

The complaint

Ms B complains about Red Sands Insurance Company (Europe) Limited (Red Sands) rejecting a claim under her pet insurance policy because of a pre-existing condition.

This decision covers, firstly, Ms B's complaint to this service in January 2022 about Red Sands declining a claim (£5,248) for surgery to her dog. After her complaint, a second claim (£732) for an overdose of medication (which was related to the surgery) was also declined. Red Sands agreed both could be considered by this service as one complaint.

What happened

Ms B took out a pet insurance policy for her dog in December 2019. In October 2021 the dog had surgery for intervertebral disc extrusion (a condition affecting the spine). Ms B made a claim for the cost of treatment. In assessing the claim, Red Sands asked for the dog's medical history, which was provided. However, Red Sands declined the claim, saying it related to a pre-existing condition, so was excluded under the policy. Specifically, they referred to notes in the medical history, firstly about a hindleg tremor before the policy started and (immediately prior to the surgery) that disc disease was the most likely cause.

Ms B challenged the decline, and the vet who performed the surgery gave their opinion the surgery wasn't related to a pre-existing condition. The vet said the hindleg tremble could have many causes, which may not have been neurological in origin. The vet also noted that, regarding the hindleg tremble before the policy started, no diagnostic tests were carried out (nor were any neurological defects noted at the time). Therefore, the two conditions could not be definitively linked (so the disc extrusion couldn't be said to be caused by a pre-existing condition). As such, the surgery should be covered under the policy.

Given the view from her vet, Ms B complained to Red Sands, but they didn't uphold her complaint. In their final response they said they deemed the hindleg tremor to be the first clinical sign of the intervertebral disc extrusion and as such this meant the condition was pre-existing. They also noted the dog subsequently presented with muscle trembling in its hind legs (and muscle weakness) and this also supported their conclusion the issue was pre-existing. While they considered what Ms B's vet said about the disc extrusion being due to inflammation/infection, they thought this less likely. Based on these considerations, they confirmed their decision to decline the claim.

Unhappy at Red Sands' response, Ms B complained to this service. The main part of her complaint was that Red Sands had unfairly declined her claim. She maintained, based on her vet's opinion, the surgery on her dog's disc wasn't related to a pre-existing condition. She asked for Red Sands to reimburse her for the cost of the surgery.

In respect of the decline of the second claim, Red Sands referred to an additional exclusion they'd added to the policy (after the decline of the first claim). That referred to cover for all claims with respect to anything to do with the hindleg muscle tremors that occurred before the policy started and resulting conditions (with effect from December 2019).

Our investigator upheld Ms B's complaint, concluding Red Sands hadn't acted fairly. As they'd relied on exclusions for a pre-existing condition to decline the claims, she thought the

onus was on Red Sands to show the exclusions applied. On the balance of probabilities, she concluded Red Sands hadn't shown the surgery was linked to a pre-existing condition, as the hindleg tremor didn't seem linked to the disc extrusion. She thought the views of Ms B's vet indicated the dog's condition wasn't the result of a neurological issue, based on the medical history after the policy was taken out (but before the disc surgery). Regarding the second claim, she thought the policy should cover the cost, as it didn't apply exclusions for conditions claimed for since the policy started (which would include the surgery). To put things right, she thought Red Sands should cover both claims (less any applicable policy excess or co-payment). Because of the distress and inconvenience suffered by Ms B, the investigator thought Red Sands should pay £150 in compensation.

Red Sands disagreed with the investigator's conclusions and requested an ombudsman review the complaint. In disagreeing, they maintained their view that the hindleg tremor noted in the medical history before the policy started was the first sign of the disc extrusion, so a pre-existing condition (and excluded from cover). They said the dog later presented with muscle trembling in the hind legs and diagnosis of disc extrusion (an age-related degenerative condition). They also referred to publicly available information on the condition indicating clinical signs can include hind limb weakness.

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 Ms B.

The main issue in Ms B's complaint is whether Red Sands acted fairly in applying a policy exclusion for pre-existing conditions to decline, firstly, the claim for the surgery on the disc extrusion and, secondly, the subsequent claim for the medication overdose (the medication related to the surgery). Ms B says, based on the views of her vet, the surgery wasn't the result of a pre-existing condition. Red Sands say the hindleg trembling was linked to the disc surgery, referring to the medical history and to information on intervertebral disc disease indicating a symptom of the condition can include hind limb weakness (trembling).

I've considered both views carefully. Where a policyholder makes a claim, the onus is on them to show that an insured event applies. In this case, there's no doubt that Ms B's dog had a condition that required surgery (and subsequent medication) for which she made claims. But where an insurer relies on an exclusion to decline a claim, the onus is on them to show the exclusion applies - it isn't for the policyholder to show that it doesn't apply.

The wording of the exclusion applied by Red Sands is contained within *Section 1: Vet Fees* of the policy, under the heading "*What is not Covered?*", which states:

"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 of the policy or within 14 days of the commencement date."

Red Sands maintain the hindleg trembling was linked to the disc surgery, referring to the medical history and to information on intervertebral disc disease indicating a symptom of the condition can include hind limb weakness (trembling). Having considered this view, alongside the medical history references they've cited, I'm not persuaded (given the onus is on them) they've shown there was a pre-existing condition (the disc extrusion) for which the hind leg trembling was the first clinical sign. So, I've concluded they didn't act fairly and reasonably in using the exclusion to decline the claim for surgery. I'll set out why I've come to that conclusion.

Red Sands refer to the medical history of the dog, specifically to a reference in May 2019 to "*Hindlimb stationary tremor*" (but not lame). The medical history doesn't mention the same issue again until February 2021 ("*muscle trembling in the back legs*") and October 2021 ("*Muscle weakness*"). There are issues recorded in August 2020 (though trembling isn't mentioned). I've also noted reference in the report on the surgery in October 2021 from the vet diagnosing disc disease as the most likely cause (other, less likely, causes are inflammatory/infectious and neoplasia). The report also records the disc intrusion following an MRI scan. The report also records intermittent episodes over the previous year of suspected spinal pain.

Taking these points together, on the balance of probabilities I think it's likely (particularly given the degenerative nature of the disc extrusion issue) the condition had been present for some time before the surgery, perhaps a year given the reference from the vet report about the surgery (and the reference to muscle trembling in February 2021). However, I'm not persuaded Red Sands have shown the condition was present as far back as May 2019 (the first reference to tremor), particularly given the absence of any clear further reference until February 2021. As the policy was taken out in December 2019, then I'm also not persuaded the disc condition was present at that point. In coming to that conclusion, I've also placed weight on the opinion of the vet that performed the surgery in October 2021.

Having concluded it was unfair for Red Sands to use the exclusion for pre-existing conditions to decline the claim for surgery, then I've also concluded they acted unfairly in declining the second claim for treatment, given the medication concerned was (as I understand it) prescribed as a consequence of the earlier surgery. As I've concluded Red Sands acted unfairly in applying the pre-existing conditions exclusion, then it follows they acted unfairly in adding the additional exclusion relating to all claims with respect to anything to do with the hindleg muscle tremors that occurred before the policy started and resulting conditions (with effect from December 2019).

Based on these considerations, I've concluded that Red Sands haven't, on the balance of probabilities, done enough to show that they acted fairly and reasonably in applying the exclusions to decline both claims. Given this conclusion, to put things right I think Red Sands can't rely on the exclusions to decline the claims and should settle both claims in line with the remaining terms of the policy (less any applicable policy excess and co-payment, given the age of Ms B's dog).

On the issue of compensation, considering all the circumstances of the case I think £150 for distress and inconvenience is fair.

My final decision

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

- Settle both claims in line with the remaining terms of the policy (less any applicable policy excess and co-payment, given the age of Ms B's dog).
- Pay Ms B £150 compensation for distress and inconvenience.

Red Sands Insurance (Europe) Limited must pay the compensation within 28 days of the date on which we tell it Ms B accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or

reject my decision before 4 August 2022.

Paul King
Ombudsman