

The complaint

Mr M's complaint is about the refusal of a claim under his pet insurance policy with Pinnacle Insurance Plc.

What happened

In July 2023, Mr M made a claim under the policy for treatment for his dog who had been diagnosed with pancreatitis.

Pinnacle refused the claim on the basis that it was a gastro-intestinal problem. Pinnacle said the dog had been unwell with diarrhoea in June 2022, which should have been disclosed when Mr M applied for the policy in March 2023. Pinnacle says that if Mr M had done so, it would have added an endorsement to the policy that would have meant that any claims relating to gastro-intestinal problems would be excluded from cover.

As it now knows this history, Pinnacle says it is entitled to apply the endorsement retrospectively, which means Mr P's policy excludes claims for gastro-intestinal problems, so the claim is not covered. Pinnacle says this exclusion is reviewable, if there are no further issues for two years. (Pinnacle also added retrospective exclusions for lumps and skin problems but these are not relevant to this claim.)

Mr M is unhappy with this. He says his dog had one episode of diarrhoea that was mentioned to the vet over a year before this claim and which only required basic treatment. Mr M also says his vet has advised that this was not linked to the pancreatitis developed over a year later. He says it is "*legally spurious*" to retrospectively change the cover in this way and means the policy was mis-sold, as he would have chosen a different policy if he'd known Pinnacle would choose to exclude all gastro-intestinal problems.

Mr M also says that when he applied for the policy he was asked to provide information about pre-existing conditions but not a full medical history. His dog had no pre-existing medical conditions, so there was nothing for him to disclose when he took out the policy.

Mr M wants the exclusion of gastro-intestinal issues removed from the policy, as he says there is no justification for this exclusion based on one episode of diarrhoea, and that his claim for the vet's bill of over £1,200 be paid by Pinnacle. Mr M also says this has caused him and his family a great deal of stress.

One of our Investigators looked into the matter. Initially he said he intended to uphold the complaint, as he did not think Pinnacle had established that the pancreatitis claimed for was a pre-existing condition.

Pinnacle did not accept the Investigator's assessment. It said it had not declined the claim on the basis that the pancreatitis pre-existed the start date of the policy but rather that the policy excludes gastro-intestinal problems. Pinnacle said Mr M had made a careless misrepresentation when applying for the policy and it was entitled to take the action it did as a result.

The Investigator reviewed the matter and changed his assessment. He did not recommend that the complaint be upheld, as he did not think Pinnacle had acted unreasonably. The Investigator said Pinnacle had asked a clear question about Mr M's dog's previous medical complaints and was satisfied that if Mr M had told Pinnacle about the diarrhoea in June 2022, it would have applied the endorsement. He therefore concluded it was entitled to refuse this claim.

Mr M does not accept the Investigator's second assessment. He says Pinnacle has only raised the misrepresentation argument in response to the Investigator's assessment and did not do so in response to his initial complaint. Mr M also disputes that he was careless and says he had nothing to hide about the dog's medical history. Mr M says he was asked whether there were any signs of illness or injury in his dog and while this question is clear, the explanation that went with that question talks about pre-existing conditions, so he thought he had answered this correctly, as his dog did not have any pre-existing conditions. Misinterpreting a question does not amount to a lack of reasonable care and he should be given the benefit of any doubt about this.

Mr M also says that it would not make any difference if Pinnacle had known about the diarrhoea in June 2022, as it is not connected to the pancreatitis. And if Pinnacle had applied the exclusion from the outset of the policy, he would have cancelled it and found cover elsewhere.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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.

Our approach is in line with the relevant law on this issue: The Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer. If a consumer fails to take reasonable care, the insurer has certain remedies provided the misrepresentation is, what CIDRA describes as, a qualifying misrepresentation.

For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms, or not at all, if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

I've considered the circumstances of this case to consider whether Pinnacle fairly added the gastro-intestinal exclusion given our approach, in line with CIDRA.

Mr M bought this policy online in March 2023. When he did so, he would have been taken through various questions and options. Pinnacle provided a screen shot of the online application, which shows that Mr M was asked:

"Has [your dog] ... ever shown any sign of injury or illness or been unwell?"

Just under that question there was the following explanation:

“We need to know anything you have noticed or discussed with your vet or any other professional about ... [your dog's] health or behaviour. Even if there was nothing to be concerned about and the problem was resolved quickly.”

Mr M provided a screenshot of the application process which doesn't include the above wording. I asked Pinnacle about this and it suggests the screenshot he provided is from a mobile phone, which is why the wording is not shown in the screenshot but that it would have been on the form when Mr M completed the application. I have also checked the online process and am satisfied that the above wording does appear just after the question about signs of illness or injury.

Both screenshots provided by Mr M and Pinnacle show the application also said:

...pre-existing conditions. This policy doesn't cover pre-existing conditions, It's important we know of any conditions/symptoms ...[the dog is] suffering from or has suffered from in the past before you take out this policy. At the point of claim, our team will review your pet's medical records. Failure to tell us about any pre-existing conditions may affect future claims and your policy”.

There was also an information 'pop-up' box next to the question about illness and injury, which said: *“A pre-existing medical condition is an illness, injury or symptom your pet has ever suffered from or is suffering from before you take out this policy. This would include one-off or ongoing conditions/symptoms and accidental injuries. As well as any discussions with your vet or other professionals about their health or behaviour. Even if treatment wasn't needed or you were told it was nothing to worry about.”*

Mr M answered 'no' to the question set out above. Pinnacle says this was careless misrepresentation, as it was entitled to know in answer to this question that his dog had had diarrhoea most recently in June 2022.

Mr M says that the description of what amounted to a pre-existing condition, set out above, was ambiguous and he did not understand that it meant he had to disclose the June 2022 visit to the vet.

I can see that Mr M and the vet do not think the diarrhoea episode in June 2022 is linked to the later pancreatitis and I accept that Mr M did not believe it to be an ongoing issue or related to a condition of any kind.

However, that said, I do think Mr M failed to take reasonable care in answering Pinnacle's question because he had taken the dog to the vet around nine months before applying for the policy and that's what Pinnacle asked about. It asked about anything noticed or discussed with your vet about the dog's health.

I do not agree that there is anything ambiguous or misleading about the question or the information provided in the online application process and think it was sufficiently clear that Mr M should have disclosed the June 2022 issue. Any misunderstanding about what Mr M needed to tell Pinnacle was not as a result of an unclear question, or information provided by Pinnacle.

Mr M says it would be easier for Pinnacle to have reviewed the dog's medical notes rather than ask ambiguous questions but it has no obligation to do this. As long as it has asked clear questions, it is entitled to rely on the information provided by the prospective policyholder.

Mr M also says that it would not have made any difference even if Pinnacle had known of the vet's visit in June 2022, as it is unrelated to the pancreatitis claim.

I do not agree. It is generally for insurers to decide what cover they want to provide for the premium. Pinnacle is entitled to decide to exclude cover for gastro-intestinal issues if there have been such issues in the past. Pinnacle has provided evidence of its underwriting guide, which shows that if it had known about the diarrhoea in June 2022, it would have excluded gastro-intestinal problems from the outset, to be reviewed at the next renewal. The next renewal would have been March 2024, so after the claim. I am therefore satisfied that gastro-intestinal claims would have been excluded at the date of the claim. The pancreatitis does not need to be linked to the diarrhoea in June 2022, other than that they are both gastro-intestinal issues.

Mr M also says that if he had disclosed this and Pinnacle had excluded cover for gastro-intestinal issues, he would not have taken the policy and would have taken a policy without that exclusion, so would have had cover for this claim. This might be the case (I make no finding on that) but as the duty was on Mr M to provide that information, any detriment to him of not disclosing it in answer to a sufficiently clear question at the application stage, is not due to Pinnacle doing anything wrong and so is not a reason to require it to disregard the non-disclosure.

Finally, Mr M says Pinnacle has only just raised this argument in response to the Investigator's assessment, but while it may not have mentioned CIDRA or set out the reasoning in full, this is the reason Pinnacle retrospectively applied the exclusion. I do not therefore agree that it was not transparent with Mr M or that it did anything untoward in this regard.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 March 2024.

Harriet McCarthy
Ombudsman