

The complaint

Mrs C complains about how West Bay Insurance Plc (West Bay) handled a claim under her pet insurance policy for treatment of her dog.

References to West Bay include their agents who administer the policy.

What happened

Mrs C had a pet insurance policy with West Bay, covering her dog, which she took out in February 2023. Later that month, the dog needed surgery on its left leg. Mrs C subsequently made a claim for the cost of the surgery (£4,482.80). West Bay took some eight weeks to assess the claim, before telling Mrs C they wouldn't accept it as the clinical history of the dog indicated it had previously had the same surgery on its right leg. West Bay said this meant the condition requiring surgery in February 2023 was pre-existing. The policy didn't cover pre-existing conditions.

Mrs C challenged the decline of her claim, saying that when the dog had surgery on its right leg in 2018, the left leg was examined and found to be normal. So, Mrs C said this showed there wasn't a pre-existing condition. She'd declared the previous surgery when she took out her policy, which was for lifetime cover. She thought the policy would cover the surgery in 2023, so decline of the claim meant she'd been mis-sold the policy. She was also unhappy at how long West Bay took to assess her claim (she thought it would be three to four weeks, rather than the eight weeks taken).

West Bay considered Mrs C's challenge as a complaint, but they didn't uphold it. In their final response they said when Mrs C took out the policy, the Statement of Fact document issued included reference to medical conditions or diseases that showed clinical signs prior to, or within the first 14 days from policy inception not being covered. West Bay also referred to the policy terms about pre-existing conditions and bilateral illnesses. West Bay referred to the call when she first contacted them to tell them about the dog's condition, saying Mrs C was told the claim would need to be assessed and they couldn't confirm whether it would be accepted until the assessment was complete. So, Mrs C hadn't been told the condition would be covered and the claim accepted. West Bay confirmed they acted correctly to decline the claim.

On the time taken to assess the claim, West Bay said they received it for treatment carried out in April 2023, which they recorded at the start of May 2023. They emailed Mrs C to indicate their aim to assess claims within four weeks. However, due to a high volume of claims received, there was a delay in processing the claim, and Mrs C was informed of the outcome at the end of June 2023. Because it had taken longer to assess than their target, West Bay apologised and awarded £40 compensation.

On the policy being mis-sold, West Bay said they hadn't made any errors. The policy was taken out online and they didn't have any influence with the quote process. Once the policy was purchased, a copy of the policy documents was issued to Mrs C, detailing information on the required level of cover and any exclusions. It was Mrs C's responsibility to ensure the policy documents were read and understood. West Bay said Mrs C's claim was assessed in

line with the policy terms, based on the information provided to them, and the outcome (decline of the claim) remained unchanged.

Mrs C then complained to this Service, disputing West Bay's decline of her claim on the basis of a pre-existing (and bilateral) condition. She thought the policy would have covered the need for surgery, so she'd been mis-sold the policy. She was also unhappy at how long it took for the claim to be assessed.

Our investigator initially upheld Mrs C's complaint, concluding West Bay hadn't acted fairly in declining her claim. She didn't think the surgery in April 2023 was a continuation of an existing condition (the earlier surgery) so West Bay hadn't acted fairly to apply the exclusion for a pre-existing (bilateral) condition. She thought West Bay should settle Mrs C's claim in line with the remaining terms and conditions of the policy and pay £100 compensation for distress and inconvenience.

West Bay disagreed with the investigator's initial view, saying the clinical history of the dog (in 2019) indicated cruciate ligament surgery in October 2018, and cruciate ligament surgery on a different leg in April 2023. So, the condition was the same (albeit in different legs) and first occurred before policy inception. So, they'd fairly applied the exclusion for a pre-existing (bilateral) condition.

Our investigator considered the further points and evidence from West Bay and issued a second view, concluding West Bay had acted fairly in treating the surgery in April 2023 as a continuation of the same condition previously treated in 2018. So, West Bay acted fairly in declining Mrs C's claim.

Mrs C disagreed with the investigator's revised conclusions, and requested an ombudsman review the complaint. In disagreeing, she said West Bay had the clinical history of her dog at the time she took out her policy, so she expected a lifetime policy to cover the cost of the surgery in April 2023 – so the policy had been mis-sold to her. She also disagreed that her dog had a pre-existing condition, or that it was fair to treat the two incidences of cruciate ligament treatment as a bilateral illness given the time between the two treatments.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to decide whether West Bay have acted fairly towards Mrs C.

The three key issues in Mrs C's complaint are, firstly, the decline of her claim. West Bay say the condition was pre-existing (and bilateral) so not covered. Mrs C disagrees. The second issue is the time taken to assess the claim. Mrs C expected it to take up to four weeks, whereas it took eight weeks. West Bay acknowledge it took longer to assess than their target and have apologised and awarded £40 compensation. The third issue is whether Mrs C was mis-sold the policy. Mrs C says the policy was mis-sold, as she declared the condition when taking out the policy and she expected the need for surgery on the dog's leg to be covered. West Bay say Mrs C was aware of the policy terms relating to pre-existing and bilateral conditions when issued with the policy documents when taking out the policy.

On the first issue, I've considered both views carefully, including the relevant terms and conditions of the policy together with the supporting information and evidence, including the clinical history of Mrs C's dog. Starting with the terms and conditions of the policy, West Bay refer to the following in their final response, in respect of pre-existing conditions:

“Any illness or injury or complication directly resulting from another injury or illness, whether diagnosed or undiagnosed or that has been identified or investigated by a vet or is otherwise known to you prior to the start of the insurance.”

West Bay also refer to the Statement of Fact and the following affirmation by Mrs C:

“You accept and understand that medical conditions or diseases that show clinical signs prior to or within the first 14 days from your policy inception date will not be covered.”

West Bay also set out the following definition of bilateral illnesses within the *General conditions applicable to all policy sections* part of the policy:

*“For illnesses that can have multiple sites or bilateral illnesses such as eyes, ears, or **legs** (my emphasis) we shall treat all occurrences of an illness as the same illness and charge only one fixed excess per period of insurance...If the condition diagnosed by your veterinary surgeon is the same as a previous condition, they will be treated as the same condition even if the problem is a different part of your pet’s body.”*

*“For example, if your pet has a growth on the left ear which is subsequently found on the right ear both will be treated in benefit terms as the one condition, benefit limits and the start date for the condition will be from the date that the left ear growth was found irrespective of the time difference between diagnoses. We will always treat the same diagnosis as one condition irrespective of when or where in your pet’s body the symptoms are found even where the condition is diagnosed in **different legs** (my emphasis) and deciding the start date for the condition it will be the date that the first symptom was noted or the first date of treatment (whichever is earlier).”*

So, the key in this case is whether the clinical history of the dog indicates the same condition treated in 2018 and 2023, albeit on different legs. West Bay refer to clinical notes in 2019 indicating cruciate ligament treatment in 2018. Looking at the clinical notes, there’s an entry in March 12019 that states:

“Owner aware that risk of other cruciate going...”

This indicates the treatment of the right leg was cruciate ligament-related. And as there’s no dispute the surgery on the left leg in April 2023 was on a cruciate ligament, I’ve concluded the same diagnosis (condition) applies to both treatments. And looking at the above policy terms and conditions, particularly the references to legs that I’ve emphasised, then this would reasonably be held to be a bilateral illness. The wording also makes it clear the time difference between the two treatments (October 2018 and April 2023) isn’t relevant – the start date for the condition is the date the first symptom was noted or the first treatment date. Which would be either October 2018 or the clinical note in March 2019. Both of which were before the policy inception in February 2023.

I’ve also considered the general principle, where an insurer relies on an exclusion, the onus is on them to show it’s reasonable to apply it. Given the points noted above, I’m persuaded West Bay have shown enough to apply the exclusions for a pre-existing condition and bilateral illness in the circumstances of this case. So, I’ve concluded West Bay acted fairly in line with the policy terms and conditions to apply the exclusions to decline Mrs C’s claim.

The second issue in Mrs C’s complaint is the time taken to assess the claim. Mrs C says she expected the claim to be assessed in three to four weeks – but it took eight weeks. West Bay acknowledge they didn’t meet their target time, citing the volume of claims they were dealing with at the time. I think there would have been a loss of expectation on Mrs C’s part,

irrespective of the outcome of the claim. West Bay have apologised and paid Mrs C £40 in recognition of taking longer to assess the claim than Mrs C was led to believe. Looking at the circumstances of the case, I think this is fair and reasonable compensation.

The third issue is whether the policy was mis-sold to Mrs C, as she expected a lifetime policy to cover the surgery on the dog's left leg. West Bay say Mrs C was aware of the policy terms relating to pre-existing and bilateral conditions when issued with the policy documents when taking out the policy.

Looking at the policy terms and conditions set out above, in addition to my conclusion that West Bay fairly applied the exclusions for pre-existing condition and bilateral illness, then I don't agree the policy was mis-sold. The policy terms clearly indicate pre-existing conditions aren't covered – this is also a common feature of pet insurance policies more generally. As are bilateral conditions (illnesses). The fact Mrs C doesn't think her dog had a pre-existing condition or that it was fair to apply the bilateral illness term to decline the claim doesn't mean the policy was mis-sold. Both terms are clearly set out in the policy documents.

And this isn't affected by Mrs C saying the clinical history of her dog was known to West Bay when she took out the policy. I say that because any claim made under the policy would be assessed against the policy terms and conditions, including those for pre-existing conditions and bilateral illness. And I think West Bay have done so fairly as I've concluded for the reasons set out above.

My final decision

For the reasons set out above, my final decision is that I don't uphold Mrs C's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 January 2024.

Paul King
Ombudsman