

## The complaint

Mrs L is unhappy because Red Sands Insurance Company (Europe) Limited declined a claim she made on her pet insurance policy.

## What happened

In October 2023, Mrs L made a claim under her policy with Red Sands for the cost of treatment after her dog was injured by a car while in a yard at her home.

Red Sands declined the claim, as it said the policy requires dogs to be on a lead or harness anywhere there could be moving vehicles. Red Sands said Mrs L's dog should therefore have been on a lead while out in the yard and reasonable care was not taken to prevent injury. It therefore said the claim was not covered.

Mrs L is very unhappy with this. She says the dog was in a fully closed and gated back yard, which is not a driveway and is not usually used for vehicles. However, on this occasion her son had driven into the yard in order to unload a heavy item. He locked the car and left the keys in the kitchen and went to work. A couple of hours later, Mrs L says she let her dog into the yard. She says she checked the car was locked and that the keys were still in the kitchen before doing so and, as she did not expect her son to return for several hours, she let the dog out and carried out some chores inside the house. Unknown to Mrs L, her son returned home early and, as he was driving the car out of the yard, hit the dog causing injury.

Red Sands maintained its position on the claim and said that as Mrs L was Hoovering inside, she was not in a position to know the dog was safe.

Mrs L asked us to consider the matter. One of our Investigators looked into it. Initially, the Investigator upheld the complaint. However, after considering Red Sands's response, the Investigator concluded that it was entitled to rely on the wording it had to refuse the claim.

Mrs L does not accept the Investigator's assessment, so the matter has been referred to me.

I issued a provisional decision on the matter in May 2024. I have copied my provisional findings below:

Mrs L's policy provides cover of up to £2,000 for vet's fees for injury or illness including injury as a result of an accident.

The part of the policy that Red Sands relied on to refuse the claim, is the following general statement:

*"Your pet's safety*

*This policy is designed to cover you for things that happen to your pet that couldn't have been prevented or predicted. It's your responsibility as their owner to keep them as safe as possible...*

*If you have a dog, you must always keep them under your control. They must be on a lead with a collar or harness anywhere there could be moving vehicles. For example, on a driveway, in car parks or next to roads, including those on private land...*

*You need to make sure your home, garden, and any other places your pet visits are secure."*

Red Sands does not define what it means by "*under your control*." Essentially, the wording above requires a policyholder to take reasonable care to prevent any accidental injury to their dog.

Mrs L has stated the yard is not routinely used for vehicle access. I have looked at the photographs provided by Mrs L of the area. They show a yard surrounded by buildings on all sides, apart from two access gates. It does not appear to be a driveway, or used as such, and there is nothing to suggest that cars are usually parked there. It also seems to me the yard was reasonably secure.

The wording above says that the insured dog should be kept on a lead anywhere there could be moving vehicles. Clearly there was a moving car in the yard on the day in question but, as it is not a driveway and this was an infrequent occurrence, the circumstances of this case are quite specific and I think it is right to consider whether it is reasonable to apply the policy terms in the way Red Sands has in these circumstances.

In doing so, I think it is appropriate to consider whether Mrs L's decision to let the dog in the yard was a reasonable one or not. I have to consider whether Mrs L took reasonable care to assess if there was the possibility of moving vehicles that might cause injury to the dog while it was in the yard.

I have looked at the leading legal case on 'reasonable care' – *Sofi v Prudential Assurance (1993) 2 Lloyd's rep. 559*. For Red Sands reasonably to be able to turn down the claim on the basis that Mrs L failed to take reasonable care, it needs to show she acted in a way which amounted to recklessness. That means that Red Sands needs to show that Mrs L recognised a risk of accidental injury from moving vehicles but took the risk anyway by taking measures she knew to be inadequate, or that she took no measures at all.

Mrs L has been consistent that her son drove into the yard only to unload a heavy item. And she has also been consistent that she checked that the car keys were inside the house and her son had left, when she let the dog out.

It seems to me therefore that at the time the dog was let out into the yard, there was no reason for Mrs L to expect there to be any moving vehicles. And it also seems clear to me that Mrs L had taken measures that she thought would prevent her dog being injured – checking the car was locked and the keys were inside the house before letting the dog out.

I do not therefore think Red Sands has established that the dog was not under Mrs L's control or that it was not reasonable for her to think there would not be any moving vehicles while the dog was in the yard.

Red Sands says that, as Mrs L was Hoovering she was unable to ensure the dog was safe. However, she was not expecting her son to return for several more hours and

so I think at the time she let the dog in the yard she was not acting unreasonably. Just because an accidental injury occurred does not mean reasonable care was not taken.

Having considered everything therefore, I don't consider that Red Sands has shown that Mrs L acted in a way that amounted to recklessness or that the dog was not under her control. I am also satisfied that the dog was not in an area where it was expected that there would be a moving vehicle.

I therefore consider Red Sands should meet the claim. I understand there is a policy limit on the amount that will be paid in the event of a claim and the costs incurred may be in excess of that limit. Red Sands only needs to meet the costs up to that limit. Interest should be paid, at our usual rate, on any costs to be covered under the policy that Mrs L has already paid.

I also consider Red Sands should pay the sum of £100 compensation for the trouble the wrongful refusal of the claim has caused Mrs L."

### **Responses to my provisional decision**

I invited both parties to respond to my provisional decision with any further information or evidence they want considered.

Red Sands does not accept my provisional decision. It has made a number of points in response to my provisional decision. I have considered everything it has said but have summarised the main points below:

- It met a previous claim in 2017. The vet's notes of attendance in May 2017 say that Mrs L reported that she not sure what happened but the dog "*could have been hit by car, kicked by horse etc*".
- This suggests the yard is used by cars.
- 'In October 2023, Mrs L said "*Good Morning Just to clarify the circumstances of Lucy's accident. Lucy was in our enclosed, gated and secure back yard when a family member brought a car in to unload something and on reversing out accidentally ran over Lucy's leg...The driver checked it was clear but Lucy moved it was a pure accident.*" Whereas she later said the car was parked before she let the dog out in to the yard.
- It agreed to meet the claim in 2017 but told Mrs L that it would not meet further claims of a similar nature in the future.

Mrs L said the incident in 2017 happened in a more open farmyard in a different part of the property, that does have animals and vehicles accessing it. She says the injury that gave rise to this claim happened in the small backyard of the house, which does not have any animals or regular vehicle access. Mrs L provided a drawing showing the layout of the property and the locations of both yards.

### **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 note Red Sands says it told Mrs L in 2017 that it would not meet any future claims of a similar nature in the future. I assume it means claims about an injury to her dog while outside on her premises. However, whether a claim should be met under the policy depends on the circumstances of the claim and the policy wording. I do not therefore think this impacts this claim.

Red Sands also says that Mrs L's dog was injured in 2017 in circumstances where a car was in the yard, indicating the yard is used by cars contrary to what Mrs L has said in the course of this claim.

However, Mrs L says the injury in 2017 happened in a different location. Mrs L says she does not know exactly how the dog was injured then and conjectured that she may have been hit by a car or kicked by a horse. Mrs L has provided photos of the backyard in which the dog was injured in 2023 and a plan of the property, which also shows the farmyard in which her dog was injured in 2017. The farmyard is in a different location and Mrs L acknowledges the farmyard is more open to farm animals and vehicles. The injury that is subject to this claim happened in the backyard, which is a small, enclosed space more like a courtyard to the house. There is nothing to suggest the backyard is used for any of the farm animals or vehicles.

I do not therefore think the details of the previous claim cast doubt on Mrs L's statements that the backyard is not usually used by cars. I remain of the opinion that there is nothing in the evidence that I have seen that suggests the backyard is used as a driveway, or that cars are routinely parked there, and that it seems to be reasonably secure.

Red Sands has also implied that there has been inconsistency in the details of the claims. It references Mrs L's initial notification of the claim in which she said the dog was in the yard already when her son drove in and later said that the car was parked in the yard and then she let the dog out. The second email, which detailed that the dog was inside when the car arrived and that Mrs L let her out later gives a more detailed account of events. It is difficult for me to be certain which one is the more accurate account of what happened. However, I don't think it makes any difference to the outcome of this complaint, if the dog was in the yard when the car was driven in, or Mrs L let her out later. I say this because I consider the test is still the same: was Mrs L's decision to let the dog in the yard reasonable and did she take reasonable care to assess if there was the possibility of moving vehicles that might cause injury to the dog while it was in the yard? Either Mrs L let the dog out into the yard while it was empty and later unexpectedly her son drove in, or her son's car was already parked in the yard and she let the dog out.

It seems to me that whatever the sequence of events, at the time the dog was let out into the yard, there was no reason for Mrs L to expect there to be any moving vehicles. And it also seems clear to me, for the reasons set out in my provisional decision, that Mrs L had taken measures that she thought would prevent her dog being injured. I do not therefore think Red Sands has established that the dog was not under Mrs L's control or that it was not reasonable for her to think there would not be any moving vehicles while the dog was in the yard.

I therefore still consider Red Sands should meet the claim, subject to the policy limit, together with interest on any costs to be covered under the policy that Mrs L has already paid.

I also still consider Red Sands should pay the sum of £100 compensation for the trouble the wrongful refusal of the claim has caused Mrs L.

## **My final decision**

I uphold this complaint against Red Sands Insurance Company (Europe) Limited and require it to do the following:

1. meet Mrs L's claim, subject to the remaining terms of the policy, including any claim limit. If Mrs L has already paid the vet's invoice, then 8% simple interest should be added to any settlement from the date the invoice was paid, to the date of settlement.
2. Pay the sum of £100 compensation of the distress and inconvenience caused by its incorrect refusal of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 29 July 2024.

Harriet McCarthy  
**Ombudsman**