

The complaint

Mrs C has complained that Wakam unfairly declined claims on her pet insurance policy and mis-sold the policy to her.

What happened

From January 2019 to January 2023 Mrs C insured her dog, whom I'll call R, with Wakam.

On 4 March 2023 R was taken to the vet as he'd had diarrhoea for about a week. The vet prescribed antibiotics.

Later that day Mrs C took out a new policy with Wakam to cover R. The policy started the following day and didn't cover pre-existing conditions.

On 20 March R was referred to a specialist for "*chronic vomiting, diarrhoea and low blood protein*". Two days later R was found to be suffering from Protein Losing Enteropathy (PLE). Sadly R was put to sleep on 24 March.

When Mrs C claimed for the cost of the treatment R had received after the policy began, Wakam declined the claims. It said the policy didn't cover pre-existing conditions and PLE was a pre-existing condition. Wakam settled a separate claim for euthanasia/cremation.

Mrs C didn't agree that the condition being claimed for was a pre-existing condition. She also felt she hadn't been given clear information about the exclusion when she took the policy out.

Mrs C brought a complaint to this service. I issued a provisional decision explaining why I wasn't minded to uphold the complaint. An extract from my provisional findings is set out below.

"Mrs C's policy says it doesn't cover pre-existing conditions.

The policy defines a pre-existing condition as "anything that your pet has had treatment, medication or advice for in the 24 months before your policy starts. We consider advice to include anything a vet observed and recorded in your pet's clinical history."

Mrs C is aware of our position with regard to pre-existing conditions as she's done research on our website. In summary, they're not inherently unfair provided they are not applied too widely. This exclusion is just trying to replicate what would have happened if Mrs C had been asked for more information at the outset as no prudent insurer would cover (on normal terms or at all) a risk which is inevitable or already existing.

So in order to establish whether an exclusion of this nature has been applied fairly, I usually consider a hypothetical question. That is if the insurer had asked the prospective policyholder full and detailed questions about material facts such as the pet's health at the quotation stage, what would the reasonable policyholder have answered and what would the prudent insurer have done.

In this case I think Mrs C would have mentioned that from March to May 2022 R was treated for bleeding from his anus. An abnormal growth was suspected but whatever it was healed up and the vet thought it was probably an anal gland abscess.

On the day of taking the policy out, it would have been on Mrs C's mind that R was clearly unwell. At that stage he was being treated for diarrhoea which he'd had for the last week and was "off solid food, not himself". The vet observed his abdomen was gassy and there was slight tensing on palpation. His stools were described as "very orangy liquid". The vet noted that if there were no improvement after a course of antibiotics, they would consider blood tests and /or an ultrasound examination. So if Wakam had asked specific and clear health questions, I think Mrs C would have mentioned this as well.

If Wakam had had that information, I think it's almost certain that it would have excluded cover for claims relating to the digestive/gastrointestinal system or something along those lines.

Unfortunately R's symptoms became worse. When R was seen again by the vet on 20 March, they noted:

"Abdomen is tense and seems painful, has not been vomiting but is not eating well, and has had some loose stools.

Abdomen very bloated and tense.

Suspect protein losing enteropathy."

On 22 March the vet noted that R's abdomen was "markedly distended and he was uncomfortable on abdominal palpation".

Taking all the above into account on balance I think it's likely there was a connection between the diarrhoea R was treated for on 4 March and the PLE he was diagnosed as suffering from 18 days later. Diarrhoea is a common sign of PLE.

I accept that R hadn't been diagnosed with PLE when the policy was taken out. But there doesn't have to be a diagnosis for a condition to be considered as pre-existing. What's required is for the pet to be showing signs of the illness or injury. And this clearly applies to R as Mrs C had taken him to the vet because of diarrhoea just before the policy was taken out. In my judgement that indicates that the exclusion has been applied fairly and reasonably. It follows that I think Wakam was entitled to decline the claims for PLE.

I've also looked at whether the policy was mis-sold. Mrs C bought the policy on a non-advised basis. That means Wakam didn't advise or recommend the policy to her. But it had to give her enough information about the policy for her to check that it was suitable for her needs. It was also obliged to highlight any unusual or onerous parts of the policy and any particular exclusions.

*I've been proved with screen shots which show Mrs C's customer journey. Early on in the process Mrs C was asked whether she wanted cover for pre-existing conditions. She was told "pre-existing condition" meant "any illness that your pet has had treatment, medication or advice for in the last 24 months". That was because Wakam offered another policy which did cover pre-existing conditions so long as there had been no treatment, medication or advice regarding them in the three months before the policy started. This wording refers to "any illness...." in contrast to the policy wording which refers to "**anything** that your pet has had treatment, medication or advice for" (my emphasis).*

I agree with Mrs C that diarrhoea is a symptom rather than an illness in itself. It can be a sign of a serious condition like PLE or more usually a one-off occurrence. So I can understand why she didn't think she needed the more expensive policy covering pre-existing conditions. But that policy wouldn't have covered the claims for PLE either. That's because the policy wouldn't cover any condition for which R had received treatment, medication or advice in the three months before the policy started.

Before proceeding to buy the policy, Mrs C was invited to "Review your cover and make sure you read important information before going to checkout". If she'd scrolled down to view the Important information, she'd have seen nine points that she was asked to confirm. One of these was:

"I understand there is no cover for pre-existing conditions. This means anything that has shown signs and symptoms, or has had treatment, medication or advice for, in the last 24 months."

In addition after the purchase was completed, a copy of the policy and a short summary document explaining the exclusion was emailed to Mrs C. And she had a 14-day period to cancel without penalty if she wished.

I appreciate that Wakam later changed the wording on its website and in its policy documentation. But that doesn't necessarily mean that the wording Mrs C saw was unclear or unfair. I don't think it was.

I do feel very sorry for Mrs C as she would probably have been covered for these claims if she hadn't cancelled her original policy with Wakam. But that unlucky decision isn't something for which Wakam can be blamed. I'm satisfied she ought reasonably to have been aware of the scope of this exclusion before she committed to the new policy."

In summary Mrs C made the following points in response:

- R was a Romanian rescue dog and like many of them, never had a good tummy. He'd regularly had diarrhoea.
- She wasn't particularly worried about R on the day she bought the policy and earlier that day the vet hadn't mentioned the possibility of following up with blood tests and an ultrasound examination.
- It was unfair of Wakam to decline the claim on the basis of information it hadn't asked for when she took the policy out.
- The website was designed in a way that purchasers were encouraged to go to checkout without viewing the assumptions and policy wording which weren't clickable.
- She doesn't believe she received a copy of the policy documents by email.

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 and read Mrs C's submission carefully, I'm not going to change my provisional decision. I understand this will come as a disappointment to Mrs C but I hope my decision explains why.

I appreciate that R had often suffered from diarrhoea and Mrs C wasn't particularly worried after taking R to the vet on 4 March although the diarrhoea was serious enough for the vet to prescribe a course of antibiotics. But the lack of knowledge on her part that R's diarrhoea

might need further investigations isn't relevant. What is relevant is that the diarrhoea was a symptom of a pre-existing condition even if at the time there was no diagnosis of that condition.

Mrs C said that Wakam didn't ask her about R's health before she bought the policy. But Wakam doesn't have to ask such questions before it sells a policy. It's up to insurers whether they ask for a full disclosure in advance or rely on the exclusion for pre-existing conditions. If they choose the latter, so long as the exclusion is made clear to potential customers, I don't think that's unfair.

It's unfortunate that Mrs C didn't see the assumptions before she bought the policy. I don't doubt that she genuinely thought she'd read all she needed to. But the fact remains that she didn't read the full page on which the assumptions were set out and she had been invited to review her cover before going to checkout. I understand that the website has since been improved but I don't think what was presented to Mrs C was misleading.

I can see that the policy information was correctly addressed to Mrs C's email address. So I can't hold Wakam responsible for the fact that she didn't receive it.

This is a very sad case but I am still of the opinion that I can't fairly hold Wakam responsible for the position in which Mrs C finds herself.

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My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 3 January 2024.

Elizabeth Grant
Ombudsman