

## **The complaint**

Mrs B is unhappy Allianz Insurance Plc turned down a claim on her pet insurance policy.

## **What happened**

Mrs B has pet insurance with Allianz covering her cat (M). The policy was taken out on 3 March 2022. In April 2024 she made a claim on the policy for treatment costs relating to inflammation of her cat's middle and inner ear. Allianz turned down the claim. It thought the veterinary notes showed M had clinical signs of the same condition prior to the policy starting and it didn't cover pre-existing conditions. And prior to taking out cover it asked Mrs B whether her cat had shown any sign of illness, injury or been unwell. If she'd told it about the ear problem it would have added an exclusion to the policy for any condition affecting the ears (which it had now done) meaning her claim wasn't covered in any event.

Having reviewed the vet's notes our investigator thought Mrs B should have told Allianz about M's ear problems when she took out the policy. He was satisfied if that had been done Allianz would have excluded cover for conditions affecting the ears. He also thought the ear problem would be classed as a pre-existing condition. And he thought Allianz had acted correctly and fairly in turning down Mrs B's claim.

Mrs B didn't agree. She said she'd hadn't asked for M's ears to be checked when she had dental treatment in December 2021 or at a follow up appointment on 24 February 2022. And she hadn't been aware of any problem with M's ears at that time. Although the vet had said he found the ears to be "*crusty*" that wasn't something she'd been told.

A follow up appointment under sedation was arranged (as the February 'check up' couldn't be completed due to M's reaction to being examined). Mrs B said she'd cancelled that as she didn't know of any medical problems affecting M and thought it would be traumatic for her to return to the vet. Neither she or her husband had noticed any problems with M's ears when they were interacting with her. She didn't accept she'd misrepresented when taking out the policy as she wasn't aware M had any ear issues at that time.

So I need to reach a final decision.

## **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.

The relevant rules and industry guidelines say Allianz has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

In turning down the claim Allianz has referenced the policy exclusion for pre-existing conditions and also said Mrs B didn't disclose information about the ear condition when taking out the policy (so there's been a misrepresentation). I've thought first about whether it's acted correctly in saying that because if that is the case then there would be no cover

available for ear problems under the policy at all. That's regardless of whether the specific condition in this case was correctly classed as a pre-existing condition.

When considering misrepresentation, the relevant law is the Consumer Insurance (Disclosure and Representations) Act (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. In this case when taking out the policy Mrs B was asked "*Has [pet name] shown any sign of illness or injury or been unwell either now or in the past. This is regardless of whether [pet name] was seen by a vet for the problem*". I think that question would have been clear to Mrs B. In fact she answered yes to it and provided information about gum disease affecting M and related tooth removal. But she didn't tell Allianz about any problems with M's ears. I've thought about whether she should have done so.

I've looked first at the vet's notes from prior to the policy being taken out in March 2022. Records from 24 February say "*went to examine ears .. (apparently was not done at spay as owner requested ..) went very angry ,scratchy etc . Ears crusty .. needs sedation*". An appointment was booked for 2 March but the notes record this as being cancelled on 28 February by Mrs B. A further note from 15 June (so after the policy was taken out) says "*Ears sore again. ++ dry wax, no signs of mites, had good look down one ear, offer sedate/clean or try drops first, O [owner] keen for latter*".

That suggests to me that, while no problem had been diagnosed prior to the policy being taken out, there was a potential issue here for which a further examination under sedation had been recommended. However, Mrs B says she wasn't aware of any issue at that time. But I don't think that's supported by the other evidence.

In particular she provided email exchanges with the vet who treated M at that time. He said "*On 24 Feb 2022 you requested that I check [M]'s ears . She objected so strongly that I recommended a sedative to achieve that examination.*" Mrs B disputed she'd been made aware of a problem at that time. The vet said "*I am afraid that the fact remains that you brought [M] to me for an ear irritation regardless of the cause. There is then the matter of the appointment you made for [M] for 9.30 on Wednesday 2 March which was clearly booked for "check mouth and ears under sedation..."*"

I've also listened to a call Mrs B had with our investigator in which she recalled being told by the vet M's ears were dirty at the February appointment. And it's clear a further appointment was then booked under sedation; I'm not sure why that would have been done if there hadn't been issues that warranted further investigation.

Overall, I think the vet's comments, the notes and the reasons for that further appointment do suggest Mrs B would most likely have been aware there was a potential problem with M's ears prior to taking out the policy. And it would have been reasonable for her to let Allianz know about that in response to the question it asked.

So there has been a misrepresentation here. And Allianz has provided underwriting evidence which satisfies me that if it had been aware of the correct position it would have offered cover but would have done so on different terms; as the ear problem was

undiagnosed it would have added an exclusion for claims resulting from or connected to the ears. That means 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. Allianz hasn't specifically said what view it's taken on this but its actions suggest it has treated this a careless misrepresentation. And I think it would in be fair to do so; given what Mrs B has said I don't think there's evidence to show the misrepresentation was deliberate or reckless.

That means Allianz can add the exclusion it would have done to the policy if the correct information had been disclosed to it which it's done. So Mrs B has the cover which would have been offered if there hadn't been a misrepresentation. And as that contains an exclusion for all claims resulting from or connected to the ears I think Allianz acted correctly and fairly in turning down the claim she made. I'm sorry to bring Mrs B what I do appreciate will be extremely disappointing news.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 4 February 2025.

James Park  
**Ombudsman**