

The complaint

Mr B complained that a claim related to his dog was unfairly declined by Atlas Insurance PCC Limited ("Atlas") under his pet insurance policy.

What happened

Mr B made a claim to Atlas to recover the costs for an operation on his dog for brachycephalic obstructive airway syndrome (BOAS).

On validating the claim, Atlas decided to decline it. Atlas said, *"the surgery and treatment for this condition is not covered as the clinical signs of moderate to marked narrow nares due to brachycephalic conformation was noted in the clinical history on the 15th July 2019 and is not a direct result of an accidental injury"*. It said, *"on review of [your dog's] policy, as the inception date was the 12th July 2019, this started with a 14- day waiting period on illnesses from the commencement date. Any illness which occurred or showed any clinical signs within this time would not be covered on your policy"*.

Mr B thought it was unfair to decline the claim. His vet who carried out the surgery provided a detailed testimony to explain why. The vet said there was no history or clinical signs of BOAS noted in the dog's examination which was carried out during the waiting period.

Our investigator decided to uphold the complaint. He didn't think Atlas had fairly applied the terms and conditions of the policy, so he thought it should re-consider the claim. He didn't think there was evidence the dog had a pre-existing condition, so he didn't think Atlas was fair in applying the exclusion clause. Atlas disagreed, so the case has been referred to an ombudsman.

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.

In doing so, I've decided to uphold the complaint and I'll explain why.

Atlas declined the claim as it said the veterinary examination carried out on the dog during the waiting period presented signs that were more than you would associate with any "normal" breed the same as Mr B's dog. Atlas said the observations noted were an early sign of BOAS. Following on, Atlas applied the following exclusion to decline the claim: *"1.4.1 costs resulting from an Illness or Injury that first showed Clinical Signs prior to the initial Cover Start Date or from an Illness that first showed Clinical Signs within the Waiting Period"*.

Atlas has explained why the observations noted in the waiting period were an early sign of BOAS. So, if there was no other evidence then I'd tend to say it had acted fairly. However, the vet that carried out the surgery has provided a detailed commentary as to why she disagrees with Atlas' viewpoint.

The vet that carried out the surgery said the observations noted during the waiting period were *“a description of [the dog’s] anatomy and not an indication that [the dog] was suffering from any clinical signs associated with this at the time”*. The vet said no clinical signs were noted and no clinical signs were noted until 2022. The vet explained that the observation made of the dog was no different to many other dogs of that breed. However, she did comment that 70% of dogs with a similar anatomy did go on to develop BOAS.

Atlas said, *“the policy wording which is relevant in this case is: “Clinical Signs means changes in Your Pet’s normal healthy state, condition, appearance, its bodily functions, or behaviour.” The marked narrow nares noted by the vet on 15th July 2019 during the waiting period are undoubtedly a Clinical Sign and not a “normal, healthy state, condition... [or]... bodily function”*.

I have considered these responses and further Atlas’ submission around the wider impact this could have on the available insurance for dogs of this breed. However, I don’t think Atlas has shown with certainty that the dog had symptoms in the waiting period which were consistent with the condition it was later treated for. Mr B has provided a thorough submission from the vet who carried out the surgery explaining why Atlas’ viewpoint is flawed.

I find the expert view from the vet to be persuasive. I don’t think the notes of the examination in the waiting period indicate a future condition was certain. I think it was more an observation which is common with that breed of dog. Atlas hasn’t provided evidence to show the examiner meant any different, so I don’t think it would be fair for me to make this assumption.

I think if Atlas wanted to exclude this type of operation for the reasoning given, then I think it needs to be clearer in its terms and conditions that it excludes cover for this type of operation or at least where certain physical observations are observed. Therefore, I uphold this complaint and I require Atlas to reconsider the claim in line with the remaining terms and conditions of the policy.

My final decision

My final decision is that I uphold this complaint. I require Atlas Insurance PCC Limited to:

- Reconsider the claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 4 July 2023.

Pete Averill
Ombudsman