

## **The complaint**

Mrs O complains that Red Sands Insurance Company (Europe) Limited unfairly declined a claim on her pet insurance policy due to a pre-existing condition and added a back-dated exclusion clause to her policy.

## **What happened**

Mrs O said she'd purchased a puppy in April 2021 when it was a couple of months old. And she'd taken out a pet insurance policy a week later. Mrs O said the puppy suffered some diarrhoea. But that wasn't unusual with a change of food and separation from its family.

The day after the policy commenced the puppy vomited. And the vet recommended a change of food. A couple of days later the vet prescribed a course of antibiotics. But the diarrhoea continued on and off for the remainder of the month.

Mrs O said there was no way she could've known there might be any existing problems when she took out the policy. And she thinks it's unfair Red Sands has declined her claim for the cost of the treatment.

Red Sands said the policy documentation sent to Mrs O explained any conditions or illnesses that first showed clinical signs or symptoms before the policy started or within the first 14 days of the policy were excluded from cover.

The pet's clinical history confirmed the condition claimed for was first noted before the policy started. So it'd declined the claim within the terms of the policy. And it'd placed an exclusion on the policy which excluded cover on all claims with respect to the digestive system with effect from the policy inception.

Mrs O wasn't satisfied with Red Sands' response. So she contacted our service and our investigator looked into the matter. She couldn't be sure exactly when the pet's symptoms had begun. But the evidence indicated it was before the policy start date. And even if they'd begun when the vet had started to treat the puppy that was within the first 14 days of the policy start. So she was satisfied Red Sands was entitled to rely on the pre-existing exclusion to decline the claim.

Our investigator could see Red Sands had also added a retrospective exclusion to the policy excluding all claims for the digestive system from the policy start date. So she looked at the online process Mrs O had gone through when she took out the insurance policy. And she didn't think Red Sands had asked a clear question about pre-existing conditions.

So she didn't think Mrs O had made a qualifying misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). And she recommended that Red Sands should remove the exclusion for cover on all claims with respect to the digestive system with effect from 13 April 2021.

Red Sands didn't agree with our investigator. It felt Mrs O had been provided with a definition of what was considered a pre-existing condition.

And the terms and conditions gave it the right to apply an exclusion to the policy in respect of any clinical signs noted within the first 14 days or prior to the policy starting. So it's asked for an ombudsman's final 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.

I'm sorry to hear about the difficulties Mrs O and her pet have experienced. And I can appreciate it must've been very upsetting to discover Red Sands had declined her claim for the cost of treatment for her puppy. So I've looked at whether Red Sands has treated Mrs O fairly and in line with the terms and conditions of the pet insurance policy. Or whether it needs to do anything more to put things right.

In the product information document, under 'what is not insured?' it states *"any illness or condition which is present or has clinical signs or symptoms before taking the policy out or occurs in the first 14 days of the policy."*

Similarly under 'what is not covered' the pet insurance policy terms and conditions state *"any claim or costs for or relating to a pre-existing condition(s) or for an accident, injury or illness that first showed clinical signs at any time before the commencement date of the policy or within 14 days of the commencement date."*

Terms such as these aren't uncommon in pet insurance policies. Most policies don't provide cover for medical conditions that'd already started before the policy was taken out, or within a set period at the start of the policy. So I think it's clear that any condition that began before the policy started, or in the first 14 days of the policy, wouldn't be covered under the pet insurance policy.

The medical notes indicate the first clinical signs of diarrhoea took place on 7 April. And the pet was first registered with the vet on 10 April, receiving treatment between 14 April and early May. As Mrs O took out the policy on 13 April I think it's fair to say signs or symptoms of a gastrointestinal problem had started either just before the policy started, or at least during the first 14 days of the policy cover. It follows that I don't think Red Sands acted unfairly in relying on the pre-existing condition clause to decline Mrs O's claim.

Red Sands has also applied a retrospective exclusion to the policy, backdated to the start of the pet insurance policy. And there are only limited circumstances where an insurer is able to add backdated exclusions to a policy after it's started.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA, if there's been a misrepresentation by the consumer, and the insurer can show that without the misrepresentation it would only have offered the policy on different terms, it may then alter the policy to reflect what would've happened if it'd been given the correct information.

For this to happen, I'd need to be satisfied that Red Sands had asked Mrs O a clear question and she had failed to take reasonable care when answering that question. So I'll look at how clear, and how specific, Red Sands' questions were.

I've looked at the process Mrs O followed when she applied online for her pet insurance policy. Mrs O would've been asked a series of questions about her pet and the level of cover she required.

And I can see there was a section relating to pre-existing conditions that explained the policy didn't provide cover for any pre-existing conditions or any illness or condition if symptoms or signs were noted, or a diagnosis is made, during the 14-day waiting period at the start of the policy.

Mrs O was asked "*are you looking to be covered for any pre-existing conditions?*". An icon provided Red Sands' description of a pre-existing condition, including any illness, injury, symptom, or sign of a condition before the policy began or noted during the 14-day waiting period at the start of the policy.

But there's no request for information about any illness her pet might've had at the time she applied for the policy. And Mrs O answered 'no' to the question about needing cover for pre-existing conditions. She'd not had to take the puppy to the vet for anything other than routine vaccinations at that point.

For Red Sands to be able to say Mrs O made a misrepresentation, it would need to show it had asked a clear question and Mrs O failed to take reasonable care when answering it. From the information I've seen, at the point when Mrs O bought the policy, she wasn't asked about her pet's medical history. And if she wasn't asked the question, then she couldn't have made a misrepresentation.

On this basis, I agree with our investigator that Red Sands should continue the terms agreed when it entered into the contract with Mrs O. In these circumstances, where there wasn't a misrepresentation at the point when Mrs O bought her policy, Red Sands isn't able to rely on CIDRA remedies. And it shouldn't add a backdated exclusion to the policy after it has started.

### **Putting things right**

As I've explained I think Red Sands acted fairly and within the terms and conditions of the pet insurance policy when it declined Mrs O's claim due to a pre-existing condition.

But I don't think the insurer acted fairly in applying a retrospective exclusion clause to the pet insurance policy. To put things right Red Sands should remove from the policy the exclusion for claims relating to the digestive system, backdated to the policy start date.

### **My final decision**

My final decision is that I partially uphold this complaint. Red Sands Insurance Company (Europe) Limited should remove the retrospective exclusion for claims relating to the digestive system from Mrs O's pet insurance policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 6 May 2022.

Andrew Mason  
**Ombudsman**