

The complaint

Mr B has complained about Red Sands Insurance Company (Europe) Limited's (Red Sands) decision to decline a claim made on his lifetime pet insurance policy and added an exclusion.

What happened

In March 2023, Mr B took out a Pet Lifetime policy for his dog, W. In August 2023, W became unwell and started vomiting and had bouts of diarrhoea. Mr M took W to the vet on four separate occasions over a couple of weeks. The vet said an X-ray should be carried out. This didn't show any blockages in W's stomach and infections had been ruled out. The vet suggested W may have developed a new intolerance to his food and recommended a hypoallergenic diet. Mr B says after this, W's symptoms cleared.

Mr B made a claim to Red Sands. This was considered then declined. They said their vet had considered W's medical history which showed W had displayed symptoms of Inflammatory Bowel disease and allergies before the policy began. Red Sands concluded this was a pre-existing condition. Mr B complained about the decision to decline his claim. Red Sands said their vet had reviewed the medical history and concluded historic incidents of vomiting were linked to the current diagnosis of Inflammatory Bowel disease.

Unhappy with Red Sands' response, Mr B referred his complaint to the Financial Ombudsman Service. It was considered by one of our investigators who initially said she thought Red Sands had acted fairly when declining the claim.

Mr B didn't agree. He said he believed the previous incidences of vomiting were caused by one off instances of something W had eaten, and since he had changed the food in line with the vets' recommendation the issues had stopped. Our investigator reconsidered the case and said the incidents didn't seem to be related and noted there hadn't been a formal diagnosis of Inflammatory Bowel disease given to W by any vet. Our investigator also said Red Sands' decision to add exclusions to the policy weren't fair.

Red Sands didn't agree, so this case has been passed to me to decide.

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 considered the information available, I've reached the same outcome as our investigator did, and I'll set out why. And while I've carefully considered all the information provided, I've summarised this where appropriate. I hope neither side considers this a discourtesy, but rather a reflection of our informal nature.

Pre-existing condition

As a starting point, Mr B has shown W's illnesses were something that could be claimed for under the policy. Red Sands are looking to rely on the policy exclusion for pre-existing conditions, so the onus is on them to show the vomiting and diarrhoea Mr B claimed for in August 2023 is the same as the incidents shown in the medical notes.

The relevant policy term says:

"Pre-existing conditions aren't covered in this policy. A condition, injury or illness is pre-existing if (W's name) has shown signs of symptoms before you joined Waggel, 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."

We've been provided with W's medical history. The relevant entries leading up to W's ill health in August 2023 are:

27 June 2022 – Vomits when outside in backyard maybe every 6 days, spit up kibble this morning but not vomit.

17 July 2022 – Walk in, ate mushrooms 30 minutes ago, has been vomiting 8 times. Appears to have purged himself of the mushroom. Anti-sickness and vitamin injection given. Monitor for lethargy, anorexia, ongoing nausea / vomiting etc.

21 November 2022 – Sporadic vomiting. Presents for the last two months has been having bile vomiting in the morning 3-4 times a week. Bloods taken (all normal). Discussed likely due to him having empty stomach overnight, make sure he eats a small amount of food before bed. Consider switching to more human grade food as prefers wet to dry. Discussed if (W's name) still vomits despite changes consider radiographs.

23 January 2023 – Diarrhoea off and on for the past week, no vomiting. Has been feeding chicken and rice for the past 2 days which firmed up the stool slightly. Owner will bring stool sample. Faecal tests all negative. No other concerns. Dispensed antibiotics and anti-diarrhoea gel.

3 February 2023 – The diarrhoea has got much better but still tiny bit softer than usual faeces. Spoke with the doctor, can add in daily probiotic to help with the soft stools.

February 4th 2023 – Presents for continued diarrhoea, vomiting 3 days ago in the middle of the night 4-5 times, had diarrhoea the following day and has had soft stools since. Began chicken and rice and giving probiotic treat. Diagnosis: Soft stools. Recommend adding in clay and considering switching off chicken based diet.

Red Sands says W has multiple episodes of vomiting and diarrhoea, and these are conditions and symptoms in their own right. They've also said the tests didn't lead to a diagnosis but trialling a hypoallergenic food is considered a treatment when a food allergy is suspected. Red Sands noted it was hard to obtain veterinary statements from treating vets as W spent part of his life abroad, where he was treated before August 2023.

Red Sands say they sought the advice of an independent vet. I've looked at this email exchange which seems to be the claims adviser saying they've provided a summary of W's

health conditions since 2022, and the independent vet replies agreeing with Red Sands position to decline the claim.

I haven't seen any evidence to show the treating vet linked W's episodes of vomiting and diarrhoea with a particular condition, apart from the last entry which diagnoses soft stools. And given there's a vet that has seen more of the incidents of W's ill health, I think it's more likely than not they would have identified a condition if they believed the symptoms presented by W indicated this. And some of the incidents recorded are likely independent incidents – such as where W ate a mushroom.

I'm not persuaded Red Sands has shown the instances of vomiting and diarrhoea are linked or indications of Inflammatory Bowel disease. It follows I'm also not persuaded Red Sands has proven a policy condition or exclusion applies.

Policy exclusion

Red Sands has said they've added an exclusion to this policy for Inflammatory Bowel disease. 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, they would need to show Mr B failed to answer a clear question about W's health. Red Sands have shown us the question asked of Mr B, which says *"Does your pet have any pre-existing conditions?"*. There seems to be a link below the question on the screenshot provided, but we haven't been provided with any information contained in that link that sets out what might constitute a pre-existing condition. So, it's hard to know if there was any additional guidance that might have been presented at the point this question is asked.

However, in any event the policy terms say:

"You don't have to tell us about [W's name] 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 Mr B failed to take reasonable care not to make a misrepresentation, it would need to show that it asked Mr B a clear question when he took out the policy, and the answer given was incorrect or incomplete. It would also need to show what it would have done differently if the correct answer had been given.

And given my finding that Red Sands hasn't shown it asked a clear question about the pet's history or that any answer given by Mr B was incorrect, I don't think it can be shown there was a misrepresentation. It follows I can't fairly say an exclusion can be added during the policy period and applied retrospectively.

Putting things right

As I've set out above, I don't think Red Sands acted correctly or fairly by declining Mr B's claim on the basis a pre-existing condition applies, or for adding an exclusion retrospectively. To put things right, I require Red Sands to:

- Settle Mr B's claim in line with the terms and conditions of the policy.
- Add 8% simple interest from the date Mr B can show he paid the vet fees until the date of settlement.

- Remove the Inflammatory Bowel Disease exclusion from Mr B's policy.

My final decision

My final decision is that I uphold this complaint. To put things right I require Red Sands Insurance Company (Europe) Limited to take the steps outlined in the "Putting things right" section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 December 2024.

Emma Hawkins

Ombudsman