

The complaint

Ms D has complained that West Bay Insurance Plc wrongly deducted a 20% co-payment from her claim under her pet policy.

What happened

Ms D has a lifetime policy for her dog which cover vet fees up to £10,000 per year with an excess of £80 per condition per year. Once her dog reaches age six and over, she was to pay an additional 20% of the claim costs by way of a further excess.

Ms D's dog suffered from an anal abscess issue and complications and she said she made claims from July 2021 when the condition started and when her dog was only five years old. West Bay has confirmed it received two claims, one for treatment from 13 July 2021 to 10 August 2021 and the other for treatment on 14 August 2021. Both of those claims were paid and because her dog was then five years old and the excess payable was £80 for each claim.

West Bay said it then received another claim for treatment from 16 September 2021 to 24 September 2021 to which the additional 20% of the treatment costs was deducted along with the excess of £80. This was because her dog turned six years of age on 16 August 2021. So, it deducted £755.42 which essentially Ms D then had to pay to the vet.

Ms D complained because she believed the 20% co-payment was only payable when the condition started after her dog was reaches six years of age, and this condition started when her dog was aged five years old. West Bay didn't think it had done anything wrong, so Ms D brought her complaint to us.

The investigator initially suggested Ms D's complaint should be upheld. But following further details from West Bay, he then thought it shouldn't be upheld. Ms D remained of the view that the policy wording was unclear on the matter, so her complaint was passed to me to decide.

I issued a provisional decision on 5 October and I said the following:

'The policy wording is essential here so first in the Insurance Product Information Document (IPID) it says the following under what is not insured:

'20% of the remaining costs of all veterinary fees after the deduction of the applicable excess for dogs aged 6 years and above and cats aged 8 years and above.'

In the policy document the following is very significant and important:

'Condition/incident – *Where your pet suffers an injury or contracts an illness which may lead to a claim covered by this insurance policy.'*

‘Fixed excess – The amount you are required to pay as part of certain claims made under the policy as shown in your Policy Schedule and will be payable each year for each illness or injury.’

‘Illness/illnesses ...

Recurring and/or on-going illness shall be considered one loss. ...’

‘Percentage excess – The percentage amount you are required to pay towards the costs of the veterinary fees in addition to the fixed excess. This amount will be deducted from each claims [sic] settlement.

Example of how to calculate the amount you will have to pay in the event of a claim. A valid claim arises for veterinary fees totaling [sic] £500 and your dog is over 6 years of age when the condition starts.

The example applicable to Essentials, Classic or Extra products.

Amount claimed	£500
Less fixed excess £90	£410
Less percentage excess 20% = £82.00	£318
Total excess paid by you	£172
Total paid by us	£318’

In Ms D’s schedule for the year starting in November 2021 which is the only one West Bay has disclosed to us, it confirms the following:

‘The excess for veterinary fees is applicable per condition per year’.

I must assume the schedule for the previous year, which is relevant for Ms D’s claims, said the same.

So first, the fixed excess is only payable ‘per year for each condition or illness’, more so given recurring illnesses are also defined as one loss. However in the final response letter dated 20 January 2022, West Bay confirms Ms D paid the fixed excess of £80 for each of the two claims made before Ms D’s dog reached six years of age, despite the fact that these two claims concerned the same condition. And for the third claim after Ms D’s dog reached six years of age, it said it deducted the 20% percentage excess plus the fixed excess of £80.

So, I consider for all three claims made, Ms D should have only paid one excess of £80 as Ms D’s policy wouldn’t have renewed until November 2021. I’ve seen no documents dealing with the payment of any of the claims, however given the definition of the fixed excess as detailed in the policy document and schedule above, it’s clear to me only one such fixed excess should have been deducted. Therefore, it should refund Ms D the further total of £160 fixed excess it said in the final response letter was deducted for the second and third claims with interest.

Turning now to Ms D main complaint concerning the 20% percentage excess. I consider Ms D is right that the wording concerning this term is confusing. On the one hand it says, ‘a valid claim arises for veterinary fees totaling [sic] £500 and your dog is over 6 years of age **when the condition starts** (my emphasis).’ So, since this condition started when her dog was aged five years of age, this wording means the percentage excess can’t be applied to the third claim as the condition being claimed for, started two months before when her dog was still aged five years of age.

However, above the wording also says '**Percentage excess** – *The percentage amount you are required to pay towards the costs of the veterinary fees in addition to the fixed excess. This amount will be deducted from each claims [sic] settlement.*' This quite obviously contradicts my earlier observation above. And I consider it contradicts the fact that recurring conditions are classed as one loss too.

In situations where the policy wording is misleading, or confusing, or like here contradictory, the law provides that the term must be construed in favour of the consumer, as of course the consumer has no part in the writing the policy terms or underwriting the risk. Therefore I consider that as Ms D's dog wasn't aged six years of age when the condition started, the 20% percentage excess cannot be applied to the last claim she made for this condition and the amount deducted, namely the sum of £755.42, should be refunded with interest.

For the avoidance of any doubt if Ms D was to make any new claim for a different condition, after her dog had turned six years of age, then the percentage excess would be payable. However, given the policy wording, if a claim was to be made for a recurring condition which started when her dog was under six years of age, this policy wording doesn't permit the percentage excess to be applied to that claim. This is because the policy decrees that recurring conditions should be considered one loss. So, since that term is there to ensure in non-lifetime policies where conditions are time limited to 12 months that the policyholder can't claim for a recurrence of a condition after 12 months has passed, it follows that West Bay can't then take advantage of this to a consumer's detriment in life time policies where no such limitation occurs.

I can see that West Bay relied on the contents of its welcome email sent in November 2020 to further explain its 20% percentage excess following the investigator's initial view namely the following:

'A 20% variable excess becomes compulsory for any treatment received from the date your dog turns 6 years of age/cat turns 8 years of age, even if this happens partway through your policy. There may be times when we change your policy excess terms at renewal.'

However, since the actual term in the policy condition details additionally '*when the condition starts*' as I explained above, and this above omits that part, I don't consider this then somehow overrides the actual policy term. Indeed, it merely strives to confuse the matter further since this isn't detailed in the actual policy wording at all.

I consider Ms D was put to some considerable trouble and distress over this. She explained to us that she has always managed to keep herself debt free but she would have to get a loan to pay the vet the sum of £755.42 if this wasn't resolved in her favour and she was very concerned about her credit rating if that had to occur. So, I consider West Bay should pay Ms D the sum of £200 compensation in addition.'

Ms D said she had nothing further to add but that she remained of the view the percentage excess can only be applied if the condition started when her dog was aged six which wasn't the case with her dog.

West Bay said it had provided the relevant schedule. And that it had made a mistake in its final response letter saying it had taken an £80 excess for each claim Ms D made. In fact, it had only taken one £80 which covered all of her claims.

It produced a call where it said it was explained to Ms D that the percentage excess would be applied as soon as her dog turned six years of age and that Ms D accepted this and understood it. So, it didn't agree with the outcome in my provisional decision including the compensation award.

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 again, I remain of the view as detailed in my provisional decision above, save for the issue concerning the £80 excess amount.

This is because of the lack of clarity in the policy wording. So, it doesn't matter what was said to Ms D on a phone call or indeed whether she indicated that she understood. The fact remains that the policy wording is unclear because it says this:

*'a valid claim arises for veterinary fees totaling [sic] £500 and your dog is over 6 years of age **when the condition starts** (my emphasis).*

Therefore, the law requires that this is held in the consumer's favour when such a lack of clarity exists. So, for these reasons I'm upholding this complaint as regards the imposition of the percentage increase which now need to be paid or refunded by West Bay. And I'm upholding the payment of compensation also.

I'm grateful for the clarification that West bay made a mistake in its final response letter and only deducted one payment of the excess of £80 for all Ms D's claims about the same condition, as that is what the policy says should happen.

My final decision

So, for these reasons it's my final decision that I'm upholding this complaint.

I now require West Bay Insurance Plc to do the following:

- Pay her vet the deduction by way of the percentage excess in the sum of £755.42. If Ms D has now paid her vet this sum herself, it should refund Ms D instead. Interest of 8% simple per year should be added to any payment to Ms D, from the date she paid it to her vet to the date it refunds her.
- If income tax is to be deducted from the interest, appropriate documentation should be provided to Ms D for HMRC purposes.
- Pay Ms D the sum of £200 compensation for the trouble and distress it caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 15 November 2022.

Rona Doyle
Ombudsman