- 'Claims arising from circumstances which could reasonably have been foreseen before you arranged or started your holiday or business trip.'*
- The cost of food and drinks.*
- Claims for telephone calls other than calls to Vitality Health or our travel assistance*

*provider and where clear, itemised invoices are sent in.'*

*Vitality says Covid-19 has been a known event since 17 March 2020 and contracting Covid-19, and any costs related to this, are to be expected and is a known risk of travel.*

*I've considered whether excluding the entire claim under the above is fair and reasonable.*

*And I don't think it is. I say this because Mr and Mrs D booked their trip before they knew random Covid-19 testing would take place at their arrival destination. And while there was a possibility that one of the family members may be randomly selected for testing upon arrival at the country, there was no way of knowing that one of them would test positive. Mrs D was selected for the random testing, and the event of contracting Covid-19 didn't happen until the point that she tested positive. So, I don't agree that the event was foreseen or known before the holiday was arranged or started. I don't think the claim arose from circumstances which could reasonably have been foreseen. There is nothing in the exclusion to specifically say costs related to contracting Covid-19 are excluded under Mr and Mrs D's travel policy. I'm therefore not persuaded that the full claim can be excluded for this reason. I've therefore gone on to look at the remaining terms and conditions of the policy.*

#### *Cancelling the trip or cutting it short benefit*

*On page 8, under the 'Cancelling the trip or cutting it short' section, it states:*

*'What's covered*

*This applies if you have to cancel the holiday or business trip, or have to cut it short or change the itinerary after the departure date as a direct and necessary result of any of the following:*

- You or any person you intend to travel with, [...], being placed in quarantine [...].'*

*Page 10 of the policy booklet explains the benefits available under the policy. Under the section 'Cancelling the trip and cutting it short', it says 'we will pay for the portion of your transport or accommodation that has been paid for, but which has not been used. We will also pay for any advance payments for trips or excursions you are unable to take.'*

*Having considered the above term under Mr and Mrs D's travel policy, it's clear that cover is available if an insured person has been placed in quarantine. I've also taken into account that Vitality says this section of the policy is not available to Mr and Mrs D and their family because 'lack of enjoyment of the trip' is not covered and is a specific exclusion under this benefit. As far as I can see, the policy terms and conditions for this section says cover is available if a policyholder has been placed in quarantine. Mrs D was placed in quarantine and therefore cover is available for this under the policy. I agree that there is no cover for lack of enjoyment but there is cover available for unused accommodation as well as unused costs for trips and excursions while being placed in quarantine. I'm not persuaded that excluding the claim on this term is fair and reasonable.*

#### *Overseas and other medical expenses benefit*

*Vitality says it has given a concession to its customers to consider Covid-19 related claims under the 'Overseas and other medical expenses' cover on page 7. I can't see this concession is stated anywhere in the policy.*

*In any case, under this section, there is cover under the policy for:*

- *'The reasonable additional accommodation costs and travelling expenses for one person required on medical advice to travel to, or remain behind with, a sick or injured insured person who is travelling for pleasure.'*
- *The reasonable additional accommodation costs if you or your insured dependent are required on medical advice to stay beyond your scheduled return date, until you are fit to return to the UK. Additional accommodation should be of the same standard as the accommodation booked for the scheduled part of the trip.'*

*Additionally, on page 11 where the overseas and other medical expenses benefit is explained, it says: 'in the event that you are not well enough to return to the UK on your scheduled return date, your plan covers the reasonable costs of additional accommodation for you, plus any additional costs that you need to pay to rearrange your passage back to the UK.'*

*Vitality says there is no cover under this section. This is because there's no evidence that one person was required to stay with Mrs D and had to do so based on medical advice. And Vitality says Mrs D and the rest of the family did not stay beyond their scheduled return date.*

*And they also booked accommodation for the isolation period which wasn't of the same standard as the accommodation booked for the original, scheduled part of the trip. So, Vitality says this benefit isn't available for what happened in Mr and Mrs D's circumstances.*

*I've considered the above term. I agree there is no cover available under this section of the policy. Based on the information available, there's no evidence to show that Mr D (and the children) had to remain with Mrs D because of medical advice. I can see that the country's government regulations stated that the isolation period was to start as soon as Mrs D was aware she had tested positive for Covid-19. But the family travelled together in one car for approximately 13 hours. Then, after having arrived at their new destination, Mrs D isolated in their newly booked accommodation. Based strictly on the policy term, there's no evidence to show that the rest of the family needed to remain with Mrs D from the point of her testing positive and that it was based on medical advice.*

*Additionally, this benefit is only available if Mr and Mrs D had to stay beyond their scheduled return date and the accommodation booked was of the same standard as the original scheduled trip. They didn't stay beyond their scheduled return date, and they didn't book accommodation of the same standard while Mrs D was isolating.*

*I'm satisfied there is therefore no cover under this benefit for Mr and Mrs D and their children.*

*Has the claim been declined fairly?*

*I've carefully considered Mr and Mrs D's travel policy in its entirety. The only section where cover is available is under the 'Cancelling your trip or cutting it short' benefit.*

*Mrs D had to go into quarantine due to testing positive for Covid-19. So, unused costs associated with having to change their itinerary are covered under the policy. And I think it's fair and reasonable that costs associated are covered for Mr and Mrs D and their children for reasons I will go on to explain.*

*When Mrs D tested positive and found out she needed to isolate, she contacted Vitality to update it and their travel agent who booked them new accommodation. This was so Mrs D could isolate, and the family could enjoy the rest of their trip in the one place. The new accommodation was not of the same standard as the original booking. The family then*

*travelled together in the same car for approximately 13 hours and arrived at their new accommodation where they stayed for eight nights until Mrs D's isolation period had been completed. They stayed at different accommodation for the next three nights and then returned to the UK as planned on their original scheduled return date. They paid additional costs for the new accommodation. They changed their flights to return from where they were staying in the new area so incurred costs for amending these too.*

*From the information available, it's not entirely clear exactly what amounts Mr and Mrs D are claiming for as that has changed over time. However, I can see overall they are claiming for any original unused accommodation booked, their new accommodation, any unused travel and excursions costs and the flight amendment costs.*

*A general principle of insurance is that policyholders are required to act reasonably. With that in mind, for the purposes of this claim, I've thought about what I think should have reasonably happened.*

*I think it would have been reasonable for Mrs D to have stayed in the same city as they had arrived. I appreciate and do understand why Mr and Mrs D might have made the decision to travel to the new accommodation. However, it's not reasonable that they now expect Vitality to pay the full claim because of this decision and, despite what the policy says. Had Mr and Mrs D and the children stayed in the city of their arrival where Mrs D was under instruction to isolate immediately, the costs potentially incurred would have been reasonable and, more importantly, unavoidable due to what happened. I've also thought about whether Mr D and the children could have continued the trip, but I think it's highly unlikely they would have left Mrs D to isolate on her own while they continued. And, as I've said above, there is cover on their policy for having to change their itinerary because of quarantine.*

*In terms of returning to the UK from a different destination to that originally planned, I think it was reasonable for the family to have travelled back to their original departure airport as they managed to do the journey while Mrs D had Covid-19 so it's reasonable they would have been able to do the same when returning. In doing so, they would have avoided the extra flight amendment costs.*

*Not all eventualities are covered under their policy or any insurance. And while I understand the reasons for Mr and Mrs D changing their plans, they have to bear some responsibility for the actions they took here.*

*The only section that does provide cover under their policy is for having to change their itinerary because Mrs D had to quarantine. But this has to be fair and reasonable and in line with the policy terms and conditions.*

*In making my decision, I have to take due regard of the law, the regulations, the principles of insurance and the industry codes of practice. Having done so, I don't think it's fair and reasonable for Vitality to settle the full claim. I therefore intend to ask Vitality to assess the claim for reasonable unused accommodation costs and any unused transport, trips and/or excursions under the 'Cancelling the trip or cutting it short' section. That is, as if they had stayed in the same city as they arrived during the isolation period and as if they had stayed in the same standard of accommodation as they had booked on their original booking.*

*Mr D and the children enjoyed the trip at the new accommodation while Mrs D isolated and therefore Vitality should take this into account. Lack of enjoyment of the trip and any associated costs are not covered under this section of the policy.*

*It's up to a policyholder to demonstrate that they have a valid claim under an insurance policy, and an insurer is entitled to make reasonable enquiries to satisfy themselves that a*

*loss has occurred before accepting a claim. So, Mr and Mrs D should provide evidence or information as requested by Vitality for it to assess the claim in line with the specific section of the policy terms and conditions less any excess.*

### Compensation

*I've carefully considered what's happened in the circumstances here.*

*I agree with the investigator that Vitality has made errors in providing incorrect information about the claim and whether it was covered. And I think the claim has been ongoing for some time and Vitality's decision regarding whether it decided to pay the claim or decline it has been unclear and confusing along the way.*

*I also think that had Mr and Mrs D been reasonable in the actions they took following receipt of the positive test result for Covid-19, the frustration, stress and inconvenience experienced could have been somewhat avoided. There have also been some inconsistencies in the information provided by Mr and Mrs D which has meant Vitality has taken longer to communicate the decision on the claim.*

*So, my intention is to award £150 total compensation in recognition of Vitality's failings.*

### Putting things right

*In order to put things right, my intention is to ask Vitality to do the following:*

- *Assess the claim in line with the 'Cancelling your trip or cutting it short' section of Mr and Mrs D's travel policy minus any policy excesses, taking into account what's fair and reasonable.*
- *Pay Mr and Mrs D £150 compensation for the distress and inconvenience caused.*

In response to my provisional decision, Mr and Mrs D responded and said they have nothing further to add.

Vitality responded and provided further information as follows:

- It said the annual certificate of insurance includes an extract as a footnote which states that cover is not available under the '*Cancelling the trip or cutting it short*' benefit of the plan for any trip that was booked on or after 17 March 2020 that needs to be cancelled, cut short or changed due to circumstances related to Covid-19.
- It also said Mr and Mrs D have previously declined to provide information from their travel consultant and without this information, it won't be able to quantify what losses were incurred. The claim will be subject to a deduction of an excess of £50 per person. Vitality says it will not allow a further complaint if Mr and Mrs D are reluctant to provide the information that initially requested.
- Vitality sent emails on 17 March 2020 to its members (which included Mr and Mrs D) and the Group Secretary confirming that cover for Covid-19 was not available for cancellation or cutting the trip short on the policy from this date. This wasn't in the policy terms and conditions, but separate emails were sent to its members including Mr and Mrs D to inform them of this.

## 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.

I've also reviewed the comments and further information provided by Vitality. Having done so, while I appreciate the information Vitality has sent, I see no reason to change the outcome outlined in my provisional decision. I'll explain why.

### Wording on the policy certificate, policy terms and conditions and communication sent to members

#### Policy certificate

I've looked at the information provided on the policy certificate regarding cancellations or curtailments in relation to Covid-19. I understand that this informs Vitality's members that Covid-19 related claims wouldn't be considered from 17 March 2020 onwards. This is included as a footnote on the annual policy certificates sent to Mr and Mrs D at renewal in April 2021 and April 2022, on page 4, which is the last page of the certificate.

#### Policy terms and conditions

I've reviewed Mr and Mrs D's policy terms and conditions again and can't see any specific mention of this exclusion. The only exclusion included in the policy terms and conditions is that which says: '*claims arising from circumstances which could reasonably have been foreseen before you arranged or started your holiday or business trip*'

#### Communication sent to its members on 17 March 2020

Vitality also says that an email was sent to members (which includes Mr and Mrs D), as well as the Group Secretary of the plan, on 17 March 2020, which informs them that claims for cancellation and curtailment in relation to Covid-19 won't be covered after this date.

I've reviewed the wording on the email communication sent to its members on 17 March 2020.

This says:

#### '3. Future bookings

*The purpose of the plan is to protect you against unforeseen events. As it's now expected that there will be travel disruption to most destinations over the next few months, we won't be providing cancellation and curtailment cover for any trips booked on or after today, 17 March 2020, which are impacted by the Coronavirus outbreak.*

*As we've mentioned, any booking you've already made will continue to be covered under the cancellation and curtailment benefit, and we'll continue to provide overseas medical expenses cover on any trip, subject to the guidance outlined above. Once the situation has stabilised, we'll get back in touch with any updates we have.'*

#### Has the claim been declined fairly?

I've carefully considered whether having received the above documents and communication Mr and Mrs D would reasonably have been alerted that cover for cancellation or curtailment in relation to Covid-19 would be excluded. Having done so, I'm not persuaded that they

could reasonably have known as the information isn't clear. This exclusion is significant and requires communication on this to be clear.

While I understand that on 17 March 2020 communication was sent to Mr and Mrs D, the wording of this email says *further updates will be sent, once the situation stabilises*. I've not been provided with evidence of any further communication sent to Mr and Mrs D since 17 March 2020 except for the policy document and the annual policy certificates.

Mr and Mrs D have travel cover with Vitality and on the years after 17 March 2020 that they renewed the policy, I can't see that Vitality has made them sufficiently aware of this significant exclusion in the terms and conditions of the policy. Since 17 March 2020, I think Vitality has had an opportunity to make this exclusion more prominent within the policy terms and conditions, but I can't see that it has done so. Instead, Vitality is relying on a footnote included in the last page of the policy certificate sent to Mr and Mrs D upon renewal of their annual policy.

I'm therefore satisfied that the footnote in conjunction with the policy terms and conditions are not enough to exclude Mr and Mrs D's claim for cancellation of their trip. And the communication sent to them on 17 March 2020 isn't enough to make them aware of this significant exclusion to their policy because the email isn't sufficiently clear as it says further updates will be provided once the situation stabilises and comes across as a temporary measure. With all of the above in mind, I don't think it's fair for Vitality to decline Mr and Mrs D's claim on this basis.

I revert to the section in the policy terms and conditions on page 8. Under the '*Cancelling the trip or cutting it short*' section, it states:

*'What's covered*

*This applies if you have to cancel the holiday or business trip, or have to cut it short or change the itinerary after the departure date as a direct and necessary result of any of the following:*

- *You or any person you intend to travel with, [...], being placed in quarantine [...].'*

*Page 10 of the policy booklet explains the benefits available under the policy. Under the section 'Cancelling the trip and cutting it short', it says 'we will pay for the portion of your transport or accommodation that has been paid for, but which has not been used. We will also pay for any advance payments for trips or excursions you are unable to take.'*

Overall, therefore, I think Vitality should assess Mr and Mrs D's claim in line with the above cancellation section of the policy minus any excesses.

I confirm again that it's up to a policyholder to demonstrate that they have a valid claim under an insurance policy, and an insurer is entitled to make reasonable enquiries to satisfy themselves that a loss has occurred before accepting a claim.

So, Mr and Mrs D should provide evidence or information as requested by Vitality for it to assess the claim in line with the specific section of the policy terms and conditions less any excess. Mr and Mrs D will need to provide evidence of the costs which they paid for, and which were unused, including any trips or excursions they were unable to take, and which were paid for in advance. I note that Vitality did previously ask for this information, but Mr and Mrs D weren't clear about the costs they had incurred and which they had paid for and were unused. For the claim assessment to be smooth, it's important for Vitality to be able to quantify the losses and for Mr and Mrs D to provide this information demonstrate



those losses.

Regarding the compensation for distress and inconvenience, I think Vitality should pay Mr and Mrs D £150. My reasons for recommending this are the same as outlined in my provisional decision.

### **Putting things right**

I direct Vitality to:

- Assess the claim in line with the '*Cancelling your trip or cutting it short*' section of Mr and Mrs D's travel policy minus any policy excesses, taking into account what's fair and reasonable.
- Pay Mr and Mrs D £150 compensation for the distress and inconvenience caused.

### **My final decision**

For the reasons given above, my final decision is that I uphold Mr and Mrs D's complaint about Vitality Health Limited trading as Vitality Health. I direct Vitality to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 23 November 2023.

Nimisha Radia  
**Ombudsman**