

## **The complaint**

Miss T 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**

Miss T had a pet insurance policy with Red Sands for three dogs, which she took out in October 2018. In December 2022, one of the dogs had an issue with its neck and surgery was carried out to remove a growth. Miss T subsequently submitted a claim for the cost of the surgery (some £1,900).

However, Red Sands declined the claim on the grounds they considered the clinical history of the dog indicated it had been used for breeding purposes.

They noted the dog had been thought to be pregnant in February 2019, after which (when paying an unrelated claim) they issued a 'breeding warning' in June 2019 as part of the remittance advice. The warning drew Miss T's attention to the policy not covering dogs used for breeding purposes. There was also an exchange with Miss T at the time in which she confirmed to Red Sands the dog wouldn't be used for breeding.

The dog subsequently became pregnant in 2020, giving birth to four live puppies in October 2020. The dog then became pregnant in 2021 (thought to be by one of the puppies born the previous year) but Miss T had the pregnancy aborted.

Unhappy at her claim being declined, Miss T complained to Red Sands. But they didn't uphold the complaint. In their final response they noted the claim accepted for treatment of the dog in 2019, and the breeding warning issued, saying they didn't cover pets used for breeding (referring to the policy terms and conditions stating this wasn't covered). Red Sands also referred to the clinical history of the dog, including the pregnancies in 2019, 2020 and 2021. Given the clinical history (and the breeding warning issued in 2019) Red Sands confirmed decline of the claim. They also said they would be avoiding the policy from the most recent renewal date (October 2022) and would refund the premiums paid under the policy from that date. But they would retain the premiums paid before October 2022.

Miss T then complained to this service. She was unhappy at her claim being declined, after initially having been told they would accept it. She hadn't used the dog for breeding on three occasions, as the dog only had one litter (in 2020). After receiving a warning, the dog hadn't been used for breeding and the condition claimed for wasn't related to breeding. She was also unhappy Red Sands had avoided her policy. Miss T said she'd been affected financially by owing her vet £1,900 for the surgery. And all three of her dogs were now uninsured. She wanted Red Sands to settle the claim and pay compensation for the stress she'd suffered.

Our investigator upheld the complaint, concluding Red Sands hadn't acted fairly and reasonably as the information provided by Red Sands wasn't sufficient to evidence the dog had been used for breeding. It was thought the dog was pregnant in 2019 (but a scan

revealed no puppies). A litter was born in 2020, but the pregnancy in 2021 was aborted. The investigator didn't consider two pregnancies in four years (from the inception of the policy in 2018) was sufficient evidence the dog was being used for breeding. The investigator thought Red Sands should reconsider the claim and, if valid, pay the claim in full (up to the policy limits) and interest from the date the claim should have been paid until it was paid. The investigator thought Miss T had suffered considerable distress from what happened, so Red Sands should pay her £500 in compensation.

Red Sands disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they said the clinical history confirmed the dog had been pregnant on three occasions (2019, 2020 and 2021) and the latter two occasions followed the breeding warning issued in June 2019. The policy terms and conditions made it clear breeding wasn't covered under the policy (and Miss T had confirmed in 2019 the dog wouldn't be used for breeding).

In my findings I concluded Red Sands didn't act fairly or reasonably in applying the exclusion for 'used for breeding' to decline Miss T's claim. The policy didn't include a specific definition of the phrase 'used for breeding' or 'breeding'. In the absence of a definition of either term, I thought about a reasonable interpretation. I didn't think it would reasonably be held to include a dog falling pregnant and having a litter of puppies. 'Used for breeding' could be interpreted to mean a pet being used to produce litters of puppies on a continuing basis on more than one occasion. In the circumstances of Miss T, I didn't think that was the case.

On the issue of the avoidance of Miss T's policy, as I concluded it was reasonable for Miss T to have thought she wasn't using the dog for breeding, Red Sands acted unfairly in avoiding her policy.

To put things right, as I concluded Red Sands acted unfairly to decline Miss T's claim for treatment of her dog, they should reassess the claim in line with the remaining terms and conditions of the policy (including any policy limits on the cost of treatment and policy excess as appropriate). If they settled the claim, they should pay interest on the amount settled, at a rate of 8% simple, from the date they would have settled to the claim to the date they settle the claim.

On the avoidance of Miss T's policy, Red Sands should reinstate Miss T's policy, subject to Miss T paying the appropriate premiums from the date of the avoidance. They should also remove any record of the avoidance from internal and external databases.

I've also thought about what Miss T told us of the impact of what happened on her. Taking account of all the circumstances, I thought £500 compensation for distress and inconvenience would be fair and reasonable.

Because I reached additional conclusions (about the avoidance of Miss T's policy) to those of our investigator, I issued a provisional conclusion to provide both parties with the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

*My role here is to decide whether Red Sands have acted fairly towards Miss T.*

*The key issue in Miss T's complaint is whether Red Sands acted fairly in declining the claim for treatment of the dog. She's also unhappy at Red Sands avoiding her policy.*

*One the first issue, Red Sands' view is that they correctly declined the claim, on the grounds the dog's clinical history indicated the dog had been used for breeding – something specifically excluded under the policy. They'd also issued a warning to Miss T about the dog*

*being used for breeding in 2019 (and she'd said she wasn't using the dog for breeding). Miss T says she hasn't been using the dog for breeding, as it has only had one litter during the time she's had the policy. She also says she was told the claim would be covered.*

*I've first considered the pregnancy history of the dog, based on the clinical notes from the vet. The first point at which the dog was thought to be pregnant was February 2019. The clinical notes indicate the possibility and record ultrasound scans. However, two weeks after the scans there's a reference to:*

*"re-scan with ML (double checked) no puppies seen in any view, would be 40<sup>th</sup> day today should be obvious to see, no concern for now."*

*This indicates the dog wasn't pregnant (although it was thought possible) and didn't give birth. However, given the possibility, it wasn't unreasonable for Red Sands to issue the breeding warning – and to ask Miss T to confirm she wasn't going to use the dog for breeding.*

*The second pregnancy was the following year, where the clinical notes record four live puppies were born in October 2020 (one puppy was stillborn).*

*The dog became pregnant again in November 2021 (thought to be by one of the puppies born the previous year). But Miss T elected to have the pregnancy aborted.*

*This history indicates one suspected (but not actual) pregnancy and two pregnancies (one of which was aborted). This is consistent with what Miss T told us when making her complaint, that the dog had only one litter (in 2020).*

*Having established the clinical history of the dog, specifically concerning pregnancy, I've then considered the grounds on which Red Sands declined Miss T's claim – that the dog had been used for breeding. And this was the case after the issue of the breeding warning in June 2019 (and Miss T confirming the dog wouldn't be used for breeding). In their final response, Red Sands refer to the policy terms and conditions relating to use for breeding. These include the following General Exclusion:*

*"What this policy doesn't cover:*

*Pets that aren't covered:*

*...We don't cover any pets used as or trained to be anything other than a domestic or household pet. This includes using them for breeding, hunting, or shooting of any kind."*

*Similar exclusions and wording also appear in the General Conditions and Vet Fees sections of the policy.*

*Given these exclusions and wordings, the key issue is what is meant by the phrase 'used for breeding' (or 'breeding'). The policy document clarifies aspects such as 'use for breeding' would include as part of a business or not. But having looked at all the references provided by Red Sands and the complete policy document, there's no specific definition of the phrase 'used for breeding' or 'breeding' (neither is included in the Definitions section of the policy).*

*In the absence of a definition of either term, I've thought about what would be a reasonable interpretation or understanding. I don't think it would reasonably be held to include a dog falling pregnant (however caused) and having a litter of puppies. 'Used for breeding' could*

*be interpreted to mean a pet being used to produce litters of puppies on a continuing basis on more than one occasion (either for commercial gain or other purpose).*

*From what I've seen, in the circumstances of Miss T, I don't think that's the case. As I've noted above, the first suspected pregnancy turned out not to be the case. On the second occasion, a litter of four puppies was born. But in the third case, Miss T elected to have the pregnancy aborted. Which suggests it wasn't her intention for the dog to have a further litter, or that she was using the dog for breeding. Had that been her intention, I would have expected her to allow the dog's pregnancy to proceed to term.*

*In thinking about this issue, I've also had regard to the general legal principle that ambiguity in a contract should be interpreted in favour of the party that didn't draft it. In this case, that would be Miss T. And given what I've said about the terms 'used for breeding' and 'breeding' not being defined in the policy, then I think there is ambiguity in what those terms mean. That being the case, then I think it's reasonable to conclude Miss T wouldn't have thought she was using her dog for breeding.*

*Having reached this conclusion, it follows Red Sands didn't act fairly or reasonably in applying the exclusion for 'used for breeding' to decline Miss T's claim. Particularly as it appears they'd previously accepted claims earlier in 2022 for the same (or similar) conditions as that claimed for in December 2022.*

*On the issue of the avoidance of Miss T's policy, one of the General Conditions of the policy requires the policyholder to notify Red Sands if they are planning to use the pet for breeding. It goes on to say that failure to notify Red Sands may invalidate the policy. The wording of the breeding warning issued in 2019 also makes it clear that if Miss T were to plan to use her dog for breeding she should contact Red Sands. If Red Sands were to subsequently find out the dog had been used for breeding the policy would be avoided and all premiums retained. In the event, Red Sands avoided the policy - and refunded the premiums paid - from the last renewal date in October 2022 (but retained the premiums before that date). However, as I've concluded it's reasonable for Miss T to have thought she wasn't using the dog for breeding, Red Sands acted unfairly in avoiding her policy.*

*Having reached these conclusions, I've thought about what Red Sands needs to do to put things right.*

*As they've unfairly declined her claim for treatment of her dog, they should reassess the claim in line with the remaining terms and conditions of the policy (including any policy limits on the cost of treatment and policy excess as appropriate). If they settle the claim, they should pay interest on the amount settled, at a rate of 8% simple, from the date they would have settled to the claim to the date they settle the claim.*

*On the avoidance of Miss T's policy, as I've concluded they've unfairly avoided the policy, they should reinstate Miss T's policy, subject to Miss T paying the appropriate premiums from the date of the avoidance. They should also remove any record of the avoidance from internal and external databases.*

*I've also thought about what Miss T has told us of the impact of what has happened on her. She's been put into financial difficulties by the vet's bill, and having been able to only make part payment, she says she's being threatened with recovery action by the vet for the unpaid bill. I can appreciate how stressful this will have been, alongside having her policy avoided and so being without cover for her dogs. Taking these and all the circumstances into account, I think £500 compensation for distress and inconvenience would be fair and reasonable.*

### *My provisional decision*

*For the reasons set out above, my provisional decision is that I uphold Miss T's complaint. I intend to require Red Sands Insurance Company (Europe) Limited to:*

- reassess the claim in line with the remaining terms and conditions of the policy (including any policy limits on the cost of treatment and policy excess as appropriate). If they settle the claim, they should pay interest on the amount settled, at a rate of 8% simple, from the date they would have settled to the claim to the date they settle the claim\*.*
- reinstate Miss T's policy, subject to Miss T paying the appropriate premiums from the date of the avoidance. They should also remove any record of the avoidance from internal and external databases.*
- Pay Miss T £500 in compensation for distress and inconvenience.*

*Red Sands Insurance Company (Europe) Limited must pay the compensation within 28 days of the date on which we tell them Miss T accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.*

*\*If Red Sands Insurance Company (Europe) Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss T how much they've taken off. They should also give Miss T a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*

Miss T responded to accept the provisional decision.

Red Sands responded to accept the provisional decision conclusion they should reassess Miss T's claim in accordance with the remaining terms and conditions of the policy (and apply interest from the date the claim should have been settled).

However, Red Sands didn't agree they should reinstate Miss T's policy. They said Miss T was provided with a breeding warning notice in June 2019 (and confirmed her dog wouldn't be used for breeding). The policy assumptions were sent to Miss T when she took out the policy and at each subsequent renewal, where the policy schedule sets out the dog 'is not used for breeding'. If this assumption wasn't correct, Miss T should have contacted them to say they planned to use the dog for breeding (or had bred). Red Sands would have told Miss T that if the dog was used for breeding (for any purpose) they wouldn't have provided cover for the dog, as this was a general exclusion (across all their policies). The exclusion wasn't limited to dogs used solely for breeding as a business, it applied regardless of the circumstances.

While they recognised the dog had one litter and one aborted pregnancy, they expected precautions to have been taken to avoid the dog becoming pregnant.

On the provisional decision conclusion about compensation for distress and inconvenience, Red Sands thought the provisional award too high and requested it be reviewed.

### **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 Miss T.

I've considered the points made by Red Sands, in particular those regarding the provisional decision conclusions on reinstatement of Miss T's policy and on compensation for distress and inconvenience.

On the reinstatement of Miss T's policy, I've considered the points made by Red Sands about the exclusion where dogs are 'used for breeding' and the documentation they've referred to (including the warning notice issued in June 2019). However, I considered the documentation (including the warning notice and Miss T's confirmation her dog wouldn't be used for breeding) when reaching my provisional decision. And it doesn't change my view about the absence of a policy definition of the phrase 'used for breeding' or 'breeding', which creates ambiguity in the policy (the contract). Nor that, in the specific circumstances of this case, it was reasonable for Miss T to have thought she wasn't using the dog for breeding.

On the point about Miss T should have taken precautions to avoid the dog becoming pregnant (in November 2021) I don't think this is relevant, as the pregnancy was subsequently aborted. So, the outcome was the same (no live litter) and consistent with Miss T not using the dog for breeding.

So, I haven't changed my view on this point and my conclusion Red Sands acted unfairly in avoiding Miss T's policy.

On the provisional decision conclusion about compensation for distress and inconvenience, I appreciate Red Sands believe the amount is too high, but they haven't provided specific reasons why they believe it is too high. But I have considered the circumstances of the case again, and haven't changed my view that £500 is fair and reasonable compensation for distress and inconvenience.

So, my provisional decision conclusions haven't changed.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Miss T's complaint. I require Red Sands Insurance Company (Europe) Limited to:

- reassess the claim in line with the remaining terms and conditions of the policy (including any policy limits on the cost of treatment and policy excess as appropriate). If they settle the claim, they should pay interest on the amount settled, at a rate of 8% simple, from the date they would have settled to the claim to the date they settle the claim\*.
- reinstate Miss T's policy, subject to Miss T paying the appropriate premiums from the date of the avoidance. They should also remove any record of the avoidance from internal and external databases.
- Pay Miss T £500 in compensation for distress and inconvenience.

Red Sands Insurance Company (Europe) Limited must pay the compensation within 28 days of the date on which we tell them Miss T accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

\*If Red Sands Insurance Company (Europe) Limited consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss T how much they've taken off. They should also give Miss T a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 11 September 2023.

Paul King  
**Ombudsman**