

The complaint

Mr E and Mrs E complain that UK Insurance Limited trading as Direct Line Pet Insurance (Direct Line) has unfairly turned down their claim on their pet insurance policy.

What happened

While on holiday, Mr E and Mrs E's dog injured his left foreleg running on a beach. Mr E says their dog's leg was left hanging and not weight-bearing following the injury. So Mr E and Mrs E took their dog for urgent treatment to a local veterinary practice and were then referred to an orthopaedic veterinary practice.

In the previous few months, Mr E and Mrs E's dog had been seen by their own veterinary practice because of lameness to his right foreleg. I understand this right leg lameness was discussed in Mr E and Mrs E's consultation with the orthopaedic vet.

The X-rays and CT scans taken by the orthopaedic vet showed Mr E and Mrs E's dog had fractured the elbow of his left foreleg and had a fissure on the elbow of his right foreleg. The fracture to his left elbow was surgically repaired by the orthopaedic vet. Mr E and Mrs E made a claim on their pet insurance policy for this treatment, which Direct Line settled up to Mr E and Mrs E's policy limit of £4,000 per condition.

Around six or seven weeks later, Mr E and Mrs E's dog had surgery at their own veterinary practice to repair the fissure on the elbow of his right foreleg. Mr E and Mrs E made a claim on their pet insurance policy for this treatment, which Direct Line turned down. It did this in reliance on a term in Mr E and Mrs E's policy that limits cover for what is called a "*Bilateral Condition*".

Mr E and Mrs E didn't think this was fair but, when they complained to Direct Line, it didn't uphold their complaint. Direct Line said that, although Mr E and Mrs E's dog's left foreleg fracture was triggered by the injury on the beach, the "*proximate cause*" was a condition known as incomplete ossification of the humeral condyle (IOHC). It says because this is a bilateral condition, the claims for Mr E and Mrs E's dog's two elbow surgeries had been correctly assessed and fell within the policy limit on cover of £4,000 per condition.

Unhappy with this outcome, Mr E and Mrs E brought their complaint to us. Initially, the investigator who looked at Mr E and Mrs E's complaint didn't uphold it. He didn't think it was unreasonable of Direct Line to rely on the opinion of the orthopaedic vet – which was that the same condition affected both of Mr E and Mrs E's dog's forelegs – to turn down their claim.

But having considered the matter further, in a second view, our investigator upheld Mr E and Mrs E's complaint. He said there'd been no treatment for the "*underlying condition*" when the per condition claim limit on Mr E and Mrs E's policy was reached (that is, following the surgery for the fracture to the left foreleg), which he said was for a one-off incident. So our investigator asked Direct Line to deal with Mr E and Mrs E's claim for their dog's right foreleg treatment as a separate condition and consider it under the remaining terms and conditions of Mr E and Mrs E's policy.

Direct Line disagreed with our investigator's second view. Among other things, it said the fact that Mr E's dog has *"now been diagnosed with IOHC strongly supports this as the underlying and proximate cause of the fracture"*. So Mr E and Mrs E's complaint came to me to decide.

In my provisional decision of 24 May 2023, I explained why I didn't intend to uphold Mr E and Mrs E's complaint. Mr E and Mrs E disagree with my provisional decision. They say, among other things, *"there is not one piece of evidence that can categorically prove that the front left leg had any previous history of IOHC or any other type of injury, only assumptions"*. Direct Line says it has nothing to add to my provisional decision.

So Mr E and Mrs E's complaint has come to me for a final decision.

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.

Having done so, I've decided not to uphold Mr E and Mrs E's complaint. I know Mr E and Mrs E will continue to be disappointed with this outcome but I am of the view that it's a fair and reasonable one. I gave my reasons in my provisional decision and here's what I said:

"The first thing I've looked at is Mr E and Mrs E's pet insurance policy. This says Mr E's dog is insured for up to £4,000 or for 12 months from the date of first treatment (whichever limit is reached first) for each condition he has. This is the "benefit limit" of Mr E and Mrs E's policy.

The policy also refers to what is called a "Bilateral Condition". It says this is any condition that affects body parts of which Mr E and Mrs E's dog has two – it gives as examples eyes, ears, hips, cruciate ligaments, hips and patellae. And it says when applying a benefit limit or exclusion to Mr E and Mrs E's policy, it treats a Bilateral Condition as one condition.

Direct Line has treated Mr E and Mrs E's claim for their dog's right foreleg surgery as part of their claim for his left foreleg surgery. This is because it says both surgeries were the result of a bilateral condition – that is, IOHC – and so Mr E and Mrs E's claim limit of £4,000 per condition, which has already been reached, applies.

Mr E says he and his wife and their friends witnessed the accident on the beach and it had nothing to do with a bilateral condition. He says the fracture to his dog's left foreleg was entirely separate from the fissure that was found to his right foreleg.

My role isn't to decide what's caused the problems with Mr E and Mrs E's dog's forelegs. It's to decide if Direct Line has acted fairly and reasonably in treating them as a bilateral condition and in applying the benefit limit of £4,000 per condition. This may seem like a fine distinction but it's an important one and I must make my decision by assessing all the facts and evidence I've been given.

Direct Line's position is broadly as follows:

"While [Mr and Mrs E's dog's] LF fracture was triggered by running into a boulder the underlying condition is IOHC. As this is a bilateral condition which predisposes the dog to fissures and fractures we have correctly related the fracture on [Mr and Mrs E's dog's left foreleg] to the fissure on his RF."

One of Direct Line's veterinary nurses reviewed Mr E and Mrs E's dog's medical history and, among other things, said:

"The treatment carried out to the LF elbow with a transcondylar screw and plate is treatment used for an IOHC fissure/fracture repair. This is not the type of fracture caused only by a collision (my underlining)."

A Direct Line veterinary nurse also notes the claim made on their behalf by Mr E and Mrs E's own veterinary practice for the surgery to their dog's right foreleg was for "Transcondylar screw RF" – that is, the same procedure as was carried out on Mr E and Mrs E's dog's left foreleg. And, in response to Mr E's argument that, before the injury on the beach, their dog had never been lame on his left foreleg, she says, with IOHC, "medically we know that in some cases no lameness is detected until the bone breaks completely."

As well as the evidence from its own veterinary nurses, Direct Line says the diagnosis of IOHC made by the orthopaedic vets following Mr E and Mrs E's dog's left foreleg fracture "strongly supports this condition as the underlying and proximate cause" of the fracture. I've also seen notes of a call between Direct Line and the orthopaedic veterinary practice and an email from one of the orthopaedic vets. Both of these say the view of two of the vets who were involved in Mr and Mrs E's dog's treatment is that, although two separate limbs were affected, Mr E and Mrs E's dog had the same condition – that is, IOHC.

As I've noted already, Mr E and Mrs E take an entirely different view of the situation. Mr E says they witnessed their dog having a traumatic injury caused by running into a rock, which somersaulted him into the air and left him screaming in agony with his left foreleg hanging and clearly broken. Previously, as I've also noted, Mr E says he'd taken their dog to their own vet because of an occasional limp to his right foreleg. He says the two conditions are entirely unrelated. Mr E also says his own vet's view is that it's impossible to say if Mr E and Mrs E's dog had IOHC in the left foreleg. And Mr E mentions that he's had some issues with the orthopaedic veterinary practice over billing – so he queries whether this means the practice "wouldn't want to assist".

I understand Mr E and Mrs E's point of view about their dog's accident. They watched him dog getting a terrible injury on a beach that clearly resulted in his left foreleg being broken. So, in their eyes, there was no obvious connection between this and the occasional lameness their dog had on a different leg in the months before their holiday.

But Mr E and Mrs E aren't orthopaedic veterinary experts. And, so far, they have given us very limited expert veterinary evidence to support their view that their dog had two separate conditions. Mr E has referred us to some general literature about the differences between a fissure and a fracture. And, as I've mentioned, he says his own vet doesn't support the view of the orthopaedic vets that his dog had IOHC. But I also understand Direct Line asked Mr E and Mrs E's vet for his view on their dog's condition and didn't get one. If Mr E and Mrs E have other expert veterinary evidence to support their view, I'd be grateful if they could send it in and I'll consider this point again.

But, as things stand, and looking at the facts and evidence I currently have, I think Direct Line has acted fairly and reasonably in relying on the opinions of its veterinary nurses, as well as the expert opinions of two vets from the independent orthopaedic veterinary practice who operated on Mr E and Mrs E's dog's left foreleg, in reaching its decision on Mr E and Mrs E's claim for their dog's right elbow surgery. In the absence of expert evidence to the contrary, I think Direct Line has fairly and reasonably applied the policy limit on cover of £4,000 per condition for Mr E and Mrs E's dog's right elbow surgery on the basis that he had a bilateral condition."

As I've already mentioned, Mr E and Mrs E say there's no evidence that categorically proves their dog's front left leg had any previous history of IOHC. They also say their vet has told them:

- A fissure (like the one their dog had on his right foreleg) is usually caused by repeated impact over and above a dog's normal activity – and they say their dog tended to land on his right foreleg when jumping out of the car, etc;
- Transcondular screws are used for most types of leg injury that affect the bone structure; and
- It would be impossible to diagnose IOHC in both legs when one had been so badly fractured.

Mr E and Mrs E say their evidence is completely truthful and all they're looking for is justice. They ask why they should be required to be experts in veterinary procedures to prove their side of the argument when Direct Line's are "*all based on assumptions*"? Mr E and Mrs E say the bottom line is there was nothing wrong with their dog's left foreleg until he collided with the rock. And they suggest there was collaboration between the specialist orthopaedic vets and Direct Line in making the diagnosis of IOHC.

I understand the strength of Mr E and Mrs E's views and I don't doubt their honesty. Mr E and Mrs E are right, I don't have "*conclusive*" proof – one way or the other – as to what caused their dog's left foreleg to fracture. But I don't need it, because our role is to decide complaints based on the "balance of probabilities". That means I must decide what I think is *most likely* to have caused Mr E and Mrs E's dog's left foreleg fracture based on all the facts and evidence I have.

Mr E and Mrs E's eye-witness testimony of what happened to their dog, which they say their friends also saw, is compelling. And I've also considered carefully what Mr E and Mrs E say their vet has told them, as I've outlined above and in my provisional decision.

But, against this (and as I've previously noted) Mr E and Mrs E's vet didn't respond to Direct Line when asked for his views on their dog's diagnosis. If he'd been willing to make his comments first-hand either to Direct Line (or to us), I'd be able to attach more weight to them than I have.

I also have the opinions of two specialist orthopaedic vets that it's "*highly likely*" – in other words, more likely than not – Mr E and Mrs E's dog had IOHC in both forelegs. Mr E describes this as an assumption. While I agree it's not "*categoric proof*", this evidence is much more than an assumption – it's saying, in the view of these vets, there's a high likelihood Mr E and Mrs E's dog had IOHC in both forelegs. We are an evidence-based service and I think it would be unreasonable to ignore this strong evidence from experts – especially in the absence of direct expert evidence to the contrary.

Mr E and Mrs E say there was collaboration between the orthopaedic vets and Direct Line. This is a serious allegation which Mr E and Mrs E haven't substantiated, so it doesn't affect my findings on this complaint.

All in all, despite the additional comments Mr E and Mrs E have given me on my provisional decision, my view on this complaint remains the same. I think Direct Line has acted fairly and reasonably, and in line with Mr E and Mrs E's policy terms and conditions, in turning down their claim for their dog's right foreleg surgery.

My final decision

For the reasons I've given here and in my provisional decision (and which now form part of this final decision), I don't uphold Mr E and Mrs E's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 31 July 2023.

Jane Gallacher
Ombudsman