

The complaint

Mr N's unhappy with Forsakringsaktiebolaget Agria (publ)'s, trading as Agria Forsakring (AF), decision to decline his claim made on a pet insurance policy.

What happened

Mr N's annual policy for his pet dog started in October 2021. He contacted AF to make a claim for vets' fees in May 2022 after his dog fell ill and needed treatment.

AF considered the claim but told him it wasn't prepared to pay it on the grounds that it felt the illness was pre-existing when the policy started. AF said that, when he took the cover, it was explained that the policy didn't pay out for costs resulting from pre-existing illness or injury.

Unhappy with AF's decision, on the grounds that he didn't believe the illness was pre-existing, Mr H brought a complaint to this service. Our investigator looked into the complaint and recommended that it should be upheld.

The complaint was passed to me to consider afresh as AF wasn't prepared to accept the investigator's findings.

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've decided to uphold the complaint. I'll explain why.

I think it's important to start by explaining what the relevant policy terms and conditions say. They explain that, subject to certain exclusions, AF will pay the cost of vets' fees for illness and injury. Those exclusions include costs resulting from '*pre-existing illness or injury*'.

'*Pre-existing illness or injury*' is defined in the policy as:

- *An injury that happened, or an illness or behavioural disorder that first showed clinical signs before your policy started; or*
- *an injury or illness that is the same as, or has the same diagnosis or clinical signs as an injury, illness or clinical sign your pet had before your policy started; or,*
- *an injury or illness that is caused by, relates to, or results from, an injury, illness or clinical sign your pet had before your policy started; no matter where the injury, illness or clinical sign(s) are noticed, or happen in, or on, your pet's body.*

'*Clinical sign(s)*' is defined as '*Changes to your pet's normal healthy state, its physical appearance, its bodily functions or behaviour.*'

AF says the illness Mr H claimed for in May 2022 – relating to a heart disorder – first arose in December 2020 (and possibly before). It says, for example, the vets' clinical notes show a grade 2 heart murmur was detected following a visit to the vet in December 2020.

A further entry in the vets' notes for February 2022 says examination revealed moderate heart murmur which had been diagnosed before. Then shortly before the time of the claim to AF in May 2022, the vet noted further concerns around Mr H's dog's heart and that they had discussed their findings and potential treatment options with Mr H at that time. Soon afterwards, AF received the claim.

On the above grounds, AF says the costs claimed for in May 2022 arose from a pre-existing illness.

Where an insurer declines a claim based on a policy exclusion, as in this case, we'd typically expect it to demonstrate that the exclusion applies on the balance of the available evidence.

In the circumstances, I don't believe that it's fair for AF to rely on the exclusion on this occasion. I say that because, for example, the treating vet has provided a further explanation of the medical history. In May 2022, the vet said it was possible the heart murmur detected in 2020 was related to the dog's recently diagnosed heart condition. But that it was difficult to be sure due to the limited information from 2020 and lack of investigation back then. Later that month, the vet added that the heart murmur found in 2020 wasn't considered to be clinically significant at the time. Further investigation wasn't warranted or recommended.

I realise that AF's provided a desktop report from a vet advisor that would seem to contradict the findings of the treating vet. That said, I'm mindful that Mr H's treating vet was responsible for the dog's care and carried out physical examinations. The vet advisor, on the other hand, hadn't examined Mr H's dog and provided a medical opinion based entirely on the available papers. As such, I've placed greater emphasis on the opinions and findings of the treating vet as I believe they had greater insight into the issues Mr H's dog experienced both before and after the start of the policy.

So, I think it's debatable that the illness discovered after the start of the policy was connected to the events that took place before it. But even if there was a proven link between them, I think it's significant that Mr H was apparently unaware of the nature of the issues his dog experienced before the policy started in any event.

That's important because the established approach of this service to pre-existing medical exclusions is that, for an insurer to be able to rely on them to decline a claim, we'd need to be satisfied the consumer knew something was wrong with their pet when they took out the policy. It wouldn't ordinarily be fair for an insurer to refuse a claim if the consumer couldn't reasonably have known there was a problem.

On that issue, Mr H has repeatedly and consistently said he wasn't aware of the condition or clinical signs before the start of the policy. For example, in an email to AF of May 2022, Mr H said *'I wasn't aware that [my dog] had a heart murmur that far back. He went in that day because he had some kind of "fit". He was given meds after an all clear check up.'* In a further email to AF of June 2022, Mr H said, *'I wasn't aware of any heart murmur and if I was why would I have taken out a policy with you 10 months later?'*

In bringing his complaint to this service in late 2022, Mr H explained that COVID-19 measures in place at the vets' surgery in December 2020 meant only his dog went into the examination room with the vet that day. His dog had had some sort of fit but, the vet assured him the dog was fine and that there was nothing wrong. Medication was prescribed to treat the fit, but Mr H confirmed *'No [I wasn't] aware that he had a heart murmur.'*

I find Mr H's testimony on this point to be plausible in the circumstances especially in the light of the vets' medical notes from that time and the additional information provided by the treating vet. Mr H's vet has, as I've already said, confirmed no further investigations were carried out in 2020. The vets' notes don't suggest – as they do in some other entries – that the vets' findings in relation to the murmur were discussed with Mr H in any detail or even at all in 2020.

What's more, AF's vet adviser seemingly conceded in their opinion of October 2022 that Mr H wasn't aware there were problems before the start of the policy: '*That [Mr H] was not advised of [the heart murmur] is beyond our control.*'

Taking everything into account, I'm not persuaded that Mr H was aware of any issues related to the condition giving rise to the claim before the start of the policy. It follows that I don't think it would be fair for AF to rely on the exclusion for pre-existing illness or injury to decline Mr H's claim.

Putting things right

AF should pay Mr H's claim in line with my findings above and the remaining policy terms and conditions. It should add interest to the payment at the simple annual rate of 8%, calculated from the date Mr H paid any relevant vets' fees to the date of AF's payment to him. †

† HM Revenue & Customs requires AF to take off tax from this interest. AF must give Mr H a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given, I've decided to uphold this complaint. I require Forakringsaktiebolaget Agria (publ) to put things right for Mr H as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 February 2023.

Nimish Patel
Ombudsman