

The complaint

Miss G complains that Pinnacle Insurance Plc unfairly declined her pet insurance claim.

What happened

Miss G held a pet insurance policy, underwritten by Pinnacle.

Sadly, in late April 2023, her cat became ill and was vomiting blood. Miss G took her to the vets who were worried she may have swallowed a foreign object.

Miss G submitted a claim to Pinnacle for her vet costs. Because the vet had incorrectly added the costs of another visit in early April, Pinnacle told Miss G that her claim was declined because the condition started during the policy's 14-day exclusionary period.

Her vets corrected this, and the claim was resubmitted. Pinnacle then took the decision to decline it for a different reason. It said Miss G's cat had existing symptoms that were present before she'd taken out the policy, so Pinnacle added exclusions for those conditions – one of which was an exclusion for gastro-intestinal problems. So, Pinnacle applied this exclusion to decline Miss G's claim for her cat's vomiting.

Miss G complained and provided further evidence from her vet. The vet said the cat's clinical signs during the earlier visit that Pinnacle had referred to were not related to the vomiting.

Pinnacle responded to Miss G's complaint and didn't change its stance. It said it thought the exclusion had been placed correctly and so its decision to decline the claim was also correct. But it did pay Miss G £30 and apologised for telling her the wrong reason why her claim had been declined.

Unhappy with Pinnacle's position, Miss G referred her complaint to the Financial Ombudsman. She said her cat didn't have any pre-existing conditions.

Our investigator looked into the complaint and didn't think it should be upheld. She set out the law that's relevant where an insurer says a customer hasn't disclosed information at the point of purchasing an insurance policy. She thought Miss G should have disclosed that her cat had been suffering certain symptoms at the point of sale, so she thought it was fair for Pinnacle to apply its exclusion and decline the claim.

Miss G didn't agree. She said she was claiming for the cost of surgery that was looking for a foreign object and not for something related to an underlying condition. She said her vet had confirmed the two visits weren't related and that her cat didn't have pre-existing conditions. She also said she'd been insured with the same policy brand for two years, with only a short break before taking out this one, so she thought Pinnacle should know that her cat didn't have any pre-existing conditions.

Because Miss G didn't agree, her complaint has been passed to me to decide.

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 not upholding the complaint for broadly the same reasons as our investigator. I know this will be disappointing for Miss G and I'm conscious that she's having to cover the cost of her cat's treatment and deal with this dispute while her cat is unwell. But I think Pinnacle has acted fairly and in line with the relevant law. I've explained why I think this below.

The relevant law in this case is 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 (an insurance policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, 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 that it would've 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 remedies available to the insurer under CIDRA depend on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Pinnacle thinks that Miss G failed to take reasonable care not to make a misrepresentation when she took out this policy. It says Miss G was asked about her cat's health and she didn't declare anything. But Pinnacle says her cat's vet records show she was suffering from gastro-intestinal symptoms before the policy was taken out.

Pinnacle has provided screenshots of the online sales journey that Miss G went through when she purchased the policy, showing she was asked the following question:

“Has [your cat] ever shown any sign of injury or illness or been unwell? We need to know anything you have noticed or discussed with your vet or any other professional about [your cat]'s health or behaviour. Even if there was nothing to be concerned about and the problem was resolved quickly.”

Miss G answered “no”.

The screenshots also show Miss G was presented with the following information to help her answer the above question:

“[Your cat]'s pre-existing conditions: This policy doesn't cover pre-existing conditions. It's important we know of any conditions and/or symptoms [your cat]'s 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.”

I think the above question and supporting information were clear and I've kept in mind that they made reference to signs and symptoms as well as illnesses and conditions.

I appreciate what Miss G has said about holding a policy of the same brand for two years before she took out this one – albeit with a small gap in cover. But Miss G was still expected to take reasonable care to answer the above question at the point of sale.

Miss G says her cat didn't have any pre-existing conditions. I've looked at the vet's records to understand her cat's clinical history.

On 30 March 2023, the same day the policy began, the records show that Miss G spoke to the vets because she was concerned about her cat's upset stomach and that this had been going on for the past four or five days. And, on that day, her cat's diarrhoea was worse. The vet suggested a change in diet and offered treatment, but Miss G said she'll try the diet first.

This suggests to me that Miss G's cat was experiencing signs and symptoms of illness before the policy started on 30 March 2023, because her cat had been experiencing diarrhoea for several days. There is a further note on 4 April 2023 which says "history – she has a diarrhoea last 7 days" – which again confirms that the cat's symptoms had started prior to 30 March 2023.

I appreciate Miss G may not have realised she needed to declare this, and I can see her vet has said that this episode of diarrhoea resolved quickly with treatment. But I think the question Miss G was asked at the point of sale made it clear that she needed to answer 'yes' if her cat was showing or had shown any signs of illness or been unwell – and the medical records indicate that her cat was unwell at the time Miss G answered this question. So I think it was fair for Pinnacle to conclude that Miss G failed to take reasonable care not to make a misrepresentation.

Pinnacle has provided evidence to show that it would've applied an exclusion for gastro-intestinal problems if it had known about the diarrhoea. So I'm satisfied Miss G's misrepresentation was a qualifying one under CIDRA.

Pinnacle has said that Miss G's misrepresentation was careless, rather than reckless or deliberate. I agree and I haven't seen any evidence to suggest Miss G intended to mislead Pinnacle or that she didn't care whether her answers were correct or not. Instead, I think she made an honest mistake – and whilst I can empathise with this, an honest mistake is still enough to be considered a misrepresentation under the law.

As I'm satisfied that Miss G's misrepresentation should be treated as careless, I've looked at what actions Pinnacle could take in accordance with CIDRA. Because Pinnacle has shown it would've applied an exclusion to the policy, CIDRA says Pinnacle can add this exclusion to the policy from the start and then assess any claims in line with it. So I think it was fair for Pinnacle to consider whether Miss G's claim fell within the exclusion it had added for gastro-intestinal problems.

The exclusion said:

"In addition to our standard cover exclusions the following conditions, and any other subsequently related condition, are also excluded: gastro-intestinal problems".

Pinnacle says the claim was for vomiting and this falls within the above exclusion. Miss G says it was for exploratory surgery to locate a foreign object, so she thinks it should be covered. While the records do show that the vets' initial concern was an ingested foreign object, they also show that this turned out not to be the case – because a foreign object wasn't found. And I can't see from the notes that a clear diagnosis was reached.

The records also show that the symptoms continued into early May and Miss H told the vets that she was concerned about the possibility of "pancreatitis, hairballs, acid reflux or gastritis". So while I agree the surgery was to explore the possibility of an ingested object, as this wasn't the case and as the presenting and persisting symptom was vomiting with no

clear diagnosis, I think it was reasonable for Pinnacle to say that the claim was related to a gastro-intestinal problem.

For the avoidance of doubt, I agree with Miss G that her cat's diarrhoea in late March wasn't related to her vomiting in late April. But for the reasons I've given, I think it was fair for Pinnacle to add the gastro-intestinal exclusion to her policy, in line with the relevant law, and then to apply this exclusion to decline her claim. I appreciate this isn't the outcome Miss G was hoping for, but I won't be asking Pinnacle to pay her claim.

I recognise it would've been confusing and frustrating for Miss G to be told that her claim was declined for the wrong reason, but I think Pinnacle's apology and payment of £30 was a fair way to respond to this part of the complaint.

My final decision

For the reasons I've set out above, I don't uphold Miss G's complaint about Pinnacle Insurance Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 25 April 2024.

Chris Woolaway
Ombudsman