

## **The complaint**

Miss H complains that Vitality Health Limited has unfairly declined her private medical insurance claim.

## **What happened**

In April 2022, Miss H took out a private medical insurance policy through Vitality. The policy was underwritten on a moratorium basis.

In October 2023 Miss H contacted Vitality to obtain authorisation for treatment for her left knee. Vitality said it would need information from her GP in order to consider the claim and asked for forms to be completed. The forms were completed in April 2024 which included information about Miss H previous medical history. The GP noted that in Miss H's records there was a comment from a consultation in 2019 that Miss H had a physio consultation for an injury to her knee. Vitality declined the claim as it said Miss H's symptoms were in existence prior to her claim in October 2023.

Miss H complained to Vitality about the outcome as she said that the information from the GP showed this was a consultation about a different matter, not specifically her knee which was mentioned in passing. And it didn't say which knee had been impacted and she couldn't remember. She said that she did a lot of sports to stay active, which Vitality recommends, and she felt she was being penalised for this. Vitality maintained its stance and said that, as Miss H couldn't provide evidence to show that it wasn't her left knee that was treated before, the claim couldn't be considered.

Unhappy with this response, Miss H brought her complaint to this service. Our investigator looked into the matter and said the complaint should be upheld. He said that it wasn't fair for Vitality to decline the claim without evidence that it was the same knee that was treated before. He therefore recommended that Vitality reassess the claim. He went on to say that the claim could only be declined on the grounds of it being a pre-existing medical condition if there is clear and unambiguous evidence to show that the treatment she received in 2019 related to the same condition. The investigator said that Miss H needs to provide consent for Vitality to obtain any further information but unless the evidence shows this is a pre-existing condition then Vitality cannot decline the claim for this reason.

Vitality disagreed with this outcome. It said the onus is on the insured person to prove their claim meets the criteria of the policy. Vitality didn't agree that if there wasn't evidence to support which knee was treated previously, it should accept the claim.

As no agreement could be reached, the matter has 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.

It is important to point out that we are 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 this complaint rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Miss H. Rather it reflects the informal nature of our service, its remit and my role in it.

The relevant rules and industry guidelines say that insurers must handle claims fairly and should unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Miss H's complaint.

#### *The policy terms and conditions*

Miss H's policy is underwritten on a moratorium bases. The policy states the following:

##### *The Moratorium Clause*

*We don't pay claims for the treatment of any medical condition or related condition which, in the five years before your cover started:*

- *you have received medical treatment for, or*
- *had symptoms of, or*
- *asked advice on, or*
- *to the best of your knowledge and belief, were aware existed.*

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

*However, subject to the plan terms and conditions, a pre-existing medical condition can become eligible for cover providing you have not:*

- *consulted anyone (e.g. a GP, dental practitioner, optician or therapist, or anyone acting in such a capacity) for medical treatment or advice (including check-ups), or*
- *taken medication (including prescription or over-the-counter drugs, medicines, or injections)*

*for that pre-existing medical condition or any related condition for two continuous years after your cover start date.*

I think the above makes it clear that Vitality won't cover any medical conditions which a policyholder has experienced symptoms of in the five years before the policy began. In this case the relevant moratorium period began in April 2022.

#### *Has the claim been declined fairly?*

Miss H contacted Vitality for treatment for left knee pain in 2023. Vitality says that Miss H's medical records show that during a consultation in 2019 about another matter, Miss H mentioned she'd received treatment for her knee. As a result of this information from her GP, Vitality declined the claim as it said that Miss H had previously received treatment for knee pain.

Miss H's policy doesn't provide cover for any claims where the policy holder has sought treatment for the same medical condition in the five years prior to taking out the cover. So I can understand why Vitality has concerns that this may be a pre-existing medical condition.

However, the information currently available doesn't provide any details of which knee was treated in 2019, nor does it confirm exactly what treatment was received. On that basis, there isn't enough information to confirm that the symptoms Miss H was suffering from in 2019 relate to the same knee or the same condition that she is currently claiming for. I'm not persuaded that it is fair for Vitality to decline the claim based on the information it currently has.

Vitality has said that the onus is on the insured person to prove that they have a valid claim. I do agree with that statement, and I'm satisfied Miss H has done that. She has obtained a GP referral for treatment as defined in the policy. It is then the insurer's responsibility to prove that an exclusion applies. I don't think Vitality has done enough to show that the knee pain in 2019 is related to that which is now being claimed. It isn't reasonable to decline the claim on the basis they might be related without such evidence to support that there is a link. Vitality therefore needs to reconsider the claim and should only decline the claim if evidence is provided to support that this current knee injury is related to that for which Miss H received treatment in 2019.

It isn't unreasonable for Vitality to want to obtain further information about the treatment in 2019. This will most likely require co-operation from Miss H. If required by Vitality, Miss H should provide details of the treatment provider which I believe was a physiotherapist, along with her consent to enable Vitality to obtain the necessary medical information, so that Vitality can request these details directly.

### **Putting things right**

Vitality needs to reassess the claim, contacting the treatment provider from 2019 for medical information if required (Miss H needs to provide the necessary details and consent to enable Vitality to do so).

Vitality should then consider with the claim under the remaining terms and conditions, unless it is able to obtain evidence to support that the treatment being sought now relates to the treatment received in 2019.

### **My final decision**

As detailed above, I'm upholding this complaint. I direct Vitality Health Limited to put things right as shown.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 5 February 2025.

Jenny Giles  
**Ombudsman**