

The complaint

Ms P complains that Pinnacle Insurance Plc refused to pay her pet insurance policy claim and unfairly added exclusions to the policy. My references to Pinnacle include its agents.

What happened

In September 2022 Ms P took out pet insurance online to cover her dog from 10 September 2022. Pinnacle is the insurer. In early 2023 Ms P's dog needed treatment for a bacterial infection on her skin and Ms P claimed on the policy for the costs.

Pinnacle wouldn't pay the claim. It said when Ms P took out the policy she'd answered the question it asked about her dog's previous health incorrectly. When Pinnacle reviewed the dog's vet notes it considered Ms P had made a careless – as opposed to a reckless or deliberate – qualifying misrepresentation, which enabled it to retrospectively add various exclusions to the policy.

Pinnacle added three separate exclusions to Ms P's policy: bursitis; skin problems; urinary incontinence. Pinnacle said the skin problems exclusion applied to Ms P's claim which meant it could decline the claim.

Ms P complained to us. She thinks Pinnacle's decision is unfair and it should pay the claim. She said the medical condition she claimed for wasn't a pre-existing condition and her vet had written to Pinnacle to confirm. Her vet had also told Pinnacle it should remove the exclusions for skin problems and urinary incontinence.

Our investigator said Pinnacle had acted reasonably in finding that Ms P had made a careless misrepresentation and in adding the exclusion that led to the decline of the claim.

Ms P disagrees and wants an ombudsman's decision. In summary she added:

- The skin problem her dog had in 2021 was not a condition but an incident. The allergy was treated very easily and wasn't ongoing so there was no pre-existing condition to tell Pinnacle about.
- She recently did a test policy application and she wasn't given the option of answering whether she'd taken her dog to the vet.
- It was unacceptable for Pinnacle to refuse the claim completely when she paid a high premium for the policy and her vet said the two skin problems were completely unrelated. She would accept Pinnacle paying half the claim.
- The wording on the on-line platform that gave her insurance quotes for Pinnacle and other insurers said pet insurance '*won't cover (dog's name) for any known medical conditions, illness or injuries that (dog's name) already has (pre-existing conditions)*'. Her dog had no current medical conditions when she took out the policy.

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'm sorry to disappoint Ms P but I don't uphold her 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 must 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 Ms P failed to take reasonable care not to make a misrepresentation when she answered 'no' to the following question when she bought the policy:

'Has (dog's name) ever shown any signs of Illness or Injury?'

Further information available to Ms P when asked the question explained:

'(Dog's name) pre-existing conditions: It's important we know of any conditions and/or symptoms [dog's name] is suffering from or has suffered from in the past before you take out this policy. At the point of claim, our team will review your pet's medical records. Failure to tell us about any pre-existing conditions may affect future claims and your policy.'

I'm satisfied the question about Ms P's dog's health was clear and specific. I'm also satisfied that the potential implications of answering incorrectly were made clear to Ms P at the time of the sale. Based on what I've seen I don't think Ms P took reasonable care in answering the question as she did, so I think she did make a misrepresentation.

I've gone on to consider whether Ms P's misrepresentation was a qualifying misrepresentation. In other words, whether the incorrect information Ms P provided would have made any difference to the insurance terms Pinnacle would have offered her.

Pinnacle's provided a copy of its underwriting criteria which shows that if Pinnacle had been provided with the correct information it would have added several exclusions to the policy it offered Ms P including, most relevantly to the claim complaint, one for skin problems.

So I'm satisfied Ms P's misrepresentation was a qualifying one.

I've also thought about how Pinnacle's classified the misrepresentation. Pinnacle's said Ms P's misrepresentation was careless rather than deliberate or reckless. That means it doesn't think there was evidence to suggest Ms P deliberately provided answers that were untrue or misleading. But as Pinnacle considered she hadn't taken reasonable care, it classed the misrepresentation as careless.

In all the circumstances, I don't think it was unreasonable for Pinnacle to have classed the misrepresentation as careless. I say that having reviewed Ms P's dog's vet notes, the vet's letter to Pinnacle and Ms P's comments.

The vet records show:

'30 Sep 2020 - Check Lump

Clinical Info: Owner came in as noticed lump yesterday, left side just on point of in sc - bursitis? Most likely from trauma, leave and should resolve may be left with a small hard nodule'.

'31 Jul 2021...

Clinical Info: Skye has a fine rash over the bridge of her nose. she has lost some pinheads of coat and can feel small scabs under the coat. Looks likely to be caused by allergy and probably due to her sticking her head into bushes or suchlike'.

The vet prescribed medication for the skin problem.

'4 Aug 2021...

Clinical Info: OR onset of increased urination - will get up multiple times in night, but also do it in bed whilst asleep. Does not seem to have good bladder control and can't quite seem to hold in to get outside. Not drinking excessively but owners have been taking water up to reduce urine production....'

Differential diagnosis was given as *'hormonal incontinence, UTI, other endocrine dz'. 'Start with urinalysis to check for presence of UTI and USG...'*

The vet prescribed medication to support the dog's healthy urinary tract function.

'10 Aug 2021 - Lab Fee DWR

...

Clinical Info: UA shows no evidence of infection in urine...'

The vet prescribed medication for treatment for urinary incontinence.

From Ms P's dog's treating vet notes made at the time of the consultations I think Pinnacle can reasonably understand that Ms P's dog had been seen by the vet due to possible bursitis; treated for a rash on her skin which the vet said was likely due to an allergy; had urinary symptoms for which the vet prescribed medication for urinary incontinence.

I've considered Ms P's explanations as to why she didn't disclose those details. But the question and information when she took out the policy was clear that Pinnacle wanted to know about any signs of illness or injury, symptoms as well as any diagnosed conditions, that her dog had ever had. The question didn't ask what medical conditions her dog had just at the time of applying for the policy.

As I'm satisfied Pinnacle could treat Ms P's misrepresentation as careless I've looked at the actions Pinnacle could take in accordance with CIDRA. CIDRA's clear about an insurer being entitled to, among other things, treat the policy as though it had been provided on the terms it would have offered if the terms offered would have been different. That would mean an insurer potentially applying those terms retrospectively and from the start of the policy. Pinnacle's shown that it would have added the three exclusions I've detailed above to the policy.

As Ms P's claim was for bacterial infection of the skin Pinnacle could fairly rely on the skin problems exclusion it had retrospectively placed on the policy to decline the claim.

Ms P and the dog's treating vet say the cause of the claim was unrelated to any symptoms her dog showed before the start of the policy. The vet's letter to Pinnacle said:

'(dog's name) skin problem back in July 2021 was caused through an allergy to pollen and therefore completely unrelated to the bacterial skin condition that has now been ongoing for months'.

But Pinnacle didn't decline the claim because it thought the bacterial skin condition was related to the skin problem in July 2021. Pinnacle declined the claim because the claim related to a skin problem which is caught by the skin problems exclusion Pinnacle fairly added to the policy.

Ms P and her vet also say the urinary incontinence exclusion should be removed. I've seen the vet's comment to Pinnacle about that. But I've explained above why, on the information in the vet notes from August 2021, I think it was fair for Pinnacle to add that exclusion. Ms P hasn't mentioned the exclusion for bursitis in her complaint but, for the avoidance of doubt, I think Pinnacle could fairly add that exclusion for the reasons I've explained above.

Overall, I think Pinnacle reasonably declined Ms P's claim and fairly added the three exclusions to her policy.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 6 October 2023.

Nicola Sisk
Ombudsman