

complaint

Miss D complains that Red Sands Insurance Company (Europe) Limited didn't pay her pet insurance claim and it added exclusions to her policy.

My references to Red Sands include its agent.

background

From August to November 2016 Miss D's cat was treated for 'possible viral upper respiratory tract infection' (URTI). She claimed for the cost of treatment.

Red Sands wouldn't pay the claim. It said the cat's clinical notes in July 2016 showed that before the policy started he had slight conjunctivitis and sneezing which are symptoms of URTI. The claim form completed by the vet said the symptoms had started in June 2016, before the policy started. The vet notes also said the cat had been unwell since Miss D got him from a rescue centre. Pre-existing medical conditions aren't covered under the policy.

The clinical notes also said the cat had been treated for ear mites. Red Sands added exclusions to the policy for all claims for ears, the respiratory system, eyes and sight with effect from the date Miss D bought the policy.

Miss D complained to us. She said:

- She had no concerns about her cat's health when she took out the policy. She'd taken her cat to the vet in July 2016 to register him, not due to concerns about his health. The first time she had concerns about her cat's health was when she took him to the emergency vet in August 2016.
- She wasn't aware the vet had written "slight conjunctivitis" on her cat's notes and no treatment was discussed or given. The claim was for URTI, not conjunctivitis. The occasional sneezing could be caused by anything.
- Red Sands based its decision on suggestions made by the vet, that she didn't recall being discussed with her, rather than diagnosis.
- She didn't recall saying her cat had been unwell all along. She didn't know why her vet had put the onset date on the claim form as June 2016.

Miss D wants Red Sands to pay the claim, remove the exclusions and not raise the policy premiums as a result of the claim.

Our investigator explained why he thought Red Sands had fairly not paid the claim. Miss D didn't agree and wants an ombudsman's decision. Before I made a decision I asked:

- If Miss D wanted to submit any further evidence from her vet. I also asked if Miss D accepted she told the vet about her cat's occasional sneezing and that he'd been treated for ear mites.
- Red Sands to provide the questions Miss D was asked about her cat's medical history when she bought the policy, the answers she gave and its underwriting guidance. I also asked for its response to Miss D's request that her premiums not be increased as a result of the claim.

The vet couldn't give any further evidence. I detailed the remaining relevant responses I received in my provisional findings.

my provisional findings

I explained why I was intending to partly uphold this complaint. I said:

'I need to decide whether Red Sands can fairly and reasonably:

- reject the claim
- apply the exclusions
- increase the premiums as a result of the claim.

the claim

The policy is clear there's no cover for conditions or illnesses showing symptoms or signs before the policy started. That's a very common exclusion in pet insurance policies.

Red Sands has provided the policy sales process that Miss D went through. To buy the policy she had to confirm she'd read various statements headed 'Presumptions and Information' which include:

"You accept that we shall not provide cover for any illness, injury, symptoms or conditions that are pre-existing at the date you take out your policy with us..."

That information is also clear in the Key Facts (policy summary) so Miss D should reasonably have known that pre-existing conditions and illness that had showed symptoms/signs before the policy wouldn't be covered.

The vet evidence is clear that Miss D's cat had *"slight conjunctivitis and occasional sneezing"* before Miss D took out the policy. When the cat was seen by the emergency vet in August the notes say the owner told the vet they'd *"noticed one eye gets some discharge every so often. Not seen a nasal discharge but heard him sneezing a few times"*. The vet notes continue that s/he *"discussed possibility of feline upper resp viruses causing signs"*. As the cat became more unwell with suspected URTI these symptoms continued and worsened.

So the evidence is the cat had shown signs of the URTI before the policy started. That's also supported by the vet stating on the claim form that the symptoms started in June 2016, before they first saw the cat.

Miss D says she didn't know her cat had slight conjunctivitis. But even if the vet didn't tell her before the policy started that her cat had conjunctivitis I think it's more likely than not that she did know he had runny eyes, or discharge from his eyes. She accepts she told the vet about the sneezing, she says anything could have caused his sneezing. But the evidence from the emergency and regular vets shows it was a symptom of the condition claimed for.

Although I don't think Miss D knew her cat had URTI symptoms when she bought the policy I do think she knew there were signs that there was something wrong with her cat. I accept Miss D wasn't very concerned about his health until she took him to the emergency vet in August. But the regular vet's comment in November 2016 that the cat was *"from dirty rescue centre and apparently and been unwell all along"* support that Miss D did know a potential problem before the start of the policy.

Red Sands can fairly and reasonably reject the claim as a pre-existing condition as the condition showed symptoms before the start of the policy.

policy exclusions

Red Sands says if Miss D had told it about her cat's pre-existing conditions or symptoms when she bought the policy it would have added exclusions for claims for ears, the respiratory system, eyes and sight. Now it's seen the cat's clinical notes it's added those exclusions with effect from the date Miss D bought the policy.

I don't think it's fair to apply those exclusions. When Miss D bought the policy Red Sands didn't ask her any questions about pre-existing conditions or symptoms. If it had, and she had misrepresented the answers, it might be fair to apply backdated exclusions – effectively doing what it would have done had it known the true position. This is what the law permits in some circumstances when there has been a misrepresentation relevant to the risk being covered. But as Red Sands didn't ask any questions of Miss D this isn't an issue of misrepresentation.

One of the presumptions in the sales process that Miss D agreed to accept is that Red Sands reserves the right to apply an exclusion for any symptoms, illness or conditions that it subsequently learns were pre-existing at the start of the policy. The relevant condition was URTI and the cat had ear mites and slight conjunctivitis and sneezing (the later related to the URTI).

I think the broad scope of the respiratory system, ears, eyes and sight exclusions Red Sands imposed is disproportionate, unfair and unreasonable in the circumstances of this case. The way the presumption is worded allows Red Sands to impose any exclusion whether related to the condition and symptoms or not. I think the presumption lacks clarity and creates a significant imbalance between Red Sands and Miss D. It effectively allows Red Sands complete discretion to exclude anything. I appreciate Miss D accepted the presumption which says Red Sands can do this, but I don't think it's fair to allow Red Sands to rely on this when it didn't actually ask Miss D to declare her cat's medical history when she took out the policy.

Red Sands should remove the respiratory system, ears, eyes and sight exclusions. This doesn't mean that it has to pay this or any future claim for the cat's URTI, as that's caught by the pre-existing condition policy exclusion.

premiums

Miss D doesn't want the claim to affect her premiums. The amount an insurer charges for premiums is generally a business decision for it to make, taking into account various risk factors. But I can look into whether Red Sands exercises its business decision fairly.

Red Sands has told us that in assessing a risk it takes into consideration many commercial factors, including its own claims research, available market research, and clinical opinion. General factors that can affect the level for premiums include increasing veterinary fees, a high increase in the frequency of claims received across the board, the age and breed of the pet, the risk of recurring conditions. Red Sands has confirmed that Miss D hasn't been treated any differently from any other policyholders for the pricing factors.

So it may be that the claim will play a part as one of the risk factors if Miss D's premium is increased. That's a business decision for Red Sands and there's no evidence it has treated Miss D any differently from its other policyholders or otherwise exercised its business decision unfairly.

responses to my provisional decision

Miss D emphasised that apart from the visit to the vet to register both cats, she didn't make any other visits to the vet before she bought the policy. She said that confirmed she had no concerns about any health issues when she bought the policy.

Red Sands agreed to remove the exclusions for the respiratory system, eyes and ears. But as the vet notes showed the cat had slight conjunctivitis before Miss D bought the policy it wanted to add an exclusion for "all claims with respect to anything to do with conjunctivitis and resulting conditions" with effect from the day she bought the policy.

my findings

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

I am aware Miss D's cat's visit to the vet before she bought the policy was for registration. But her problem is that on that visit (13 July) the vet notes that her cat had "slight conjunctivitis and occasional sneezing". Miss D didn't take out the policy until 24 July. I've explained in my provisional findings why I think Red Sands acted fairly in saying the symptoms noted on 13 July showed there were signs of the URTI before the policy started. I also explained why I thought Miss D knew there was a potential problem with her cat's health before the start of the policy, even though she wasn't very concerned about his health until she took him to the emergency vet in August.

For the reasons in my provisional findings and these findings Red Sands doesn't need to pay Miss D's claim. It can fairly and reasonably reject the claim as a pre-existing condition as the condition showed symptoms before the start of the policy

I don't agree with Red Sands' suggestion that it should be able to substitute the existing exclusions it put on the policy with an exclusion for all claims for anything to do with conjunctivitis and resulting conditions. I've explained above why this isn't a misrepresentation case where misrepresentation remedies may be available, and why I don't think it's fair for Red Sands to rely on the presumption Miss D agreed to when she bought the policy.

And importantly Red Sands has relied on the cat having slight conjunctivitis as a symptom of the URTI to show that the URTI was a pre-existing condition, which I've said it can exclude. I've relooked at the vet notes and I've seen no evidence that the conjunctivitis was a stand alone condition or related to a condition other than the URTI. So I don't think it's fair for Red Sands to now impose an exclusion for conjunctivitis and related conditions.

For the reasons I've given in my provisional findings and these findings Red Sands must remove the policy exclusions for respiratory system, ears, eyes and sight with effect from the date Miss D bought the policy. It cannot fairly add an exclusion for "all claims with respect to anything to do with conjunctivitis and resulting conditions" with effect from the day Miss D bought the policy.

Neither party has commented on my provisional findings about the premium payments. So for the reasons in my provisional findings there's no evidence that Red Sands has treated Miss D any differently from its other policyholders in setting her premium payment or otherwise exercised its business decision about her premium cost unfairly.

my final decision

I partly uphold this complaint.

I require Red Sands Insurance Company (Europe) Limited to remove the policy exclusions for the respiratory system, ears, eyes and sight with effect from the date Miss D bought the policy.

Red Sands Insurance Company (Europe) Limited cannot add an exclusion for “all claims with respect to anything to do with conjunctivitis and resulting conditions” with effect from the date Miss D bought the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 27 November 2017.

Nicola Sisk
ombudsman