

## **The complaint**

Miss K complains that Red Sands Insurance Company (Europe) Limited unfairly declined her claims under her pet insurance policy, and unfairly added an exclusion.

## **What happened**

On 14 May 2023 Miss K took out a lifetime pet insurance policy to cover her dog, who was then around three months old. The insurer for the policy is Red Sands.

In January 2024 Miss K made a claim for vet treatment costs for her dog's 'gastroenteritis', which included episodes of vomiting and diarrhoea. In March 2024 she submitted a second claim (which I'll call a continuation claim) for the costs incurred to investigate her dog's gastroenteritis. The costs included blood tests and a scan under sedation.

Red Sands turned down the claim and cancelled the continuation claim. It said that its policy didn't cover any pre-existing condition, which included a condition or symptom which began prior to the policy or within the first 14 day 'warm up' period.

Red Sands said that Miss K's dog had symptoms including diarrhoea and vomiting on 26 May 2023, which was within the first 14 days of the policy. It said this meant the dog's condition was pre-existing. Red Sands referred to additional entries in the dog's vet's notes from June, July and September 2023 which it said suggested the dog had been suffering from gastrointestinal issues since 26 May 2023.

Red Sands also said it was entitled to apply an exclusion to the policy saying there was no cover for gastroenteritis or related conditions.

Miss K didn't agree and thought Red Sands had been selective in quoting extracts from her dog's vet's notes. She sent Red Sands evidence from her dog's vet supporting her claim. Red Sands said it had sought advice from its vet, who had reviewed the dog's medical history in conjunction with Miss K's vet's statement. Red Sands maintained its position that due to the vomiting and diarrhoea noted within the 14 day warm up period and the exclusion this created on her policy, it was unable to cover the costs of the claim.

In referring her complaint to this Service, Miss K said this complex matter had been challenging due to her being an individual living with autism, dyslexia, dyspraxia and ADHD, and had caused her stress and anxiety.

Our Investigator did not uphold Miss K's complaint. He didn't find Miss K's vet's comments to be persuasive as there had not been any diagnosis in May 2023. He thought that Red Sands had fairly declined the claim as a pre-existing condition, given the dog's symptoms within the first 14 days of the policy start date. Our Investigator also said that Red Sands had fairly applied the exclusion.

Miss K strongly disagreed and requested an Ombudsman's review. In summary, she expressed concern that Red Sands had not provided evidence to show the claimed condition was linked to her dog's symptoms in May 2023. She said Red Sands had not

properly explained in the policy the extent of possible exclusions for digestive issues, which could have several different causes. Her vet told her in May 2023 that there was nothing wrong with her dog and it was just normal puppy stomach issues.

I reviewed the complaint and issued a provisional decision saying that I intended to uphold it. I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I have to decide whether Red Sands can fairly and reasonably rely on the pre-existing medical condition exclusion and/or rely on the specific exclusion it added retrospectively to decline the claim. I don't think it can do so and this means I currently intend to uphold Miss K's complaint. I'll explain my reasons.*

*Can Red Sands fairly rely on the pre-existing condition exclusion?*

*Miss K's policy started on 14 May 2023 and excludes illness that has shown signs or symptoms within the first 14 days. The policy says:*

*"Pre-existing conditions aren't covered in this policy. A condition, injury or illness is pre-existing if [dog's name] has shown signs or symptoms before you joined [Red Sands], or within the first 14 days of your initial policy start date. This also includes any other condition, injury or illness which is connected to that pre-existing condition as determined by a vet."*

*I can see from the vet's notes that on 26 May 2023 Miss K's dog had diarrhoea and vomiting. This was day 12 of the 14 day period. The vet didn't diagnose any illness and queried whether the cause was "dietary indiscretion".*

*To rely on the pre-existing condition exclusion Red Sands needs to show that the claimed condition is related to the diarrhoea and vomiting that occurred within the first 14 days. Red Sands says that the dog's vet notes show that she had gastrointestinal problems intermittently since May 2023, which means they started within the 14 day 'warm up' period.*

*The entry for 26 May 2023 says:*

*"History – usually goes toilet – went in garden with D+ [diarrhoea] orangy colour and softer than usual, when came inside – interested in food but V+ [vomiting] up yellow bile, drunk water, more lethargic than usual – still excitable and playing but goes quieter quicker was fine yest, did have ice cream (for dogs) that does not usually have, and also was sniffing a dead magpie – don't think ate any but not 100% sure.*

*Diagnosis – suspect dietary indiscretion."*

*The vet prescribed treatment and noted that by 5 June 2023 the dog was much improved. Although Miss K had noticed fresh blood in the dog's diarrhoea, the vet's note of 31 May 2023 said they suspected the blood was secondary to straining as there were only small amounts of fresh blood.*

*Red Sands referred to entries in the dog's notes from June and July 2023 where the dog had vomited and/or had diarrhoea. The notes suggested possible causes including exercising on an empty stomach and a change in diet. But Miss K's vet's notes and her later statement did not suggest those episodes were linked to the 26 May 2023 symptoms.*

Miss K's vet said:

*"[Miss K] took out the standard policy just after the breeder's introductory insurance finished and there were no pre-existing health conditions. Towards the end of the introductory period there was one period of vomiting and diarrhoea spanning notes 26/5 to 5/06/23, however this then resolved, it was believed this was an episode of dietary indiscretion and not an ongoing condition."*

Miss K's vet went on to say that she didn't think the section of the notes from 26 May 2023 to 5 June 2023 should have been submitted as part of the claim and said this period was not related to the 2024 claims.

Miss K's vet said she did think the dog's symptoms of diarrhoea and vomiting noted in September 2023 might be relevant but not the May 2023 incident.

The vet's notes from 18 September 2023 said the dog had experienced chronic vomiting once a week or twice in the past couple of months. The vet noted that the dog's diet was being changed constantly, and the dog sometimes had diarrhoea. The vet queried the possibility of gastritis or reflux.

The next entry Red Sands has referred to was on 29 January 2024, when the dog was reported to be sick after medication, and vomited bile once every two to three weeks.

Miss K's vet said:

*"With the benefit of hindsight it appears there is a good response to restricted diet for food intolerance and since these symptoms are not normally considered under six months of age it does seem unlikely that the period of illness from 26/5-05/06/23 would be related. The scan and bloods from 29/01/2024 were performed as a result of needing to rule out obstruction and not an ongoing process which again I would consider an acute presentation. The owner is understandably upset about the decision to decline cover and I do feel that the treatment from September should have been covered."*

*Please could I ask that the claim is reconsidered (for) the period the owner wanted to claim for, which she believes is the start of this episode...from 29/01/2024."*

So Miss K's vet's evidence is that the diarrhoea and vomited noted from 26 May 2023 to 5 June 2023 was an episode of dietary indiscretion and it is unlikely the illness at that time was related to the claimed for condition of gastroenteritis.

I consider Miss K's vet's evidence in her statement to be persuasive. The vet's contemporaneous notes from 26 May 2023 support her opinion as they said the dog had consumed dog ice-cream and had possibly had contact with a dead bird. (Miss K says that she later discovered that this type of ice cream is not suitable for puppies under four months). The vomiting described in September 2023 for "the past couple of months" would mean from mid-July 2023. So again Red Sands has not shown it was linked to the May 2023 episode.

Red Sands says it obtained its own vet's opinion but it has not shared that opinion with Miss K or this service. Given Miss K's vet's evidence, I don't currently think Red Sands has done enough to show that the dog's symptoms in the 14 day warm up period are related to the claimed for illness in 2024. So it is fair for Red Sands to pay the claim and continuation claim as set out below.

*But Red Sands is also saying that it has relied on the retrospective policy exclusion for gastroenteritis and related conditions exclusion to decline Miss K's claim. So I've considered whether it fairly applied that exclusion.*

*Can Red Sands fairly apply the gastroenteritis and related conditions exclusion?*

*The policy says:*

*"You don't have to tell us about [dog's name] pre-existing conditions. When you submit a claim, we will request their medical history. Each claim will be assessed, and all relevant exclusions applied from the date your policy started.*

*For example, if your claim relates to Diabetes and [dog's name] showed signs or symptoms, received treatment, medication, or advice for this condition before the start of this policy, we will exclude Diabetes together with the related conditions such as Diabetic ketoacidosis (DKA), Insulin deficiency and Reduced insulin levels.*

*This means that your exclusion list may change during the policy of the policy, after assessment of each claim. You can see a list of your existing exclusions [here](#)."*

*Under the strict policy terms, the policy does allow for retrospective exclusions to be added. But I need to decide what I think is fair and reasonable taking into account all the circumstances of the complaint and including the relevant law.*

*The policy does not explain what is meant by "relevant exclusions" and the example is for a diagnosed medical condition of diabetes. I consider the exclusion Red Sands applied to Miss K's policy for gastroenteritis and related conditions is too wide given gastroenteritis can be caused by a range of different factors.*

*The remedy to turn back the clock and apply an exclusion retrospectively (as here) is set out in the Consumer Insurance (Disclosure and Representations) Act 2012 or 'CIDRA'. CIDRA sets a duty on a consumer to take reasonable care not to make a misrepresentation. But it applies to representations made when a contract is entered into (or varied). For a remedy to be available to Red Sands under CIDRA, it would need to establish that Miss K failed to answer a clear question about her dog's health with reasonable care. It would also need to show that if Miss K had taken reasonable care, it would have offered her a policy which excluded cover for gastroenteritis and related conditions.*

*Red Sands has said that Miss K's dog first showed clinical signs of gastroenteritis 12 days into the policy (and by gastroenteritis I understand Red Sands is referring to the diarrhoea and vomiting noted in the dog's vet's notes on 26 May 2023). Red Sands hasn't suggested that there was anything Miss K should have told it about her dog's health before the policy began, which would have resulted in it offering a policy without cover for gastroenteritis and related conditions. Indeed, the policy explicitly says that she did not have to tell it about her dog's pre-existing conditions (if any). And she couldn't have disclosed something that hadn't happened yet. So there was no misrepresentation of her dog's health.*

*Taking everything into account, I don't think it was fair for Red Sands to add the exclusion to Miss K's policy. So I intend to direct Red Sands to remove it and to pay Miss K's claims, with interest as set out below.*

*Red Sands' handling of the claim*

*I consider Red Sands' handling of the claim did cause Miss K some material distress and inconvenience. It declined her first claim and cancelled the continuation claim, and so she*

*has been out of pocket for her vet's fees. She obtained evidence to support her claim from her vet, but Red Sands rejected that evidence without explaining to Miss K what its own vet had said in response. It applied a wide ranging exclusion to her policy and did not respond to her concerns about this.*

*I currently consider Red Sands should pay some compensation to Miss K for the distress and inconvenience it caused to her. I consider £200 to be fair and reasonable."*

Red Sands responded to my provisional decision to say it didn't have anything further to provide.

Miss K did not make any further comments.

### **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.

I've not received any further evidence to review. So I see no reason to depart from the findings I reached in my provisional decision, which I confirm here. I uphold this complaint for the reasons set out in my provisional decision.

### **Putting things right**

For the reasons I've explained, I uphold this complaint and require Red Sands Insurance Company (Europe) Limited to:

- Pay Miss K's claim and continuation claim, subject to the applicable excess and the remaining policy terms and conditions, together with interest\* at the rate of 8% per year simple from the date of the claims to the date of settlement; and
- Remove the retrospective policy exclusion it has applied for gastroenteritis and related conditions; and
- Pay Miss K £200 compensation for her distress and inconvenience.

\*If Red Sands considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss K how much it's taken off. It should also give Miss K a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons set out in my provisional decision and above, my final decision is that I uphold this complaint. I require Red Sands Insurance Company (Europe) Limited to take the steps set out in the "*Putting things right*" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 30 December 2024.

Amanda Maycock

**Ombudsman**