

The complaint

Mr C and Ms L have complained that Red Sands Insurance Company (Europe) Limited ("Red Sands") has declined their claim for the cost of treatment for their pet dog on the ground that his condition was pre-existing and therefore excluded by their policy.

References to Red Sands include their agents and administrators.

What happened

Mr C and Ms L acquired a rescue dog from their local council, and I'll refer to him as "M". He was seven years old when they adopted him and he appeared fit and healthy but the rescue centre wasn't able to provide any previous medical history for him but had no concerns based on their care of him.

Mr C and Ms L insured M with Red Sands on 18 October 2021. Their policy provides that it doesn't cover pre-existing conditions, defined as:

"Any claim or costs for existing conditions, which means any injury or illness that relates to or results from an accident, injury, illness or where [M] showed observable changes to his normal healthy state, condition, appearance, bodily functions or behaviour that could be observed visually, diagnostically or otherwise before or within 14 days of your policy's original start date".

On 22 October 2021, so within the policy's 14-day exclusion period, Mr C and Ms L took M to the vet as he seemed a bit stiff on his back legs after long walks. The vet noted:

"L stifle thickened slight crepitus does have scar laterally on thigh and O reports surgery in the past but not known what – suspect cruciate..."

No specific comment was made about his right hind leg. Anti-inflammatory medication as needed was advised.

On 12 November 2021 M was taken back to the vet. His right hind leg was noted to be fine but there was a concern about how comfortable he was on his back legs especially the left. Referring to M's left hind leg, the vet noted:

"Line on lateral aspect of leg not likely to be cruciate surgery as would normally approach medially, but does look like possible scar - could just be normal feature of coat."

On 10 January 2022 M was taken to the vet again as he was displaying lameness in his right hind leg. He was advised rest and to continue with anti-inflammatory medication. On 8 February 2022, after no improvement on his current medication, the vet advised that M be x-rayed.

Mr C and Ms L contacted Red Sands to check whether M would be covered for further investigation. They were told that this was something that would be covered as long as his condition wasn't pre-existing when they took out the policy. Red Sands explained about

claim limits. As Mr C and Ms L weren't aware of M having any pre-existing conditions, they therefore went ahead and approved M having x-rays assuming M would be covered for these. They say they weren't made aware by Red Sands that if M had in fact got a pre-existing condition, he wouldn't be covered for it even if they didn't know about it.

The x-rays showed right side lameness. M's right stifle showed changes consistent with chronic cruciate disease. M was "*Fine otherwise*".

Mr C and Ms L submitted a claim to Red Sands for the costs of M's treatment. Red Sands declined their claim on the ground that it had been noted on 22 October 2021, within the 14-day policy exclusion period, that M was suffering from cruciate ligament damage and osteoarthritis and had been stiff on his back legs. It stated:

"As per the medical notes there is strong evidence to suggest that [M] had a previous femur fracture which has caused osteoarthritis changes in that limb. It is also evident from these radiographs / medical notes that [M] has suffered with chronic cruciate disease to the left hind limb."

It explained that the policy didn't cover pre-existing conditions, not did it cover bilateral conditions, quoting the following from the policy:

"Should your pet suffer from a bilateral condition, which refers to any condition affecting both sides of the body, such as ears, eyes, elbows, shoulders, knees, hips and cruciate ligaments, these disorders are considered as one condition".

In response, Mr C and Ms L provided a letter from M's treating vet who disagreed with Red Sands's assessment of M's clinical history and who expressed the opinion that both the clinical and radiographic evidence was more supportive of an acute cruciate injury in M's right hind limb, with the onset of clinical signs occurring after the inception and 'warm-up' period of the policy.

Red Sands reassessed Mr C's and Ms L's claim, but concluded that:

"As [M] is noted to have suffered from osteoarthritis, cruciate ligament damage (as stated previously this is a condition when bilateral is treated as one condition) and been seen to be stiff on his hind limbs before the end of his policy warm up period, we do consider osteoarthritis and cruciate ligament damage to be pre-existing conditions and as such we are unable to cover this claim".

Mr C and Ms L weren't happy with the rejection of their claim by Red Sands and brought their complaint to this service. Our investigator's view was that their complaint should be upheld as they had no knowledge of M's previous medical history, and M's vet had confirmed that on 22 October 2021 M's right hind limb appeared normal and overt lameness on the right hind limb wasn't reported until 9 January 2022. She also didn't consider that Red Sands could fairly apply the definition of a Bilateral Condition to treat both legs as one condition.

In response to our investigator's view, Red Sands made reference to M's previous veterinary history before he was acquired by Mr C and Ms L. It said that this indicated that M suffered from cruciate damage and osteoarthritis before the policy start date. It argues that osteoarthritis is a progressive, degenerative disease that worsens over time, hence why under the terms of Mr C and Ms L's policy wording, although the left leg was the previous concern, the right limb would be excluded also. Cruciate ligament damage affecting one side of the body prior to the policy will automatically place an exclusion on the bilateral limb also.

As Red Sands doesn't agree with our investigator's view, it's asked that the matter be referred to an ombudsman for a final decision from this service.

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.

Having done so, I'm upholding Mr C's and Ms L's complaint and I'll explain why.

I've considered what was recorded by M's previous vets. The vet's notes from 12 August and 28 August 2019 refer to M's left leg limping. A near cruciate rupture was suspected, and osteoarthritis was noted. No comment was made about M's right hind leg.

On 22 October 2021, after Mr C and Ms L acquired M, and within 14 days of taking out their policy with Red Sands, M's new vet noted that M's left stifle was thickened, and he had a scar on the thigh. Subsequent x-rays indicated that this was not cruciate related but was connected to a previous fracture. The only comment at that time that included M's right hind leg was that M's back legs seemed a bit stiff after long walks. This was Mr C's and Ms L's observation, but they explained that this was a casual comment to the vet as to how anyone might feel after a long walk.

It wasn't until 10 January 2022 that any comment was made about M's right hind leg. This led to x-rays being taken which showed that M had chronic cruciate disease in his right stifle. Red Sands argues that due to the policy term relating to bilateral conditions, a condition evident in one leg is treated as also evident in the other.

I've taken into account what M's vet has said in response to Red Sand's rejection of Mr C's and Ms L's claim (with my emphasis underlined):

"You will note doubts recorded in the clinical record on 12.11.2021 regarding whether the previous surgery was for cruciate disease, or for another reason. These suspicions were confirmed by the subsequent radiographs, which demonstrated that the surgery that [M] has had on that limb was most likely, as you accept, to treat a fracture and not to treat cruciate disease. The osteoarthritic changes noted in the stifle joint in that limb could just as well be secondary to that surgery, original trauma or some other conformational abnormality or degenerative process, as they could be caused by cruciate disease.

The radiographs taken on 17.02.2022, which were reviewed at the time by an Advanced Practitioner in Small Animal orthopaedics, also support the initial clinical assessment that osteoarthritis was the most clinically significant feature of the left stifle, as there was NO clear radiographic evidence for cruciate disease in that limb.

On the other hand, there is clear radiographic evidence supporting a diagnosis of cruciate disease in the right hindlimb. There is no evidence, however, to support your assertion that this either a chronic condition, or one that pre-dated the inception of the policy.

Indeed, when [M] was examined on both the 22.10.2021 and the 12.11.2021, the right hindlimb appeared normal (notwithstanding the soft tissue injury noted on 12.11.2021); overt lameness on the right hindlimb was not reported until 09.01.2022, well after the inception of the policy. On this date, lameness was moderate but there were still no clear clinical signs (stifle effusion, cranial draw etc) that suggested a cruciate injury at that point; that diagnosis was only established following radiographs on the 17.02.2022.

In summary, both the clinical and radiographic evidence is more supportive of an acute cruciate injury in right hindlimb, with the onset of clinical signs occurring after the inception and 'warm-up' period of the policy."

In summary, in M's vet's professional opinion, the surgery on M's left hind leg was most likely to have been to treat a fracture which led to osteoarthritis. The x-rays taken on 18 February 2022 did not disclose clear evidence of cruciate disease in M's left hind leg. There were no issues with M's right hind leg until 9 January 2022. The cruciate disease in this leg was only diagnosed on 17 February 2022 and was considered to be acute. There was no evidence that it was chronic, or that it pre-dated policy inception.

In the absence of evidence to the contrary, I'm drawn to conclude that there is insufficient evidence of a connection between the issue with M's right hind leg for which Mr C and Ms L are claiming, and the pre-existing issue with M's left hind leg. As the conditions are different, I don't consider that it is fair for Red Sands to treat them as bilateral. And as there is no evidence of any cruciate issues with M's right hind leg until January 2022, I don't consider that this condition can fairly be determined by Red Sands to be pre-existing.

My final decision

For the reasons I've given above, I'm upholding Mr C's and Ms L's complaint. I require Red Sands Insurance Company (Europe) Limited:

(1) to settle Mr C's and Ms L's claim subject to the other terms and conditions of their policy. If they have already paid to the vet any part of the sum claimed, this should be reimbursed to them.

(2) to pay Mr C and Ms L interest on any sum so paid to them by way of reimbursement at the simple rate of 8% from the date they made payment to the date that payment is made to them.

If Red Sands Insurance Company (Europe) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C and Ms L how much it's taken off. It should also give them a tax deduction certificate if either of them asks for one so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms L to accept or reject my decision before 1 March 2023.

Nigel Bremner
Ombudsman