

## The complaint

Mr S has complained that Royal & Sun Alliance Insurance Limited (RSA) has rejected a claim for the treatment of his pet dog on the ground that her treatment was for a pre-existing condition.

## What happened

Mr S acquired his pet dog, who I'll refer to as "D", from a rescue charity on 26 December 2021. D was insured with RSA with effect from 31 December 2021. She was registered with her vet on 22 January 2022.

On 24 February 2022, D was taken to the vet for a check-up. D's medical notes on that visit noted that she had *"cherry eye + conjunctival erythema and swelling in left eye"*. The notes also said *"cherry eye first started at Christmas time, then 2 weeks ago and today again, each time lasted a few hours, seems a bit irritated with it today"*.

D underwent an operation to treat this on 1 April 2022. Mr S claimed the cost of this from RSA. The claim form states that, based on the vet's records, clinical signs of cherry eye were first noticed in December 2021.

RSA reviewed D's medical records. Based on these, it rejected Mr S's claim on the ground that D's records said that cherry eye had been noticed around Christmas 2021, so before policy inception, and Mr S's policy doesn't cover pre-existing medical conditions or any changes noticed in a pet's health within 14 days of the cover start date. As Mr S's policy started on 31 December 2021, it wouldn't cover any illness that showed signs or symptoms before 13 January 2022.

Mr S disputed the accuracy of the vet's note from 24 February 2022. He says that the note in fact related to D's brother who had had cherry eye around Christmas 2021 but who had sadly passed away under general anaesthetic whilst undergoing treatment for this. RSA queried this note with D's vet, but they couldn't recall a discussion regarding D's brother. The vet that treated D on 24 February 2022 noted on 9 June 2022 as follows:

*"With regards to the recent claim, client believes that my notes on the 24/02/22 are inaccurate and in fact the Christmas reference was about [D's] sibling, not her. However, I cannot recall a discussion regarding a sibling and my only method of reviewing is to look at my clinical notes."*

In D's notes the first reference to D's brother occurs on 21 March 2022 when, with reference to the procedure that D was going to undergo, the note, made by a different vet, says *"O very concerned as brother passed away on operating table for same procedure"*.

Mr S provided RSA with a letter from D's vet which stated that there was no clinical evidence that D's cherry eye began at Christmas as she wasn't presented to the vet until February 2022. The vet has confirmed that when she undertook D's repair procedure, *"[her] prolapsed gland was not massively inflamed or traumatised and so was unlikely to have been prolapsed for many weeks or for multiple times"*.

Mr S also provided RSA with a letter from the rescue charity who had had D in their care until 26 December 2021. In this the charity confirmed that D had shown no sign of cherry eye prior to her being acquired by Mr S on that date.

In response to this, RSA has said that D's cherry eye could have still occurred between 26 December 2021 and the policy start date of 31 December 2021.

RSA maintains that what the clinical notes say is determinative as it is a legal document.

As Mr S was dissatisfied with RSA's rejection of his claim, he complained to this service. Our investigator's view was that the recent evidence from D's vet about the length of time over which D's gland was likely to have been prolapsed was persuasive. She recommended that RSA settle Mr S's claim and pay him £100 compensation.

RSA doesn't agree with our investigator's view. It argues that the clinical notes from 24 February 2022 make no reference to a sibling dog having been mentioned and that the sentence "*cherry eye first started at Christmas time, then 2 weeks ago and today again*" isn't plausible if Mr S was talking about D's sibling and also about D.

As RSA doesn't agree with our investigator, the complaint has been referred to me as an ombudsman for a final decision from this service.

### **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'm upholding Mr S's complaint and I'll explain why.

Veterinary records are important in establishing what a vet noticed or was told, or what they did on any particular occasion. They are generally contemporaneous and so unaffected by loss of memory. But they are susceptible to human error, and if there is other information that might suggest that this is the case, that information should not be dismissed out of hand. I have to consider what is more likely than not to have taken place on the balance of probabilities.

On the one hand there is the evidence of the note in D's records. I accept what RSA says about the statement "*cherry eye first started at Christmas time, then 2 weeks ago and today again*" making little sense if it is intended to refer to both D and her sibling. But it could simply have been a mistake by the vet in recording a conversation they understandably couldn't recall having had some months later. The vet doesn't comment on whether the note is accurate or not. Given Mr S's upset after the death of D's sibling, I think it quite likely that he would've mentioned this to the vet when D was found to have the same medical issue. He is recorded as having mentioned it to the different vet who examined D on 21 March 2022.

On the other hand, there is the evidence from the rescue charity that D showed no sign of cherry eye before 26 December 2021 when D was acquired by Mr S. That narrows down 'Christmas time' to a short period after Christmas day.

There is also the professional opinion from the vet who undertook D's repair procedure on 1 April 2022 that it was unlikely that D's gland had been prolapsed for a number of weeks. I consider this to be persuasive as it is the professional opinion of D's treating vet. It would've been over 3 months between Christmas 2021 and the date of D's procedure on 1 April 2022.

The fact that D's vet visit on 24 February was a check-up appointment at which other health issues were raised also suggests that D's eye hadn't been causing particular concern over a significant period of time.

I also consider that as Mr S had had the sad experience of losing D's sibling around Christmas 2021 during a procedure to treat his cherry eye it is likely he would've been concerned for D's health. If he'd noticed this same condition in D around Christmas 2021, I consider it unlikely that he'd have delayed until 24 February to raise it with the vet, or in fact to register D with a vet, which he didn't do until 22 January 2022. I think this suggests a lack of any concern on his part until February 2022.

My conclusion therefore is that I consider that the balance of probability lies in favour of D's cherry eye not being a pre-existing condition and that RSA has unreasonably declined Mr S's claim on this ground.

I also agree with our investigator that compensation of £100 is reasonable in the circumstances for Mr S's upset in having his claim rejected.

### **My final decision**

For the reasons I've given above, I'm upholding Mr S's complaint.

I require Royal & Sun Alliance Insurance Limited:

1. to settle Mr S's claim subject to any other terms and conditions of his policy.
2. to pay Mr S interest on any sum paid to him at the simple rate of 8% from the date of his claim until payment is made to him.

If Royal & Sun Alliance Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give him a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

3. to pay Mr S compensation of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 September 2023.

Nigel Bremner  
**Ombudsman**