

The complaint

Miss K complains that Pinnacle Insurance Plc declined her pet insurance claim. My references to Pinnacle include its agents.

What happened

Miss K has lifetime pet insurance for her rabbit which started on 1 February 2020. Pinnacle is the insurer.

When the policy started Pinnacle checked the rabbit's vet records and wrote to Miss K telling her it had applied a specific exclusion to the policy for 'respiratory problems' (reviewable in February 2022) as her rabbit previously had treatment for diagnosed respiratory problems in 2018/2019.

The policy renewed in February 2021. In September 2021 Miss K took her rabbit to the vet with breathing issues. She claimed for treatment for pyothorax (pus fluid within the chest cavity). Pinnacle declined the claim as it said the condition fell within the respiratory problems exclusion.

Miss K complained to us. She sent a report by her vet which she said showed pyothorax isn't a respiratory problem. She wants Pinnacle to pay the claim.

Our investigator said Pinnacle fairly added the respiratory problem exclusion and fairly declined the claim as it had provided evidence that pyothorax would be considered a respiratory problem for its underwriting criteria.

Miss K disagrees and wanted an ombudsman's decision. In summary she said she didn't dispute that Pinnacle could add the respiratory problems exclusion. Her complaint is that Pinnacle couldn't use the exclusion to decline the claim as her vet's opinion was the claim wasn't for a respiratory condition. She said she hadn't seen any evidence from Pinnacle to dispute her vet's opinion.

Before I made my provisional decision I asked Pinnacle to provide evidence why it considered pyothorax to be a respiratory problem and if it had any comments on Miss K's vet's report. I referred to the evidence Pinnacle provided in my provisional decision.

What I provisionally decided – and why

I made a provisional decision that I was intending to not uphold the complaint but for different reasons than our investigator gave. I said:

'Miss K doesn't dispute that Pinnacle could add the respiratory problems exclusion to her policy so I don't need to consider that issue. I have to decide whether Pinnacle fairly and reasonably used the respiratory problems exclusion to decline the claim, and I think it did. I'll explain why.'

Miss K's vet notes of 9 September 2021 says her rabbit presented with increased respiratory effort and flaring nostrils. Her vet's report says:

'Mrs K brought (rabbit's name) to see me on 09/09/2021 as he was breathing quicker than normal. I was concerned at this and suggested we take radiographs (x-rays). The x rays revealed a chest full of fluid which we aspirated and discovered pus. We then drained the chest and flushed till all the pus was removed and the chest was clear. As this is a potentially life threatening condition (pyothorax) we sent a sample away to be tested in order to make sure we were treating with the correct antibiotic....

I maintain that this was not a respiratory infection as neither the airways nor the lungs were affected. It was in fact an infection in the chest that was impeding the lungs from inflating properly, giving rise to the increased respiratory effort. It was most definitely not a respiratory infection. The results of the culture revealed Pasteurella which is a bacteria that can affect many parts of the body. As far as I am aware he was excluded for respiratory problems. He did not have a respiratory problem'.

So Miss K's vet's opinion is that the condition claimed for wasn't a respiratory problem.

Pinnacle's underwriting guidance shows that if a pet has pyothorax it will add a specific exclusion for respiratory problems. But that's not necessarily evidence that pyothorax is a respiratory problem.

However Pinnacle's also provided a detailed report from its vet, which we've sent to Miss K. In summary the vet says:

- Pasteurella was the inciting cause of both the rabbit's initial upper respiratory infection and the later pyothorax. So the conditions all related to respiratory problems/pasteurellosis.
- The pleural space is part of the respiratory system so although the bacteria was affecting the pleural space and not the upper respiratory tract given that pasteurella was found and the rabbit previously had pasteurellosis the conditions are linked.
- Miss K's vet said the claim condition wasn't a respiratory infection as neither the airways nor lungs were affected. However, the pleural space is part of the respiratory system, just not directly connected to the upper or lower airways. The pleural space is important to regulate pressure changes which allow the lungs to expand and contract which is why the rabbit had laboured breathing when his pleural space was full of fluid. The fluid was impairing the lungs expanding so the lungs were affected, just indirectly.
- The only way bacterial infection gets into the pleural space is from perforation internally from the lungs, blood transmission, or from an external trauma. In any of these situations, pasteurella was the bacteria isolated, so it is clearly due to the rabbit already having the bacteria in its body and it spreading (internally, externally or via the blood).
- Miss K's vet also says the rabbit didn't have a respiratory problem, however the presenting clinical signs were an increased respiratory rate and effort and flaring of the nostrils which are all respiratory problems.

So Pinnacle's vet's opinion is that the claim condition was a respiratory problem or at the very least related to a respiratory problem.

There is conflicting opinion between the vets. I'm persuaded by Pinnacle's vet's full explanation in her report as to why Pinnacle can reasonably consider that Miss K's rabbit's pyothorax fell within the respiratory problem exclusion. I think Pinnacle fairly relied on the exclusion to decline the claim'.

Responses to my provisional decision and further developments

Miss K disagreed with my provisional decision. There's been exchanges of further evidence between Miss K's vet and Pinnacle's vet. Miss K added that:

- Pinnacle's second report didn't have a named author or the author's professional qualifications and may not be a professional opinion, whereas her vet had provided expert opinion.
- Pinnacle's second report included a reference to a named online encyclopedia which Miss K said was known to be an unreliable source so I should disregard any comments from that source.
- When the policy began it was offered with the exclusion of respiratory problems, there was no exclusion for pasteurella. If such an exclusion for pasteurella had now been added she didn't know or consent to it.

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've considered all the further evidence from both parties and their vets, as well as the original evidence, and have enough to make a final decision on Miss K's complaint.

To address Miss K's concerns raised in her response:

- Pinnacle's covering letter to its second report shows the report is its vet's response to Miss K's vet's report of April 2022. I'm satisfied Pinnacle's report is from an appropriate expert.
- I've not taken into account generic information from the online encyclopedia but have taken into account evidence Pinnacle's vet provided in her second report from the medical websites and the National Cancer Institute's definitions (the later originally referred to by Miss K's vet).
- The exclusion on the policy that Pinnacle used to decline this claim is the exclusion for 'respiratory problems'. I've seen no evidence that Pinnacle has added an additional exclusion for the specific condition of pasteurellosis.

Having considered all the evidence I find that Pinnacle fairly and reasonably used the respiratory problems exclusion to decline the claim. I'll explain why.

The evidence from both parties' vets has in part focused on whether or not Miss K's rabbit previously had pasteurella. Very briefly, Miss K's vet said as her initial vet didn't do diagnostic tests there's no proof the rabbit's original respiratory problems were caused by pasteurella and also other matters can also cause respiratory problems. Pinnacle's vet said pasteurella hadn't been previously diagnosed in the rabbit but she detailed why she thought there was enough evidence the rabbit previously had pasteurellosis without a formal diagnosis.

As no diagnostic tests were done in 2018/19 to show the cause of the rabbit's respiratory problems I can't be completely certain that pasteurellosis was the cause then. But I make my decision on the 'the balance of probabilities'. Although there was no formal diagnosis in 2018/19, I'm persuaded by Pinnacle's vet evidence that the rabbit's clinical signs and response to treatment mean it's more likely than not that he previously did have pasteurellosis.

However, importantly I don't think whether or not the rabbit had pasteurellosis is the main issue. I say that because Miss K doesn't dispute Pinnacle could add the respiratory

problems exclusion given her rabbit's medical history before the policy started. So the main issue is whether Pinnacle fairly considered pyothorax to be a respiratory problem.

Also, I note Miss K's vet says that if he hadn't done a bacterial culture and just treated the rabbit with antibiotics Pinnacle would have paid the claim because there would be no proven pasteurella. But I don't think that's correct, Pinnacle didn't decline the claim only because it thought the rabbit had pasteurella previously and at the treatment claimed for. It declined because it considered pyothorax was a respiratory problem.

Miss K's vet thinks the pleural space isn't part of the respiratory system. He referred to the definition of the respiratory system from the National Cancer Institute - *'the organs that are involved in breathing. These include the nose, throat, larynx, trachea, bronchi, and lungs'*. He says pleural space isn't mentioned in that definition. And although the pleural space is involved in breathing so are other parts of the body (for example ribs, heart, brain) that aren't part of the respiratory system.

In contrast Pinnacle's vet says the pleural space is a *'vital part of the respiratory system'*, without which the pressure changes to allow for expansion and contraction of the lungs wouldn't occur. And as to the National Cancer Institute's definition of the respiratory system she says just because the pleural space isn't a direct part of the respiratory apparatus (lungs, airways etc) doesn't mean it's not part of the respiratory system. She refers to the National Cancer Institute's definition of the pleural cavity - *'the space enclosed by the pleura, which is a thin layer of tissue that covers the lungs and lines the interior wall of the chest cavity'*. She says that definition describes the pleura as being a membrane to the chest cavity, similar to the bone membrane still being part of the bone. She also referred to medical article that refers to the pleural space as being part of the respiratory system and an online veterinary paper on 'Approach to rabbit respiratory disease' which says pleural effusion can cause a restrictive respiratory disease.

On the overall vet evidence I don't think it was unreasonable for Pinnacle to consider that pyothorax was a respiratory problem. And although Pinnacle's underwriting guidance alone isn't necessarily evidence that pyothorax is a respiratory problem I accept that the underwriting guidance shows if a pet has pyothorax Pinnacle will add a specific exclusion for respiratory problems.

Both vets have also commented on whether laboured breathing, which the rabbit had when he was treated for pyothorax, implies a disease of the respiratory system. Miss K's vet says not as other conditions, such as cardiac conditions, can cause increased breathing effort. Pinnacle's vet agrees that some other conditions can cause laboured breathing but says in this case Miss K's rabbit had increased respiratory effort and flaring of the nostrils, it was radiographed to show a pleural effusion and when the pleural effusion was drained that improved his respiratory effort. She believes in this case the rabbit's laboured breathing was clearly due to the pleural effusion and she referred again to the veterinary paper which says a pleural effusion can cause a restrictive respiratory disease.

Both vets agree that laboured breathing doesn't have to mean there is a respiratory disease, and I accept that. But the evidence shows that when the rabbit had pyothorax he had increased respiratory effort.

For the reasons I've explained above I find that Pinnacle reasonably considered that on the overall evidence the claim for pyothorax fell within the exclusion for respiratory problems and it could fairly use the exclusion to decline the claim.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 16 August 2022.

Nicola Sisk
Ombudsman