

The complaint

Mrs T complains that Red Sands Insurance Company (Europe) Limited unfairly declined a claim under her pet insurance policy and added exclusions retrospectively.

Where I refer to Red Sands, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

On 15 March 2021, Mrs T adopted a dog. Six days later, on 21 March 2021, Mrs T took out a pet lifetime insurance policy underwritten by Red Sands.

In February 2024, Mrs T made a claim for Histiocytoma. But Red Sands declined it on the basis the lump was present on the dog prior to the start of the policy, and there was no cover for pre-existing medical conditions. It relied on vet notes from August 2022 which recorded the lump as being present on the dog since before Mrs T adopted him.

In addition, Red Sands added a policy exclusion to Mrs T's policy retrospectively for all claims with respect to growths, tumours, cancers and resulting conditions.

Mrs T disputed this and raised a complaint. She provided paperwork from the rehoming shelter which confirmed the dog had no pre-existing medical conditions. She said she noticed a tiny pimple after the dog's first bath, but she wasn't concerned about it. It was 18 months later when it started to grow into a small spot, which is when the vet noticed it and recorded it. And another 18 months later when it had grown into a lump requiring treatment, giving rise to this claim.

Red Sands rejected Mrs T's complaint, so she brought it to our Service. But our Investigator didn't uphold it. He was satisfied Red Sands had acted in line with the policy terms and hadn't treated Mrs T unfairly.

As Mrs T didn't agree, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

Pre-existing condition

When making a claim under an insurance policy, the onus is on the policyholder to prove they have a valid claim. If they do, the insurer should cover the claim unless it can prove that a policy condition or exclusion applies.

Mrs T has shown that her dog has Histiocytoma requiring treatment, which is something the policy provides for. So, on the face of it, she's demonstrated that she has a valid claim.

As Red Sands seek to rely on the policy exclusion for pre-existing conditions, the onus is on it to show the exclusion applies.

The relevant policy term says:

Pre-existing conditions

Pre-existing conditions aren't covered by this policy. We consider a condition to be pre-existing if your pet showed any signs or symptoms of it before your cover start date, whether they needed treatment previously or not.

Red Sands has provided the dog's medical history from the vet. The relevant entry says:

05/08/2022 Small lump right shoulder...O says had since before had him...will monitor advise any change.

On a strict interpretation of the policy terms, based on this vet note, the Histiocytoma is a pre-existing condition because the lump (no matter how small) was present on the dog before the policy cover started.

But my role is not only to determine whether Red Sands' decision was in line with the policy terms, but also whether the way the policy terms were applied was fair and reasonable in the circumstances of the claim. And I don't think it is. I'll explain why.

When considering whether a condition can be deemed pre-existing, our Service will always consider whether the consumer knew – or ought reasonably to have known – there was something wrong that was likely to lead to investigation / treatment.

Regardless of whether Mrs T noticed the lump within the six days she had the dog before taking out her policy or afterwards, it was only a small pimple. I don't think Mrs T had any cause to think her dog might need any investigation / treatment because of it. And this is supported by the fact that, 1) the rehoming shelter had made no mention of it and confirmed there were no pre-existing medical conditions, and 2) no investigation / treatment was required for three years.

For these reasons, I don't think it's fair or reasonable for Red Sands to deem this a pre-existing condition. So I intend to direct it to pay the claim.

Policy exclusion

After declining Mrs T's claim for Histiocytoma, Red Sands added an exclusion to the policy dating back to the start. The exclusion is for:

"All claims with respect to Growths, Tumours, Cancers and Resulting Conditions with effect from 29 March 2021."

The remedy to turn back the clock and apply an exclusion retrospectively 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 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 Mrs T failed to answer a clear question about her dog's health with reasonable care. It would also need to show that if Mrs T had taken reasonable care, it would only have offered her a policy on different terms or not at all making the misrepresentation a qualifying one.

I've asked Red Sands what questions it asked Mrs T at the point of sale and what answers she gave.

Red Sands has provided a screenshot of the online sales process for a price comparison website, which shows that Mrs T would've been asked the following question:

"Do you need cover for any pre-existing or ongoing medical conditions for your pet?"

If "no" is selected, the following question is asked:

"Is [your dog] currently awaiting a review for any new or unexplained symptoms or conditions?"

Red Sands hasn't shown what answer Mrs T gave, but I'd assume she selected "no" to these questions. And I'm satisfied these answers would be correct.

So this doesn't show me that Mrs T answered a question incorrectly. Mrs T didn't need cover for pre-existing or ongoing medical conditions as she'd been told by the rehoming shelter her dog didn't have any. And her dog wasn't awaiting a review for any new or unexplained symptoms or conditions.

Red Sands didn't ask Mrs T to disclose any signs or symptoms her dog had whether they needed treatment or not. That may be what the policy terms say, but Red Sands is required to ask a clear and specific question during the online sales process if it wants the opportunity to add policy exclusions from the outset.

As Red Sands hasn't satisfactorily shown that Mrs T made a misrepresentation, I can't fairly say it can add an exclusion during the policy period and apply it retrospectively. So I intend to direct it to remove the exclusion from the policy.

Responses to my provisional decision

Mrs T has accepted my provisional decision. Red Sands didn't respond.

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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

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

- pay Mrs T's claim for Histiocytoma, minus any policy excess and up to the policy limits. (If Mrs T has already paid for the treatment, Red Sands should add 8% simple

interest per annum to the claim settlement from the date Mrs T paid the vet until the date she is reimbursed in recognition of the time she's been out of pocket).

- remove the exclusion for all claims with respect to growths, tumours, cancers and resulting conditions from Mrs T's policy.
- pay compensation of £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 25 December 2024.

Sheryl Sibley
Ombudsman