

## **The complaint**

Miss C's complaint is about a claim she made on her Pinnacle Insurance Plc ('Pinnacle') pet insurance policy, which Pinnacle declined.

Miss C says that Pinnacle treated her unfairly.

## **What happened**

Miss C took out pet insurance with Pinnacle which started to run on 15 May 2023. In January 2024 her pet became unwell and required treatment. It was eventually diagnosed with Protein Losing Enteropathy ('PLE'). Following this the pet was sadly put to sleep.

When Miss C made a claim on her policy, Pinnacle considered it and declined to cover it. They said that when Miss C took out cover, she did not declare that her pet had been treated for several different things before cover was in place and had she done so, exclusions would have been placed on the policy. Pinnacle says that one of those exclusions would have been for any gastrointestinal problems and as the condition the pet was treated for was gastrointestinal in nature, they declined to cover this.

Unhappy, Miss C complained to the Financial Ombudsman Service. Our investigator considered her complaint and ultimately concluded it should be upheld in part. He said that that Pinnacle were entitled to apply the exclusion they had to the pet's policy for gastrointestinal problems and that PLE fell into this category, so they did nothing wrong by turning down the costs Miss C had claimed in relation to this. But he also thought that part of the claim was for costs was associated with a heart condition, which eventually led to the pet being put to sleep and that Pinnacle should cover these.

Neither Miss C nor Pinnacle agrees so the matter has been passed to me to determine.

## **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 uphold Miss C's complaint. I'll explain why.

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 do this, 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 Miss C failed to take reasonable care not to make a misrepresentation when she declared that her pet had not shown any signs of illness or injury when she took out the policy. I can see from the screenshots Pinnacle has provided that Miss C was asked a specific question in relation to this, and information was provided under the question asked of her to explain that the policy didn't cover pre existing conditions and that she declare any conditions or symptoms her pet is suffering from or has suffered from in the past before taking out cover. It also warned that at the point of a claim, Pinnacle would review Miss C's pet's clinical history and failure to tell them about any pre-existing conditions may affect future claims and her policy. So, Miss C ought to have been aware that she was under a duty to provide material evidence. And she was specifically prompted to do so when she took out the policy.

I've looked at the pet's clinical history and my judgment is that Miss C knew (or should have known) that Pinnacle would have wanted to have been told about her pet's clinical history and particularly the fact that in February 2023, her pet was recorded to have had loose stools at home with accidents. I realise Miss C says that this condition was nothing to do with the PLT, but there was an obligation on her to disclose any signs or symptoms her pet had had before cover was in place. And having reviewed Pinnacle's underwriting criteria, had she done so, Pinnacle would have placed an exclusion on the policy for all gastrointestinal issues, regardless of whether they were related to the PLE or as a result of some other cause.

In this case I'm satisfied that Miss C's misrepresentation was a qualifying one. Pinnacle have said Miss C's misrepresentation was careless, which means they're entitled to decline the claim and place the exclusion they would have placed on the policy from the start of it for gastrointestinal issues as they have here. I don't think Pinnacle did anything wrong by doing this and take the view they were entitled to treat Miss C's claim in this way.

I turn now to Miss C's submissions about part of the sums claimed for relating to a heart condition in her pet and that this was the cause of its death. I've reviewed the detailed clinical notes supplied and I understand why Pinnacle treated the claim for costs as one claim for PLE. The claim form confirms the reason for the claim is PLE. But on further examination of the clinical notes, it's clear that there was also treatment for a heart condition and that this was eventually the reason why a decision was taken to sadly put Miss C's pet to sleep. Miss C's vet has written separately to say:

*“(The pet) was seen on the 10<sup>th</sup> of January 2023 for hyporexia, vomiting, diarrhoea and hypoalbuminemia resulting in investigation and treatment of PLE.*

*On 18<sup>th</sup> January a cardiomyopathy was identified and treatment was started. We can not prove that this was related to his gastrointestinal disease. Unfortunately, (the pet was euthanised on the 5<sup>th</sup> of February mainly due to complications of his cardiomyopathy.”*

The clinical notes for the pet also record:

*“Increased circulatory cardiac troponin-I indicates myocardial injury irrespective of its cause. It might be released in congenital and acquired cardiac diseases and secondary to non-cardiac diseases such as systemic inflammatory disorders, neoplasia and infections disease.”*

What's clear from the clinical notes and the vet that treated Miss C's pet is that the cause of

the heart problems it experienced and was eventually put to sleep for were not known. And given that Pinnacle weren't entitled to apply any exclusions to heart conditions for Miss C's pet, I don't think it was fair for them to turn down the entirety of her claim in respect of the diagnosis, treatment and eventual euthanasia costs associated with this as being related to PLE.

Pinnacle have referred to their own vet who has concluded that the heart problems were caused by the PLE as a result of systemic deterioration and shock and that the pet's clinical history supports this, particularly when the notes question whether it could be related. But if Pinnacle wish to apply an exclusion to a condition, they need to show that it was more likely than not that the cause of the heart condition was the PLE. And in this case, I don't think the clinical notes or Miss C's vet's account support this. I accept they question it but ultimately conclude the cause to be unknown. As such I don't think Pinnacle were able to rely on the same exclusion they have placed for gastrointestinal issues here. As such I uphold this aspect of Miss C's complaint. I have set out what Pinnacle need to do to put things right in respect of this below.

### **Putting things right**

Pinnacle should assess and pay Miss C's costs associated with the diagnosis, treatment and eventual euthanasia costs associated with her pet's heart condition subject to the remaining policy terms. They should also pay her interest at 8% per year simple on any sums they pay in respect of this one month from the date she made the original claim, until that sum is paid to her.

### **My final decision**

I uphold Miss C's complaint against Pinnacle Insurance Plc and direct them to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 14 January 2025.

Lale Hussein-Venn  
**Ombudsman**