

## **The complaint**

Mr S is unhappy with West Bay Insurance Plc's (WBI) decision to decline his claim made on a pet insurance policy.

## **What happened**

Mr S's annual policy for his pet dog started in February 2022. He contacted WBI to make a claim for vets' fees, from two different vets, in August 2022 after his dog fell ill and needed treatment.

WBI considered the claim but told him it wasn't prepared to pay it on the grounds that it felt the illness was pre-existing at the start of the policy. WBI explained that the policy didn't pay out for costs resulting from pre-existing medical conditions (PEMCs) that were present before the policy start date. WBI also explained that, had the claim been accepted, the policy allowed it to deduct two excess amounts as Mr S's dog had been treated for the same condition by two different vets' practices.

Unhappy with WBI's decision, Mr S brought a complaint to this service. He didn't believe the illness claimed for was pre-existing or that it would be fair for WBI to charge two excess amounts in the circumstances. Our investigator looked into the complaint but didn't recommend that it should be upheld.

As Mr S said he didn't agree with the investigator's findings, the complaint was passed to me to consider afresh.

I issued a provisional decision recommending that the complaint be upheld in part. I didn't believe that the evidence showed the condition claimed for directly resulted from any PEMCs. I asked WBI to pay the claim albeit WBI was entitled to deduct two excess amounts. On reflection, I subsequently asked WBI to deduct only one excess amount further to Mr S's submissions and given the circumstances in which his dog was treated by two vets' practices.

I asked both parties to provide additional information for me to consider before I reached a final decision.

Mr S accepted my conclusions.

WBI didn't agree with my findings. It said it wasn't in doubt that Mr S's dog had pancreatitis before the start of the policy. It acknowledged that, when they were treated in relation to the current claims, no blood testing was carried out, meaning there were only the vets' notes to go on. The vets believed the cause of the claim to be pancreatitis or GI (gastrointestinal) upset. WBI said the first claim was for pancreatitis according to the information provided on its online portal claim submission.

In relation to WBI's application of the second excess, it said it was entitled to do so as per the policy wording. It said there was nothing to suggest that wording was unclear, ambiguous, or misleading such that it couldn't rely on it here.

## 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, WBI will pay the cost of vets' fees for the treatment of illness or injury. Those exclusions include costs resulting from '*pre-existing conditions*'.

The term '*pre-existing conditions*' is defined in the policy as:

*'Any illness or injury or complication directly resulting from another injury or illness, whether diagnosed or undiagnosed or that has been identified or investigated by a vet or is otherwise known to you prior to the start of the insurance'*

WBI says the illness Mr S claimed for in August 2022 first arose in May 2021. I note that the details completed by one of the vets that treated Mr S's dog on WBI's online claim portal recorded '*Pain and vomiting – possible pancreatitis flare up*'. The other portal entry made by the other vets Mr S consulted refers to '*Treatment of vomiting/diarrhoea*'. Clinical notes from the time of the claim indicate a differential diagnosis of gastroenteritis and/or pancreatitis.

The vets' clinical notes for May 2021 – around nine months before the start of the policy – show Mr S took his dog to the vet as they were unwell. The clinical notes from that time record '*suspect acute pancreatitis*' due to the nature of the symptoms experienced and a blood test was done. The vet said they discussed medications and dietary changes with Mr S.

Although the pancreatic blood test at the time was negative, the notes showed the vet explained to Mr S that pancreatitis couldn't be ruled out due to the delay between symptoms first presenting and when the blood test was carried out.

In October 2021, Mr S's dog fell ill again, and the vet noted '*suspected pancreatitis flare up?*' Further blood tests done resulted in the vet noting '*Suspected pancreatitis/infection*'.

In November 2021, Mr S's dog was apparently much better following the vets' advice with the vet asking the '*lab to repeat TLI [trypsin-like immunoreactivity – the measurement of which is used to diagnose pancreatitis] to [assess] improvement in pancreatitis*'.

A few weeks before the start of the policy in February 2022, the vet noted Mr S's dog suffered with chronic pancreatitis. They avoided prescribing tablets for a skin condition so as not to trigger an episode of pancreatitis, as his dog was already recovering from an episode that had occurred a few days ago.

On the above grounds, WBI says the costs claimed for in August 2022 arose from a PEMC – in this case pancreatitis.

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. Essentially, I've found that it wasn't fair for WBI to rely on the pre-existing exclusion clause that it did to decline the claim. I understand why it's cited the exclusion. I recognise that there are similarities between the condition Mr S's dog was diagnosed with and treated for prior to the start of the policy and the condition they were treated for in August 2022.

But it's not enough for WBI to show mere similarities or a *possible* link between the conditions. I accept, as does Mr S, that his dog had likely suffered with pancreatitis in the past. Much of WBI's submissions in response to my provisional decision support that point. But the exclusion goes further and excludes '*Any illness or injury or complication directly resulting from another injury or illness, whether diagnosed or undiagnosed or that has been identified or investigated by a vet or is otherwise known to you prior to the start of the insurance* [my emphasis]'.

I don't believe the available evidence shows the illness claimed for directly resulted from the pre-existing pancreatitis. That's because of the opinions provided by the treating vets, which I note aren't contradicted by an equivalent expert opinion. The claims portal details for the first claim showed the vet suspected pancreatitis but qualified that by saying it was '*possible*' that was the condition Mr S's dog had suffered from. I think this is important as this doesn't demonstrate to me that the claim more likely than not arose from pancreatitis. I believe WBI's assertion that the portal information shows that the first claim was for pancreatitis is overly simplistic. Clearly, the vet wasn't in any way certain about the cause, and I don't reasonably see how WBI could be either.

I realise the claims portal details for the second claim show it was a continuation of the first. But no mention of pancreatitis was made by the vet on this occasion – just, as WBI says in its response to my provisional decision, the symptoms experienced. Looking at the clinical notes from the time of the claim, the vet made a differential diagnosis. In other words, it wasn't clear to the vet what the cause of the claim was. It's true that the vet referred to pancreatitis as one possible diagnosis. But they also referred to GE – gastroenteritis – as another. There was no indication as to which, in the vet's view, was more likely to be the cause. So, I think we can reasonably take it that the vet felt it was equally possible that either condition was the cause of the claim.

In these circumstances, and despite carefully considering WBI's responses to my provisional decision, I'm not persuaded that it was fair for WBI to rely on the pre-existing exclusion to decline the claim. In summary, I still haven't seen sufficient evidence showing the condition claimed for was more likely than not pancreatitis. I believe the evidence indicates it was just as likely to have been gastroenteritis.

I'm aware that the policy terms allow, on the face of it, for WBI to deduct two excess amounts given that Mr S consulted two different vets for the same condition in the same period of insurance. Contrary to what WBI believes, in both my provisional decision and this final decision I focused on section 1 of the policy under the sub-heading '*What is not covered?*' which included:

*'The fixed excess which is payable by you on a per incident, per period of insurance basis. If your pet is seen and/or treated by another veterinary practice (or specialist) for the same condition in the same period of insurance, another fixed excess becomes due for any further costs incurred from the second treating vet...'*

On reflection, I don't believe it's fair and reasonable in the circumstances that Mr S should pay two excess amounts just because he had to visit an alternative practice out of hours. It isn't as though, for example, Mr S was deliberately seeking an alternative vets' opinion on his dog's diagnosis or treatment. His hand was effectively forced by his dog needing treatment when his own vets' practice was closed. And, as WBI itself accepts, the second claim was a continuation of the first. I'm not saying that the above policy term is unclear or ambiguous. But I don't believe the term was intended to allow an additional deduction of excess in such circumstances or that it would fair and reasonable for the term to operate in that way in this case.

### **Putting things right**

WBI should pay Mr S's claims in line with the remaining policy terms and conditions, and apply only one fixed excess amount. Interest should be added to any payment made at the annual rate of 8%, calculated from the date Mr S paid the vets for the relevant treatment up until the date of settlement.†

† HM Revenue & Customs requires WBI to take off tax from this interest. WBI must give Mr S 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 West Bay Insurance Plc to put things right for Mr S as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 July 2023.

Nimish Patel  
**Ombudsman**