

The complaint

Mrs B complains that Pinnacle Insurance Plc won't pay her pet insurance claim and that it's added an exclusion to her policy. My references to Pinnacle include its agents.

What happened

Mrs B took out pet insurance on-line for her dog which started on 31 October 2022. Pinnacle is the insurer. In the autumn of 2023 she made a claim for her dog having some teeth extracted due to an abscess.

Pinnacle declined the claim. It said Mrs B's dog's vet notes for 15 August 2022 showed that before the policy was taken out the dog had '*gingival recession*'. It considered that when Mrs B took out the policy she should have told it about the gingival recession when she was asked questions about her dog's health. And it considered this to be a careless qualifying misrepresentation, which entitled it to place an exclusion on the policy for teeth and gum problems, backdated to the start of the policy. Pinnacle said as the treatment claimed for fell under the teeth and gum problems exclusion there was no cover and it wouldn't pay the claim.

Mrs B complained to us. In summary she said:

- Before her dog had the treatment she'd phoned Pinnacle to check her dog was covered for the treatment, it said she was and to make a claim after the procedure. If Pinnacle had told her that her dog wasn't covered for the treatment she would have gone to an animal charity as she was in receipt of benefits which meant her dog could have free or reduced costs care.
- The appointment on 15 August 2022 was a regular check-up as she takes her dog every six months for a standard check-up and as part of that the vet checks her dog's teeth. During these checks the vet always encouraged brushing her dog's teeth as much as possible and commented on her dog's lovely teeth. She wasn't told her dog had gingival recession.
- The policy covered dental conditions if the dog had regular dental check-ups and treatment was to relieve suffering, and that was her situation. The claim being declined has caused her a lot of upset and distress. She now has a lot of money to find to pay the vet which is causing her stress and anxiety. She wants Pinnacle to pay her claim and compensation for all her upset.

Our investigator considered that Mrs B hadn't made a misrepresentation so Pinnacle had acted unreasonably in adding a retrospective exclusion to the policy and applying the exclusion to decline the claim. Our investigator also considered that there was no evidence of the dog's abscess being a pre-existing medical condition. She recommended Pinnacle pay the claim in line with the remaining policy terms and conditions and pay £100 compensation for Mrs B's distress and inconvenience.

Pinnacle disagrees and wants an Ombudsman's decision. It explained why it strongly believed that it had acted reasonably: it asked a clear question at the sale of the policy about whether Mrs B's dog had a pre-existing condition; Mrs B had given the wrong response to the question; it had clearly told her what would happen if it later found out there was pre-

existing medical history it hadn't been told about. Pinnacle added that the vet records showed there were other health issues with the dog Mrs B should have told it about - sore ears, diarrhoea and removal of a broken nail. And Mrs B knew before she got her dog from the rescue charity that the dog had a scale and polish. Pinnacle said if Mrs B had disclosed even one of those incidents from her dog's history it would then have done the underwriting process and the teeth and gum problems exclusion would have been added from the policy's start date in line with its underwriting guidelines.

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.

This decision is only about whether Pinnacle fairly added the teeth and gum problems exclusion to the policy and whether it fairly declined the claim. I note Pinnacle also added an exclusion to the policy for fractured nails specific to dew claws which is reviewable on 31 October 2024, but Mrs B hasn't complained about that exclusion so I'm not going to make any finding about it. I also note Mrs B was concerned about a text message she received from Pinnacle about cancellation of the policy for the period she'd paid for but I understand that matter has now been resolved.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to take reasonable care, 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 sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Pinnacle thinks Mrs B failed to take reasonable care not to make a misrepresentation when she bought the policy as she wrongly answered the question asked about her dog's health. I've looked at the question Mrs B was asked when she bought the policy, the dog's vet notes, Pinnacle's relevant underwriting guidelines and all the other evidence provided.

At the policy sale Mrs B was asked:

'Has (dog's name) had ever shown any signs of illness or injury?'

This question was supported by an explanation of what Pinnacle considered to be a pre-existing condition which said:

'What is a pre-existing condition?

Signs of previous injury, illness or being unwell & health or behavioural issues you have noticed or discussed with a vet or professional. Even if there was nothing to be concerned about or the problem was resolved quickly.'

There was also a warning that if Mrs B hadn't told Pinnacle about any pre-existing medical condition it could affect future claims and the policy.

Mrs B answered 'no' to the above question. I think Pinnacle did ask Mrs B a clear question and if I thought that Mrs B hadn't taken reasonable care in answering the question, and made a careless misrepresentation, then I may have found Pinnacle's actions fair.

But I don't agree that Mrs B's misrepresentation was careless, as Pinnacle suggests. I'll explain why.

The vet notes from 15 August 2022 show the attendance at the vet was a standard check-up, the vet gave the dog her booster injections, checked her weight and checked her teeth. The note says:

'Mild plaque and gingival recession (dental S&P (scale and polish) in 2020 before rescued)...discussed more regular brushing of teeth as maintenance'.

From the note it's clear the vet told Mrs B that her dog needed regular tooth brushing. But Mrs B says the vet didn't tell her the dog had gingival recession, just that the vet always encouraged brushing her dog's teeth as much as possible. The note doesn't say the vet told Mrs B her dog had gingival recession and I accept what Mrs B says about that. As she told us, she acted on what the vet told her about keeping her dog's teeth clean, as is evidenced by the vet note of 24 August 2023 (after the policy was taken out) which says:

'Teeth v good (has cleaned at groomer) however 208 appears abscess – recommend extraction'.

In all the circumstances I think Mrs B reasonably understood that the vet telling her to brush her dog's teeth regularly didn't mean that her dog had 'injury, illness or being unwell & health or behavioural issues' that she discussed with the vet.

I accept that it appears from the vet notes Mrs B told the vet about the dog's scale and polish at the rescue charity in 2020 before she got her dog. But again I think Mrs B reasonably understood that didn't mean her dog had illness, injury or pre-existing condition as detailed on the policy sale process.

Pinnacle's now raised there are other matters about the dog's health, not related to dental matters, that Mrs B should have told it about. And if it had known about those matters it would have triggered the full underwriting process so the teeth and gum problems exclusion would have been added that way. But even if I thought Mrs B should have reasonably told Pinnacle about those other matters, and I make no finding about those matters, then I'd still say Pinnacle couldn't reasonably add a retrospective exclusion for teeth and gum problems for the reasons I've given above.

As I'm satisfied that Mrs B took reasonable care I don't think she made a misrepresentation about her dog's dental matters. So Pinnacle adding the retrospective teeth and gum problems exclusion was unfair and not in line with CIDRA. Pinnacle should remove the exclusion for teeth and gum problems from the start of the policy. It unfairly relied on the exclusion to decline the claim.

Pinnacle has told us the claim was declined based on the exclusion not that it thought the gingival recession and abscess were related. The policy says Pinnacle doesn't cover:

'A condition or symptom, or anything related to it, that you were aware of or has been noted and/or checked by a vet, before the policy started'.

For the avoidance of doubt I don't think Pinnacle has shown that the gingival recession and abscess were related.

The policy covers treatment of dental and related conditions so long as the dog had regular dental check-ups, Mrs B followed the vet's advice for treatment within six months and treatment was to relieve suffering, and I think all apply in this case.

I'm satisfied that the fair and reasonable outcome is for Pinnacle to pay Mrs B's claim in line with the remaining policy terms and conditions. Mrs B's very recently told us that she's borrowed money from her brother to pay the vet costs so Pinnacle should also pay interest as I've detailed below.

As I've decided that Pinnacle should pay the claim for the reasons above I've no need to investigate Mrs B's comments about Pinnacle telling her before the treatment took place that the treatment would be covered. Whether or not that's correct it's clear Mrs B has been distressed by the claim's decline and very anxious about how she's going to pay the vet to the extent that she's borrowed money from family to pay the vet. The investigator recommended Pinnacle pay Mrs B £100 compensation for her distress and inconvenience its unfair claim decline caused and I think that's a reasonable amount to acknowledge her stress and upset.

Putting things right

Pinnacle must remove the exclusion for teeth and gum problems from the date the policy started and pay Mrs B's claim subject to the remaining policy terms and conditions plus interest as I've detailed below. It should also pay Mrs B £100 compensation for her distress and inconvenience it's caused.

My final decision

I uphold this complaint and require Pinnacle Insurance Plc to:

- Remove the exclusion for teeth and gum problems from the date the policy started, and
- Pay Mrs B's claim subject to the remaining policy terms and conditions plus interest* at 8% simple a year from the date she paid the vet to the date of Pinnacle's settlement, and
- Pay Mrs B £100 compensation for her distress and inconvenience it's caused.

*If Pinnacle Insurance Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs B how much it's taken off. It should also give Mrs B a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 April 2024.

Nicola Sisk
Ombudsman