

The complaint

Mr S complains that Red Sands Insurance Company (Europe) Limited added an exclusion to his pet insurance policy and relied on that exclusion to reject a claim.

What happened

Mr S bought his pet insurance policy online. The policy started on 29 December 2020 and renewed annually.

In May 2023, Red Sands received a pre-authorisation request for entropion surgery. Red Sands reviewed the vet's notes and these showed Mr S' pet had symptoms of entropion in November 2020 – before the policy started.

Red Sands declined the pre-authorisation request and added an exclusion to the policy for any treatment costs related to the eye or eyelids. The exclusion was backdated to the start of the policy in December 2020.

In July 2023, Mr S made a claim for the cost of treating an eye trauma his pet had suffered. Red Sands declined the claim, on the grounds it was caught by the policy exclusion for all treatment relating to eyes or eyelids.

Mr S complained but Red Sands didn't uphold the complaint, so he referred it to this Service but our investigator didn't think the complaint should be upheld. He said Mr S should have told Red Sands about a visit to the vets in November 2020 when he took out the policy. And he said if Mr S had done so, Red Sands would have added the exclusion to the policy at the start. So it was entitled to add the backdated exclusion and the claim would be caught by that exclusion.

Mr S disagrees. He says he answered the questions correctly when taking out his policy.

Before making a decision I contacted both parties to say I was minded to uphold the complaint, because

- I thought Mr S had answered the relevant question correctly; and
- in any event, the question Red Sands relied on was only included in the policy documents sent to Mr S after he'd bought the policy – it wasn't one of the questions he had to answer as part of the online sales process.

I invited Mr S and Red Sands to provide any further comments. Mr S has replied and says he has nothing further to add. Red Sands hasn't provided any further response.

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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim.

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 an insurance policy. The standard of care is that of a reasonable consumer.

If a consumer fails to take reasonable care and makes a misrepresentation, the insurer has certain remedies if there is a qualifying misrepresentation, as defined in CIDRA. For it to be a qualifying misrepresentation the insurer has to show it would either have offered the policy on different terms or not offered it 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. One of these is how clear the question asked was.

When Red Sands rejected the claim Mr S made in July 2023 it relied on the retrospective exclusion added for all claims with respect to the eyes and eyelids from December 2020.

This exclusion was added on the basis that when he bought the policy, Mr S failed to give an accurate answer to the question "*Have you ever taken... to the vet for anything other than routine vaccinations?*"

That question was in the Declaration Questions in the policy schedule.

For there to be a misrepresentation there would need to be evidence Mr S was asked a clear question before he bought the policy, he failed to take reasonable care when answering, and Red Sands would not have offered the policy on the same terms (or at all) if it had been given the correct information.

It seems the appointment in November 2020 was made in order to have vaccinations done. Although other issues came up and were discussed, I think Mr S did answer the question correctly, if he took his pet to the vets for the purpose of routine vaccinations.

In any event, from the evidence I've seen the policy schedule was only sent to Mr S after he had taken out the policy – in Red Sands' file it's noted that "*The policy inception date is 29 December 2020... Following the purchase of the policy, the policy documents were sent to the policyholder.*"

The screenshots of the sales process don't include the question about past visits to the vet and the evidence is that the Declaration Questions were only sent to Mr S with the policy documents, which were sent after he'd bought the policy.

If Mr S wasn't asked the question as part of the sales process, I don't think it can be said there was a misrepresentation. And if there was no misrepresentation then it wouldn't be fair – or in line with CIDRA – to add a retrospective exclusion for everything to do with the eyes and eyelids.

The notes show entropian was noted in November 2020 – so that does appear to be a pre-existing condition and would not be covered. But the claim in July 2023 was for Descemetocoele – a different condition, which only arose in 2023. As I don't think the retrospective exclusion should have been added, it would not be fair to reject that claim for Descemetocoele in reliance on that exclusion.

Mr S has cancelled the policy so there won't be any further claims. But for the reasons set out above I don't think the exclusion backdated to the start of the policy should have been

added, and so the claim for Descemetocoele should be paid (subject to the remaining terms and conditions).

My final decision

I uphold the complaint and direct Red Sands Insurance Company (Europe) Limited to pay the claim, in line with the remaining terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 March 2024.

Peter Whiteley
Ombudsman