

The complaint

Mr N and Mrs P complain that Vitality Corporate Services Limited (*'Vitality'*) has failed to provide them with a smartwatch, as part of the member benefits package included with their Vitality joint protection policy.

What happened

In October 2021, Mr N and Mrs P took out a joint personal protection plan comprising life cover and serious illness cover, with Mrs P as the life assured.

Vitality offers a rewards programme for its members, and as a new customer, Mr N and Mrs P were entitled to receive an Apple Watch – subject to agreeing a 36-month credit agreement with a third party finance provider. Vitality acts as a broker for the purposes of the agreement. Thereafter Vitality undertakes to meet the monthly repayments for the watch, as long as the member earns 160 Vitality activity points in each month through participating in one of a number of defined activities, tracked through its member app.

Mr N and Mrs P ordered their watch through Vitality's online member portal shortly after commencing their policy. However, the watch was lost in transit via Apple's chosen delivery provider. On 10 December 2021, Mr N complained. He told Vitality they required the watch before 6 January 2022.

On 23 December 2022, Apple confirmed to Vitality that the watch was lost in transit. That same day, Vitality cancelled the credit agreement and reset Mr N and Mrs P's benefit, meaning they could reclaim through the member portal. Thereafter, the complaint was closed after an apology and a gift hamper was issued to Mr N and Mrs P.

Mr N and Mrs P ordered their watch again, through the Vitality online member portal. On 4 January 2022, Mr N emailed the complaint handler he had previously dealt with at Vitality. He said the delivery provider tracking info had said it was supposed to deliver the watch on 31 December 2021 but there was a delay. It had then been rescheduled for 4 January 2021, but not been delivered.

The following day, Vitality noted that the delivery service provider (the carrier) said the order was "on the van", so it told Mr N to give it a couple of days. On 8 January 2022, Vitality noted that the delivery provider's tracking system showed the watch as delivered. On 9 January 2022, Mr N said that the delivery provider said Mr N had signed for the parcel – but he and Mrs P had been on a long haul flight which left the UK on 7 January 2022.

Vitality said the parcel might have been posted through their letterbox. Mr N thereafter had limited email access whilst he and Mrs P were overseas until early February 2022. He explained how their apartment was visually identical from the outside to others within their building and that they could check with their neighbours. On 31 January 2022, Mrs P confirmed that none of their neighbours had taken the parcel.

Vitality was able to confirm with Apple that the watch had not been activated as of 28 February 2022. However, Apple told Mr N it that it would not agree the item wasn't delivered.

Mr N and Mrs P then complained for a second time.

In March 2022, Vitality refused the complaint. It said that Apple had approached the carrier and it had said its global positioning system ('GPS') evidenced that the delivery person had visited Mr N and Mrs P's property. The photograph it had seen was of Mr N and Mrs P's property and therefore the carrier asserted that the watch was correctly received. It was unfortunate that Mr N and Mrs P were overseas when the second watch was delivered. However, the carrier said it was delivered to their home address and signed for by someone at that address.

Vitality gave Mr N and Mrs P further information to report the matter to the police; but it said it could not arrange cancellation of the credit agreement.

An investigator from this service reviewed the complaint, and he believed it ought to succeed. He felt, on balance, that the watch was likely delivered to the wrong apartment. Vitality hadn't shown it was correctly received, and he felt it ought to reverse Mr N and Mrs P's credit agreement, as well as paying them £100 for the inconvenience caused.

Mr N accepted the investigator's proposal. Vitality disagreed. It said, in summary:

- it knows Mr N and Mrs P were away;
- but this doesn't mean that the watch wasn't delivered;
- the further evidence Mr N has supplied is with his door partially closed – so this doesn't provide any additional reliable evidence;
- the carrier says the watch was delivered, with location records confirming the same;
- it wasn't able to cancel a second credit agreement;
- it wanted the complaint to be referred to an ombudsman.

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 everything before me, I also believe this complaint should be upheld, on the same basis that has been suggested by our investigator.

We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The Financial Ombudsman Service provides informal dispute resolution. whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances.

Where information is unclear or in dispute - as is the case here – I will reach my conclusions on the balance of probabilities. That is, what I think is most likely to have happened in light of the available evidence and the wider surrounding circumstances.

In simple terms, Mr N and Mrs P say they should not be accountable for a credit agreement for a watch they have never received (and, to their knowledge has never been activated), They believe Vitality ought to cancel their agreement and reset the benefit for a second time. I'm aware that I've summarised this complaint using my own words and concentrated on

what I believe to be the key issues here – as our rules permit me to do so.

Vitality says it feels it is reasonably entitled to rely on the statement from the carrier, as it took a photograph of the apartment where it says the watch was delivered. I have looked at that evidence, as well as Mr N's photograph of his and Mrs P's apartment entrance. However, the carrier's blurred photograph does not show the door number, but rather the lower portion of the door and the floor.

I am not persuaded that this photograph shows confirmed delivery of the watch to a person purporting to be Mr N – and signing for delivery as such – at Mr N and Mrs P's address. It merely confirms delivery to an apartment within the building, as per the GPS location. Mr N's supplied photograph of his and Mrs P's apartment (of a lower portion of the partially open door) does not alter my view on that. I don't consider the evidence determines that Mr N or Mrs P received the watch in their absence; they were overseas, and no other person was present at their premises to have signed for the delivery.

I say that noting how Mr N and Mrs P have supplied confirmed evidence that they were both on board a flight which had taken off two hours before the delivery was attempted. And it is recorded within Vitality's call log notes that Mr N had told Vitality they required the watch before 6 January 2022 – which would follow, given they were travelling the day after.

Mr N made several concerted efforts to ensure correct delivery and liaised with Vitality regarding his concerns – because the first watch was never properly received either. And, to the date of the complaint outcome, the watch had not been activated.

In these circumstances, I don't consider that Vitality has considered this complaint correctly or reached a fair conclusion. Given it has acted as the broker to the agreement, it is for Vitality to show that Mr N and Mrs P have had receipt of the goods for which the third party finance provider can thereafter collect as a debt. I do not believe, on balance, that Vitality has established that; consequently Mr N and Mrs P have not been able to utilise the member reward of the Apple Watch offer, provided as a promotional condition to their personal protection policy by Vitality.

I realise Vitality has said it cannot or will not cancel a second agreement. However, I've seen no objective evidence that it cannot do so. In fact, its complaint handler intimated on 5 January 2022 that it could return to Apple on the same basis. I therefore agree that Vitality ought to restore Mr N and Mrs P to the position they'd have been in but for their smart watch having not been received, by arranging for the credit agreement to be cancelled and the member benefit reset.

I also believe Mr N and Mrs P should receive an award for the inconvenience they've experienced in having to chase Vitality for a second time, whilst overseas. I agree £100 is a fair amount to compensate them for the upset caused to them in these circumstances.

Putting things right

Vitality should:

1. if not already terminated, end the credit agreement for the Apple Watch with nothing for Mr N and Mrs P to pay;
2. refund all payments made on the agreement by Mr N and Mrs P together with simple interest at the rate of 8% per year from date of payment to date of settlement;
3. pay £100 to Mr N and Mrs P for distress and inconvenience;
4. arrange to have all details of the agreement removed from Mr N and Mrs P's credit record;

5. restore Mr N and Mrs P's Vitality Apple Watch member reward benefit, so that if they did wish to reapply through the member portal, they have the option to do so.

My final decision

For the reasons given, my final decision is that I'm upholding this complaint. I require Vitality Corporate Services Limited to take the steps I've set out above to fairly resolve it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs P to accept or reject my decision before 3 August 2023.

Jo Storey
Ombudsman