

The complaint

Mrs B complains that Red Sands Insurance Company (Europe) Limited unfairly turned down her pet insurance claim. She also complains about its handling of her claim and complaint.

What happened

Mrs B has a time limited pet insurance policy with Red Sands to cover her dog. Under the policy Red Sands will cover a condition for 12 months from the date the condition first showed clinical signs or symptoms.

In June 2023 Mrs B's dog received vet treatment. Her vet submitted a claim on her behalf for two separate conditions: an ear disorder and nasal discharge.

Red Sands did not pay the claim. It said the clinical history showed that the dog had experienced repeated ear infections in both ears since 2010. The history did not show a separate cause for each ear infection and reinfection was likely. So it said the ear condition was a pre-existing condition that had started before Mrs B had first taken out the policy on 31 March 2013. It also applied an exclusion for all claims with respect to ear infections and resulting conditions from 31 March 2013.

Red Sands said the clinical history indicated that a rotten tooth caused the nasal discharge, which was resolved through the removal of the tooth. There was no cover under the policy for dental or gum conditions, or for the cost of any tests that led to a dental problem being diagnosed. So it would not pay for the nasal discharge fees.

Mrs B strongly disagreed. She said that Red Sands had not commented on the costs of an x-ray of her dog's chest. This was to check for a lung condition. She asked Red Sands to comment on that point and to send her personal data. But Red Sands did not comment and issued its final response on the complaint before providing her personal data. She came to us.

Our Investigator did not uphold Mrs B's complaint. He said Red Sands had fairly been entitled to reject the ear disorder claim as a pre-existing condition and to apply the exclusion for the dog's ears. He said the x-rays had been carried out to diagnose the dental issue and so were not covered, even if this could have been better communicated by Red Sands.

Mrs B asked for a review. She said there was no evidence to show the lung x-ray was related to the nasal symptoms, and Red Sands had not explained its position to her about this at any point. Red Sands had not treated her fairly as it was obliged to do by its regulator.

It did not explain its reasoning or provide her with its documentation before sending its final response letter, which is unjust and gives the impression that complaints can simply be dismissed as an afterthought.

I reviewed the complaint and asked for some further information and comments from both parties. I issued the following provisional decision saying that I intended to uphold Mrs B's complaint in part. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly and they mustn't turn down claims unreasonably.

The ear disorder claim

Red Sands declined Mrs B's claim for her dog's ear disorder because it was a "pre-existing condition" as defined in its policy.

Red Sands considers "a condition to be pre-existing if your pet showed any signs or symptoms of it before your cover start date, whether they needed treatment previously or not. We can start covering some conditions again if they haven't needed – or been recommended to have – treatment from you or the vet in the last 24 months."

The clinical history for Mrs B's dog shows that in 2010 he was seen by a vet and treated for a sore right ear. In 2012 the dog had a sore left ear, which the vet treated with ear drops.

In its final decision letter Red Sands refers to the 2010 and 2012 entries in the dog's clinical history, which happened before the policy's start (or inception) date of 31 March 2013. Red Sands also listed consultations for the dog's ears in 2013, 2017, 2020, 2021 and 2022.

Red Sands said: "The medical notes do not illustrate a separate cause for each infection and due to the frequency to which they occur reinfection is a likelihood unless evidence is shown otherwise."

As Red Sands is relying on a policy exclusion to decline the claim, it is for Red Sands to show that the claim for the dog's ear disorder was related to a pre-existing condition. While I have noted Red Sands comments about the later infections, I do not consider that it has shown that the dog's sore right ear in 2010 or sore left ear in 2012 was related to the ear disorder claimed for in 2023.

It follows that I do not consider that Red Sands fairly declined Mrs B's claim for the dog's ear disorder on the grounds that it was a pre-existing condition.

The amount claimed by Mrs B's vet was £92.99 and the policy excess per condition was £99. So from the information I have seen, I do not currently consider that the rejection of the claim caused Mrs B any financial loss. But I think she was frustrated by Red Sands' response, having herself pointed out that it is for Red Sands to show that the claimed condition is linked to a pre-existing one.

Red Sands also applied a backdated exclusion, which said "excludes cover on all claims with respect to ear infections and resulting conditions with effect from 31 March 2013".

We would only consider it fair for an insurer to backdate a policy exclusion to the policy's start date if it could show that the consumer had failed to answer its clear questions with reasonable care. Mrs B took out the policy before the Consumer Insurance (Disclosure and Representations) Act 2012 or 'CIDRA' took effect on 6 April 2013. So CIDRA does not apply in this case. But in reaching a fair and reasonable outcome, I think it is fair to follow the principles set out in CIDRA, because they follow the long standing approach of the Financial Ombudsman Service in cases of misrepresentation or 'non-disclosure'.

In this case, Red Sands' questions to Mrs B before she first took out the policy related only to previous insurance, any aggressive tendencies in the dog and whether Mrs B had ever

been declined for insurance or had a policy cancelled. Red Sands has not shown that it asked Mrs B a clear question about her dog's health or that she failed to answer any such question with reasonable care. As such, it is not fair for Red Sands to place the above retrospective exclusion on the policy.

The nasal discharge claim

Mrs B's vet submitted a claim for investigations and treatment into the dog's nasal discharge. Red Sands turned down the claim quoting the following policy exclusion:

"We don't cover any dental or gum treatment or conditions, including epulis. This includes the cost of any tests that lead to a dental or gum problem being diagnosed."

In investigating the nasal discharge the vet sedated the dog and extracted a rotten tooth, which the vet thought could be the cause of the nasal discharge. The vet was to review after a week to check that the tooth removal had resolved the nasal signs. There is nothing in the clinical history to suggest that the nasal signs did not resolve.

I think that Red Sands fairly assessed the claim for the nasal discharge. The vet thought the rotten tooth had caused the nasal discharge. Red Sands was entitled to decline the claim under the dental policy exclusion.

The chest x-ray

Mrs B's vet has provided some additional comments, which I have shared with Red Sands. The vet said the claim for nasal discharge included one x-ray for the dog's chest (at a cost of £66.67). This x-ray was to establish the cause of the dog's laboured breathing and the vet said should not have been included in the claim for nasal discharge.

Red Sands has told me that it received claims only for the ear disorder and nasal discharge. From its history and the vet's comments I think this is correct. However, Red Sands says it is willing to consider a claim for the dog's breathing issue if submitted by Mrs B (or her vet). I think this is reasonable, given there is no evidence a claim has yet been submitted for the breathing issue.

But I don't think Red Sands answered Mrs B's questions about the chest x-ray and I will comment on this below.

Red Sands' response to the claim and complaint

When Mrs B received Red Sands' responses to her claims, she clearly raised the issue of the chest x-ray. She said that the chest x-ray was unrelated to the nasal discharge claim. She is also concerned that Red Sands issued a final response to her complaint without responding to her concern about the x-ray and before it had provided her with the data access request information. She said it had not treated her fairly and had dismissed her complaint.

I have asked Red Sands to respond to these points. In summary, it said it had given Mrs B information about its complaints procedure and invited any further comments. After that, on 17 July 2023, it had issued a final response to Mrs B's complaint, in which it had referred to her dog's clinical history and explained why it had declined her claim with reference to the policy terms and conditions. It had not treated her unfairly or dismissed her complaint. It received the data access request on 6 July 2023 and sent the information to her on 21 July 2023.

I have shared Red Sands' comments with Mrs B, and I have considered what she has said in response.

I think that there were some shortcomings in the way Red Sands dealt with Mrs B's claim and her enquiries about the chest x-ray.

In my view, Red Sands did not fairly deal with Mrs B's claim about the ear disorder. I don't consider Red Sands was entitled to say the condition was pre-existing or apply a retrospective exclusion. I think its response caused her distress and inconvenience for the reasons I've already explained.

Red Sands failed to answer Mrs B's repeated questions about the chest x-ray. The clinical history showed that the chest x-ray was for investigation of a breathing issue. It is correct to say that the vet had not submitted a separate claim for the breathing issue and had mistakenly included the chest x-ray in the claim for nasal discharge. But Red Sands was the expert in this matter and should simply have explained to Mrs B that she would need to make a separate claim. Instead, Red Sands suggested that the x-rays were all related to the nasal discharge issue, which the clinical records showed was not the case. This was clearly frustrating for Mrs B.

I think that Red Sands should fairly pay Mrs B some moderate compensation for its poor handling of these issues and I assess £150 to be fair and reasonable.

I don't consider that Red Sands otherwise dismissed Mrs B's complaint. It gave her a detailed response within its regulator's timescales. I appreciate Mrs B's reasons for saying that Red Sands should have waited until she received the data access information. While this might have been helpful I don't think that Red Sands was required to wait. And if it had done so, I don't think this, of itself, would have prevented her from making a complaint to this service."

I said I intended to uphold this complaint in part. I was minded to require Red Sands to remove the retrospective ear related exclusion and to pay Mrs B £150 compensation for her distress and inconvenience.

Mrs B responded to say that she felt my provisional decision had vindicated her pursuit of this complaint. She added that she felt it was unlikely she was the only policyholder adversely affected by the unfair imposition of a backdated exclusion by Red Sands. She presumed that this was something Red Sands would need to proactively address to fulfil its obligation to treat the customer fairly.

Red Sands did not respond to my provisional decision.

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.

I have read Mrs B's comments. But I am not a regulator and my role here is to decide only her individual complaint. So I will not comment further on her point about Red Sands' wider obligations to its customers.

I have not received any further evidence, and so I see no reason to depart from the findings I reached in my provisional decision. I confirm them here for the reasons given above.

Putting things right

I require Red Sands Insurance Company (Europe) Limited to:

- remove the retrospective exclusion which “*excludes cover on all claims with respect to ear infections and resulting conditions with effect from 31 March 2013*”; and
- pay Mrs B £150 compensation for her distress and inconvenience.

My final decision

For the reasons given above and in my provisional decision, I uphold this complaint in part. I require Red Sands Insurance Company (Europe) Limited to take the steps set out in the ‘Putting things right’ section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 22 February 2024.

Amanda Maycock
Ombudsman