

The complaint

Mrs E complains about Red Sands Insurance Company (Europe) Limited (Red Sands) declining a claim under her pet insurance policy for treatment of her dog.

References to Red Sands include their agents who administer the policy.

What happened

In September 2021 Mrs E took her dog to a vet as it had issues with skin irritation and anal glands. The vet thought the issues could include pruritis (a skin condition whose symptoms included itching, the cause of which commonly included allergies). The vet advised blood tests to help diagnose the issue, which could be underlying allergies, and inform any required treatment. Mrs E submitted a pre-authorisation request for the tests.

However, Red Sands declined the request, as review of the dog's clinical history indicated to them the condition leading to the request had first been noted in August 2020, before the policy start date of April 2021. They referred to an exclusion in the vet fees section of the policy which meant pre-existing conditions wouldn't be covered. They also said the policy terms and conditions gave them the right to apply an exclusion in respect of the condition. So, they applied an exclusion (from the policy start date) to exclude cover on all claims in respect of allergies of any cause and skin conditions.

Mrs E was unhappy about Red Sands' decline of her request and obtained a view from the vet that said, in their professional opinion, the clinical signs Red Sands noted in August 2020 (an irritated foot) were unrelated to the current issue and unlikely to be the result of an allergy (as only one foot was affected). The more likely cause was some form of trauma. So, allergies shouldn't be classified as a pre-existing condition.

Red Sands reviewed the claim, including the vet's opinion, but confirmed their decision to decline the request as they considered the dog's history of skin, ear and digestive issues and symptoms before the policy start. They considered the symptoms were still present, as well as anal gland issues which they thought likely to be related to digestive problems. As such, they confirmed their decline of the claim as the first clinical signs of the current condition (thought to be underlying allergies) were noted before the policy started, so they deemed it to be a pre-existing condition.

Mrs E then complained to this service. She didn't accept her dog had a pre-existing condition. She also thought the information from Red Sands' virtual vet was unfair. She wanted Red Sands to reconsider their decline of her request and confirm the condition claimed for wasn't pre-existing.

As Mrs E hadn't made a formal complaint to Red Sands before complaining to this service, our investigator asked Red Sands to consider the issues raised by Mrs E as a complaint.

Red Sands didn't uphold the complaint. In their final response they said review of the clinical history confirmed the clinical signs for the dog's allergy condition were first noted in April 2020 (so prior to the policy start in April 2021). They also said the clinical history also indicated an ongoing history of intermittent diarrhoea, general pruritis and scooting (which

were related to the dog's allergies). Red Sands concluded that any conditions that displayed clinical signs prior to the policy start were deemed pre-existing and so excluded from cover under the policy terms.

Our investigator then considered Mrs E's complaint and upheld it. The investigator concluded Red Sands hadn't acted fairly because she didn't think they'd done enough to show the issues in the clinical history before policy inception were signs or symptoms of an allergy. And the issues hadn't occurred again leading to the condition claimed for. So, she thought they were isolated incidents and the pruritis symptoms appeared after the policy start. The opinion of Mrs E's vet also indicated the clinical signs before policy start (August 2020) weren't related to the condition claimed for. So, it wasn't reasonable for Red Sands to apply the pre-existing condition exclusion.

The investigator thought it reasonable for Red Sands to apply backdated exclusions as Mrs E had been asked (when the policy documentation was issued) whether her dog had ever been to a vet for something other than routine vaccinations. However, the investigator thought Red Sands hadn't proven that the issues recorded prior to policy inception related to allergies or pruritis. Nor, considering Red Sands' underwriting criteria, had Red Sands applied the exclusions for allergies and skin conditions fairly, as the symptoms displayed before the policy started didn't relate to the exclusions.

To put things right, the investigator thought Red Sands should accept the pre-authorisation request, subject to the excess, limits and remaining terms of the policy. They should also pay interest on any treatment costs incurred by Mrs E (less any policy excess) from the date she paid for the treatment to the date Red Sands reimbursed her. Red Sands should also remove the exclusions for allergies and skin conditions from the policy.

Red Sands disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they referred to the clinical history, saying the dog had a recurring ongoing history of digestive issues, skin, ear and anal gland issues with the onset of the conditions prior to the policy inception and ongoing. The dog had been seen by the vet regularly since April 2020 for allergy symptoms, and due to these recurrent issues the vet wished to carry out allergy testing.

Red Sands also referred to the view of their consultant vet about the nature of allergies, including to environmental allergens and food allergy, including skin symptoms including itching, recurrent otitis. The vet also referred to gastroenteric symptoms of food allergy, which they thought Mrs E's dog had displayed from the clinical history. While the issues presented might also be linked to non-allergic problems (and therefore isolated incidents) the fact the same symptoms had subsequently intensified, made the possibility the issues presented before policy inception were related to an underlying allergic condition. Red Sands also provided a series of published material on allergies in dogs to support their view. Red Sands also noted they hadn't received a claim for the cost of treatment – it was a pre-authorisation request for potential treatment.

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 have acted fairly towards Mrs E.

In doing so, I've only considered Red Sands' decline of the pre-authorisation request by Mrs E (for tests to be carried out). It doesn't cover any subsequent treatments that may have followed from the tests and the results.

The key issue in Mrs E's complaint is whether Red Sands acted fairly in declining the pre-authorisation request for tests for her dog. Red Sands' view is that they correctly declined the request, on the grounds the dog's clinical history indicated the issue was the result of a pre-existing condition, so excluded from cover. Mrs E's view is that the previous issues weren't shown to be related to the present condition.

The second, linked aspect to the complaint, is whether Red Sands acted fairly in applying the exclusions (from the policy start date) to exclude cover on all claims in respect of allergies of any cause and skin conditions. Red Sands (In disagreeing with our investigator's view) refer to the clinical history, saying the dog had a recurring ongoing history of digestive issues, skin, ear and anal gland issues with the onset of the conditions prior to the policy inception and ongoing. And that these indicate the [likely] presence of allergies and skin conditions.

On the issue of the decline of the request because of the exclusion for a pre-existing condition I've considered both views carefully, including the relevant terms and conditions of the policy (including those referred to by Red Sands in their initial rejection of the request and their final response) together with the supporting information and evidence, including the vet's notes and the clinical history of Mrs E's dog. In their final response, Red Sands refer to the policy terms and conditions excluding pre-existing conditions (though it doesn't include the precise wording). In their initial decline to pre-authorise treatment Red Sands refer to the following wording in the Vet Fees section of the policy:

"1.3 Exclusions – the following are excluded from cover:

1.3.1 Any pre-existing condition or claim for costs relating to an injury or illness that relates to or results from an accident, injury, illness or clinical signs your pet had before the commencement date;"

The initial decline refers to the condition was first noted in August 2020 (prior to the inception of the policy). However, this is contradicted by the vet's opinion the condition (an irritated foot) was unrelated to the current issue and unlikely to be the result of an allergy (as only one foot was affected). The more likely cause was some form of trauma. As the vet treated the dog, I find their view more persuasive.

The initial decline also includes reference to various issues after August 2020, to November 2020 concerning the dog's ears. But the clinical notes don't record a clear diagnosis of the cause (there is reference to their being dirty). So it's not clear the cause is some form of allergy (which isn't mentioned).

The reassessment by Red Sands following Mrs E's challenge includes additional references to the dog's clinical history, including issues with diarrhoea and vomiting. The reassessment goes on to say the clinical history shows the dog has a long and recurrent history of skin, ear and digestive system issues prior to the commencement of the policy (and these symptoms are still present (as well as anal gland issues). The conclusion is that these issues are the first clinical signs of the condition thought to be underlying allergies noted before the commencement of the policy. So, the pre-authorisation was correctly declined. However, looking at the clinical history, none of the issues referred to in the reassessment include reference to potential allergies, nor a clear diagnosis of any underlying cause. I've also considered the additional information provided by Red Sands when responding to our investigator's view. It refers to allergies as being potential causes of various conditions and issues. However, I've also noted (my emphasis) Red Sands vet acknowledges the issues presented *might* also be linked to non-allergic problems (and therefore isolated incidents) and goes on to refer to the *possibility* the issues presented before policy inception were

related to an underlying allergic condition. This indicates a level of uncertainty about whether the various issues had a specific [underlying] cause.

I've also considered the general principle, where an insurer relies on an exclusion, the onus is on them to show it's reasonable to apply it. Given the lack of any clear diagnosis of an allergy (or allergies) in the clinical history, together with the uncertainty referred to above, and as the onus is on Red Sands to show the exclusion applies, I don't think it reasonable to rely on a 'possibility'.

Taking all these points into account, I'm not persuaded Red Sands have shown enough to apply the exclusion for a pre-existing condition in the circumstances of this case. So, I've concluded Red Sands acted unfairly to apply the exclusion to decline Mrs E's pre-authorisation. I've also considered the pre-authorisation was for tests to help identify whether there were underlying allergies. Which also indicates uncertainty about the underlying cause.

Turning to the second issue, I've considered whether it was reasonable for Red Sands to apply backdated exclusions (from the policy start date) to exclude cover on all claims in respect of allergies of any cause and skin conditions.

In respect of the second issue, I've noted Red Sands' final response (or their initial decline of the pre-authorisation and reassessment) don't say Mrs E made a misrepresentation (under the Consumer Insurance (Disclosure and Representations) Act 2012 – CIDRA) when she took out the policy. Nor have they applied any of the remedies available under CIDRA in such circumstances, such as avoiding the policy. Red Sands' base their adding the exclusions on the wording of the policy that allows them to do so (which, looking at the wording, it does). The wording of the exclusion is consistent with the underwriting guidance Red Sands apply when they consider an exclusion is appropriate, the relevant heading in the guidance is "*Allergies (skin)*" and the wording of the exclusion is:

"Excludes cover on all claims with respect to Allergies of any cause with effect from 17 April 2021 and excludes cover on all claims with respect to Skin Conditions with effect from 17 April 2021"

In considering whether it was reasonable to apply the exclusion, as I've concluded Red Sands didn't act reasonably in applying the exclusion for pre-existing conditions to decline the pre-authorisation request, because they hadn't shown the conditions before policy inception clearly indicated the case as being an allergy, then it follows they didn't act reasonably in applying the exclusion for Allergies (skin) to the policy.

Given these conclusions, I've thought about what Red Sands need to do to put things right. As I don't think they can rely on the exclusion for pre-existing conditions, I think they should settle the cost of any tests Mrs E had carried out (which was the subject of the pre-authorisation request) in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

If Red Sands settle the costs, they should also pay interest at a rate of 8% simple on the amount settled, from the date Mrs E paid for the tests to the date they reimburse her. With respect to the exclusion for Allergies (skin) being applied to the policy, as I've concluded it was unreasonable to do so, then Red Sands should remove the exclusion from the policy.

While it isn't a substantive issue in the complaint, I've also noted the point made by Red Sands that they hadn't received a claim for the cost of treatment – it was a pre-authorisation request for potential treatment. I accept the point, so have referred consistently to 'pre-authorisation request' in this decision.

My final decision

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

- Settle the cost of any tests Mrs E had carried out (which was the subject of the pre-authorisation request) in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).
- Remove the exclusion for Allergies (skin) from the policy.

If Red Sands Insurance Company (Europe) Limited settle the cost of any tests, they should also pay interest at a rate of 8% simple on the amount settled, from the date Mrs E paid the vet's bill to the date they reimburse her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 2 June 2023.

Paul King
Ombudsman