

The complaint

Ms N's complaint is about a claim she made on her Convex Insurance UK Limited ('Convex') equine insurance policy, which was declined.

Ms N feels that Convex treated her unfairly.

What happened

Ms N took out an equine insurance policy for her horse with Convex in 2020. When she did so Convex reviewed the horse's clinical history and applied an exclusion for *"all claims related to or arising from skin nodules or skin abnormalities"*.

This was added because the 'certificate of veterinary examination of a horse on behalf of a prospective buyer' said under the heading *'Report of Relevant Clinical Findings and/or History'* *"1.3 skin nodules found suspicious of fibronecrosis lesions. These are unlikely to be of clinical significance. Any skin lumps found at a prepurchase examination have to be considered as potential "sarcoids" (benign skin tumors) although these lesions do not have the appearance of such."*

In 2023 Ms N's horse is diagnosed with squamous cell carcinoma in its penis for which it was treated. The treatment amounted to over £4,000 in veterinary costs. When Ms N called Convex to discuss putting in a claim, she was told an exclusion is applicable and that her claim would not be covered. Ms N didn't agree so proceeded to put in her claim for the cost of the treatment. At this point Convex sought veterinary evidence to confirm whether the condition Ms N was seeking cover for was covered by the exclusion applicable to her policy. Convex' vet said:

"Unfortunately not a simple answer.

If I type in squamous cell carcinoma into google it comes up with endless references to skin cancer. However if I drill down into the anatomy of the skin it becomes a little less clear. The skin on the glans penis and the shaft of the penis do not have sweat glands, is non pigmented and there are no hairs (with associated structures), however it has all the layers of normal skin (epidermis, dermis and subcutis).

Basically it would appear that in the UK the structure covering the glans penis and the shaft of the penis is regarded as skin. Where the urethra emerges from the depths of the penis and attaches to the skin, this margin is called the mucocutaneous junction (same as the mouth or anus). However in the USA they refer to the mucocutaneous tissue covering the whole of the glans penis and the shaft of the penis.

With Equine Squamous Cell Carcinomas they are generally found on the penis, third eyelid or around the eye (periorbital). In the UK a periorbital lesion would be referred to as a skin lesion, whereas a lesion on the third eyelid would not?

Reading the vetting, it mentions fibronecrosis lumps, these are usually hard lumps under the saddle margin. It is not usual to examine the shaft of a horses penis at a vetting.

Reading the surgery report, the lesion was on the urethral process and fossa which are at the very end so mucocutaneous junction tissue.

For me it is the same as a sarcoid on the lip, which would be regarded as a skin lesion or a melanoma on the anus which would also be considered skin."

Based on that evidence, Convex declined Ms N's claim. They did however accept they were wrong to decline cover before she submitted her claim and they needed to consider it together with the clinical evidence to support it before doing so. Convex apologised for this and said they would seek to improve their internal processes going forward.

Ms N's complaint is that Convex were wrong to apply the exclusion in the way that they did. She said the exclusion is ambiguous and too broadly applied. She also feels it's unreasonable to apply it in these circumstances. Ms N feels the exclusion is unconnected to the penile lump and that there's a tenuous link between it and the condition she was claiming for. In particular Ms N relies on the original veterinary examination of her horse which says the lumps which gave rise to the exclusion are *"unlikely to be of clinical significance"*. Because of this she says she wouldn't have reasonably expected them to extend to the condition currently being claimed for. She's also unhappy that Convex declined her claim before she could put it in and did so again only a few hours after she submitted her claim.

Our investigator considered Ms N's complaint and thought that it shouldn't be upheld. Ms N didn't agree so the matter was passed to me to determine.

I issued a provisional decision in May 2024 in which I said:

"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 uphold Ms N's complaint.

The starting point is the policy terms. When Ms N took out her policy Convex applied an exclusion for "all claims related to or arising from skin nodules or skin abnormalities". In this decision I won't be determining whether Convex were entitled to apply this exclusion given the earlier clinical evidence that led to them determining it should be placed against the policy from the outset and at renewal. Rather I'll focus on whether Convex have established the exclusion applies at all to the present claim that is the subject of this complaint. In order to do so Convex would need to show that it's more likely than not the squamous cell carcinoma is related to or arises from skin nodules or skin abnormalities.

There is no evidence from Ms N's horse's treating vet setting out whether they think the squamous cell carcinoma is related to or arises from skin nodules or skin abnormalities. Convex' own vet has given an account of the condition and whether it relates to skin. In particular he says "Reading the surgery report, the lesion was on the urethral process and fossa which are at the very end so mucocutaneous junction tissue." But based on his account of what constitutes skin and tissue in both the UK and the USA the suggestion is very much that the location of the lesion as noted on the surgery report is on what constitutes tissue rather than skin. Confusingly, he goes on to conclude that the location of the lesion is regarded as skin. I'm not entirely sure I understand whether the vet feels the location is regarded as skin or whether he thinks that accords with the approaches taken in the UK and the USA. If it is the latter, then this doesn't seem to be supported by his earlier comments. As a result, I don't think his account is particularly clear on this issue. And given it is a matter for Convex to establish the exclusion is applicable in order to fairly rely on it, I'm not satisfied that they have done so because the evidence they have relied on is unclear. The vet's assertions are, in my view, inconclusive and seem to support less that the location of the lesion is skin and more that it is tissue. As such I'm not persuaded that Convex have established the condition being claimed for is related to or arises from skin nodules or skin abnormalities. Because of this I don't think it was fair for Convex to decline Ms N's claim.

I've set out what Convex should do to put things right below.

Putting things right

Convex should pay:

- *Ms N's claim, subject to the remaining policy terms*

Pay Ms N interest of 8% simple on any sums they pay her in respect of her claim from the time the claim was made, until it is paid."

I asked both parties to provide me with any more comments or evidence in response to my provisional findings. Both parties responded. Ms N accepted my provisional findings and said the veterinary evidence on which Convex relied was never disclosed to her. She also thought that Convex would be likely to now rely on further veterinary evidence in response to my provisional findings. She asked that this be rejected on the grounds that it has now been established that whatever further opinion Convex might introduce, their earlier decision to decline cover was based on unclear and inconclusive evidence, so they acted unfairly.

Convex also responded. They said they didn't agree with my provisional findings. They also said the matter was very technical and although they understood my conclusions, they thought the evidence they'd supplied was sufficient. They also supplied an updated report from the same vet.

In June 2024, I considered the further submissions and evidence submitted by both parties and concluded that Ms N's complaint should still be upheld but for different reasons and in a different way. In issuing my second provisional decision I said:

"Whilst Convex have expressed that they thought their vet's initial conclusions were sufficient to support that they'd fairly relied on the policy exclusion they were invoking, I'm not satisfied that they were. Convex have said these things are very technical. But they are not veterinary practitioners, they are insurers. As such they are not qualified to make clinical determinations themselves. Rather they are reliant on veterinary evidence to help determine whether an exclusion is applicable. In this case they needed to determine whether it's more likely than not the squamous cell carcinoma is related to or arises from skin nodules or skin abnormalities. For the reasons I set out within my provisional decision, I'm not satisfied that the evidence they relied on was clear enough to properly support this when they turned down Ms N's claim.

Turning now to the new evidence Convex have supplied, I appreciate Ms N feels it's unfair for Convex to now seek to rely on that given my provisional findings. And I agree that when Convex turned down the claim, they didn't have clear enough evidence to do so. But that doesn't mean that it's now not fair for them to turn down the claim if they have obtained sufficient evidence.

To be clear, the issue for me to determine is whether Convex can establish the squamous cell carcinoma is related to or arises from skin nodules or skin abnormalities. In summary their vet says the squamous cell carcinoma was removed from the horse's urethral process and fossa as well as the body of the horse's penis. He says that the urethral fossa and the body of the penis are covered in skin. The urethral process is however covered with transitional tissue. He then goes on to discuss the differences between fibroncrosis lesions and nodules and squamous cell carcinomas which he concludes have very different aetiologies and are different and separate disease entities. The vet then discusses the pre purchase information provided for the horse and the fact that the horse had an increased risk

to the insurer of developing future skin issues. Finally, the vet concludes that squamous cell carcinoma lesions were found on the horse's skin, and this constitutes an abnormality.

Given the vet's findings and the explanation he has given about the locations of the carcinoma as well as the nature of the disease, I'm satisfied that the condition that was being claimed for did arise from skin abnormalities and that was something excluded by the policy. I'm satisfied that Convex applied that exclusion due to the increased risk of skin problems to the horse given the skin nodules and suspicious of fibroncrosis lesions present when the insurance was taken out. Ms N doesn't think it was fair for them to do this and says that the skin conditions are not related. I agree that the conditions are not related. This appears to be supported by Convex' own vet's evidence, but that doesn't mean the exclusion doesn't apply. That's because the conditions don't need to be related in order for the exclusion to engage. Turning to the exclusion itself, it's not up to us to determine the risk an insurer is prepared to take on when offering insurance. Our role is to determine whether it has done so fairly. In this case I haven't seen anything to support that in applying the exclusion to the policy as a result of the presence of the skin nodules and suspicious fibroncrosis lesions, it was unfair for Convex to apply a wider exclusion to the policy for skin abnormalities. So whilst I accept the initial examination of the horse at purchase reports the skin nodules are unlikely to be of clinical significance, they are also recorded as being "suspicious". So, I can understand why Convex chose to apply the exclusion it did to the policy from the outset. In light of the further evidence supplied by Convex' vet and the absence of any evidence from Ms N's vet to support that skin abnormalities were not found I find that Convex are now entitled to turn down Ms N's claim based on their policy exclusion.

But that doesn't mean that I'm satisfied that Convex acted fairly. The evidence they relied on was unclear when they turned down Ms N's claim. And I think their decision to do so without providing her with a sound basis on which they did would have caused her both stress and inconvenience. So, I think she should be compensated for this. Given Ms N's account of how Convex' actions affected her I think Convex should pay her £350 in compensation for the trouble and upset caused to her.

Putting things right

Convex should pay Ms N £350 in compensation for the way in which they handled her claim, in particular their decision to turn it down based on unclear evidence."

I asked both parties to provide me with any comments or evidence they wanted me to consider in response to my second provisional decision. Convex have not responded, but Ms N has. She doesn't agree with my findings. Her submissions, in summary, are:

- The policy exclusion applied by Convex is ambiguous and arbitrary to the insurer's legal, regulatory and moral obligations and the scope, application and interpretation is unfair.
- The fact that I have upheld her complaint twice means that the exclusion is unfair and invalid so Convex should not be permitted to apply it.
- The evidence Convex have supplied is from their own vet and has not been shared with her.
- The vet's evidence now can't negate the position that the earlier evidence given on the issue in question was "not a simple answer".
- The vet's evidence can't override the original basis for the exclusion that the observation of skin nodules on the horses' back were deemed unlikely to be of clinical significance.
- Convex have not demonstrated a link between the skin nodules and the condition that was claimed for.
- If my provisional findings stand then Convex will have walked away with a healthy profit and behaved unfairly.
- Convex have not acted in her best interests and are in breach of this rule as well as the

Unfair Terms in Consumer Contracts Regulations 1999.

- The veterinary evidence should be interpreted in her favour given it was unclear.
- If I am not persuaded to change my opinion, I should at least raise the level of compensation payable to her given I have determined she has been treated unfairly.

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 remain of the view that Ms N's complaint should be upheld for the same reasons and in the same way set out in my second provisional decision dated June 2024.

I understand Ms N's disappointment and I've considered her earlier submissions on the application of the policy exclusion. But as I said in my second provisional decision, it's not up to us to determine the risk an insurer is prepared to take on when offering insurance. Our role is to determine whether it has done so fairly. And as I said previously, I haven't seen anything to support that in applying the exclusion to the policy as a result of the presence of the skin nodules and suspicious fibronecrosis lesions, it was unfair for Convex to apply a wider exclusion for skin abnormalities.

I appreciate that the skin condition that was the subject of this claim was unrelated to the earlier skin nodules and suspicious fibronecrosis lesions, but they didn't have to be. The issue for me to determine is whether Convex can establish the squamous cell carcinoma is related to or arises from skin nodules or skin abnormalities and in this case, based on the veterinary evidence, I'm satisfied that it does arise from skin abnormalities. So the exclusion is applicable to the claim.

Turning now to the veterinary evidence, I know that Ms N feels it's unfair that I should accept a further account from the vet clarifying whether the location of the squamous cell carcinoma and whether it was located on skin, or tissue. Like Convex, Ms N also had the opportunity to obtain veterinary evidence to support the cause of the condition being claimed for and to obtain clarity on any such evidence if she wanted to. She's also received an account in my provisional findings about what both pieces of veterinary evidence Convex is relying on say. We wouldn't disregard a party's submission simply because clarification was given at a late stage. So, whilst I know it is disappointing for her that the evidence doesn't support her position, I can't disregard it. I have however taken account of the position Convex have taken throughout and the evidence they relied on when doing so and made an appropriate award of compensation for not providing a sound basis on which to turn down Ms N's complaint, which would have caused her both stress and inconvenience. I know Ms N wants me to increase that award in the circumstances, but I haven't seen anything to support a basis on which to do so. My award takes into account the impact of Convex' actions on Ms N. It's not intended to punish them. In the absence of any submissions that persuade me that the impact of Convex' actions on Ms N was more significant than I first determined, I take the view that my award is adequate in the circumstances.

Ms N has talked about Convex profiting from her policy by not paying out on her claim when she's paid considerable premiums. I can't determine what exclusions an insurer seeks to apply to its policies when designing them. I can only decide whether it's done so fairly and applied those exclusions fairly. In this case I'm satisfied that Convex has, so I can't say they need to do anymore beyond the award I've set out below.

Finally, whilst I note Ms N's references to the law, I should make clear that although I can take into account the law when reaching my conclusions, I am not bound by it. And my determination is based on considering everything the parties have said and deciding whether

Convex have acted fairly and reasonably. My decision is not intended to replicate the judgment of a Court. If that is something Ms N wishes to pursue herself then she's entitled to do so.

Putting things right

Convex should pay Ms N £350 in compensation for the way in which they handled her claim, in particular their decision to turn it down based on unclear evidence.

My final decision

I uphold Ms N's complaint against Convex Insurance UK Limited and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 18 July 2024.

Lale Hussein-Venn
Ombudsman