



<u>Decision Ref:</u>	2019-0187
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Pet Insurance
<u>Conduct(s) complained of:</u>	Rejection of claim - pre-existing condition
<u>Outcome:</u>	Rejected

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

Background

On **28 March 2017**, the Complainant incepted an insurance policy with the Provider, for her pet rabbit. On **29 January 2018**, the Complainant submitted a claim for reimbursement of veterinary fees incurred as a result of her rabbit taking ill on **17 December 2017**. This claim was denied by the Provider on **1 February 2018**. The Complainant unsuccessfully appealed this refusal to indemnify her for the costs of veterinary treatment.

This complaint concerns whether or not the Provider was correct to refuse to admit the claim on the basis that the rabbit's conditions in December 2017, were pre-existing conditions within the meaning of the policy.

The Complainant's Case

The Complainant's rabbit developed anorexia and gut stasis secondary to an incisor abscess on **17 December 2017**. The Complainant says that the Provider incorrectly viewed anorexia and gut stasis as pre-existing conditions. She submitted an email sent to the Provider from her vet dated **2 February 2018**, which says:

"We have been contacted by [the Complainant] to say that you have intimated that you will not honour her recent claim for [rabbit]. [Rabbit] had a pre existing history of liver torsion (with secondary gut stasis) that is being used as the reason to preclude

this claim. [Rabbit's] current condition is an incisor abscess (with secondary gut stasis). Gut stasis is a secondary outcome of any disease/stress in rabbits so it seems unfair to use this as a reason not to payout."

The Complainant says that either her claim has been wrongly rejected or the policy is unfit for purpose because all rabbits will develop gut stasis as a result of any illness that stops them eating. She says that the Provider has mischaracterised a finding in a radiograph taken of her rabbit's skull on **23 March 2017**, which stated that *"the upper incisors curled a bit more than I'd like"* to say that the abscess was a pre-existing condition. She queries whether the Provider used a qualified exotic pet vet, to assess the claim.

The Complainant wants to be reimbursed for all outlay occasioned by the rabbit's illness.

The Provider's Case

The Provider issued its Final Response Letter on **13 February 2018**. It notes that the Complainant's vet indicated that the rabbit had previously been treated for gut stasis secondary to liver torsion. It notes that the Complainant's claim made was for gut stasis and anorexia secondary to an incisor abscess. The Provider says that the policy was incepted subsequent to the rabbit's radiograph having given rise to a comment from a vet that *"the upper incisors curled a bit more than I'd like."*

The Provider did not furnish this Office with expert evidence from a vet. Rather, it relies on the following terms of the policy, under the heading **"Vets 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."

As the rabbit had suffered from anorexia, gut stasis and had dental issues prior to the inception of the policy, the Provider says that it was entitled to refuse the claim as it arose from pre-existing conditions. The Provider also says that the appeal was assessed by a *"fully qualified and very experienced small vet"* and points out that the rabbit was being treated for anorexia and gut stasis, at the time when the policy was incepted.

In that respect, the Provider points to treatment undergone by the rabbit with a different vet on **15 March 2017**, 2 weeks before the policy was incepted, when it was noted that *"owner feels is eating differently now"*. On **20 March 2017**, the rabbit was seen at a pet emergency hospital for anorexia and it was noted that *"last 3-4 days has started quidding"*. At the Complainant's rabbit's current vet on **21 March 2017**, it was noted that the rabbit had been quidding and eating selectively. On **23 March 2017**, following skull radiographs, it

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was then noted that *“the upper incisors curled in a bit more than I’d like”*. An ultrasound was performed which was *“strongly suspicious of liver torsion”*.

The Complaint for Adjudication

The complaint is that the Provider wrongly declined the Complainant’s claim on the basis that the rabbit’s anorexia and gut stasis were conditions which pre-existed the inception 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 27 May 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, the final determination of this office is set out below.

POLICY PROVISIONS

“Condition” is defined in the policy as:

“Any Illness, Injury or disease, or any Clinical Signs or signs of injury, Illness or disease including related problems, Illnesses and diseases.”

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“Illness” is defined as:

“Any sickness, disease or changes to Your Pet’s normal healthy state.”

“Clinical Signs” is defined as:

“Changes in Your Pet’s normal healthy state, its bodily functions and/or normal behaviour.”

It is not in dispute between the parties that “*gut stasis*” is a secondary outcome of very many disease processes or stresses in rabbits. In this instance however, I note that 2 weeks before policy inception, when the policy was incepted in March 2017, the rabbit in question had been undergoing treatment for poor eating and had been referred to the pet emergency hospital. On 21 March 2017 in the early morning “*he was syringe fed 20 msl of oxbow critical care...and tolerated this well*”. I am satisfied, having examined the records of the rabbit’s treatment at the Complainant’s current veterinary practice, the former veterinary practice and the emergency veterinary hospital, that the Provider was entitled to form the opinion that the conditions for which the rabbit was treated in December 2017 and which gave rise to the claim, were those same or very similar conditions, to the conditions that the rabbit had been treated for in March 2017, just prior to the policy inception. In those circumstances, I am satisfied that the Provider acted reasonably in forming the view that those conditions pre-existed the inception of the Complainant’s cover for her rabbit with this Provider. I note in that regard, that the policy exclusions make it clear that in relation to veterinary fees the Provider will not pay:-

“Any amount if your claim results from:

- *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.”*

In those circumstances, I take the view that the Provider was entitled to decline the Complainant’s claim for benefit pursuant to the policy. The evidence before me indicates that the Provider did not act unreasonably in declining the claim on that basis.

Accordingly, I do not consider it appropriate to uphold this complaint.

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

19 June 2019

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.