



<b><u>Decision Ref:</u></b>	2021-0000
<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 - non-disclosure Misrepresentation (at point of sale or after)
<b><u>Outcome:</u></b>	Rejected

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

The Complainant incepted a pet insurance policy with the Provider on **17 June 2019** in respect of a Cavalier King Charles Spaniel that she had just purchased from a breeder. The policy was incepted by phone.

#### **The Complainant's Case**

The Complainant presented her Cavalier King Charles Spaniel to X. Veterinary Clinic on **19 July 2019**, where the dog was diagnosed with a “*v2+mic+congenital grade 4 heart murmur*” and was referred for an ultrasound to Y. Veterinary Clinic.

Following further investigations, Y. Veterinary Clinic noted on **22 November 2019** that “*a grade 5/6 left basal continuous, a grade 2/6 left apical systolic and a grade 2/6 right apical systolic murmur was identified*”.

The Complainant then submitted a pre-authorisation form to the Provider in respect of heart surgery to be performed on her dog at Z. Veterinary Hospital, with an estimated cost of €4,000.

Following its assessment, the Provider declined indemnity by way of email on **28 November 2019** on the basis that the Complainant had previously presented a Cavalier King Charles Spaniel at J. Veterinary Clinic on **17 June 2019**, the same day that she had incepted her pet insurance policy, where it was identified that this dog had clinical signs of a heart murmur.

The Complainant states, however, that she returned that particular dog to the breeder on **17 June 2019** and collected another Cavalier King Charles Spaniel on the same day. She later telephoned X. Veterinary Clinic on **28 June 2019** to register this second dog with that practice, and booked a first visit for **19 July 2019**. The Complainant advises that in the meantime, some two days later, in and around **30 June 2019**, this second dog began vomiting and so she returned it to the breeder and collected another Cavalier King Charles Spaniel. The Complainant says that it was this third dog that she presented to X. Veterinary Clinic on **19 July 2018** and that underwent heart surgery at Z. Veterinary Hospital on **29 November 2019**.

Following its assessment of this information, the Provider wrote to the Complainant on **9 December 2019** to advise that it had cancelled her pet insurance policy *ab initio* due to misrepresentation, advising as follows:

*“The original pet that was covered under this policy was returned on the same day to the breeder. As you no longer own this pet we are not in a position to continue to offer cover ...*

*It has come to light as part of a recent claims investigation that the pet on cover is not the same pet in which you have inputted the claim for”.*

In this regard, the Complainant submits in the Complaint Form she completed, that:

*“I took out [the pet insurance policy] the day I bought [my dog] & all was fine. When I took [my dog] to the vets on the 19<sup>th</sup> July [2019] for her check-up & chip I was told she had a heart issue. The vet advised me to get a scan done so I did, which showed [the] heart problem. I was then referred on to [Z. Veterinary Hospital] for surgery for [my dog]. This is where a problem came up. [The Provider] are saying [my dog] showed signs of illness before...but I told them no, they have their wires crossed”.*

As a result, the Complainant seeks for the Provider to admit and pay the claim in respect of her dog’s surgery in the amount of €4,000 and in this regard she submits, *“I took out insurance for [my dog] in good faith & I feel very hurt that [the Provider] has bailed on [its] side. My [dog] is my everything & I will not allow them deny me her”.*

### **The Provider’s Case**

Provider records indicate that the Complainant telephoned the Provider at 16:05 on **17 June 2019** and incepted a pet insurance policy in respect of a female Cavalier King Charles Spaniel. This policy provides a wide range of benefits for cats and dogs only, including veterinary fees for injury and illness to the pet insured, up to €4,000 per annum, on the basis of cover for life, meaning that, provided a condition is not deemed to pre-exist the inception of the policy, all conditions will be covered for the lifetime of the pet, whilst the policy remains in force.

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The Provider says that on 26 November 2019, it received a 'Pre-authorisation of possible claim' form from the Complainant in respect of heart surgery (amplatz canine duct occluder (transarterial) occlusion of patent ductus arteriosus) to be performed on her dog at Z. Veterinary Hospital, with an estimated cost of €4,000.

The Provider says it advised the Complainant on 28 November 2019 that in order to assess this pre-authorisation request, it needed a full medical history of the insured pet from the veterinary clinics where the dog had attended. On the same day, the Provider received clinical notes for the Complainant's dog from J. Veterinary Clinic (notes for 17 June and 25 June 2019), X. Veterinary Clinic (notes for 28 June and 19 July 2019) and Y. Veterinary Clinic (notes for 27 September, 15 October, 18 October, 22 November and 27 November 2019).

The Provider noted that J. Veterinary Clinic recorded the following clinical notes on 17 June 2019, as follows:

*"Clinical Infor: umbilical hernia.  
4/5 cardiac murmur systolic over mitral but also pulmonary and aortic outlet of heart.  
Lung fiend clear.  
Advised heart scan and contact breeder".*

The Provider says that as J. Veterinary Clinic had recorded that the dog had presented with a heart murmur on 17 June 2019, the same day that the Complainant had incepted her pet insurance policy, the Provider emailed the Complainant on **28 November 2019** to advise that the claim was declined as there were clinical signs of the heart condition within the first 14 days of the policy.

In this regard, the Provider refers to **Section 1, 'Vet Fees'**, of the applicable Pet Insurance Policy Document which provides at pgs. 8 - 9, as follows:

***"What We will not pay ...***

***3. The cost of any Treatment for:***

- an Illness that first showed Clinical Signs within 14 days of Your Pet's cover starting; or***
- an Illness which is the same as, or has the same diagnosis or Clinical Signs as an Illness that first showed Clinical Signs within 14 days of Your Pet's cover starting; or,***
- an Illness that is caused by, relates to, or results from a Clinical Sign that was first noticed within 14 days of Your Pet's cover starting,***

***no matter where, in or on Your Pet's body, the Clinical Signs were noticed."***

The Complainant telephoned the Provider at 09:07 on **29 November 2019** to advise that the dog that she now owned, was not the same dog that had been seen by J. Veterinary Clinic on 17 June 2019.

In this regard, the Complainant advised that she had purchased a dog in [location] and brought it to J. Veterinary Clinic on 17 June 2019 for a health check. At this consultation, after the dog had been vaccinated, a murmur was detected in the dog's heart. As a result, the Complainant advised that she then brought that dog back to the breeder, stating that she *"went on to the next pup, which is the one I have now"*. The Complainant also advised that when she rang the Provider and purchased the pet insurance policy on **17 June 2019**, that she already had the second dog in her possession at that time. The Complainant confirmed this version of events to the Provider by way of email at 10:29 on **29 November 2019**, as follows:

*"I was asked to send a confirmation of the mix up that was made with [the dog]...The dog that [J. Veterinary Clinic] seen on the 17 June [2019] is not the dog we own today. That King Charles puppy was sent back to their breeder when the vet couldn't confirm to me that it was healthy. My King Charles I own today and have on the insurance is a totally different pet. [This dog] was never seen by [J. Veterinary Clinic], it was [X. Veterinary Clinic] that saw [this dog] for her microchip and top-up vaccination".*

After reassessing the clinical history, the Provider noted that X. Veterinary Clinic recorded the following clinical note on 28 June 2019, as follows:

*"CHECK HEART MURMUR".*

As a result, the Provider advised the Complainant by email at 10:57 on **29 November 2019** that its decision was still to decline the claim, as this clinical note of 28 June 2019 was again within the first 14 days of her the policy.

The Provider says that the Complainant telephoned the Provider later at 14:02 on **29 November 2019** to advise that she had not taken her dog to X. Veterinary Clinic on 28 June 2019 but rather, she had only telephoned the clinic that day to have the dog registered with the practice and to make a first appointment for 19 July 2019 to have her dog's heart checked, and that it was only then, at that appointment, that X. Veterinary Clinic first saw her dog and identified the heart murmur.

The Provider says that the Complainant then telephoned the Provider later at 16:43 on **29 November 2019** to advise that altogether she had collected three different dogs and had given each the same name. In this regard, the Complainant now advised that she had brought the first dog she had collected to J. Veterinary Clinic on 17 June 2019 for a health check but once the heart murmur had been identified, she brought this dog back to the breeder on the same day. The Complainant advised that she then went to another breeder on the same day, 17 June 2019, and collected a second dog and it was thereafter, when she was in possession of this second dog, that she rang the Provider to incept the pet insurance policy.

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The Provider says that the Complainant also advised that she rang X. Veterinary Clinic on 28 June 2019 to register this second dog with the practice and booked a first visit for 19 July 2019 but in the meantime, this dog was not feeling well and started vomiting after two days and as a result, she returned this second dog to the breeder.

The Complainant then advised that it was the third dog that she collected that was the dog she ultimately brought to X. Veterinary Clinic on 19 July 2018 and that underwent the heart surgery. The Complainant further advised that once X. Veterinary Clinic had diagnosed the heart condition on 19 July 2019, she contacted the breeder but decided against returning this dog as the breeder had threatened that the dog would be destroyed.

The Provider says that based on this new information, the Provider understood from the Complainant's own statements, that this third dog, which was collected sometime after 28 June 2019, was the dog seen at X. Veterinary Clinic on 19 July 2019 and diagnosed with "v2+mic+congenital grade 4 heart murmur" and that underwent the heart surgery on 29 November 2019.

The Provider says that in light of the fact that the dog insured at the inception of the Complainant's pet insurance policy on 17 June 2019 was no longer in her ownership and as the 'Pre-authorisation of possible claim' form she submitted was therefore in respect of a different dog, the Provider telephoned that Complainant on **6 December 2019** to advise that it was voiding her pet insurance policy from inception, due to misrepresentation.

In addition, the Provider wrote to the Complainant on **9 December 2019** to advise that it had voided her pet insurance policy, as follows:

*"As disclosed within the previous conversations with our claims team, you advised that the pet in which this policy was originally incepted is no longer owned by you...The original pet that was covered under this policy was returned on the same day to the breeder. As you no longer own this pet we are not in a position to continue to offer cover ...*

*It has come to light as part of a recent claims investigation that the pet on cover is not the same pet in which you have inputted the claim for ...*

*In light of this I must inform you that we are voiding your policy with effect from inception.*

*This means that no cover was ever in force and we will not pay any claim that has been presented under the...policy".*

The Provider says that following her complaint, by telephone, and upon completion of a review into the matter, it sent its final response letter to the Complainant dated 12 December 2019 confirming that it had voided her pet insurance policy.

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The said letter of 12 December 2019 advised as follows:

*“ ... your policy was voided effective from its inception, due to the non-disclosure of a material fact, which is an obligation under the terms of your policy, that is, you no longer owned the pet that was insured at the inception of the policy [on 17 June 2019].*

*Based on all the above information provided by you in regards to the pet that you owned, your policy was voided, meaning that no cover was ever in force.*

*As a result we will not pay any claim that has been presented under your Pet policy.”*

The Provider says that the information presented to it by the Complainant regarding the subject of the pet insurance policy, that is, the insured pet dog, constituted the material facts based on which the contract of insurance was formed. In this regard, the information provided by the Complainant at the inception of the policy on 17 June 2019 was for a dog that the Complainant no longer owned at the time of the claim assessment in November 2019, and was not the dog that underwent the heart surgery claimed for. The decision to void the Complainant's pet insurance policy was not taken lightly, but the Provider is satisfied that its decision was correct, fair and reasonable in light of the evidence on file, and in accordance with the terms and conditions of the pet insurance policy itself.

### **The Complaint for Adjudication**

The Complainant's complaint is that the Provider wrongly or unfairly declined indemnity and voided her pet insurance 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.

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A Preliminary Decision was issued to the parties on **26 November 2020**, 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, within the period permitted, the final determination of this office is set out below.

I note that the Complainant incepted a pet insurance policy with the Provider on **17 June 2019** by telephone. Having listened to a recording of this call, I note that the Complainant was seeking to insure a female Cavalier King Charles Spaniel that was born on 28 March 2019, advising the Agent that *"I just bought her"*.

I note that the Complainant later presented a Cavalier King Charles Spaniel to X. Veterinary Clinic on **19 July 2019**, where the dog was diagnosed with a *"v2+mic+congenital grade 4 heart murmur"* and was referred for an ultrasound to Y. Veterinary Clinic. Following further investigations, Y. Veterinary Clinic noted on **22 November 2019** *"a grade 5/6 left basal continuous, a grade 2/6 left apical systolic and a grade 2/6 right apical systolic murmur was identified"*, and referred the dog for surgery to Z. Veterinary Hospital.

The Complainant then submitted a pre-authorisation form to the Provider in respect of heart surgery to be performed on the dog at Z. Veterinary Hospital, at an estimated cost of €4,000. Following its assessment, the Provider declined the claim and voided the pet insurance policy as it concluded from the statements provided by the Complainant herself, that the dog insured at the inception of her pet insurance policy on 17 June 2019 was no longer in her ownership and thus that the 'Pre-authorisation of possible claim' form she submitted was in respect of a different dog.

Having listened to the recordings of the telephone calls between the Complainant and the Provider in relation to this matter, I note that the Complainant acknowledges that the dog she presented to X. Veterinary Clinic on 19 July 2019 was not the dog that was in her possession on 17 June 2019 when she first incepted her pet insurance policy with the Provider. I note that the insurance cover detailed throughout the applicable Pet Insurance Policy Document refers to cover available to *"Your Pet"*, which is defined in the 'Definitions' section of this policy document at pg. 3, as follows:

***"Your Pet***  
*Any dog or cat named on the Schedule"*

As a result, the Complainant, when incepting her pet insurance policy with the Provider by telephone on 17 June 2019, was insuring a specific dog, namely, the dog that was in her possession at that time, on 17 June 2019, and which was duly listed at Section 2, 'Pet Details', of the 'Your Pet Insurance Statement Of Fact' that the Provider sent to the Complainant upon the commencement of the policy on 17 June 2019 as a Cavalier King Charles Spaniel, date of birth 28 March 2019.

I note that the Complainant's dog that underwent the heart surgery on 29 November 2019 was not, by her own admission, the dog that she had been in possession of on 17 June 2019 when she incepted her pet insurance policy with the Provider. As a result, this dog was not the insured dog under the policy.

I am satisfied therefore that the Provider was entitled to decline indemnity and to void the Complainant's pet insurance policy in accordance with the policy terms and conditions.

In this regard, I note that the Provider sent the Complainant her new pet insurance policy documents on 17 June 2019 and the cover letter advised as follows:

*"Please read your statement of fact document carefully as this forms the basis of your contract with [the Provider]. If this document contains any inaccurate or incomplete information you must notify us immediately"*

I have also considered **Section 4, 'Brief Details of Cover'**, of the enclosed **'Your Pet Insurance Statement of Fact'** which states as follows:

***"Material Facts Declaration – Continuing Obligation***

*You agree that the information supplied by you, or by a relevant party on your behalf is, to the best of your knowledge, true and complete and that no material fact has been misrepresented or withheld by you.*

*You acknowledge that failure to disclose all material information may result in the voidance or cancellation of your policy, a claim not being paid or partly paid, you encountering difficulty obtaining insurance elsewhere or, in the case of property insurance, you breaching the terms and conditions of any loan on the property.*

*Material information is that which [the Provider] would regard as likely to influence its assessment or acceptance of this insurance. You have a continuing obligation to immediately disclose to [the Provider] any information that may affect the insurance or increase the risk of loss or damage or injury to others. You agree that if you are in any doubt you will disclose it to us.*

*Please note that this document, in conjunction with any other information supplied by you or on your behalf will form the basis of your contract with [the Provider] ...*

*Please read this document carefully and check that all the details in it are accurate. If any information is inaccurate or incomplete you must nifty [the Provider] or your insurance intermediary immediately".*



In addition, I note that the '**General Conditions**' section of the applicable Pet Insurance Policy Document provides at pg. 6, as follows:

*"13. This Policy will be voidable in the event of misrepresentation, misdescription or non-disclosure of any material facts i.e. those circumstances which may influence Us in our acceptance and assessment of this insurance. If You are in any doubt as to whether a fact is material or not please disclose it".*

It is important to bear in mind that insurance contracts are contracts of utmost good faith. The failure to disclose material information allows the Insurer to void the policy from the outset and to refuse or cancel cover. Once nondisclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, refuse cover and void the policy, as the Provider has done in this instance.

As the Complainant had not informed the Provider that she was no longer in possession of the dog that she incepted her pet insurance policy for, I am of the opinion that the policy continued on the basis of a false premise. I am therefore satisfied that when the Provider declined the claim and cancelled the Complainant's pet insurance policy from the inception date, that it was entitled to do so and that its actions were in strict accordance with the terms of the insurance arrangement in place.

As a result, I am of the opinion that, given the evidence made available by the parties, there is no reasonable basis upon which it would be 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  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

4 January 2021

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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.

