

## **The complaint**

Miss M complains that Red Sands Insurance Company (Europe) Limited unfairly declined a claim under her pet insurance policy and added an exclusion.

Where I refer to Red Sands, this includes the actions of its agents and claims handlers for which it takes responsibility.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In January 2023, Miss M took out a Pet Lifetime insurance policy underwritten by Red Sands for her 10-year-old rescue dog.

In November 2023, a lump was found on one of her dog's teats, so Miss M made a claim to have the lump removed.

Red Sands declined the claim. It said that as Miss M's dog had a lump removed from one of its teats in 2021, this was a pre-existing condition that the policy would not cover. It added "mammary mass" as a pre-existing condition onto Miss M's policy which it said creates an exclusion for "growths, tumours and cancers and resulting conditions".

Miss M didn't think this was fair, so she cancelled her policy. She's brought a complaint to our Service, the key points of which are:

- The lump found in 2021 was an infection and different to the lump claimed for in 2023. So, it's not reasonable to treat them as the same condition.
- In September 2023, Miss M claimed for a small lump found on the side of her dog's body. Red Sands paid this claim, so it's not clear why it excluded all lumps two months later.
- When taking out the policy, there was no option to declare any pre-existing conditions, rather Miss M was told that in the event of a claim Red Sands will decide if something is pre-existing or not. Had she known that lumps on her dog's teats would be considered pre-existing regardless of the cause, she wouldn't have taken out the policy.
- An exclusion for all growths anywhere on the body is broad and unfair. And is inconsistent with the claim which was paid in September 2023. Red Sands didn't offer any premium deduction despite cover drastically reducing.
- Red Sands didn't comply with their complaints process by sending an acknowledgement letter with five days and a final response within eight weeks. Rather, it issued a letter within two days rejecting her complaint and telling her to come to our Service.

- Red Sands increased the policy premium mid-term when Miss M corrected her dog's weight and told her she'd have to pay the shortfall on the payments already made.
- She's had to pay for the lump to be removed herself which has put her in financial hardship.

To put things right, Miss M wants a full refund of the policy premiums.

Our Investigator didn't uphold the complaint. He was satisfied Red Sands had acted in line with the policy terms and hadn't treated Miss M unfairly.

As Miss M didn't agree, the complaint was passed to me to decide and I issued the following provisional decision.

### **My provisional decision**

#### *Pre-existing condition*

When making a claim under an insurance policy, the onus is on the policyholder to prove they have a valid claim. If they do, the insurer should cover the claim unless it can prove that a policy condition or exclusion applies.

Miss M has shown that her dog has a lump requiring removal which is something the policy provides for. So, on the face of it, she's demonstrated that she has a valid claim.

As Red Sands seek to rely on the policy exclusion for pre-existing conditions, the onus is on it to show the lump claimed for is the same condition as the lump found in 2021.

The relevant policy term says:

*"Pre-existing conditions aren't covered in this policy. A condition, injury or illness is pre-existing if [Miss M's dog] has shown signs or symptoms before you joined [Red Sands], or within the first 14 days of your initial policy start date. This also includes any other condition, injury or illness which is connected to that pre-existing condition as determined by a vet."*

Red Sands has provided Miss M's dog's medical history from the vet. The relevant entries say:

- |            |                                                                                                                                                                               |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 18/05/2021 | <i>Large hard lump inside R abdomen/groin region. Advise FNA and removal.</i>                                                                                                 |
| 21/05/2021 | <i>Lump RHS caudal MG, take FNAs, some were fatty/bloody.</i>                                                                                                                 |
| 27/05/2021 | <i>Remove mass from caudal R MG, looks large/reactive...surrounded by fatty tissue, sub cut and skin sutures – to remove in 10-12 days. Results of FNA were inconclusive.</i> |
| 23/11/2023 | <i>Caudal most R mammary gland small nodular mass in teat. Rest of mammary glands NAD.</i>                                                                                    |
| 27/11/2023 | <i>Estimate created - Mammary mass removal</i>                                                                                                                                |

Red Sands says “as mammary masses especially in the caudal righthand side have been present” prior to the start of the policy, it considers the lump claimed for to be a pre-existing condition. But it hasn’t provided any information to show that the lumps were both as a result of the same underlying cause.

I can’t see that Red Sands has consulted with the treating vet – or its own veterinary advisors – to ascertain what the lump was a sign or symptom of. So I have insufficient evidence to satisfy myself that both lumps arise from the same condition, injury, or illness. Rather, the vet notes provided show noticeable differences with the lumps – one was large/fatty and the other was a small nodular lump.

As lumps can be caused by a number of reasons, it’s not enough to simply say that as Miss M’s dog had two lumps in two teats that they’re the same or connected.

For this reason, I’m not persuaded Red Sands has proven a policy condition or exclusion applies here.

#### *Policy exclusion*

The remedy to turn back the clock and apply an exclusion retrospectively is set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (or CIDRA). CIDRA sets a duty on a consumer to take reasonable care not to make a misrepresentation. But it applies to representations made when a contract is entered into (or varied).

For a remedy to be available to Red Sands under CIDRA, it would need to establish that Miss M failed to answer a clear question about her dog’s health with reasonable care. It would also need to show that if Miss M had taken reasonable care, it would only have offered her a policy which excluded cover for lumps or growths.

Miss M says she wasn’t given the opportunity to provide any information about pre-existing conditions when she first took out the policy. And this is consistent with the policy terms which says:

*“You don’t have to tell us about [your dog’s] pre-existing conditions. When you submit a claim, we will request their medical history. Each claim will be assessed, and all relevant exclusions applied from the date your policy started.”*

For Red Sands to satisfactorily show that Miss M failed to take reasonable care not to make a misrepresentation, it would need to show that it asked her a clear question when she took out the policy, and the answer she gave was incorrect or incomplete. It would also need to show what it would have done differently, if the correct answer had been given. As it hasn’t done so, I can’t fairly say it can add an exclusion during the policy period and apply it retrospectively.

If Red Sands has opted to not ask questions about pre-existing conditions at the outset of the policy, it follows that it loses the opportunity to turn back the clock and apply an exclusion retrospectively. This is in accordance with CIDRA and our long-standing approach, which Red Sands will be aware of through previous decisions issued by this Service. It’s important to highlight that under Consumer Duty, Red Sands are required to learn from our decisions and it’s disappointing to see that it hasn’t.

As Miss M has rightly pointed out, by not asking questions and adding exclusions at the outset, Miss M lost the opportunity to decide whether this policy was right for her and her dog’s needs leaving her without cover when a claim is made. This isn’t acceptable and

doesn't deliver good outcomes to customers in line with the relevant obligations under Consumer Duty.

### *Complaints procedure*

Miss M raised a complaint on 29 November 2023. And Red Sands responded with its final response letter on 1 December 2023 – two days later.

The rules set by the Financial Conduct Authority (FCA) state that on receipt of a complaint, Red Sands must send a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it. And by the end of eight weeks after its receipt of the complaint, it must send its final response letter with referral rights to our service.

Red Sands didn't acknowledge Miss M's complaint and I understand she feels she missed her opportunity to set out her full reasons for her complaint as she was issued with a final response two days later. She also doesn't feel Red Sands took the appropriate time to investigate it.

Whilst I agree with the points Miss M has raised here, my role isn't to punish businesses for things it's done or hasn't done. Rather, it's to ensure Miss M isn't negatively impacted by its actions. As Miss M went on to bring her complaint to our Service for an independent review, I'm satisfied she hasn't been impacted by Red Sands failure to send an acknowledgement letter.

### *Pricing*

Miss M has raised concerns about the price increase to her policy after she amended her dog's weight, and the shortfall she was asked to pay. I can't see that she's raised this as a complaint to Red Sands. The rules set by the FCA require a business to have the opportunity to investigate and respond to a complaint in the first instance before our Service can become involved.

As such, if Miss M wishes to pursue this element of her complaint, she should raise it to Red Sands directly. She can contact us once a final response has been issued or if eight weeks passes and she hasn't received one.

### *Putting things right*

As I've explained, I don't think Red Sands acted correctly or fairly by declining Miss M's claim as a pre-existing condition or for adding a broad exclusion retrospectively.

I understand that Miss M has now cancelled her policy, but she paid for the year in full. As such, I intend to ask Red Sands to pay the claim plus interest. I'm aware Miss M has asked for a refund of her premiums but as Red Sands has already paid a claim in September 2023, and as I believe it should pay this one, I'm not persuaded she's entitled to this.

I'm not aware whether Miss M now has a new pet insurance policy and what she's now covered for. To be able to establish what the full detriment has been to Miss M as a result of Red Sands actions, I'd like to know more around whether she was able to secure a like for like policy for a similar premium and what she's had to declare as pre-existing conditions. Subject to this information, I may award Miss M's out of pocket expenses or compensation for the impact.

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

Miss M has given more information about her current position. She's told us:

- After cancelling her policy with Red Sands, Miss M says she'd lost faith in insurance and was concerned she wouldn't be covered for any lumps going forwards. So she took out an accident only policy for £5 per month.
- Since this time, her dog has had several more treatments for lumps in different places which she's had to pay for herself.

Red Sands didn't respond.

### **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.

Having done so, I remain satisfied this complaint should be upheld. I've thought about how Red Sands should put things right based on the impact its actions had on Miss M as described above.

Where a business has done something wrong or unfair, our role is to ensure the business puts the customer back in the position they would've been in had everything been done correctly.

In this case, had Red Sands handled the claim correctly, it would've paid it. So in the first instance, it should pay the claim plus interest.

I'm persuaded that, had Red Sands paid this claim at the time, Miss M would've renewed her policy. And when her dog went on to need more treatments for lumps, she would've made additional claims under the policy.

But I can't say with any certainty that these claims would've been paid, because I don't know the cause of the lumps – they may well have been linked to a pre-existing condition and correctly declined. Even if they were paid, Miss M would've paid a premium for the policy which would've likely increased year on year due to the claims she'd made – and I don't know what that premium would've been.

Because of these factors, Miss M's consequential losses aren't possible to calculate with any degree of accuracy. So, I'm awarding compensation in recognition of these losses and the impact Red Sands actions have had.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct Red Sands Insurance Company (Europe) Limited to:

- pay Miss M's claim, minus any policy excess and up to the policy limits, plus 8% simple interest from the date Miss M paid the vet until the date she is reimbursed.
- pay compensation of £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 1 October 2024.

Sheryl Sibley  
**Ombudsman**