



<u>Decision Ref:</u>	2021-0010
<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

The complaint concerns a declined claim under pet insurance policy.

The Complainant's Case

The Complainant says that on **10 May 2017**, her dog of approximately 4 months old, attended a veterinary practice to receive its second vaccination injection. The veterinary clinic notes submitted by the Complainant record that the vaccination was administered and on examination, the vet recorded that the pet displayed an :

“ocular discharge noted, could be allergy based”

The Complainant states that the day after this routine visit, her pet was unwell and was *“sneezing/coughing/gagging”*, so she contacted the vet by telephone on **11 May 2017** and spoke to the veterinary nurse, regarding her concerns.

The Complainant says that the nurse explained *“breed problems”* associated with the breed of dog owned by the Complainant and common breathing issues characteristic to the breed. The nurse proceeded to recommend that the Complainant administer the anti-allergy medication *“Piriton”* to her pet in line with the vet's clinical notes from the previous day. The Complainant states that upon following the nurse's advice, her pet was *“fine”*.

The Complainant says that on **18 May 2017**, approximately a week after her pet's second vaccination injection, she incepted cover under a pet insurance policy with the Provider.

The Complainant submits that almost 2 years later on **20 March 2019**, her pet became ill and she brought the dog to the vet, due to its *“breathing deteriorating”*. The Complainant further says that the vet referred her to [Veterinary Hospital] where surgery to address the pet’s condition was proposed.

The Complainant states that she then contacted the Provider to obtain pre-authorisation for the cost of her pet’s treatment, but the Provider declined to agree cover for the medical treatment, stating that:

*“Your policy began on **18/05/17** and as per [the pet’s] medical history he first showed clinical signs of his condition on **11/05/17”**.*

The Complainant says that in the absence of insurance cover, she could not afford to pay for the veterinary care that her pet required. The Complainant states that she had no option but to consider putting her pet down, but her mother intervened and provided the finances required to fund the necessary veterinary treatment.

The Complainant has submitted a statement from her vet dated **11 April 2019** which states that prior to inception of the policy the dog:

“...was never presented, examined for or diagnosed with any upper respiratory tract, pharyngeal or laryngeal condition by us... The owner was advised over the phone, by our RVN that the breed is susceptible to such issues”.

The Provider’s Case

In the Provider’s Final Response Letter to the Complainant dated **18 April 2019**, the Provider has stated that:

“Prior to your policy inception of 18/05/2017, it was noted you phoned your vet on 11/05/2017 as [pet’s name] had been vomiting. It was noted [pet’s name] was sneezing, coughing and gagging foam. The nurse advised you of the breed prone conditions and recommended Piriton.

The letter from your vet on 11/04/19 states that [pet’s name] never presented, examined or diagnosed with any upper respiratory tract, pharyngeal or laryngeal conditions by us. The owner was advised over the phone, by our RVN (nurse) that the breed is susceptible to such issues.

As your vet did not elaborate on the phone call in question, we phoned the practice to discuss further. The vet stated that [pet’s name] was sneezing and had runny eyes on 11/05/17 and that the nurse suspected allergies and recommended Piriton. I queried [why] the notes said gagging, vomiting etc. but the vet could not elaborate and said none of the vomiting, gagging, breed related issues were noted.

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Unfortunately this explanation contradicts the original notes from the time of the call on 11/05/17. The nurse specifically noted [pet's name] was vomiting and described it as sneezing, coughing and gagging foam all typical clinical signs of BOAS as advised by the nurse during this call. As [pet's name] had runny eyes the day before the sneezing the nurse suspected allergies and recommended Piriton.

There was a similar episode on 31/10/17 where the vet referenced reflux peristalsis induced gastritis which is also known to be related to BOAS. On 11/01/18 it was suspected [pet's name] had tracheitis. In [the veterinary clinic] there were visits for vomiting on 22/06/17, 26/09/17 and [pet's name] was noted to have been chesty. The mix of respiratory and gastric episodes have been recurrent and progressive resulting in the need for [the veterinary surgery] to investigate both respiratory and gastrointestinal tracts via endoscopy".

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined the Complainant's claim under her policy, for the cost of veterinary treatment that her pet received. The Complainant is also unhappy as she believes that the Provider proffered poor customer service to her throughout this time.

The Complainant wants the Provider to pay veterinary expenses of €2,165.35 which, the Complainant contends, should have been covered by her 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 **20 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.

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

Chronology of Events

- **26 April 2017:** The Complainant contacted the Provider in relation to adding a new dog to the existing policy held by the Complainant. The Provider informed the Complainant that there would be an additional premium of €250.53, until the renewal of the policy on the 23 March 2018.
- **2 May 2017:** The Provider issued the Complainant with the Additional Pet Form and advised the Complainant that once it was received back completed, the new pet would be added to the policy.
- **10 May 2017:** The Complainant attended the vet with her dog so it could receive its second vaccination injection. The vet recorded "*ocular discharge noted, could be allergy based*".
- **11 May 2017:** The Complainant contacted the Provider in relation to the additional premium. The Provider informed the Complainant that this was the best premium it could offer and reminded the Complainant that she would need to complete the Additional Pet Form to be covered under the existing policy. On the same day she contacted the veterinary practice by telephone and spoke to the nurse about her dog's symptoms which included a discussion about problems associated with certain breeds of dog.
- **12 May 2017:** The Provider received the completed Additional Pet Form for the new pet.
- **15 May 2017:** The Complainant contacted the Provider and asked if it received the Additional Pet Form. The Complainant informed the Provider that her existing pet under the policy had passed away on the 12 May 2017.
- **17 May 2017:** The Complainant's old policy was cancelled as a result of the death of the previously insured pet.
- **18 May 2017:** The Complainant was issued with the new policy documentation.

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- **16 April 2018:** The Complainant was issued with the renewal documentation for the policy.
- **3 May 2018:** The Complainant contacted the Provider and advised that her pet was having breathing difficulties and might need surgery. The Provider advised the Complainant that formal pre-authorisation would need to be sought.
- **4 May 2018:** The Complainant paid the premium and renewed the policy.
- **21 March 2019:** The Complainant telephoned the Provider and enquired as to whether her pet would be covered for a procedure as it was having breathing difficulties. The Provider advised the Complainant that it would need pre-authorisation details from the clinic, before it could make a decision.
- **28 March 2019:** The Complainant telephoned the Provider and enquired as to whether or not it received the pre-authorisation details from the veterinary clinic. The Provider informed the Complainant that it had not received the details, but once it did, it would process same within 48 hours. Later that day the Provider received the pre-authorisation details from the veterinary clinic, along with the pet's clinical history records.
- **29 March 2019:** The Provider emailed the Complainant and advised that pre-authorisation for the pet's BOAS surgery was declined on the basis that there were signs of the condition on **11 May 2017** and this was before the policy inception of **18 May 2017**.
- **29 March 2019:** The Complainant contacted the Provider and advised that she was not happy. The Complainant said that in May 2017 she had been advised that the coughing and sneezing were signs of allergies. The Provider registered a complaint.
- **29 March 2019:** The Provider issues a Final Response Letter to the Complainant.
- **4 April 2019:** The Complainant telephoned the Provider and explained that she had contacted the veterinary clinic on 11 May 2017 and explained the symptoms her pet had to the veterinary nurse. The Complainant stated that the nurse had said that the breed of dog was susceptible to these types of breathing issues. The Complainant explained to the Provider's Agent that the pet had not been diagnosed by the veterinary doctor and she informed the Provider's Agent that she would get a letter from the vet confirming this. The Provider's Agent advised that once it received this letter it would review it and a decision would then be made.
- **11 April 2019:** The Complainant telephoned the Provider enquiring as to whether it had received the letter from the veterinary clinic. The Provider's Agent informed the Complainant that it had not yet received the letter. The Complainant then emailed the Provider with the letter.

- **18 April 2019:** The veterinary doctor telephoned the Provider and informed it that on 10 May 2017 the pet was at the clinic for a vaccination and had presented with ocular discharge and as a result “Piriton” was recommended, as the symptom was seen as a sign of an allergic reaction. The vet further explained that “Piriton” had not been given for symptoms the dog was showing at the time. The vet explained that the veterinary nurse advised the Complainant of BOAS, which the breed of dog was predisposed to.
- **18 April 2019:** The Provider issued its Final Response Letter to the Complainant and advised that the declination of the pre-authorisation for the pet’s BOAS surgery was being maintained.
- **18 June 2019:** The Provider received the Claim Form for the veterinary fees for the BOAS surgery.
- **24 June 2019:** The Complainant’s claim for the pet’s BOAS surgery was declined on the basis that the pet had showed signs of the condition before the inception of the policy.

Policy Terms and Conditions

Within the policy document, I note the following definition:

“Clinical Signs

Changes in the pet’s normal healthy state, its bodily functions or behaviour”.

I also note the following in relation to Veterinary fees that are covered by the policy and veterinary fees that are not covered:

“Section 1: Vet Fees

This section applies in the Republic of Ireland, and for not more than 30 days in any period of insurance for temporary visits to the UK, the Isle of Man and the Channel Islands as long as the purpose of the travel is not to seek veterinary treatment.

<i>What We will pay</i>	<i>What We will not pay</i>
<p><i>The cost of any Treatment Your pet has received during the Policy Year for an Illness or Injury.</i></p> <p><i>The Maximum Amount Payable under this section is displayed on Your Schedule.</i></p>	<p><i>1. More than the Maximum Amount Payable.</i></p> <p><i>2. The cost of any Treatment for:</i></p> <ul style="list-style-type: none"> • <i>an Injury that happened or an Illness that first showed Clinical Signs before Your Pet’s cover started; or,</i>

<p>What You pay</p> <p><i>For each Illness or Injury that is treated during the Policy Year and is not related to any other Illness or Injury treated during the same Policy Year. You must pay the Excess as shown on Your Schedule.</i></p>	<ul style="list-style-type: none"> • <i>an Injury or Illness that is the same as, or has the same diagnosis or Clinical Signs as an Injury, Illness or Clinical Sign Your Pet had before its cover started; or,</i> • <i>an Injury or Illness that is caused by, relates to or results from an Injury, Illness or Clinical Sign Your Pet had before its cover started,</i> <p><i>no matter where, in or on Your Pet’s body, the Injury happened or the Illness or Clinical Signs were noticed.</i></p> <p>3. The cost of any Treatment for:</p> <ul style="list-style-type: none"> • <i>an Illness that first showed Clinical Signs within 14 days of Your Pet’s cover starting; or,</i> • <i>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,</i> • <i>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,</i> <p><i>no matter where, on or on Your Pet’s body, the Clinical Signs were noticed”.</i></p>
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Furthermore, on the Complainant’s policy summary on page 1, the following is recorded:

“Features and Benefits	Cover details	Main Exclusions
Vet Fees	For vet fees each year including hospitalisation and referral up to €4,000.	<p><i>The cost of any treatment for an injury or illness that is the same as, results from, or first showed clinical signs before your pet’s cover started.</i></p> <p><i>The cost of any treatment a Vet normally recommends to prevent injury or illness”.</i></p>

Analysis

The Complainant incepted the policy with the Provider for her new pet on the **18 May 2017** after she returned the completed “**Additional Pet**” form, which the Provider received on 12 May 2017.

Some 2 years later the Complainant’s pet underwent surgery and treatment between **7 May 2019** to the **9 May 2019** for BOAS (Brachycephalic Obstructive Airway Syndrome).

In the Complainant’s submissions to this Office, I note the following:

“...I never presented to the vet with [pet’s name] on the 11/05/2017. I made a phone call to [the veterinary clinic] on that date to discuss [pet’s name] symptoms. I also never spoke to the vet on the phone at the time I spoke to the veterinary nurse. The nurse advised me to try giving [pet’s name] piriton and suggested it could be an allergy and call her tomorrow if I was still not happy and go from there. The veterinary nurse asked me at the time if I knew about the breed in general and I said no and she gave me the information about breed problems in general. When I gave [pet’s name] the piriton tablet he was fine and I didn’t have to ring the vets back”.

[My emphasis]

Pet insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In applying the terms and conditions of the parties’ contractual arrangement to this complaint, I note the policy definition of “*Clinical Signs*”. Furthermore, the policy booklet makes clear what is covered and what is not covered under the policy. The Provider makes clear that it will not pay for veterinary fees where Clinical Signs were present before the purchase of the policy, including any illness that showed clinical signs within the first 14 days after the pet’s cover started.

Furthermore, on the Complainant’s policy summary, I note that one of the Main Exclusions is:

“The cost of any treatment for an injury or illness that is the same as, results from, or first showed clinical signs before your pet’s cover started”.

Having reviewed the medical files submitted to this Office, I note the following records for the dog, dated **11 May 2017** from the veterinary clinic:

“van 11/05/17 on re dog v+ once - ate/drank/form all good - sneezing/coughing/gagging (foam) - explained breed problems (stenotic nares/tracheal stenosis/elongated soft palate/laryngeal collapse - well explained in simple terms) etc and try piriton first then call [vet] if still not happy and go from there!!!!”.

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The Provider submitted that:

“Following the assessment of the clinical history received from the clinic, we noted that on 11th May 2017 the pet showed clinical signs of the condition for which the surgery was recommended (BOAS).”

In applying the terms and conditions of the policy to these events, I accept that the Provider was entitled to form the view based on the evidence, that the Complainant’s pet had “clinical signs” on **11 May 2017**, which was before the policy inception on **18 May 2017**.

Furthermore, in applying the terms and conditions of the policy, I note the following:

“What we will not pay

2. The cost of any Treatment for:

- *an Injury that happened or an Illness that first showed Clinical Signs before Your Pet’s cover started; ...”*

I note that during a telephone conversation between the Complainant and the Provider’s Agent, the Complainant was asked:

“...has he been seen by a vet, been unwell, had any injury or skin complaints aside from vaccinations or neutering”

The Complainant in response to this answered “**No**”.

This response was not however correct, as based on the veterinary records, the dog had been sneezing, coughing and gagging on **11 May 2017**.

I note that on the 29 March 2019, the Complainant was contacted by the Provider by email informing her that the pre-authorisation for her pet’s BOAS surgery had been declined. As a result the Complainant contacted the Provider on the 2 April 2019 and advised the Provider that the symptoms noted in the veterinary history dated 11 May 2017 related to her pet’s allergies, and that the veterinary clinic could provide evidence of this.

The Provider informed the Complainant that once this information was received, it would assess the new information and make a determination taking account of the additional new evidence. I note from the evidence that the Provider then received the letter from the veterinary clinic on **11 April 2019** which stated as follows:

“This is to state that [pet’s name], above patient, was never presented, examined for or diagnosed with any upper respiratory tract, pharyngeal or laryngeal condition by us”.

I note in the Provider's submissions to this Office the following:

"...we contacted the veterinary clinic in order to enquire the recommendation of the antihistamine medicine for the pet on the 11th May 2017. The veterinary doctor contacted to us on the 18th April [2019] and confirmed that the Complainant rang the practice on the 11th May 2017 to advise that the pet was sneezing/coughing and gagging foam. As the day before, on the 10th May 2017 when the pet was presented at the clinic it was noted the pet had runny eyes, the antihistaminic medicine was recommended as the nurse considered these signs were the effect of an allergic reaction.

The veterinary doctor advised that the nurse told the Complainant that the breed of dog is predisposed to respiratory medical issues ("stenotic nares/tracheal stenosis/elongated soft palate/laryngeal collapse")

Based on the new information provided by the veterinary doctor, all the evidence on file was reviewed and a Final Response letter was issued to the Complainant on the 18th April 2019 advising that our position regarding the declination of the pre- authorisation for the pet's BOAS surgery is maintained

We appreciate the veterinary doctor's new information provided [on] the 18th April 2019 and acknowledge that the pet was not diagnosed at the clinic with a respiratory illness on the 11th May 2017.

Nonetheless, we arrived at the conclusion that the pet was showing clinical signs (as defined by the pet policy) of Brachycephalic Airway Obstruction Syndrome based on the notes that were taken by the nurse at the time of the call, on the 11th May 2017."

Having considered all the evidence submitted to this Office, including the terms and conditions of the policy, along with the dog's veterinary records, I am satisfied that the Provider was entitled to form the opinion that the Complainant's pet had shown "*clinical signs*" before the inception of the policy, and that therefore, the dog was not covered under the policy for the cost of the veterinary treatment received. As a result, I accept that it was reasonable for the Provider to decline the Complainant's claim for benefits for the dog's BOAS treatment.

I am satisfied that all the information that was given to the Complainant was communicated in a professional and fair manner and was clearly explained both in the written and verbal correspondence.

In considering the complaint under **Provision 7.6** of the "**Consumer Protection Code**" I am satisfied that the Provider has met its obligations. Before the Provider issued a decision on the Complainant's claim, it informed the Complainant that it would require pre- authorisation details from the veterinary clinic along with all veterinary records. Once the Provider received this information, it then made its decision.

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Furthermore, when the Complainant contacted the Provider on the 2 April 2019, after the Provider had issued its declination letter, it re-reviewed the claim and spoke to the veterinary doctor, before it issued its decision based on the new information.

I accept that the Provider was entitled to take the view that the dog had displayed clinical signs of Brachycephalic Airway Obstruction Syndrome (BOAS) on the **11 May 2017**, being “sneezing, coughing, gagging”. For the policy exclusion to apply, it was not necessary for the dog to have been diagnosed with any particular condition, nor was it necessary for the dog to have presented to the veterinary practice for examination. Rather, the records show that the dog displayed the symptoms in question and indeed the Complainant’s own submission confirms that the reason she telephoned the veterinary clinic on 11 May 2017 was to discuss those very symptoms.

I note that since the Preliminary Decision was issued to the parties, the Complainant has pointed to a claim she made to the Provider, in **October 2017**, when her pet was gagging and foaming at the mouth, and which resulted in him having surgery, the cost of which was covered by the Provider, without any issue. She has also pointed out that her pet was diagnosed with Epilepsy in **March 2018**, the symptoms of which can be vomiting, foaming at the mouth, shortness of breath, among others, and she points out that nevertheless, there was no issue with that illness either, which was covered by the Provider.

The Complainant believes that the Provider’s approach displays a contradiction as the Provider previously paid out on claims regarding the dog’s ongoing vomiting from 2017, and there was never an issue, nor was it ever suggested that the dog was showing clinical signs of BOAS until he had to have surgery in May 2019.

The Provider, in reply has pointed out that:

- On the medical history from the veterinary clinic ... it is stated for **22nd June 2017**:
 - *“vomit twice yesterday, once this morning, normal faeces this morning, no faeces in rectum, temp 101, abdomen palp, clear but o thinks may have eaten small piece of oil tank?? [emphasis added] Yesterday, offered xrays to be sure no obstruction, o wants to wait and see, adv back no later than tomorrow am if still not well, otherwise slow intro bland food.*

- On the medical history from the veterinary clinic ... it is stated for **11th October 2017**:
 - *“admit drip, sudden onset vomiting within past hour, faeces in rectum, t normal, can feel f.b? [Foreign body] admit for ivft”.*

The Provider has explained that the claim for veterinary fees incurred and submitted by the Complainant was accepted and paid at that time because the vet suspected that a foreign body was the cause of the sudden onset of vomiting. It points out that ingestion of a foreign body is seen as an injury, rather than an illness, and that injury cover starts immediately from when the policy is purchased.

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Having considered the details of those other claims, I accept the Provider's explanation as to why it was appropriate to admit the Complainant's other claims for payment under the policy in place. On the basis however of the evidence made available by the parties, details of which are outlined above, I am satisfied that the Provider's conduct in refusing to admit the Complainant's claim for payment of benefit towards the cost of her dog's surgery in **May 2019** was a reasonable decision. I also accept that the Provider acted in accordance with the terms and conditions of the policy, in declining that particular claim, even though it has admitted other claims made by the Complainant under the policy in question.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 January 2021

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.