

## The complaint

Mr L complains that Vitality Health Limited turned down his private medical insurance claim.

## What happened

On 25 May 2018, Mr L took out the policy with Vitality. It was taken out on a moratorium basis, which meant that pre-existing conditions from the previous five years wouldn't be covered.

In February 2021, Mr L experienced heartburn and saw a specialist. He was diagnosed with a hernia, and made a claim under the policy for treatment.

Vitality turned down the claim as it thought Mr L had experienced symptoms of his condition before taking out the policy. It therefore concluded the claim fell under the moratorium.

Unhappy with this, Mr L brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought that it had been reasonable for Vitality to conclude that Mr L's condition fell under the moratorium.

I issued a provisional decision on 22 April 2022. Here's what I said:

*"The policy says:*

*"We will not pay for the following:*

- a) If you or your insured dependents have a moratorium underwriting basis:*
- We will not pay for treatment of any medical condition or related condition which in the five years before your cover start date you:have received medical treatment for*
  - had symptoms of*
  - have asked advice on or*
  - to the best of your knowledge were aware existed.*

*This is called a 'pre-existing medical condition'.*

*Mr L's GP said that Mr L's symptoms of chest pain and heartburn had begun in 2012. They said in 2015 he reported heartburn and a lump in the throat. It was noted that he took medication for heartburn intermittently, and that a gastroscopy in 2015 showed he had oesophagitis with no mention of a hernia. The GP said that Mr L would have been aware of the symptoms before taking out the policy in May 2018. Finally, the GP said Mr L's symptoms reoccurred after he stopped taking medication (they implied this happened in June 2020).*

*In February 2021, Mr L had an upper GI endoscopy with a capsule insertion. This confirmed he had a hiatus hernia.*

*In March 2021, Mr L was seen by a consultant gastrointestinal surgeon (Mr B). Mr B said it was clear that Mr L had significant acid reflux caused by his hiatus hernia. He noted that Mr L had been thinking about surgery on and off for years, and had decided that he would have the surgery. Mr B recommended a laparoscopic repair of the hernia and a magnetic implant for the treatment of reflux.*

*Mr L's GP has provided a more recent letter. They said that in 2015, Mr L was diagnosed with oesophagitis following a gastroscopy and there was no mention of him having a hernia at this time. The GP explained that Mr L was treated for this with a pump inhibitor. The GP said that, in their medical opinion, Mr L's symptoms from 2015 weren't connected to his current symptoms due to reflux disease with a hiatus hernia.*

*The NHS says that oesophagitis is the inflammation of the lining of the oesophagus, and this is usually caused by reflux of stomach acid. The medication Mr L took was to reduce stomach acid.*

*I appreciate that Mr L had investigations in 2015 and he wasn't found to have a hernia at this time. I don't think Vitality has shown that Mr L's hernia happened before the policy was taken out. However, the claim isn't only for the repair of the hernia, it's also for treatment of Mr L's reflux, which he had before taking out the policy.*

*I think a reasonable outcome would be for Vitality to cover the cost of the hernia repair. I don't intend to require it to cover the cost of treating Mr L's long-standing reflux."*

I asked both parties to provide any further comments they wished to make, before I made a final decision.

Mr L responded to say he accepted my provisionl decision, and thought this was a fair outcome.

Vitality responded with the following main points:

- It asked if the case could be reviewed by one of our medically trained experts.
- The GP identified the symptom start date of this condition as being in 2012, and didn't mention the more recent symptoms as being new or different to those experienced previously.
- Mr B's letter said that Mr L had been considering surgery on and off for years.
- Its medical doctor said that acid reflux and and oesopahagitis are usually a consequence of an underlying cause or condition such as a hernia (some other causes include diet, obesity, and smoking). They said this raises the question of why surgery would be discussed or considered if there had been no evidence prior to 2021 that the underlying cause was a hernia.
- Its medical doctor also said that Mr L had a sliding hiatus hernia, and this may not always be evident on an endoscopy. They said the GP had only written to advise that there was no mention of a hernia on the 2015 report but this

doesn't necessarily exclude hernia as a cause of Mr L's symptoms.

### **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.

Vitality has asked if this case can be looked at by a medically trained expert. To confirm, we don't have medically trained staff, instead we rely on the evidence brought to us by both parties before deciding whether or not a business did anything wrong.

Although Vitality says Mr L's GP identified the symptom start date of this condition as being 2012, the GP has confirmed they didn't think Mr L's earlier symptoms were connected to this condition.

I accept that Mr L had experienced reflux symptoms for years (which he also accepts, and which is evidenced by Mr B's reference to him considering surgery for years). It's for that reason that I don't require Vitality to cover the cost of treating Mr L's long-standing reflux.

Vitality's medical doctor questions why surgery would be discussed or considered as a management plan if there'd been no evidence prior to 2021 that the underlying cause of Mr L's symptoms was a hernia.

I can't answer this, as I'm not Mr L's doctor. However, I'm satisfied from the evidence I've seen that Mr L was diagnosed with a hernia in February 2021 (around three years after the policy started), and that Mr B thought this was causing the symptoms of significant acid reflux that Mr L was experiencing at that time.

As I've said, I accept that Mr L had experienced symptoms of reflux previously. If Mr L hadn't had any investigations in 2015, I might've agreed with Vitality that it would be reasonable to say that his symptoms had likely been caused by his hernia. However, I can't ignore that Mr L had a gastroscopy in 2015 and wasn't found to have a hernia at this time.

I've noted Vitality's doctor's explanation that the hernia may not have been evident on the endoscopy, though this hasn't been suggested by Mr B or Mr L's GP. It seems the fact that no hernia was found in 2015 was the reason the GP said they thought Mr L's symptoms from 2015 weren't connected to the symptoms due to the hernia. If the GP thought that Mr L's hernia had been missed when the gastroscopy took place in 2015 (but was still responsible for his symptoms before the policy started), I would've expected them to have said this.

Overall, I'm still not persuaded that Vitality has done enough to show that Mr L's hernia was a pre-existing condition and fell under the moratorium. I therefore remain of the view a reasonable outcome would be for Vitality to cover the cost of the hernia repair only.

### **My final decision**

My final decision is that I partly uphold this complaint. I require Vitality Health Limited to deal with Mr L's claim for the hernia repair only under the remaining policy terms. If Mr L has paid for this treatment himself, then Vitality should reimburse him directly and add interest at the rate of 8% simple annum from the date the invoice/s were paid to the date of settlement\*.

\* If Vitality considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 May 2022.

Chantelle Hurn-Ryan  
**Ombudsman**