



<b><u>Decision Ref:</u></b>	2022-0064
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Pet Insurance
<b><u>Conduct(s) complained of:</u></b>	Complaint handling (Consumer Protection Code) Fees & charges applied Failure to provide product/service information
<b><u>Outcome:</u></b>	Rejected

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

The Complainant holds a pet insurance policy by a pet insurance company (the "Provider").

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

On **1 February 2017** the Complainant attended a Veterinary Practice with her dog who the vet determined was having a "gagging episode." On **8 February 2017**, the Complainant incepted a pet insurance policy with the Provider to cover the dog.

In **June 2019** the practice vet referred the dog to a Veterinary Hospital, which the Complainant contends was for investigations unrelated to the previous *gagging episode*. In **June 2019**, the Complainant asserts that the Provider refused to pay the Veterinary Hospital fees under her pet insurance policy. The Complainant states the "*[the Provider] maintain the problem was there prior to the commencement of the policy based on the fact that the 'condition has the same clinical signs' as those which the vet noted on the visit of February 2017.*"

The Complainant relies on a letter from her Veterinary Practice, dated **5 June 2019**, which states that the event in **February 2017** has "*no bearing on any current or recent issues that are the subject for investigation at [the Vet hospital].*"

The Complainant asserts that:

*"I purchased the insurance on-line from [Provider] on the 08/02/2017 I completed the form on-line, I set-up the direct debit and got confirmation from [Provider] that everything was in order, I continued to pay monthly and the insurance was renewed every year with no problems."*

The Complainant contends that:

*"[The Provider] are refusing to pay for the investigation carried out, on [Dog], by [Veterinary Hospital]. This was recommended by our vet. [Provider] maintain the problem was there prior to the commencement of the policy based on the fact that the 'condition has the same clinical signs' as those which the vet noted on the visit of February 2017. Reading the letter from the vet of 5/6/19, he notes that 'in his opinion this incidence has no bearing on any current or recent issues that are the subject for investigation at [Veterinary Hospital]'. [Provider] have never seen the dog whereas the vet has tended to [Dog's] requirements from the moment we got him."*

The Complainant wants the Provider to pay the invoice from **June 2019** from the [Veterinary Hospital] in the amount of €1,356.68 (one thousand three hundred and fifty six euros and sixty eight cent).

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

The Provider says that the Complainant's pet insurance policy was underwritten by two separate underwriters, one at the policy's inception on **8 February 2017** (Underwriter A) with such underwriting being transferred to another underwriter on **16 May 2018** (Underwriter B).

The Provider, in its **Final Response Letter** of **18 June 2019**, states that at the point of claim, the condition and or diagnosis noted was *Breathing Difficulties* and it sets out that the dog had been referred for investigation of a two-year history of coughing and reverse sneezing, and a 6 month history of snoring and, as a result, the condition was considered chronic and pre-existing, and therefore, was not covered by the Complainant's pet insurance policy.

/Cont'd...

By letter dated **5 June 2019**, the Provider wrote to the Complainant and said as follows:

*"The start date of this policy is 08/02/2017. We can see that on 02/02/2017 6 days prior to policy inception, [Dog] presented to the vet, chest x-rays were performed and the pet was treated with antibiotics and steroids. No notes were recorded at the time of the consultation. We recently asked for further information in relation to this date and the vet stated that the clinical signs that pet presented with included retching and gagging. The clinical signs recorded on 02/02/2017 appear to be very similar to the current issue; bouts of reverse sneezing and coughing. Chest x-rays were performed on 02/02/2017, this indicates that the vet was suspicious of a respiratory issue. It appears that no diagnosis was reached on this date...We are unable to cover treatment and investigations of the current respiratory issue. Investigations in relation to a possible respiratory issue were performed on 02/02/2017 and the pet was also showing similar clinical signs on this date."*

The Provider states that:

*"The clinical signs noted by [Veterinary Practice] in February 2017 are the same as the clinical signs as for the condition ultimately diagnosed by [Veterinary Hospital]. In summary, the clinical presentations for this condition for this pet throughout 2017, 2018 and 2019, while recurrent were undiagnosed by the [Veterinary Practice]."*

The Provider asserts that it acted in line with the **Terms & Conditions** of the Complainant's pet insurance policy in determining that the dog's condition was pre-existing and was therefore excluded by the policy.

### **The Complaint for Adjudication**

The complaint is that in **June 2019** the Provider wrongfully refused to indemnify the Complainant's claim for veterinary fees having wrongfully determined that the medical condition claimed for, pre-existed the inception of policy cover.

### **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.

/Cont'd...

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 **25 January 2022**, 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 Provider relies on its **Terms and Conditions** where at *Vet Fees, What We Will Not Pay*, page 7, it says as follows:

*"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.*

*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.*

*Claims resulting from a Condition or Injury that is specifically excluded on the Policy Certificate or generally not covered by these Terms and Conditions."*

The Provider's **Terms and Conditions** define *Clinical Signs* as "*changes in your Pet's normal healthy state, its bodily functions and/or behaviour.*"

The Provider's **Terms and Conditions** define *Condition* as "*any Illness, Injury or disease, or any Clinical Signs or signs of Injury, Illness or disease including related problems, Illnesses and diseases.*"

The *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004* are relevant. These Regulations say that when a consumer signs a contract online that they must receive comprehensive information about the contract in advance of signing it, that they can avail of a cooling-off period and that they must be dealt with fairly.

I note that the Veterinary Hospital wrote to the Veterinary Practice by letter dated **10 June 2019** and said as follows:

*"Thank you for referring this case to [Veterinary Hospital]. [Dog] was referred for investigation of a two-year history of coughing and reverse sneezing, and a six-month history of snoring.*

*Physical examination findings: At presentation to [ Veterinary Hospital], physical examination identified a positive tracheal pinch. It was otherwise unremarkable...*

*Diagnosis:*

*Possible chronic bronchitis (pending BAL culture) Moderate tonsillar eversion and erythema*

*Mildly elongated soft palate*

*Mild nasopharyngitis...*

*It is likely that the reverse sneezing is as a result of the nasopharyngeal inflammation, and possibly related to the tonsillar eversion, however a dynamic condition such as epiglottic retroversion remains a differential. The snoring is likely as a result of the elongated soft palate and may be associated with a BOAS esque condition, which is occasionally encountered in this breed of dog. Surgical management of both the tonsillar eversion and elongated soft palate could be considered however the clinical signs seem relatively mild at present."*

The Provider submits that:

*"On the report provided by [Veterinary Hospital] dated the 10/06/2019, it is stated that:*

*'[Dog] was referred for investigation of a two-year history of coughing and reverse sneezing, and a six-month history of snoring.'*

*In 2017 (the year in which the report from [Veterinary Hospital] refers to [Dog] presented to [ Veterinary Practice] on the 01/02/2017, 02/02/2017, 07/02/2017 with the clinical signs of:*

/Cont'd...

*'RETCHING GAGGING AND NOT EATING DIFFICULTY SWALLOWING'  
'appetite still not great start on steroids 1 2 days 1/2 daily then 1./2 eod.'  
'Prescribed Noroclav colvasone, prednicortone. Noraclav prescribed again  
14/09/2018 and again 11/04/2019 in addition to prednicortone.*

*These are the only recorded clinical signs for this condition in 2017 with no recorded visits in June 2017."*

In its **Final Response Letter** dated **18 June 2019**, the Provider wrote to the Complainant, and said as follows:

*"A claim from [Veterinary Hospital] was received on the 17/06/2019. A full veterinary report was provided with your claim dated the 10/06/2019. The report advised:*

*'[Dog] was referred for investigation of a two-year history of coughing and reverse sneezing, and a 6- month history of snoring.'*

*[Veterinary Hospital] listed possible chronic bronchitis, moderate tonsillar eversion and erythema, mildly elongated soft palate/BOAS (to account for snoring) and nasopharyngitis as diagnoses. [Dog] presented to [Veterinary Practice] on the 01/02/2017 with the clinical signs of retching, gagging, inappetence and difficulty swallowing. This was before the inception date of your Policy. As per your Policy Terms and Conditions, there is no cover for any Condition that has the same clinical signs as an illness your Pet had before the start date. There is also no cover for any Condition that first showed clinical signs before the start date....The Condition you are claiming for is not acute, but chronic in nature (2 years duration). Your Pet presented to [Veterinary Practice] one week prior to your Policy inception with the same and similar clinical signs as to the ones noted by [Veterinary Hospital] for the current investigation."*

The Provider also states that:

*"The veterinary notes in February 2017 did not only reference a 'gagging episode' but referenced 'retching, gagging and not eating, difficulty swallowing - booked for bloods and x-rays' - these are all clinical signs and medical treatments for (BOAS) Brachycephalic Obstructive Airway Syndrome as ultimately diagnosed by [Veterinary Hospital], who upon examination confirmed the duration of the illness. The pet subsequently presented in 14/9/18 with further respiratory issues and was prescribed the same medications as the 'gagging episode' prior to policy Inception."*

/Cont'd...



The Provider submits that:

*"For the avoidance of doubt BOAS, as outlined above and as diagnosed by [Veterinary Hospital], is a congenital condition which is present from a pet's birth which combined with the clinical presentation in February 2017, confirms the clinical existence of this condition prior to policy inception."*

I note the contents of the **Claim Form** for the Provider dated **2 May 2019** (referring to treatment between **14 September 2018 – 17 April 2019**) which notes *Condition / Diagnosis* as *"Harsh lung sounds – GF suspects pulmonary imaging + BAL."* I note the contents of the **Claim Form** for the Provider dated **11 June 2019** (referring to treatment on **14 June 2019**) which notes *Condition / Diagnosis* as *"Investigations of reverse sneezing / coughing."*

The Provider submits that:

*"In this case three separate claim forms were completed by Veterinary Practitioners. Each had a different Condition or Diagnosis listed. These were, 'Harsh Lung Sounds, GF suspects Pulmonary (unreadable word) + BAL' 'Investigation of reverse breathing and coughing.' 'Respiratory workup'. All of these Veterinary descriptions are used interchangeably by veterinary practitioners as a condition reference as well as a clinical sign and relate directly to the ultimate diagnosis by [Veterinary Hospital] of Brachycephalic Airway Syndrome."*

The Complainant submits a letter from her Veterinary Practice, dated **5 June 2019**, which states that her dog presented in **February 2017** to the Veterinary Practice *"with a gagging episode"* and that *"we were concerned re a possible swallowed or inhaled foreign body so under general anaesthetic we examined the throat....there was a good improvement over the next few weeks. In my opinion this incident has no bearing on any current or recent issues that are the subject for investigation at the [Veterinary Hospital]."*

The Provider submits that:

*"Given that the medications prescribed by the [Veterinary Practice] in February 2017 (anti-biotics and anti-inflammatory Steroids) were not related to the ingestion or inhalation of a foreign body (combined with lack of evidence of same on X-ray) and given that this (highly medically relevant) information was not recorded in their contemporaneous notes we cannot understand how, some 2 years later, the vet asserts that the treatments given were for same. The lack of definitive diagnosis at the time combined with the intervening continuous clinical presentations and treatments in conjunction with the ultimate diagnosis by [Veterinary Hospital] makes it impossible to separate the events of February 2017*

/Cont'd...

*with the final diagnosis of BOAS...In the appeal letter submitted by [Veterinary Practice], the Vet advises that [Dog's] gagging improved over the 'next few weeks' However, we do not have any evidence that [Veterinary Practice] examined [Dog] for this Condition in the weeks following the 07/02/2017 and so we do not understand how they can make such an assertion having not examined the pet."*

I note the Provider's assertion that *"the clinical signs noted by [Veterinary Practice] in February 2017 are the same as the clinical signs as for the condition ultimately diagnosed by [Veterinary Hospital]."* I note that the Provider submits that *"the veterinary notes in February 2017 did not only reference a 'gagging episode' but referenced 'retching, gagging and not eating, difficulty swallowing - booked for bloods and x-rays' - these are all clinical signs and medical treatments for (BOAS) Brachycephalic Obstructive Airway Syndrome as ultimately diagnosed."*

In particular, I note that the Complainant's dog presented with symptoms six days prior to the inception of the policy. I note the Provider's submission that the *"pet subsequently presented in 14/9/18 with further respiratory issues and was prescribed the same medications as the 'gagging episode' prior to policy Inception."* I note in particular the Provider's submission that *"BOAS, as outlined above and as diagnosed by [Veterinary Hospital], is a congenital condition which is present from a pets birth."*

I am satisfied that it was reasonable for the Provider to conclude that the Complainant's dog had clinical signs of BOAS prior to the inception of the pet insurance policy, because no evidence has been submitted to suggest that the Provider ought to have taken the view that the issue related to *"the ingestion or inhalation of a foreign body"*. I note the Complainant's submission that *"the [Provider] have never seen the dog whereas the vet has tended to [Dog's] requirements from the moment we got him."* I am satisfied that the Provider is entitled to make an assessment on the basis of the clinical evidence and records furnished to it by veterinary experts, and it wouldn't be practical for the Provider to itself assess each pet concerned with an insurance claim.

In particular, I note that the Provider's **Terms and Conditions** excludes *"a Condition that first showed clinical signs before the start date"* and excludes *"a pre-existing Condition."* I note that the Provider's **Terms and Conditions** define *Clinical Signs* as *"changes in your Pet's normal healthy state, its bodily functions and/or behaviour."* I am satisfied that it was reasonable for the Provider to conclude that the veterinary assessment carried out in **February 2017** amounted to a *"changes in [Complainant's] Pet's normal healthy state"* which amounted to a *"Condition that first showed clinical signs before the start date."*



As a result, I am satisfied that the Provider was entitled to exclude the **June 2019** claim on the basis that it reasonably concluded that the clinical signs of this condition namely a *'gagging episode,' 'retching, gagging and not eating, difficulty swallowing'* are clinical signs of (BOAS) Brachycephalic Obstructive Airway Syndrome and that these were the symptoms that presented on a date, that pre-existed the policy inception.

The Complainant bought her insurance policy online and the Provider contends that:

*"The complainant completed the purchase process on line ... all information relating to the product was provided in a clear and intelligible format via a durable medium prior to the purchase of the policy. All information relevant to the policy terms was provided to the customer on three separate occasions:*

- 1. During the online quotation process...*
- 2. Prior to issuing the policy the complainant was provided with full quotation documents by email which included:*

- Policy Quotation*
- Policy Terms and Conditions*
- Privacy policy*
- Terms of Business*

- 3. On purchase, the Complainant was provided with full Policy documents which included:*

- Policy Schedule*
- Policy Terms and Conditions*
- Privacy policy*
- Terms of Business."*

The Provider also submits that:

*"the complainant is not stating that she was not aware that pre-existing conditions were not covered under the policy but that the condition in question did not exist at the time of policy inception."*

The Provider also submits that:

*"The customer completed the declaration during the online purchase process noting that the Conditions of Cover as well as the General Policy Terms & Conditions were read understood and accepted. These conditions included all relevant information regarding pre-existing conditions and related exclusions and conditions of cover."*

The Provider also submits that:

*"We were not made aware of the gagging episode at the time of policy inception."*

I am satisfied that the relevant **Terms and Conditions** of the policy were furnished to the Complainant on three different occasions and in a number of formats including by email. In particular, I note that the Provider wrote by letter to the Complainant on **8 February 2017** confirming cover and said:

*"there is no cover under this policy for any illness or injury, death from illness or holiday cancellation costs which occur or arise within 14 days of the inception date of the period of insurance regardless of whether or not they were clinically apparent or reported"*

I am satisfied in that regard, that the Provider adhered to its obligation under the *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004* to supply the Complainant with comprehensive information about the contract in advance of cover being incepted.

In conclusion, I accept that the Provider acted in accordance with the Terms and Conditions of the policy when it refused to cover the Complainant's pet insurance claim for the cost of the tests carried out on **4 June 2019 – 5 June 2019**, at a total of €1,356.68.

Accordingly, in the absence of any wrongdoing by the Provider I take the view that there is no reasonable basis upon which this complaint can be 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.



**MARYROSE MCGOVERN**  
**Financial Services and Pensions Ombudsman (Acting)**

16 February 2022

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.