

complaint

Mrs T complains that Red Sands Insurance Company (Europe) Limited has unfairly declined a claim made under her pet insurance policy for veterinary treatment costs for her cat.

background

Mrs T purchased a pet insurance policy with Red Sands for her cat in January 2011. In September 2012, Mrs T submitted a claim for removal of a mammary carcinoma on the right caudal mammary gland. Red Sands declined the claim on the grounds it considered this was for a pre-existing condition.

Red Sands advised Mrs T that as her cat had previously suffered from a mammary carcinoma in the L3 region in 2009, prior to the start of the policy, this new occurrence with the same diagnosis was excluded. It also referred to research suggesting that cats which have previously had a mammary carcinoma will have an increased risk of recurrence of this condition.

Red Sands said that had it been aware of her cat's previous mammary carcinoma when Mrs T took out the policy, it would have applied the following exclusion: *'Excludes Cover on all claims with respect to Growths, Tumours, Cancers and resulting conditions...'*. It confirmed that the exclusion had since been applied to Mrs T's policy retrospectively from 31 January 2011, and that even if the claim had been unrelated to the previous mammary carcinoma, it would not be covered because of this exclusion.

Mrs T did not accept Red Sands' position and complained to this service. The adjudicator who investigated the complaint recommended that it should be upheld. She considered that Red Sands had not applied its policy terms in a fair and reasonable manner, especially in light of the treating vet's professional opinion that the mammary carcinomas were not related, other than in name.

The adjudicator also concluded that Red Sands had not asked Mrs T clear questions about her cat's medical history at the time the policy was purchased, and consequently Mrs T had not answered any questions incorrectly. As a result, the adjudicator considered that it was unreasonable for Red Sands to rely on non-disclosure to retrospectively underwrite her policy or decline the claim.

Red Sands did not agree with the adjudicator's assessment, and both Red Sands and Mrs T provided further veterinary evidence to support their respective positions. In particular, Red Sands pointed out that it was not relying on the retrospective exclusion to exclude the claim, as it was being declined purely on the basis that it was for a pre-existing condition. The adjudicator reviewed the further information but her opinion on the complaint remained the same.

The matter was therefore referred to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

There are two issues for me to determine, firstly whether Red Sands is entitled to decline Mrs T's claim, and secondly whether Red Sands is entitled to retrospectively apply an exclusion to her policy.

It is the approach of this service that it is unreasonable for an insurer to rely on the non-disclosure of a pre-existing condition unless it can demonstrate that clear proposal questions were asked and that the consumer gave incorrect answers. I have not been provided with evidence which establishes that Red Sands asked Mrs T sufficiently clear questions about her cat's medical history when she was taking out the policy, such that her answers can be regarded as being incorrect. For that reason, I cannot be satisfied that there was non-disclosure of the prior treatment or condition. Red Sands has, in any case, now explained that it is not relying on non-disclosure to decline the claim.

However, because there was no non-disclosure, I also do not consider that it is fair or reasonable to apply the exclusion retrospectively.

Red Sands has argued that Mrs T's claim is for a pre-existing condition since it shares the same diagnosis as a condition which was present prior to the start of her policy. It has applied a strict interpretation of the following policy terms and conditions, and definition, to decline the claim:

'2.4. Exclusions

The following are excluded from cover:

2.4.1. Costs resulting from an Accident or Injury or Illness that:

2.4.1.1 first showed Clinical Signs before the Commencement Date or within the Waiting Period of the Commencement Date;

2.4.1.2 is the same as or has the same diagnosis or Clinical Signs as an Accident, Injury, Illness or Clinical signs your pet had before the commencement date;

2.4.1.3 is caused by relates to or results from an Accident, Injury, Illness or Clinical Signs your pet had before the commencement date.'

'Condition' is defined as:

'... any injury sustained during, or resulting from, a single accident or any manifestation of an illness having the same diagnostic classification or resulting from the same disease process regardless of the number of incidents or areas of your pet's body affected.'

The treating vet has stated that *'There is no doubt given the histopathological and anatomical differences associated with the recent mammary tumour development that this is a new and spontaneous tumour unrelated to the previous occurrence...'* He indicates that due to the nature of the previous mammary carcinoma, any recurrence directly related to that original tumour would have been rapid and aggressive. In this case, there is a gap of more than three years between the previous carcinoma and the one the subject of Mrs T's claim.

Red Sands has referred to general veterinary information which suggests that it is highly likely that once a cat has suffered from a mammary carcinoma they would have a higher risk of recurrence in the future. I also note that Red Sands' consultant vet has indicated that the treatment Mrs T's cat received for the previous mammary carcinoma could not have completely removed the risk of a recurrence.

I acknowledge that the evidence does appear finely balanced. However, where there is a dispute as to what has happened, we assess complaints on the balance of probabilities – that is to say, what we consider is most likely to have happened in the circumstances. In this case, I place more weight on the professional opinion of the treating vet. I am satisfied that the treating vet is better placed to assess the conditions, as he was directly involved in the diagnoses and treatment, and he has categorically stated that the two conditions were unrelated. Due to the time period between the two mammary carcinomas, and given the veterinary evidence, I am therefore satisfied that it is fair and reasonable to regard the current mammary carcinoma as unrelated to the previous mammary carcinoma and that it should therefore be treated as a separate condition, and not pre-existing. It should therefore not be declined on that basis.

my final decision

For the reasons above, it is my final decision that I uphold this complaint.

I require Red Sands Insurance Company (Europe) Limited to reconsider Mrs T's claim in accordance with the remaining terms and conditions of the policy.

I also require Red Sands Insurance Company (Europe) Limited to remove the retrospective exclusion from Mrs T's policy.

Helen Moya
ombudsman