

## The complaint

Mr B and Mrs B complain that Allianz Insurance Plc (“Allianz”) decided they’d made a qualifying misrepresentation when they renewed their horse insurance policy.

Mrs B has acted as the main representative during the claim. So, for ease of reference, I will refer to any actions taken, or comments made, by either Mr B or Mrs B as “Mrs B” throughout the decision.

## What happened

Mrs B renewed her horse insurance policy in April 2021 and again in 2022. Mrs B then made a claim to Allianz in May 2022. Allianz declined the claim on the basis Mrs B made a ‘careless misrepresentation’ when renewing her policy, so Mrs B complained. Allianz responded and explained, as part of their claim investigation, their underwriting team reviewed Mrs B’s horse’s clinical notes. They said this referred to two visits to the vet before Mrs B’s 2021 renewal which showed clinical signs of the condition for which a claim was now being made. Allianz said, had they been made aware of this at the 2021 renewal, they would’ve applied an exclusion to the policy – and this would’ve meant the claim wouldn’t have been covered.

After considering all of the evidence, I issued a provisional decision on this complaint to Mrs B and Allianz on 4 September 2023. In my provisional decision I said as follows:

*“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.*

*Allianz thinks Mrs B failed to take reasonable care not to make a misrepresentation when, during the renewal process, she didn’t disclose that her horse had shown signs of illness, injury or being unwell. Allianz say this prevented them from applying an exclusion.*

*The first point I’ve considered is whether Mrs B took reasonable care not to make a misrepresentation. I’ve looked at the information Mrs B was presented with during renewal, and this shows the renewal invite included a document headed ‘Important*

*details we need to know'. This sets out a series of questions and asks whether there is anything about Mrs B's horse she hasn't claimed for or already told Allianz about. It says, "If you answer YES to any of the following questions, you must contact us to let us know the full details before your renewal date. Otherwise, it could result in a claim not being paid or affect your cover." It goes further to say, "We need to know about anything for which your horse has been seen by a vet or a veterinary professional, along with any issues you have discussed with them regarding your horse's health, even if they didn't feel there was anything to be concerned about at the time, or the problem resolved quickly."*

*One of the questions asks, "Have your horses shown signs of illness or injury or been unwell, regardless of whether or not they saw a vet for the problem or you treated the problem yourself?" The other question asks, "Have your horses been seen by a vet or another veterinary professional for any reason other than routine vaccinations, teeth rasping or castration?" Mrs B didn't provide a response to these questions. Allianz say had Mrs B answered these questions 'Yes' – as they believe she should've done – then they would've applied an exclusion relating to Mrs B's horse's back/spine – which wouldn't have provided cover for the condition she is claiming for.*

*So, I've looked at Mrs B's horse's circumstances to see whether she could reasonably have been expected to answer the questions in the way Allianz have described. I've looked at the clinical notes and there's an entry made on 27 January 2021 which says, "On palpation very reactive lumbar epaxial musculature and over sacro-iliac region...2/10 left hind lame...suspect lameness related to injury left dorsal hock...periosteal reaction proximal dorso-medial aspect of the left hind canon bone...the TMT joint showed mild to moderate arthritic changes dorso-medial aspect..." There's a further entry in the clinical records dated 15 February 2021, which says, "On palpation multiple areas of mild to moderate sensitivity, back of saddle, lumbar back and over pelvis/sacro-iliac region." There's then an entry dated 1 February 2022, which the claim form suggests is the date the condition was first noticed, which says "Very reactive on palpation along back and over sacro-iliac region."*

*I think the questions were clear – particularly because it asks about Mrs B's horse showing any signs of illness or injury, or generally being unwell – and it does make it clear this is regardless of whether a vet was seen for this – or even if it was nothing to worry about. So, in the circumstances of this case, and having carefully considered the information, I think Allianz's suggestion for how Mrs B should've answered these questions is reasonable. So, given that I believe the question was clear and specific, I don't think Mrs B took reasonable care when answering it.*

*There's been a misrepresentation here, but an insurer will only be entitled to take action if it's a 'qualifying misrepresentation' in accordance with CIDRA. So, I've now considered whether the information provided by Mrs B amounts to a qualifying misrepresentation.*

*The next point I've looked at is whether the misrepresentation actually made a difference to Allianz. In other words, if the information Allianz received had been accurate, would they have offered the insurance policy at all or only on different terms - including whether they would've charged more. In considering this point, I can see there's a dispute between the parties about whether there were any clinical signs of the condition in 2021. I should stress that I am not a vet and nor do I have specialist veterinary knowledge, so when considering such complaints, I take into account what the clinical notes show and the opinion of the experts. And that's what I've done here.*

*Under guidelines issued by their regulatory body, all vets are required to take the utmost care when writing records to ensure they are clear and accurate. It is therefore reasonable for an insurer to rely on the clinical notes as being a true and accurate representation of what was seen and heard at the time of each consultation. The clinical notes are a contemporaneous account of Mrs B's horse's clinical history.*

*The claim form submitted to Allianz relates to treatment provided between 1 February to 14 February 2022. The vet has noted the affected area as 'Dorsal spinous process impingement diagnosed on bone scintigraphy' and notes the condition first started on 1 February 2022. There's a question which asks about the clinical history and if Mrs B's horse has been seen before for this condition or anything similar, and the vet notes, "See clinical history." The next question asks if the condition being claimed for is related to this history and the vet has noted, "Previous history of back soreness." A further question asks whether the vet recommended any complementary treatment and they've noted, "Physiotherapy".*

*I can see Mrs B's horse was receiving physiotherapy treatment and the physiotherapist provides an opinion which says they've seen Mrs B's horse over the last two years for regular routine physiotherapy appointments. The physiotherapist says, during this time, Mrs B's horse has displayed muscular discomfort in the middle to low thoracic region and lumbosacral region. The physiotherapist also says Mrs B's horse has also palpated tender through the pelvic musculature from time to time. They say, at no time has Mrs B's horse displayed pain over the dorsal spinous processes in the thoracic region or shown reduced range of movement in this area. The physiotherapist says, "In my opinion the muscular discomfort shown during this time has been consistent with his work load and expected in a big young horse as he develops and progresses in his training."*

*The treating vet has also provided an opinion which says Mrs B's horse has recently undergone a poor performance investigation, including bone scintigraphy and subsequent radiography. They say a diagnosis of thoracic dorsal spinous process impingement has been made and this part of Mrs B's horse's back has been medicated. The vet says Mrs B's horse has previously been examined by them in 2021 and they've recorded muscular pain in the lumbar part of the horse's back in addition to over the sacro-iliac region. They say this muscular soreness resolved with physiotherapy. The vet says, "...the current diagnosis of dorsal spinous process impingement is for thoracic spinous processes T10 - T15, much more cranial than the previously recorded lumbar muscle soreness. The previous recorded lumbar muscle soreness is not related to the current diagnosis of 'kissing spine'." The vet asks Allianz to reconsider the claim as they don't consider dorsal spinous processes a pre-existing condition.*

*Allianz then forward the clinical notes and the opinion from the treating vet and physiotherapist to a consultant vet and ask them to provide an opinion. Insurers often appoint experts experienced in this type of work to provide an opinion, and that's what Allianz did. I think it's a fair thing to do – and it's reasonable for Allianz to take their expert's opinion into account. The consultant vet refers to the entry made in the clinical notes on 15 February 2021 which they say was after apparent inception on 27 January 2021. They say sensitivity was found at the back of the saddle area (thoracolumbar junction). The consultant vet says the comments made during the visit on 1 February 2022 are very similar to that made during the February 2021 visit and, as such, the conditions could be directly or indirectly related. The consultant vet refers to the scintigraphy report which states, "There is mild/moderate focal IRU within the summits of the dorsal spinous processes of the 11-13th thoracic vertebrae,*

*and then milder focal IRU in the same location further caudally from the 17th thoracic to the 1st lumbar vertebrae". The consultant vet says, on the basis of the IRU extending into the lumbar area they would expect the associated/adjacent muscle groups to be reactive. The consultant vet says, in their opinion, the condition treated in 2022 is likely to be a related condition (directly or indirectly) to the condition identified in January 2021.*

*The consultant vet then carries out a further review, but this time focusing more specifically on the treating vet's opinion. They say it's recognised that pain in one part of the back can always be indicative of problems elsewhere as the anatomical structures (muscles, bones and ligaments) are inter-related. The consultant vet notes that Mrs B's horse was seen on multiple occasions by a physiotherapist, from December 2020 onwards, and on most occasions during that time they refer to both thoracic and lumbar areas. The consultant vet refers to the treating vet's opinion about the diagnosis relating to the T10 – T15, which the treating vet said was much more cranial than the previously recorded condition. The consultant vet says, "...the thoracic and lumbar areas are adjacent and T15 is still very close to the first lumbar vertebra..." The consultant vet has then provided two diagrams, one showing the position of the 18 thoracic vertebrae, and another showing the thoracic area and lumbar area – together with the lumbar vertebrae.*

*The consultant vet then explains the back of the saddle extends to the back of the saddle area – and the back of the saddle support area is at the 18<sup>th</sup> thoracic vertebrae – the last one connected to the ribs. They say, "The strength of the horse's back allowing it to carry weight comes from all the muscles and ligaments intertwined in the ribs. After the last rib is the lumbar vertebrae. The lumbar vertebrae have long delicate horizontal transverse processes... Since they cannot support any weight, the muscles tighten to protect them resulting in back pain and need for chiropractic and massage therapy." The consultant vet is of the opinion the condition being claimed for is linked to the condition recorded in January 2021 and the exclusion does apply in this case.*

*Allianz have also provided physiotherapy records which show Mrs B's horse was receiving physiotherapy at the time of the January 2021 visit to the vet – and through 2021. And I agree with the consultant vet's opinion that the records do, on a number of occasions, refer to both thoracic and lumbar areas.*

*I accept there is conflicting expert opinion here, and where that's the case, I have to weigh up which is more persuasive. The clinical notes from the vet for the visits in January and February 2021 do refer to the areas which were mentioned during the visit in February 2022. And while I have taken into account the treating vet's opinion about the condition in February 2022 being more cranial than the previously mentioned lumbar muscle soreness, the diagrams provided by the consultant vet shows the positioning of the thoracic and lumbar vertebrae – and they describe how any pain and discomfort would be linked.*

*In addition to this, on the claim form, the treating vet also comments about there being a previous history of back soreness – and the physiotherapy records support this. So, having considered all expert opinions, I'm persuaded, it's more likely than not, the condition treated in February 2022 is linked to the issues identified in January 2021.*

*Mrs B's policy covers a condition for 12 months starting from the date the clinical signs are first noticed or the date an injury happened. After the 12 months, or the maximum benefit being reached, the condition is no longer covered, and an exclusion is placed on the policy. Allianz have provided their underwriting criteria,*

*and this shows the exclusion which would've been applied to the 2021 renewal. This relates to the 'back/spine, and associated soft tissue structures'. Given what I've mentioned above, I think it's more likely than not, had Mrs B answered 'Yes' to the questions I've referred to above, the exclusion would've been applied - and the onset date taken as 27 January 2021. The underwriting criteria shows this would've been reviewable after 12 months. But there would need to be evidence Mrs B's horse had been free of any related problems over the previous 12 months. As mentioned above, I'm persuaded by the consultant vet's opinion that the physiotherapy notes show Mrs B's horse wasn't free from any related problems over the previous 12 months – that means the exclusion wouldn't have been disapplied.*

*So, taking this information into account, I think Mrs B has made a qualifying misrepresentation. I can see Allianz believe the qualifying misrepresentation was careless and I'm minded to agree. Given that's the case, CIDRA allows Allianz to continue to provide the insurance but on the terms they would've offered had the misrepresentation not happened. Allianz have provided evidence which shows they would've placed an exclusion on Mrs B's policy relating to her horse's back/spine and associated soft tissue structures. This means they wouldn't cover any related problems after 12 months from 27 January 2021. The treatment Mrs B's horse received, and is subject to the claim, is after 12 months, so the exclusion would've meant Allianz wouldn't cover this under the policy. And a review wouldn't have led to the exclusion being removed. So, I don't think Allianz's decision to decline the claim is unfair."*

So, subject to any further comments from Mrs B or Allianz, my provisional decision was that I was minded to not uphold this complaint.

Following my provisional decision, Allianz have responded to confirm they have no further comments to make. Mrs B has responded and points out her horse had a very traumatic incident in 2019 involving his hind leg and, given the significance of this injury, back/pelvis/lameness related observations would be expected as he rehabilitates. Mrs B says this is what the treating vet has referred to in their entry of 27 January 2021. Mrs B says Allianz applied an exclusion for this injury, which included connected issues. And she explains she has followed this exclusion and covered all associated costs of treatment as she assumed they were connected. Mrs B says the condition being claimed for isn't connected to this, so there wasn't anything to disclose at renewal. Mrs B also refers to an injury sustained to her horse's hock in 2020 and she says her vet relates the issues in January 2021 to this.

Mrs B also says the diagnosis of an overriding dorsal spinous process is strongly associated with declining behaviour and performance related issues, which weren't present in her horse until February 2022. Mrs B says her horse was in a stable condition and his performance improved during the period between 27 January 2021 and the point of claim. Mrs B says it would be highly unlikely to see a horse in a stable state with performance improvements for almost a year if this condition was present from January 2021.

Mrs B also says she believes the onset date should be taken as February 2022 as this is when her horse started displaying key symptoms of pain and performance issues associated with a dorsal spinous process.

I note Mrs B says the treating vet is of the opinion the observations made in January 2021 are related to the hock – and therefore covered by the existing exclusion which was already in place. Mrs B therefore feels the points about reasonable care and misrepresentation should be reconsidered. Mrs B also feels Allianz should specifically comment on why they believe the observations in January 2021 are unrelated to the hock in order to justify why an additional spinal exclusion was added. Mrs B says this is particularly the case as the

condition in January 2021 didn't meet the policy definition of 'pain'. Mrs B says, when considering the extensiveness of the hock injury and related exclusion against a lack of clinical symptoms (such as behaviour and performance) for dorsal spinous process shown at the time, and then looking at the classic clinical symptoms for dorsal spinous process displayed in February 2022, this supports her argument that the condition identified in January 2021 is unrelated to the condition which forms the basis of her claim.

### **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 see no reason to depart from my provisional decision. So, I've decided to not uphold the complaint for the reasons set out in my provisional decision and copied above.

I've looked again at the clinical notes, and I agree there is a record in relation to an injury sustained to Mrs B's horse's hind leg in 2019 which necessitated a number of visits to the vet for treatment. The notes suggest the injury involved a vertical scrape and cut to the horse's right hind with some swelling. It appears a Radiography examination showed no signs of a fracture. Three of the records relating to the treatment for this injury refer to there being no lameness present. The notes refer to the wound being stitched, with the dressing being changed during visits to the vet.

There's also a record relating to an injury sustained in 2020 to Mrs B's horse's left hock. The vet describes the injury as a "*...full thickness skin wound to the dorsal aspect of the mid-left hock region.*" The vet had concerns about the potential joint involvement of the wound, so they made a referral to a veterinary hospital for further investigation and treatment. There's a note which says Mrs B's horse was discharged, and a follow-up appointment with the vet notes the wound was granulating well. The vet notes stiffness improved with movement and the physiotherapist would release tightness in left back which was likely caused by the initial injury and surgery. I can see an exclusion was then added to the policy relating to Mrs B's horse's injured hock.

The entry relating to the January 2021 visit does then refer to an examination of Mrs B's horse's hock, and the vet notes this has scarred over well and there being no lameness while walking in a straight line. There was some lameness noted on lunge, which the vet suspected relates to the injury to the hock. As mentioned above, the notes for this visit also refer to Mrs B's horse's back, but I'm not persuaded the injury to the hock is related to this. There's a number of visits to the vet during 2019 and 2020 for treatment for the two injuries, but the notes for these visits don't refer specifically to Mrs B's horse, on palpation, being very reactive around the lumbar epaxial musculature and over sacro-iliac region. The notes relating to the visit on 15 February then refer to the same area – and this then follows through to the visit in February 2022 for which the claim is being made.

So, while I agree with Mrs B's points about her horse sustaining other injuries, it doesn't change what I believe was the onset date for the condition.

I acknowledge Mrs B's point about her horse's performance over the year following the January 2021 visit and how this would've been unlikely if her horse was showing signs of dorsal spinous processes at that point. I also acknowledge Mrs B's points about her horse showing the more typical signs of dorsal spinous process in February 2022 – and how behaviour and performance are key identifiers for this condition. As I've mentioned, I'm not an expert in this area, and it may well be that a condition develops over time and starts to have a greater impact later. But, in assessing an onset date – and in order to determine when the 12-month period should start, Allianz take this from the date the clinical signs are

first noticed. And, as I've already mentioned above, specifically in relation to my comments about the consultant vet's opinion, I'm persuaded the first clinical signs of the condition being claimed for were identified during the visit in January 2021.

I acknowledge the consultant vet hasn't specifically commented on whether there is any possibility the lumbar epaxial musculature issue noted during the January 2021 visit was connected to the hock injury, but they have described how this is linked to the dorsal spinous process condition. There's a link here in the observations made by the treating vet during the visits in January and February 2021 when compared to the areas which were mentioned during the visit in February 2022. And, as mentioned above, I'm persuaded by the consultant vet's opinion as they describe how any pain and discomfort would be linked. In addition to this, and as mentioned above, it's not just the consultant vet's opinion that I've taken into account. The claim form, and specifically the section completed by the treating vet, refers to there being a previous history of back soreness – and the physiotherapy records support this. So, having considered all expert opinions, I'm persuaded, it's more likely than not, the condition treated in February 2022 is linked to the issues identified in January 2021.

I understand Mrs B will be disappointed, and I do acknowledge it has been a difficult time for her. But my role here is to decide whether Allianz have acted fairly and reasonably in declining the claim – and from the information I've seen, I think they have. I wish to reassure Mrs B I've read and carefully considered everything she has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

### **My final decision**

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 25 October 2023.

Paviter Dhaddy  
**Ombudsman**