



<b><u>Decision Ref:</u></b>	2019-0160
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Pet Insurance
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - pre-existing condition
<b><u>Outcome:</u></b>	Upheld

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

The Complainants made a claim on their pet insurance policy in respect of treatment for their dog. The Insurer declined the claim citing the excessive weight of the dog.

**The Complainants' Case**

The Complainants incepted a pet insurance policy with the Insurer in January 2017. The Complainants' dog developed a limp following which the Insurer declined to cover the cost of treatment citing the excessive weight of the dog. The Complainants maintain that the Insurer was aware of the weight of the dog from inception. The Complainants also maintain that their dog's weight "*is not the cause of his joint condition*". The Complainants also point to the content of a letter of 14 December 2016 from the Insurer.

The complaint is that the Complainants made a claim on their pet insurance policy which, they maintain, was improperly declined by the Insurer. The Complainants seek that the Insurer reinstate cover for future treatment and reimburse them for all historic treatment paid for by them.

### **The Provider's Case**

The Insurer relies on a specific provision of the policy in declining the Complainants' claim based on the contention that the Complainants' dog's condition is due to the fact that the dog is overweight.

### **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 Complainants were 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 3 April 2019, 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 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, I set out below my final determination of this office.

Prior to considering the substance of the complaint, I will outline certain of the policy terms and conditions:

### **Policy Terms and Conditions**

The Insurer has identified the following provisions from the 'Vet Fees' section of the policy in support of its decision to decline the Complainants' claim:

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### **What We Will Not Pay**

Costs for **Treatment of Conditions** arising from Your Pet being overweight, except for weight gain as a result of a diagnosed **Illness** ("Overweight Pet" Clause).

### **Analysis**

In this case, the Complainants were previously insured by a separate insurer which ceased to offer pet insurance. Thereafter, having been passed the Complainants' details by the former insurer, the Insurer wrote on 14 December 2016 stating as follows:

*The great news is that, [the dog] does not have to go uninsured and regardless of his or her age and regardless of your claims status, we are guaranteeing you a policy to make sure that, should it become necessary, [the dog] can get the best care possible.*

*We have reviewed your pet's age and claims status and based on the information which we have been provided with we can offer to insure [the dog] at a rate of €386.00 for the coming year.*

The letter went on to state:

*This policy will not be identical to the [previous insurer's] policy and so please be sure to read the attached policy terms and conditions in detail.*

The Complainants accepted the Insurer's offer of insurance and the policy was inceptioned on 9 January 2017. Thereafter, the Complainants' dog developed lameness in its left paw/leg and was seen by a vet on 28 April 2017. This led to the Complainants submitting a claim on the policy on 2 May 2017 in the amount of €738.42. The Insurer responded by way of letter of 18 May 2017 rejecting the claim on the following basis:

*As per your policy terms and conditions there is no cover for any conditions associated with your Pet being overweight.*

The letter went on to cite the terms of the policy reproduced above before stating:

*As obesity is directly related to joint problems such as the one you are claiming for and as your pet has been overweight since 2013, we must decline your claim.*

The Complainants appealed this decision however the appeal was unsuccessful. The Insurer's Final Response Letter of 26 June 2017 documented the prolonged nature of the overweight condition of the Complainants' dog spanning over four years. The letter went on to state as follows:

*"Given the length of time for which your pet has been overweight, dating back to the inception of your policy, we cannot provide cover for forelimb lameness as his weight is a significant factor in the aetiology and severity of his symptoms."*

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There are essentially two issues that require to be addressed in this complaint. The first is whether the Insurer was entitled to reject a claim by reference to the overweight nature of the Complainants' dog.

The second issue is, if the Insurer *is* entitled to rely in principle on the overweight nature of the Complainants' dog, whether the Insurer has in fact established that the dog's symptoms can be said to arise from the dog being overweight.

#### Entitlement to Rely on Overweight Nature of the Dog

The terms and conditions of the policy clearly reserve the right on the part of the Insurer to decline to cover vet fees for treatment "*arising from*" the animal "*being overweight*". This was a specific term of the policy which the Complainants incepted. It is unclear whether any similar term formed part of the Complainants' previous policy with the former insurer however this is not relevant.

The Insurer did not hold itself out as providing 'like-for-like' cover and, in fact, it made the point that the policy may well be different from the previous policy. In this regard, the Insurer expressly urged the Complainants to review the terms of the new policy in detail.

The Complainants submit that the Insurer knew (or ought to have known) of the precise weight of the dog at inception and that, because of same, it should be prevented from declining cover on the basis of this pre-existing condition of which it was aware. I am afraid that I cannot agree with the Complainants on this point. Whether the Insurer knew or did not know about the overweight condition of the Complainants' dog is not relevant. The policy provides the Insurer with an entitlement to decline cover in respect of treatment arising from the dog being overweight. The fact that it may have known of the dog's weight when the policy was created does not alter this fact.

In light of the foregoing, I am satisfied that it may have been within the rights of the Insurer to decline cover by reference to the 'overweight pet' clause of the policy providing that it had established that the treatment in respect of which the claim was made was indeed treatment arising from the pet being overweight.

Therefore, I will now address this issue.

#### Whether Treatment was Due to Overweight Nature of the Dog

In addition to other arguments raised, the Complainants submit that their dog's weight "*is not the cause of his joint condition*". If the Complainants can establish this as a fact, I am satisfied that the Insurer will not be entitled to rely on the 'overweight pet' clause of the policy. In support of their contention, the Complainants have furnished an undated letter from their vet which provides as follows:

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*This dog [name] is markedly overweight. I would suggest a thyroid stimulation test to evaluate an underlining endocrinopathy as our next step in diagnostic procedures. The current body condition is certainly making this clinical condition worse. However, in my professional opinion, it is certainly not the underlying cause. I suspect we are dealing with bilateral elbow dysplasia, a common condition of the of elbow joint in this breed.*

This letter would appear to have been written after the initial rejection of the Complainants' claim on 18 May 2017 and prior to the Insurer's Final Response Letter wherein the Complainants' appeal of the earlier decision was rejected. The Final Response Letter dated 26 June 2017 provided as follows:

*[The Complainants' vet] has indicated that he is suspicious of bilateral elbow dysplasia as the cause of [the dog's] lameness. However, radiographs taken on 02/05/2017 were recorded as showing minimal changes. The cytological findings from the elbow joint taps performed indicate mild arthrosis.*

I have reviewed both the radiographical findings and the microbiology report provided to me as part of the vet's records. These records confirm that "*minimal changes*" were noted arising from the radiographical analysis. The microbiology report makes clear that the reason for the analysis was a suspicion of elbow dysplasia. The report does not however conclude that elbow dysplasia is in fact present. The conclusion is rather, as the Insurer noted in its Final Response Letter, that, in respect of the dog's left elbow, the findings are "*suggestive of mild mononuclear arthrosis*".

The conclusion at which I am compelled to arrive is that, though he may well have suspected elbow dysplasia (and indeed may well still suspect it), the Complainants' vet has not established same as a diagnosis because the various tests undertaken have not borne that diagnosis out. The Complainants' vet notes that the dog is "*markedly overweight*" which is "*certainly making this clinical condition worse*".

The terms and conditions of the policy state that the Provider will not cover, "The costs for treatment of conditions **arising** from your pet being overweight". This is different, clearer and more restrictive than the letter from the Provider, dated 18 May 2017, where it stated, "There is no cover for any conditions associated with your pet being overweight." It is much simpler to 'associate' lameness and obesity in an overweight dog rather than make a direct causal chain from one to the other.

It is not acceptable that the Provider has substituted the word "*associated*" in its correspondence for the word "*arising*" in the policy to suit its own needs.

In the same letter, the Provider states, "As obesity is directly related to joint problems....such as the one you are describing, we must decline." This letter is general rather than specific. The Provider does not state that in this particular case, the lameness **arose** from the obesity, nor does it provide any evidence to support this contention.

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The Complainants' vet wrote that "*the body condition is making this clinical condition worse. However, in my professional opinion, it is certainly **not** the underlying cause.*" It is not clear why the opinion of the vet is discounted by the Provider in this context. He clearly thinks there **is** another cause.

The Complainants have relied on the professional opinion of their vet who thinks that obesity is not the underlying cause of the lameness. The Provider has not furnished any evidence to the contrary.

The Provider relies on the fact that the dog is overweight and had been for some time, but does not establish that the lameness 'arose' from the obesity.

For the reasons set out above, I uphold this complaint and direct the Provider to pay the claim in the normal manner and pay a further sum of €300 in compensation for the inconvenience caused to the Complainants.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by paying the claim in the normal manner and by making a compensatory payment to the Complainants in the sum of €300, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

**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**

2 May 2019

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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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

