

## The complaint

Mr S has complained that HDI Global Specialty SE (HDI) has declined his claim for the cost of veterinary treatment for his dog on the basis that it was for a condition that was existing prior to the policy being taken out.

## What happened

Mr S's dog, who I'll refer to as "C", was covered by an insurance policy with HDI from 5 April 2021 until 4 April 2022 (Policy 1). Mr S didn't renew his existing policy from 5 April 2022 as he found it cheaper not to do so but to cancel it and take out a new policy instead (Policy 2).

Between 7 July and 15 September 2022, and between 29 September and 11 October 2022 C received treatment from her vet for problems in her mouth. Mr S claimed for the cost of this from HDI.

Having seen C's medical history, HDI declined Mr S's claim on the ground that on 15 January 2022 (during the currency of Policy 1), C had received treatment for a dental problem. The vet's notes on that occasion read as follows:

*Reason: Tooth Causing Issues Last Couple Week*

*Appointment Notes: mouth bleeding, poss some ulcers/ blisters on tongue? and down that side of mouth. has had some teeth removed last year? Owner concerned and thinks tooth may need removing, adv come in to discuss and poss have some meds then book in for sx?*

*O noticed bad breath and ulcers on rhs of tongue*

*Dental disease again although left looks worse. If doing another dental will remove all remaining teeth.*

C's next appointment was on 6 May 2022 when the vet's note was brief as C wouldn't tolerate an oral examination, but it was noted that "*gums quite erythematous and halitosis*" and "*as previously mentioned dental w extracting remaining teeth prob the best thing to do*".

C's next visit was on 16 July when another concern about bleeding from C's mouth was raised. On 28 July a mass was found during dental treatment and excised. This was subsequently diagnosed as cancer. On 15 September an assessment was made of bleeding oral neoplasia, with a possible secondary infection.

HDI maintains that the first signs of gingival infection, oral bleeding and halitosis were noticed on 15 January 2022, before the inception of Policy 2 on 5 April 2022. It refers to the following policy term:

*"What is not covered?*

*7. Any illness arising prior to or within the first 14 days of the inception date of the insurance or a pre-existing condition."*

It maintains that as Mr S didn't continue Policy 1, and Policy 2 is a new policy, there was no continuity of cover. The consequence of that is that the policy exclusions for pre-existing conditions will apply to the treatment claimed for.

Mr S maintains that the treatment C received in January 2022 was purely dental treatment. HDI made an enquiry of C's vet as to whether the claim Mr S made on Policy 2 for C's treatment from July 2022 might be linked to the dental issues noted in January 2022. No reply appears to have been provided by C's vet.

HDI therefore maintained its position that the condition for which C was treated from July 2022 was first displayed in January 2022 and was therefore excluded from cover as a pre-existing condition.

Mr S wasn't satisfied with HDI's rejection of his claim and brought a complaint to this service.

Our investigator's view was that in the absence of a response from C's vet clarifying whether or not in their opinion there was a link between the condition that C's vet identified in January 2022 and the condition for which she was treated from July 2022, it wasn't reasonable for HDI to assume that there was. He considered that the medical evidence was insufficient to establish such a link. In his view HDI should settle Mr S's claim.

In response to our investigator's view, HDI referred to Mr S's further claim for treatment between 29 September and 11 October 2022, and argued as follows:

*"It was at this point it was recognised this condition started under Policy 1, making it pre-existing to Policy 2. Therefore, a response from the vets was not needed. Although the vet has never responded to us, it is clear from the information they and the policyholder provided, that this condition started under Policy 1. As Policy 2 is a new contract, which doesn't cover pre-existing conditions, the claim has been correctly declined."*

Our investigator didn't agree that it was clear, as HDI stated it to be, that C's condition started under Policy 1, and maintained his view.

Mr S's complaint has therefore now been passed to me for review and 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.

Firstly, I should address the fact that Mr S didn't renew his policy in April 2022 and took out a new one.

I agree with HDI that as this was a new policy and not the continuation of an existing policy, any conditions existing before the new policy was taken out would be regarded as pre-existing and consequently not covered. Mr S was referred to the following policy term (my emphasis underlined):

*"The limit of cover is continuous up to the overall limit of the policy for the period of insurance, subject to cover remaining in force, relevant premiums having been paid and the insurer invites renewal. Treatment in respect of any on-going illness or injury can continue into the next period of insurance."*

I don't consider that HDI has acted unfairly in maintaining that as there was no continuity of cover, pre-existing conditions as at the commencement date of the new policy would not be covered.

As HDI consequently relies upon the exclusion relating to pre-existing conditions - *"Any illness arising prior to or within the first 14 days of the inception date of the insurance or a pre-existing condition"* - I have considered what is to be regarded as a pre-existing condition.

A pre-existing condition is defined in the policy as:

*"Any illness or injury or complication directly resulting from an injury or illness, whether diagnosed or undiagnosed that has been identified or investigated by a vet or is otherwise known to you prior to the start of the insurance or within the first 14 days of the policy for illness or 48 hours in the case of an injury."*

The notes made by C's vet from 15 January until 28 July make no reference to any identification or investigation of any neoplasia or suspicion of it, nor has it been suggested that Mr S otherwise knew about it. The vet's notes refer only to dental issues and the possible need to remove the remainder of C's teeth, and some bleeding and halitosis. On 28 July C's appointment was for dental treatment under general anaesthetic. That led to the finding of a mass. It wasn't until 15 September 2022, some eight months later, that C is assessed as having neoplasia.

It is for HDI to provide evidence which is sufficient on the balance of probabilities that an exclusion upon which it relies to decline a claim is applicable. In this case I don't consider that HDI has met that test. It hasn't provided any evidence to support its position that there was a connection between the condition for which C was treated in January 2022 and the cancer with which she was diagnosed some eight months later. It has simply made an assumption about this in the absence of any further clarification from C's vet.

In my opinion HDI hasn't established on the balance of probabilities that C's illness was present before 5 April 2022.

In the circumstances I consider that HDI has acted unfairly towards Mr S in declining his claims. I think it should settle them.

### **My final decision**

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

I require HDI Global Specialty SE:

1. to settle Mr S's claims 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 claims until payment is made to him.

If HDI Global Specialty SE 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 October 2023.

Nigel Bremner  
**Ombudsman**