

## The complaint

Miss W complains that when she made a claim on her pet insurance policy, Pinnacle Insurance Plc added two exclusions to the policy and refused to pay the claim.

## What happened

Miss W bought an insurance policy for her dog in January 2023 and renewed it in January 2024.

Soon after the renewal, she made a claim for treatment relating to lameness. Pinnacle looked into the claim and after reviewing the clinical notes, said these showed evidence of lameness and of behavioural issues in 2022.

Pinnacle said Miss W should have disclosed these when she bought the policy and if she had, it would have added exclusions for hind leg conditions and behavioural problems. So it added these two exclusions – backdated to the start of the policy – and said it would review them in January 2026.

Because of the exclusion for hind leg conditions, the claim for lameness was not covered.

Miss W complained that the condition she had claimed for was not connected to the previous lameness issue. And she said it was unfair to add the exclusions at this point and apply them from the start of the policy. Pinnacle didn't change its decision so she referred the complaint to this Service.

Our investigator said Miss W should have told Pinnacle about previous problems when she bought the policy and as she hadn't done so, there had been a misrepresentation. And she said but for that misrepresentation, the exclusions would have been added to the policy. So it was fair to apply them and to reject the claim.

Miss W disagreed. She provided further comments, repeating that the condition claimed for was different from the problem that had been discussed in January 2022. And she said it was unfair to add an exclusion for lameness, which is a wide term that covers a range of problems.

The investigator considered the further comments but didn't change her view, so Miss W requested an ombudsman's decision. She has provided further comments. These are detailed so I won't set them out in full but the key points include:

- She was asked about any pre-existing medical conditions, described as "*illness, injury or symptoms*". The incident in January 2022 was not an illness or injury.
- With regard to her dog's behaviour, she was asked to confirm "*no one has ever made a complaint about an aggressive act, I have never seen a professional about his behaviour. He has never shown aggression, injured another person or damaged another persons property*". The correct answer to this is "No".
- Pinnacle could have checked the clinical records at the time and added the exclusion; it's unfair to apply it retrospectively.

## 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.

Miss W is unhappy Pinnacle declined the claim for lameness and referred to an issue with lameness before the policy started. She's provided evidence from her vet showing these were not the same condition. Pinnacle did not, however, treat this as a pre-existing condition (which would not be covered under the policy terms). What it said was that Miss W failed to disclose previous issues when she bought the policy, so there was a misrepresentation.

When considering misrepresentation, the relevant law 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.

Miss W took out the policy online. She was asked "*Has the pet ever shown any signs of illness or injury?*" There was a note to this question, which explained that she should disclose any illness, injury or symptom her pet had suffered from, and any discussions with the vet even if treatment wasn't needed

She answered "No".

I think the question asked was clear. So Miss W should have disclosed any previous signs of illness or injury – including any discussions with the vet, even if treatment wasn't needed.

The clinical notes from January 2022 show the dog was noted to have lameness occasionally. The vet discussed this with Miss W and recommended x rays of the hips and hindlimbs, and said it would be better to do that under a general anaesthetic rather than to sedate.

X rays were booked but Miss W cancelled few days later, saying things had improved. Nevertheless, the notes indicate there were signs of lameness, which were serious enough to be investigated, and the vet recommended x rays.

With regard to the behavioural issues, the notes show that in March 2021 Miss W asked for advice about castration and that she "*has noticed that he has been more reactive to other dogs*". Miss W said she felt he "*has to protect himself, will bare teeth and bark. Owner has noticed he now starts to react before another dog has come over*".

The notes also refer to the possibility that this is "*learnt behaviour through feeling threatened*"

Following discussion with the vet, Miss W is recorded as having implemented techniques for managing his reactivity, and a later note says "*Client says he is much calmer... in presence of triggers and less reactive*".

In May 2022 there was a long discussion about castration; Miss W discussed with the vet how her dog was reacting to other dogs; they decided to try chemical castration to see how it altered his behaviour before considering surgery; and this was done. Surgical castration was then carried out in March 2023.

Taking all the evidence into account I'm satisfied Miss W was aware there was an issue with lameness, this had been discussed with the vet and they recommended investigating this with x rays. She had also discussed behavioural issues and there had been treatment in relation to this.

I've considered what she says about the lameness – in particular why she didn't go ahead with x rays at the time, and why she thought she wouldn't need to mention this. But the question was clear and, given the discussion included a recommendation for x rays, I'm satisfied this is something that should have been disclosed.

It wasn't accurate to say there were no previous issues. She should have disclosed the past issues that had been discussed with the vet. So there was a misrepresentation.

Pinnacle has provided evidence which shows that if it had been aware of her dog's history it would still have offered the policy, but on different terms – it would have added exclusions for hind leg conditions and behavioural problems.

I'm satisfied this was a qualifying misrepresentation.

The remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless. Pinnacle has treated this as a careless misrepresentation and I think that's fair; given Miss W's explanation, I don't think the misrepresentation was deliberate or reckless.

That means Pinnacle may add the exclusions it would have added, if the previous issues had been disclosed. So Miss W has a policy on the terms that would have been offered to her if there had been no misrepresentation. And the exclusion for lameness means this claim is not covered.

Miss W is unhappy that such a wide exclusion has been applied. I appreciate the exclusion for hind leg conditions may cover a range of conditions. However, it's for insurers to decide which risks they want to accept. They will consider this when deciding whether to offer a policy and if so, what terms to include and how much to charge for it. Pinnacle has shown that, if it had been aware of the previous issues, it would have added these exclusions. So it's fair – and in line with the relevant law – for it to do so.

### **My final decision**

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 22 November 2024.

Peter Whiteley  
**Ombudsman**