

The complaint

Mr C complains about Red Sands Insurance Company (Europe) Limited (Red Sands) applying a lower claim limit for a pre-existing condition to a claim under his upgraded pet insurance policy.

This decision covers Mr C's complaint about Red Sands (as the insurer of the policy) applying a lower claim limit for a pre-existing condition under his upgraded policy. It doesn't cover the sale of the upgraded policy by his broker.

What happened

Mr C took out a lifetime pet insurance policy for his dog in May 2017, which included a £1,000 annual limit on claims for any single condition requiring treatment. In November 2017 Mr C contacted Red Sands to discuss making a claim under his policy as his dog had a problem with its eye following an accident. Prior to renewal of his policy renewal in May 2018, Mr C contacted his broker and asked to upgrade his policy to a higher level of cover (including a £6,000 annual limit on a condition. Revised policy documents were issued confirming the upgraded policy. Mr C renewed his policy, at the same level of cover, each year thereafter.

In January 2022, Mr C contacted Red Sands to make a claim as his dog had a problem with its eye. Mr C said his dog needed treatment by two separate vet practices (one being a specialist). Red Sands said each practice would need to submit a claim for treatment. One of the practices then submitted a pre-authorisation for the estimated cost of treatment of the condition (Ulcerative Keratitis) at a cost of £1,168.39. The pre-authorisation was approved, and a full claim was subsequently submitted for an actual cost of £1,038.82. Red Sands accepted the claim (having deducted amounts due for the policy excess and a co-payment of 20%).

However, Red Sands also said they'd made a mistake when they'd approved the pre-authorisation, as the eye condition requiring treatment had started back in 2017. As such, they said all claims for conditions that had started before Mr C upgraded his policy would still be assessed against the previous policy annual condition limit of £1,000. While they agreed to pay the claim in full on this occasion, they said the annual condition limit had been fully used for the dog's eye condition (so they wouldn't accept any further claim for treatment of the condition in the current policy year).

Mr C was unhappy at this as he said he hadn't been told that the annual condition limit (for conditions that began before he upgraded his policy) would be limited to the figure under his old policy (£1,000) rather than the limit under his upgraded policy (£6,000). So, he complained to Red Sands.

Red Sands didn't uphold his complaint. In their final response, they said the dog's eye condition was first noted in June 2017, at which time the policy in force had an annual condition limit of £1,000. While Mr C upgraded his policy in May 2018, as the eye condition was first noted when the previous policy was in force, the £1,000 annual condition limit would still be applied. While they didn't have a recording of the call in which Mr C upgraded

his policy (as calls were only kept for two years) Red Sands said their sales script included an explanation that the higher annual condition limit would only apply to new conditions that arose after the upgraded policy began.

Unhappy at Red Sands' response, Mr C complained to this service. The main part of his complaint was that he had been mis-led about his dog's eye condition being covered (at the higher level) when he upgraded his policy (at extra cost) over the phone. He also thought that the eye condition wasn't a pre-existing condition as it had originally been treated and hadn't recurred (until the problem in January 2022). He thought he had been mis-sold the policy as he only became aware of the lower annual condition limit when he made the claim in January 2022. He wanted Red Sands to pay the whole value of the claim (including any bill from the second vet) or to be refunded the additional premiums paid for the upgraded policy (over and above the premiums for the previous policy).

Our investigator upheld Mr C's complaint, concluding Red Sands hadn't acted fairly. She couldn't see any evidence Mr C was told about the annual condition limit remaining at £1,000 for pre-existing conditions. Nor could she see any information in the policy documentation for Mr C's old policy setting out what would happen (to the annual condition limit) should he decide to upgrade his policy). And the policy documents for Mr C's upgraded policy only referred to the £6,000 annual condition limit – there was no mention of a lower limit for any pre-existing conditions. So, she thought Red Sands hadn't acted fairly in applying the lower limit. To put things right, she thought Red Sands should assess any second claim for treatment of the eye condition in line with the upgraded policy terms and conditions (including the £6,000 annual condition limit). If Mr C had settled any second cost of treatment, she thought Red Sands should reimburse this (and pay interest on the settlement figure).

Red Sands disagreed with the investigator's conclusions and requested an ombudsman review the complaint.

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.

My role here is to decide whether Red Sands has acted fairly towards Mr C.

The main issue in Mr C's complaint is whether Red Sands acted fairly in applying the lower annual condition limit from his previous policy (£1,000) to the claim made for treatment of his dog's eye condition in 2022 (rather than the higher annual condition limit of £6,000 under his upgraded policy). Mr C says he wasn't made aware of the lower limit still applying to a pre-existing condition (and that this means the policy was mis-sold). Red Sands say they acted fairly in applying the lower limit and this would have been made clear to Mr C during the sales call in which he upgraded his policy (from the sales script used in such situations).

I've considered both views carefully, together with the evidence and information available. Having done so, I've concluded Red Sands haven't shown Mr C was made aware of the lower limit, either at the time he upgraded his policy or subsequently. So, I don't think they've acted fairly in seeking to apply the lower limit to Mr C's claim. I'll set out why I've come to that conclusion.

In their final response, Red Sands say Mr C would have been aware of the lower limit continuing to apply to any conditions that first occurred before Mr C upgraded his policy. They say this was part of the sales script that would have been used when Mr C called to upgrade his policy. However, because Red Sands only keep call recordings for two years, the recording of the call in which Mr C upgraded his policy isn't available. So, it's not

possible to determine clearly whether he was told about the lower annual condition limit continuing to apply to pre-existing conditions. Given the importance of the issue of Mr C clearly being made aware of the lower limit continuing to apply, I don't think it's sufficient to refer to the sales script.

Given this, I've also looked at the policy information provided to Mr C, with a view to seeing whether the lower annual condition limit continuing (for pre-existing conditions) where a policy was upgraded was made clear.

Taking his old policy first, the policy terms and conditions at the time he took out his policy (2017) specify the £1,000 Annual Condition Limit for the level of cover taken out by Mr C (it also sets out the – higher – figures for enhanced levels of cover). While it refers to Red Sands being able to change the cover, benefits, premium, terms and/or conditions (when inviting renewal of the policy) there's no mention I can see about changes where the policyholder requests a change in the level of cover – including the annual condition limit. Specifically, there's no mention that the annual condition limit where a policy is upgraded will remain the same (for conditions that arose before the policy upgrade).

Turning to the policy information provided about Mr C's new, upgraded policy, I've again looked at what Red Sands provided to Mr C. The policy terms and conditions for the upgraded level of cover simply refer to the Annual Condition Limit of £6,000. While reference is made to the application of any policy excess or co-payment figure, there's no reference I can see to a lower Annual Condition Limit in relation to a condition that has previously arisen when a previous (lower level of cover) policy was in force. Similarly, the policy schedule issued to Mr C for the upgraded level of cover only refers to an Annual Condition Limit of £6,000 – there's no qualification or other reference to the lower level of £1,000 for conditions that first arose under the previous (lower level of cover) policy.

Given the significant difference between the two annual condition limits (which Red Sands say would have been made clear to Mr C from the sales script that would have been used in the call when he requested his policy upgrade) I think it's reasonable to have expected this to be confirmed (and thereby made clear to Mr C) in the policy schedule. It would then have been for Mr C to whether he was content with the lower annual condition limit that would continue to be applied (along with the other terms and conditions, premiums he was being offered for his upgraded policy).

Based on these considerations, I've concluded Red Sands haven't done enough to make clear to Mr C that a lower Annual Condition Limit continued to apply (for conditions that first arose under his old policy) when he upgraded his policy. So, they haven't acted fairly and reasonably in applying the lower annual condition limit to Mr C's claim in January 2022. Given this conclusion, to put things right I think Red Sands should assess Mr C's claim (or any additional element of claim for treatment of the eye condition that may arise) against the higher Annual Condition Limit of £6,000 and in accordance with the remaining terms and conditions of the policy (such as policy excess or co-payment).

My final decision

For the reasons set out above, my final decision is that I uphold Mr C's complaint. I require Red Sands Insurance (Europe) Limited to:

- Assess Mr C's claim (or any additional element of claim for treatment of the eye condition that may arise) against the higher Annual Condition Limit of £6,000 and in accordance with the remaining terms and conditions of the policy (such as policy excess or co-payment).

If Mr C has already paid for any additional cost of treatment, which Red Sands Insurance (Europe) Limited assess and accept under the above point, they should add interest at a rate of 8% simple from the date Mr C paid the additional cost to the date he tells us he accepts my decision (if he accepts the decision)¹.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 August 2022.

Paul King
Ombudsman

¹ If Red Sands considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they've taken off. They should also give Mr C a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.