

## **The complaint**

Mr H's complaint is about a claim he made on his pet insurance policy, which Alwyn declined to cover. Instead, they cancelled his policy and refunded the premium.

Mr H says this is unfair and wants Alwyn to cover his claim, pay him interest and damages for the stress and anxiety their actions caused him.

All references to Alwyn in this decision include their claims handlers.

## **What happened**

In late July 2023 Mr H took out a pet insurance policy for his pet. When he made a claim on the policy in 2024 for the treatment of generalised seizures, Alwyn reviewed the pet's clinical history and turned down the claim.

Alwyn said that when Mr H took out the insurance, he failed to declare his pet had pre-existing conditions and had he done so, cover for these conditions would have been declined. In particular Alwyn say that the policy required Mr H to notify them of all conditions his pet had suffered from for a 24-month period predating the policy. Alwyn said that Mr H's failure to do so meant he'd recklessly misrepresented the position to them. As such they cancelled the cover and returned Mr H's policy premium.

Unhappy Mr H complained to the Financial Ombudsman Service. Our investigator considered Mr H's complaint and did not uphold it. He initially said Mr H's pet had been seen for seizure treatment on 13 May 2022 which fell within the two-year declarable period and Mr H did not declare this so Alwyn were entitled to take the action they had.

Mr H made some submissions in response to this and provided further evidence from his vet to say they'd made a mistake and the pet had not been treated or seen for anything within the two years preceding the policy being taken out. Alwyn also provided further evidence. In response the investigator said that the pet's clinical notes showed that on 23 April 2021 the pet had been experiencing neurological episodes for which the vet had been attempting to reach a diagnosis but that the nature of the episodes remained unclear. The investigator said the information from the vet suggested the pet was awaiting diagnosis for the neurological episodes when Mr H took the policy out and that he failed to declare this. As such he remained of the view that the complaint should not be upheld.

Mr H does not agree so the matter was passed to me to determine. I issued a provisional decision in October 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 will be upholding Mr H's complaint in part. I'll explain why.*

*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 (a 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 it would have 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 remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.*

*Alwyn said Mr H failed to take reasonable care not to make a misrepresentation when he declared that his pet had no pre-existing conditions. I can see Mr H had a discussion with Alwyn about this by email and have noted that he questioned whether he needed to declare pre-existing medical conditions for his pet when he took out the policy. Alwyn explained he'd need to declare any condition for which his pet had had a consultation, prescription, medication, investigations or treatment within the last 2 years. So, Mr H was aware that he was under a duty to provide material evidence. And he was specifically prompted to do so when he took out the policy.*

*It's clear to me that the pet's clinical history suggested that it had been seen for seizure treatment on 13 May 2022 which was within the two-year declarable period. Mr H was not aware that this was the initial basis upon which his claim was declined, and insurance cancelled until the investigator reached his first view on Mr H's complaint. As such he was not in a position to either dispute or accept that his pet was seen for seizure treatment at that time. Based on the information Alwyn had at the time they declined the claim and cancelled Mr H's policy, I think it was fair for them to reach the conclusion that they did- namely that the clinical notes suggested that Mr H knew (or should have known) that Alwyn would have wanted to have been told about this visit in May 2022. And I think that it followed that their conclusion that he failed to notify them of this amounted at least to a reckless misrepresentation. So, I don't think they did anything wrong here. It wasn't until Mr H provided a letter from his vet following the investigator's first view of his complaint to the Financial Ombudsman Service that they'd make a mistake and the pet had not been treated or seen for anything within the two years preceding the policy being taken out. At this point I think Alwyn should have agreed to reassess their position. Instead, they made further representations to support why their actions were correct in the circumstances.*

*It's my view that the further evidence Mr H supplied clarifies that he did not misrepresent the position with regard to his pet's clinical history in the two-year period preceding the policy being taken out. With this in mind, I don't think that Alwyn should have maintained their position. I say so because there's no evidence to support it. Indeed, when he took out the policy out, Mr H sent Alwyn the following email:*

*"Hi there My pet does have a pre-existing medical condition, but it was over 2 years ago and they have not shown symptoms and/or had any medical attention for this condition since this time. During filling out the quote, its now telling me that you've confirmed that you're not aware of any recent pre-existing medical conditions, however, I am not being given the option to declare medical conditions from longer than 2 years ago. Can you advise whether I need to declare this, and how I go about it if so? Thanks in advance."*

*So I think he was transparent that his pet had pre-existing conditions that were over the two year period pre dating the policy. As such I think that Alwyn should reinstate his policy accordingly subject to Mr H returning the policy premium Alwyn paid back to him depending on whether he wants cover to continue with them.*

*For the avoidance of doubt, I don't agree with the investigator's findings that Mr H was awaiting test results within the two-year period predating the policy. The clinical notes that Mr H has provided for the pet record that these were discussed on 6 July 2021 where he was advised the results of the tests conducted were normal. There is nothing to record that at that point his pet received any particular diagnosis at all and was awaiting any further investigation. Rather it seemed that matters were concluded until such time that the pet might require medical attention again.*

*Turning now to the declinature of the claim. The policy states:*

*"What You Are Not Covered For:*

*In addition to the General Exclusions of the Policy, the Insurer shall not be responsible for: 5. Any Pre-Existing Conditions. (this exclusion will not apply to a Pre-Existing Condition if You have disclosed the condition(s) and We agree cover)".*

*A "Pre-Existing Condition" is defined as "any condition, Illness, Injury or Bilateral Condition which occurred or first showed Clinical Signs or symptoms prior to the Policy start date, whether diagnosed or not or existing in any form even if the diagnosis changes. This includes if the condition, Illness, Injury or Bilateral Condition has the same diagnoses or is caused by, relates to or results from a condition, Illness or Injury which occurred prior to the policy start date."*

*"Illness" is defined as "Changes to a normal healthy state, sickness, disease, defects and abnormalities including defects and abnormalities Your Pet was born with or were passed on by its parents."*

*When taking out the policy Mr H acknowledged his pet had pre-existing conditions that pre dated the 2 years before taking out cover. I appreciate that he doesn't think those were related to his pet's eventual diagnosis of epilepsy in 2024 but I'm not persuaded by this. Whilst there was a two-year period of his pet not experiencing any symptoms, his pet was investigated by a specialist in April 2021 for neurological episodes that were described as episodes of lethargy, reduced responsiveness, and reduced alertness. It was recorded that the pet was able to walk but very slowly and noted that a forebrain lesion could not be ruled out. The specialist took the view that the cause of the pet's episodes were unclear. Although I appreciate the vet said the vast majority of the causes of reactive seizures and structural epilepsy were ruled out, I think it's clear that the pet was experiencing clinical signs or symptoms of the condition that it was eventually diagnosed with in 2024. The fact that those symptoms were not put down to a particular condition that was unrelated to the epilepsy further supports that they were more likely than not linked because the cause remained unknown.*

*Because of this I think that Alwyn would have been entitled to turn down Mr H's claim given it would have been considered to be pre-existing based on the policy definition. As such I think that Alwyn's declinature of the claim was not unreasonable given the pet's clinical history. The fact that that history predates the two years before cover started makes no difference as there is no cut off point for pre-existing conditions. Rather the two-year period only applies to the time in which Mr H was expected to declare them.*

*Overall, I uphold Mr H's complaint against Alwyn in part and direct them to put things right as I have set out below.*

### **Putting things right**

*Alwyn should reinstate Mr H's policy from the time they cancelled it subject to Mr H returning the policy premium Alwyn paid back to him, provided that Mr H wants them to do this.*

*Alwyn should clarify what Mr H wants to do about this before reinstating the policy.”*

I asked both parties to provide me with any further comments and evidence in response to my provisional findings. Alwyn did not respond but Mr H did. He queried why the complaint was being upheld if he never asked for the policy to be reinstated or what that means.

He also asked for clarity on a number of things, namely:

- Whether he would be expected to pay the policy premium for the months the policy was cancelled to restart cover. He doesn't think this is reasonable since he didn't have cover for those months.
- Whether his pet's pre-existing conditions will be covered by the policy following my decision. He doesn't think he should have to pay for cover if these are not covered, particularly because he feels he received poor service.
- The cover he paid for has now expired. He doesn't understand how this would factor into the remedy within my decision.
- Whether he is obligated to continue to insure his pet with this insurer to ensure his pet's pre existing conditions are covered and what is to stop them increasing the price unreasonably if that's the case. He doesn't have any faith in Alwyn and doesn't want to insure with them if he feels this will be untenable going forward.

### **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 and in the absence of any further submissions in respect of my provisional findings by either party in this complaint, I remain of the view that Mr H's complaint should be upheld in the same was as set out within my provisional decision.

Mr H has asked a number of questions instead. I will do my best to address them here although I should be clear that the question of whether to accept the reinstatement of his policy is a decision for him and not one I can advise him on.

My findings are that Alwyn was wrong to cancel Mr H's policy on the basis that he misrepresented his pet's clinical history to them. But given that clinical history, I am satisfied that the claim that was the subject of this complaint was turned down reasonably because his pet was experiencing clinical signs or symptoms of the condition that it was eventually diagnosed with before the policy was in place. This means I wouldn't expect Alwyn to offer cover for any conditions that were considered to be pre-existing, including anything in relation to the pet's epilepsy.

I can't comment on whether Alwyn should cover any other theoretical claims going forward however I can say that if Mr H decides to renew his policy with Alwyn from the date it expired, then Alwyn should cover any claims that are not in relation to pre-existing conditions subject to the remaining policy terms. It is of course quite possible that the policy premiums will increase significantly going forward if they continue to offer this sort of cover. Policies that don't offer cover for conditions that occurred during the period of cover tend on the whole to be priced more reasonably.

Given my findings are that Alwyn should not have cancelled Mr H's policy and that they should reinstate it if he wants them to do so, the effect of my decision will be that cover will be applied retrospectively from the date the policy was cancelled. That means Mr H will need to pay policy premiums for this period and can expect cover in return for this.

It's now a matter for Mr H to decide whether he wants his policy to be reinstated. If so, he should confirm this to Alwyn directly.

### **Putting things right**

Alwyn should reinstate Mr H's policy from the time they cancelled it subject to Mr H returning the policy premium Alwyn paid back to him, provided that Mr H wants them to do this.

Alwyn should clarify what Mr H wants to do about this before reinstating the policy

### **My final decision**

I uphold Mr H's complaint against Alwyn Insurance Company Limited and direct them to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 November 2024.

Lale Hussein-Venn  
**Ombudsman**