



<u>Decision Ref:</u>	2018-0059
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Pet Insurance
<u>Conduct(s) complained of:</u>	Rejection of claim - pre-existing condition Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's pet insurance policy held with the Provider. The policy was incepted on 5 October 2015.

The complaint is that the Provider incorrectly or unreasonably declined the Complainant's claims under the policy.

The Complainant's Case

The Complainant submits that she has held pet insurance with the Provider since 5 October 2015. The Complainant submits that on 29 April 2017 one of her dogs was lame, and her vet referred her to a veterinary hospital resulting in the dog having an operation for which the Provider is refusing to admit the claim. The Complainant states that *"We had to proceed at the time as the surgeon had a slot and if we left it until later we would also have had to cancel our holiday to look after the dog"*.

The Complainant submits that contrary to what the Provider contends, her vet and the surgeon who operated on the dog have confirmed that the dog did not have a pre-existing medical condition. The Complainant states that the Provider is *"also trying to claim [the condition] was in existence in 2015, which is untrue, [it is] using a totally wrong set of clinical history circumstance to back this up, so [it] will not pay despite the fact that the surgeon has said this could not possibly be the case having looked at the leg [on] the operating table he confirmed that this is a recent injury and despite our vet confirming that the incidence on the 29th April was the first incidence of this injury"*.

The Complainant states that *“We have paid for the operation which was in the sum of 2068 euros and we have paid vets fees and will have further fees to see the surgeon for a follow up so it looks likely that it will be in the region of €2300”*.

The Provider’s Case

The Provider submits that the Complainant submitted two claims which related to treatment of the Complainant’s pet’s hind limb lameness and a pre authorisation for TPLO surgery required on her pet’s right hind leg. The Provider states that *“On review of [the Complainant’s pet’s] clinical history we can see that on the 13/06/2015 your Pet was noted to be stiff on hind legs when getting up in the mornings. On the 27/06/2015 the notes advised that your pet was still lame and did have an abnormal gait on the hind legs. Rimadyl was dispensed and radiographs were recommended. We can see that your pet has been on an ongoing rimadyl prescription since the 23/08/2015. Rimadyl has been prescribed on 20 occasions between the 23/08/2015 and the 24/05/2017”*.

The Provider submits that, as per the Complainant’s policy terms and conditions, there is no cover for any condition that first showed clinical signs before the start date of the policy. The Provider submits that there is also no cover for any condition that has the same clinical signs as an illness the Complainant’s pet had before the start date, and in addition there is no cover for any degenerative conditions that present during the first 18 months of the policy.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 11 April 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that

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period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The issue to be determined is whether the Provider incorrectly or unreasonably declined the Complainant's claims under the policy.

The Complainant submits that on 29 April 2017 her dog became lame on his right hind leg and she took him to the vet who x-rayed him and prescribed Rimadyl and rest. The Complainant submits that her dog had already been prescribed Rimadyl since 2015 for an arthritic condition in his front left elbow, which had responded very well to this treatment so the vet increased the dose to see if it would help the lameness in the hind leg.

The Complainant states that *"Over the coming weeks there was no change at all in [the dog's] hind leg lameness, so we took him back to the vet..., who initially repeated the prescription for Rimadyl, but as nothing changed we took [the dog] back to the vet who gave him a further x-ray on the 3rd June. The vet could not see the cause of the problem so referred [the dog] and sent the x-rays to an Orthopaedic specialist at... [a named] Veterinary hospital whom we saw at a consultation... on the 9th June"*. The Complainant submits that the specialist examined the dog and advised that he had a cruciate ligament injury and this was the cause of the lameness in the hind leg. The Complainant submits that to rectify the problem the dog would require an operation on the leg. The Complainant submits that she accepted the appointment on 16 June 2017 for the operation as otherwise she would have needed to wait for a further 3-4 weeks before another appointment was available.

The Complainant submits that she submitted a claim form for the initial vet fees and also a further claim form for pre-authorisation for the operation. The Complainant submits that she supplied all clinical history and vaccination records requested by the Provider, and the Provider emailed her on 15 June 2017 declining the claim.

The Complainant submits that she appealed the Provider's decision to decline the claim, and the Provider requested copies of the x-rays from the hospital. The Complainant submits that she provided a letter from her vet and the professional report from the specialist who performed the operation, as requested by the Provider. The Complainant states that *"When I requested the letter from the vets they advised me that they had already been contacted by the [Provider] and they confirmed to the [Provider] that the previously prescribed Rimadyl medication had nothing to do with the lameness occurring on the 29th April 2017. But they provided a letter which I sent onto the [Provider]"*. The Complainant submits that on 3 July 2017 the Provider sent her a further letter declining the appeal.

In declining the Complainant's claims, the Provider has made reference to the policy terms and conditions which explain how the policy operates, and set out what the policy covers and does not cover.

The Provider refers in particular to the following policy provisions:

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"Vet Fees:

...

What We Will Not Pay:

...

- A **Condition** that first showed **Clinical Signs** before the **Start Date** or during the **Stand-Down** period.
- A pre-existing **Condition**, i.e. a **Condition** that is the same as, or has the same diagnosis or **Clinical Signs** as an **Illness, Injury** or **Clinical Sign Your Pet** had before the **Start Date** or during the **Stand-Down** period.
- A **Condition** that is caused by, relates to or results from an **Illness, Injury** or **Clinical Sign Your Pet** had before the **Start Date**, or during the **Stand-Down** period.
- ...
- Any amount for **Eye Conditions, Degenerative Conditions** (or **Conditions** with secondary evidence of chronicity, no matter how minimal) commencing within 18 months of the policy **Start Date**."

I note that underneath the "Definitions" heading in the policy terms and conditions it states, among other things, the following:

"Clinical Signs – Changes in **Your Pet's** normal healthy state, its bodily functions and/or behaviour.

Condition – Any **Illness, Injury** or disease, or any **Clinical Signs** or signs of Injury, **Illness** or disease including related problems, **Illnesses** and diseases.

...

Illness – Any **Sickness, disease** or changes to **Your Pet's** normal healthy state."

The Provider submits that it undertook a complete review of the Complainant's claims, including the letters submitted by her vets. The Provider submits that its decision to decline the Complainant's claims was supported by evidence in her pet's clinical history where problems with lameness were noted on a number of occasions on dates prior to the inception of the policy on 5 October 2015, as follows:

- 13/06/2015 – Pet was noted to be stiff on hind legs in the mornings
- 27/06/2015 – Pet noted to be still lame and did have an abnormal gait on the hind legs
- 23/08/2015 – Rimadyl prescription dispensed

The Complainant submits that the Provider, in its declinature letter dated 15 June 2017, states that her pet was on an ongoing prescription of Rimadyl since 23 August 2015, however there is no clinical record of a visit to any vets either in the UK or Ireland on this date. The Complainant also submits in relation to the Provider's reference to the consultation in the UK on the 27 June 2015 that the pet was still lame on this visit to the vet and Rimadyl was dispensed "Whereas at this visit the vet states quite clearly in the clinical

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notes that he did not present lame in clinic. There was no prescription dispensed of Rimadyl on this date as stated in their declination, the vet said they could prescribe but I would assume that as there was no lameness, there was no need. There was no Rimadyl prescribed until September 2015 in Ireland”.

The Complainant states that the Provider is “totally misreading the notes from [the Veterinary Clinic] to suit your own purpose in refusing this claim. [The dog] was not presented for lameness on that visit of the 13/6 or the visit of the 27/6 2015 but for an incidence of scratching when stroked, it was we that mentioned to the vets that he had a slight stiffness when getting up on a morning but this was not something that continued. [H]e may have had a strain, no one knows what that was other than it did not continue and was nothing that needed treatment. We were concerned he had a trapped nerve and the vet recommended x rays for the investigation of the scratching condition, not anything else. And yes the vet did mention that he had a slightly abnormal gait, and our current vet believes that this could be down to Hip Dysplasia as a puppy, not confirmed as we did not have him as a puppy but we do have a dog with that problem and their gait is identical. I furthermore do not see how you can attribute this with this current problem, when even the surgeon confirms that there is no degeneration in that leg and had this condition been present as your claim in 2015 there certainly would be signs of that, and that being the case you are out of time in your assertion of the 18 months stand down period”.

The Complainant submits that the Provider also states in its declination letter dated 15 June 2017 that cruciate ligament is a degenerative disease and had been present in the first 18 months of the policy. The Complainant states that “this also is not true and the first instance this occurred was the 29th April 2017 and the [inception] date of the policy was the 5/10/2015. This would then fall out of [its] 18 month stand down period. This is not relevant, there is no hind leg lameness incidence and as stated and confirmed by the Vet, the first instance of lameness in the right hind leg was the 29th April 2017”.

The Complainant also states that “There is no lameness in the full history of the pet from clinical history provided from 24/07/2010 until the incidence of elbow dysplasia in September 2015, and to that point the pet had been prescribed Rimadyl on only four occasions in 5 years, previously 17/10/11 for cut ear, again on the 19/10/2011 for cut ear and then for stomach pains on the 14/11/2012, on the 23rd September 2015 the pet was prescribed Rimadyl for lameness in his front elbow, this was the first and only occasion Rimadyl was prescribed for any lameness, prior to inception of this policy and was not related to hind legs”.

I note that the Veterinary Clinic in the UK’s clinical history for the Complainant’s pet provides, among other things, the following:

- 13 June 2015

“Examination

Last few weeks when owner st[r]okes base dorsum triggers scratching action with RH. Owner concerned trapped nerve? Is a bit stiff HLs when first gets up in morning. No apparent discomfort on flexion neck or on palp T+L spine – does not seem to trigger scratching action when firmly palpate T+L spine. CP OK both HLs. Reduced

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ROM both hips... HL reaction does seem more like response to pruritus rather than pain but if getting worse adv consider xrays initially... Prev gave codliver oil caps- has stopped recently but will restart and see if helps..."

- 27 June 2015

"Examination

... still same, not lame in consult but does have sl abnormal gait HL... no pain detected on exam but v stoical dog... discussed either trial nsaid or book in for bloods, ga, xray spine and hips, gave rough estimate of 600£ for this but would adv complete estimate on admit, [the Complainant] wishes to go home and discuss with partner, adv if req, we can dispense 1 wk rimadyl then r/v"

I note that the clinical history from the Veterinary Clinic in Ireland for the Complainant's pet provides, among other things, the following:

- 23 September 2015
*"Rimadyl 100mg x 10, 1.5 daily
Rimadyl pal tabs 100mg x 100 10 1 tablets daily"*
- 26 September 2015
"Rimadyl pal tabs 100mg x100 20 1 tablets daily"
- 3 October 2015
*"Repeat prescription
...
Rimadyl pal tabs 100mg x 100 28 1 tablets daily"*
- 12 December 2015
*"Repeat Prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"*
- 16 January 2016
*"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"*
- 15 February 2016
*"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"*
- 19 March 2016
*"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"*
- 13 April 2016
"Rimadyl pal tabs 100mg x 100 30 1 tablets daily"

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- 4 June 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily
..."
- 9 August 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"
- 20 August 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily
..."
- 13 September 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily
..."
- 1 October 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"
- 5 November 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily
..."
- 3 December 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"
- 21 December 2016
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"
- 28 January 2017
"Rimadyl pal tabs 100mg x100 30 1 tablets daily
..."
- 1 March 2017
"Rimadyl pal tabs 100mg x100 30 1 tablets daily"
- 31 March 2017
"Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily"

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- 29 April 2017
Check up
...
very lame on left stifle x ray
...
Rimadyl pal tabs 100mg x 100 50 1.5 Tab daily”
- 24 May 2017
“Repeat prescription
Rimadyl pal tabs 100mg x 100 30 1 tablets daily”

The Complainant states “I believed that [the Veterinary Clinic] were treating [the pet] for one thing but the notes were unclear and it was in 2015 so memory comes into play. I believed it was for a scratching problem causing a spinal reaction so to clarify this issue I recently emailed the vet in question and asked them to advise on their notes, they replied on the 08/09/2017”. The Complainant states that the Veterinary Clinic state “they and a senior insurance colleague looked at [the dog’s] history, and they can see he was being looked at for reduced movement of the hips as well as the scratching problem and they believe they were treating him for the hips. They state quite clearly in their email “A cruciate ligament injury would be unrelated to this”, and further advise that we should get a supporting letter from the vet who performed the surgery, which we already had and have submitted to the insurer”.

I note that the Complainant’s vet’s email dated 8 September 2017 states, among other things, the following:

“On 22nd September 2015, this dog was presented with a sudden onset of elbow lameness. [Family member] noted that this was the 1st time the dog showed lame and owner was concerned he may have been hit. An x ray confirmed arthritis of the elbow and started on Rimadyl. Responding well to the tablets and continued on them. On the 29 April 2017, [the Complainant’s pet] was presented with sudden onset stifle lameness consistent with cruciate rupture. This is the 1st time he showed stifle lameness.”

The Provider submits that the Complainant’s vet submitted a letter stating that the Complainant’s pet presented to his clinic on 22 September 2015 with forelimb lameness and that an x-ray taken at the time confirmed arthritis of the elbow for which Rimadyl was prescribed. The Provider submits that there was no record of this visit on the original clinical history submitted by the Veterinary Clinic. The Provider submits that the first visit recorded there was 23 September 2015 when Rimadyl was dispensed and there was no reference to forelimb lameness.

The Provider submits that this history was not supplied at point of claim in the original contemporaneous notes supplied with the pet’s full clinical history. The Provider states that “Irrespective of this there are two prior references in June 2015 to the problem [the Complainant’s pet] was having with his hind legs. It would seem to us convenient that clinical

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history provided after the claim was declined referenced a visit for elbow dysplasia not previously referenced anywhere in [the Complainant's pet's] notes".

The Provider submits that when assessing claims it can only consider the original clinical information recorded at the time of consultation, in line with the Complainant's policy terms and conditions. The Provider states *"Rimadyl had in any case been recommended by [a Veterinary Hospital] prior to this. On 13/06/15 it was noted that [the Complainant's pet] had 'stiff HL's when first gets up in the morning' and 'reduced ROM both hips'. On 27/06/15 it was recorded that [the Complainant's pet] had 'abnormal gait HL's' and x-rays were recommended".* The Provider goes on to state that *"Considering that [the Complainant's pet] had a recorded hindlimb lameness before the inception of your policy on 05/10/15, and given the degenerative nature of cruciate disease, your policy does not provide cover for this condition".*

The Complainant submits that the Provider states *"that the clinical history... did not show the visit on the 21st September, this was a very late visit around 7pm in the evening, we were not registered with any vet in Ireland at this point and went in as an emergency. All staff had left apart from the vet. On the 22nd September, the vet referred [the dog] to [the Veterinary Hospital] in the form of an email and x-ray attachment... together with x-rays of the front left elbow. Once the hospital gave their diagnosis we were prescribed Rimadyl on the 23rd September to treat the issue. [The dog] has been on Rimadyl for this episode from the 23rd September 2015 and for no other condition... At this stage we were still insured in the UK, I had not had the opportunity of moving insurance. I checked with our insurer in the UK who advised we would be covered abroad if on holiday but not permanently. We just found a new insurer in Ireland and did not pursue a claim for the September 2015 elbow arthritis".*

The Complainant, in her email to the Provider dated 3 July 2017, states that *"It is not within our remit to be responsible for what a vet records or does not record we have no control over that process and can only advise what we know to be true at the time, we visited the vet with our pet and can only have good faith that they do their job. We cannot be held responsible for any mis-recording that is totally out of our control, but I would suggest that they purely mixed the dates up, as it was a late visit on that day it was recoded the following day but they have confirmed both verbally and in writing to you of the facts and the xrays that they took on that day will prove that it was the forelimb, and that should be sufficient for your records".*

I note that the letter from the surgeon states:

"I have been asked by our client... to write a letter in response to a recent Insurance company letter which is declining to cover the costs of a recent TPLO surgical procedure. The Insurance company are claiming that the hindlimb lameness is chronic in nature with a history of lameness in the affected limb reported in the clinical history in 2015.

I examined this dog for the first time on the 9th June 2017. This dog had been with its owner from 1.5 yr age. The owner reported that [the pet] had a mild left forelimb lameness 16 months earlier and was currently on Rimadyl SID – doing well.

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This dog was exercised twice daily for 30-45 min walks. First noted a right hindlimb lameness in late April 2017. Radiographs were taken... and he found no significant pathology.

...

On physical examination, I noticed that this dog was very lame on the right hindlimb. Palpable instability present with mild joint effusion. Suspect CCL rupture. No medial buttress was present.

I subsequently admitted [the pet] and radiographs of the right stifle joint were taken. A joint effusion was present with minimal signs of osteoarthritis present. A stifle arthrotomy was performed and this confirmed structural changes of the cranial cruciate ligament resulting in stifle instability. No particular osteophytes were noted.

My professional opinion, is, that this is a recent stifle injury with minimal radiographic changes. It certainly is not consistent with chronic injury related to 2015 as suggested in the Insurance company letter.

I am happy to discuss this further with any interested party

Report

Notified by [the Provider] that the claim was disqualified as it was a pre existing condition at the time policy was taken out. Owner is appealing this decision."

The Provider submits that the Complainant's pet's surgeon stated in his letter that, based on x-rays taken of the Complainant's pet's stifle and the arthrotomy performed, he believes this to be 'a recent stifle injury'. The Provider states that "We have sent these x-rays to our European Board Specialist for review and it is his assertion that you cannot tell with any certainty how chronic this injury is. Regardless, the fact that [the Complainant's pet] had hindlimb lameness and an abnormal hindlimb gait prior to inception of your policy would have pre-disposed him to cruciate disease".

In response, the Complainant states that the Provider "sent the x-rays... to [its] European board for review, they assert they cannot tell one way or another, but as [the vet] performed the surgery I would certainly suggest and put forward that having operated on and seen the joint in question, his professional opinion is better placed to make this judgement and he has confirmed no pre-existing condition in his report to the [Provider]".

The definition of a pre-existing condition in the policy terms and conditions is a very broad and far reaching one and is relied on by the Provider to entitle it to decline to cover claims made in respect of any illness, which has the same diagnosis, or exhibits the same clinical signs as those which were presented in advance of the policy coming into being, even if a specific diagnosis of the condition being claimed for had not been made previously.

Having given the matter careful consideration, I must accept based on the evidence before me that the Provider was entitled to decline the claim in accordance with the terms and

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conditions of the policy. I must accept that the medical evidence confirmed that the Complainant's pet first showed clinical signs of the medical condition that led to the claim in dispute, before the start date of the policy. The clinical history confirms that in June 2015 an investigation of the Complainant's pet's hind limbs led to discussions regarding further medical investigations if the condition worsened. I appreciate that although it will be of some disappointment to the Complainant, it is the case that a policy of insurance is not all encompassing in terms of cover provided, and there will be events, which are not covered by a policy.

Consequently, it is my Legally Binding Decision that this complaint is not upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 May 2018

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and
- (b) in accordance with the Data Protection Acts 1988 and 2003.