

The complaint

Mr M is complaining that Red Sands Insurance Company (Europe) Limited ('Red Sands') declined a claim he made on his pet insurance policy.

What happened

In May 2024 Mr M contacted Red Sands to claim for a veterinary bill he'd incurred for his dog. The vet had said his dog was displaying evidence of bilateral hip dysplasia. However after reviewing the dog's veterinary history, Red Sands concluded the condition had first shown evidence of appearing in October 2022 – before this policy started. It said the policy doesn't cover a condition, injury or illness where the pet has shown signs or symptoms before the policy started. Red Sands also added an additional exclusion to the policy saying it won't cover claims for the following:

- Specific limb(s) lameness that occurred and related conditions – excluded by Lameness Right Hind Leg
- Hips, pelvis and related conditions of Hip Dysplasia – excluded by Hip Dysplasia

Mr M didn't think this was fair and raised the following:

- He acknowledged he'd taken his dog to the vet before for an issue with the hip, but he said that the condition cleared up after a few days. He didn't believe there was anything to show his dog displayed evidence of hip dysplasia before the policy started. He said they would not have left the dog in pain for six months and not able to climb stairs without any kind of treatment.
- Even if he accepted the exclusion applied to the right side of the hip, which he did not, his dog has never had any issues with her left side. So he doesn't believe the issue is pre-existing in this respect.
- He said his dog had always been adequately insured throughout the time he'd owned her.

Our Investigator partially upheld the complaint. He thought the veterinary notes suggested that it was most likely the hip dysplasia had started to show symptoms before the policy started. He thought it was likely the dysplasia was showing intermittent symptoms.

The Investigator said the terms of the policy treats bilateral conditions as one condition. He thought this was fair and, given he was satisfied it was most likely the dysplasia was pre-existing, he didn't think it was unfair for Red Sands to have declined the claim.

However, the Investigator thought Red Sands could have been clearer in explaining how bilateral conditions are treated under the policy terms. He also thought it was unfair for Red Sands to have added two exclusions where it appeared to have "hedged its bets" and added a wider exclusion regarding lameness for this limb too. He said the unintended consequence of this is that it may inadvertently preclude later claims to do with the right hind leg. So he thought Red Sands should remove this exclusion. He also thought Red Sands should pay £150 in compensation.

Red Sands accepted the Investigator's opinion. However, Mr M didn't agree and raised the following:

- His dog has been comprehensively insured for all her 12 years of life. But he says he's now facing between £7,000 and £10,000 in bills, not including any potential surgery.
- He understood the Investigator's interpretation of the veterinary notes, but he maintains from his extensive knowledge and experience of working within the canine profession his dog was not suffering any symptoms of hip dysplasia before the policy started.
- He thinks it's unfair an onus has been placed upon a speculative note his vet recorded from an injury his dog swiftly recovered from and did not reoccur.
- He maintained, even if the dysplasia in the right hip was pre-existing, there is nothing to show it was pre-existing in the left hip.
- He provided further clarification from the vet who said, regarding the visit in October 2022 that *"No pain was actually found on the right hip during the clinical examination. More common conditions such as muscular or ligament sprain should have been included in the vets differential list for this presentation. Given she recovered with rest, this would also be the most likely cause of her lameness rather than a more serious/long term condition."*
- He reiterated that he would not have left his dog in pain or limping for six months and highlighted she was insured at that time. So there was no reason why he would have left her without treatment and would have simply claimed against his insurance policy.

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 come to the same conclusion as the Investigator and I'll now explain why.

Addition of the exclusions

Insurers are unable to vary an insurance contract – such as add exclusions to the policy – midway through a policy term unless the policyholder agrees to the terms being added or it's entitled to do so in law. Mr M didn't consent for Red Sands to add the exclusions, so Red Sands has to show it was entitled to do so in law.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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 requires Red Sands to ask Mr M clear questions when he first applied for the policy asking him to disclose material information it needed to know to assess the risk. If it can show it asked clear questions, I then need to think about whether Mr M took reasonable care not to make a misrepresentation.

Despite numerous requests, Red Sands hasn't provided information about how it sold the insurance policy. So I can't say whether Red Sands clearly asked Mr M about his dog's previous medical history. It follows, therefore, that I haven't seen anything to show Mr M failed to take reasonable care to not misrepresent.

So I don't think it was fair for Red Sands to have included the exclusions mid-term following the claim. It follows, therefore, that I think Red Sands should remove these from the policy. However I haven't seen anything to show that Mr M has lost out because Red Sands added these additional exclusions as I don't think it's relied upon them to decline a claim. That said, I agree with the Investigator that the addition of these exclusions have caused Mr M some distress and inconvenience. I think the £150 in compensation the Investigator awarded is fair.

However, while I don't think Red Sands was entitled to add the exclusions when it did, this doesn't mean it can't reassess the risk when the policy renews. But the subsequent renewal doesn't form part of this complaint. If Mr M is unhappy with the renewal terms offered, he'd need to raise this with Red Sands.

Decline of the claim

While I don't think Red Sands has shown Mr M made a qualifying misrepresentation, the existing terms of the policy say Red Sands won't cover a claim for a condition, injury or illness if the dog has shown signs or symptoms of this before the policy started.

Red Sands has said the veterinary notes sets out that the vet diagnosed potential hip dysplasia in October 2022. So it said the issues the dog was now experiencing was an extension of this original diagnosis. Mr M disputes this as he maintains the symptoms in October 2022 swiftly disappeared. But, he also says it's unfair for Red Sands to decline the claim for the left hip, which the issue before was limited to the right hip. I've thought about whether Red Sands was being fair.

While I have carefully considered Mr M's testimony, I can't say it was unreasonable for Red Sands to rely upon the veterinary evidence from the time. In October 2022, the vet recorded in the dog's notes:

"Not been able to use the stairs lately...Limping in cons with R HL, no FB seen, flexion and extension of all joints normal, no sign of pain, spine palp. Mild discomfort on thoracic / lumbar area ... Diagnosis: IVDD? / spine injury? / R hip dysplasia?"

The notes further suggest the vet prescribed Metacam for the dog to take. Metacam is an anti-inflammatory drug which I think supports the vet thought dysplasia was likely. Further to this, I note in April 2024 the vet said *"no changes since last visit, had Metacam but not make any change, recommend X Rays."*

I think this seems to support Red Sands that the condition did continue thereafter. While it may only be mild symptoms, I can't say it was unfair for Red Sands to say there was evidence of dysplasia before the policy started.

I note the vet has recently provided a further statement saying there wasn't pain in October 2022 and it was more likely to be a muscular strain. But I've found the contemporaneous notes from the time of the inspection to be most persuasive. So I think it's most likely there was signs of hip dysplasia before the policy started. And, as I said, the terms of the insurance policy say Red Sands don't cover claims in these instances. This is standard for most pet insurance policies and isn't unreasonable.

I've now thought about whether it was fair for Red Sands to decline the claim for the left hip, when the condition previously seemingly only appeared in the right hip. But the terms of the policy say:

"If your pet develops a condition on one side of their body that they've previously had on the

other side of their body, we'll class it as one condition. This is called a 'bilateral condition', and both cases will be classed as the same condition."

This is also a standard term in most pet insurance policies. But I've thought about whether it was fair for Red Sands to say the hip dysplasia was a bilateral condition in this case. I think it was. While I recognise the dysplasia wasn't portraying symptoms in the left hip in October 2022, I'm satisfied the evidence suggests the underlying issue is the same issue in both hips. And I haven't seen anything to show there was a different cause – such as a trauma. It seems to me that the dysplasia has just developed further. So I don't think it was unreasonable that Red Sands considered this to be a bilateral condition.

As the policy considers the dog's hip dysplasia to be one condition and I think it was fair for Red Sands to consider this to be a pre-existing condition, I'm satisfied it was fair for Red Sands to say the claim wasn't covered under the terms of the insurance policy.

My final decision

For the reasons I've set out above, it's my final decision that I partially uphold this complaint and I require Red Sands Insurance Company (Europe) Limited to do the following to put things right:

1. Remove the exclusion clauses relating to the hip dysplasia it added to the policy that commenced in March 2024.
2. Pay Mr M £150 in compensation.

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 April 2025.

Guy Mitchell

Ombudsman