

The complaint

Mrs S complains about Red Sands Insurance Company (Europe) Limited (Red Sands) handled a claim under her pet insurance policy for treatment of her dog.

References to Red Sands include their agents who administer the policy.

What happened

Mrs S had a pet insurance policy with Red Sands, covering her dog. In February 2023, the dog needed surgery for a fractured hip on its right leg. Mrs S subsequently made a claim for the cost of the surgery (£3,333.23). But Red Sands declined the claim, saying the condition was bilateral, as the dog had fractured its other hip in January 2023. The second claim wouldn't be covered as the policy limit on any single condition in any one year was £4,000 (which had already been exceeded from the claim in January 2023).

Mrs S's vet said there was no evidence of the condition Red Sands said was present or a bilateral condition. The vet provided their diagnosis of the condition to Red Sands and discussion with Red Sands followed. Red Sands then said the dog's condition was hip dysplasia¹ – this was disputed by the vet, saying the diagnosis was speculative.

Red Sands considered Mrs S's challenge as a complaint, but they didn't uphold it. In their final response they noted the clinical notes of the dog's treatment, including x-rays which Red Sands said showed the dog had a degree of hip dysplasia. Red Sands also referred to clinical notes that recorded a comment about suspected degree of hip dysplasia and, subsequently, to a claim for treatment of a fracture of the right femur in January 2023. The claim was for £3,025.49 to which a deduction of £412.37 was made, as the amount by which the claim (with earlier claims) exceeded the policy limit of £4,000 in any one policy year. Red Sands then referred to the subsequent claim for a similar fracture in the left leg some four weeks later. Red Sands concluded the same fracture in the bilateral opposing hip meant the policy wouldn't provide cover until the policy renewed in September 2023.

Red Sands referred to the policy terms and conditions that said a condition in one part of the body that previously occurred in another part would be considered as a bilateral condition (one condition) and covered by the same policy limit. A condition meant any injury or illness with a single cause or diagnosis. Mrs S had accepted the policy terms and conditions when she took out the policy. So, Red Sands confirmed they wouldn't accept the second claim.

Mrs S then complained to this Service, disputing Red Sands' decline of her claim on the basis of a bilateral condition. She'd been affected both financially and emotionally by what had happened and the decline of her claim. She wanted Red Sands to settle her claim and subsequent invoices for the cost of treatment, up to the policy limit of £4,000. She also wanted compensation for the stress and anxiety she'd suffered.

¹ Hip dysplasia is a condition that occurs during the growth stage in dogs, resulting in loosening of the hip joint which leads to dysfunction and pain. As the dog grows the cartilage and bone of the hip begin to wear down. Over time this can lead to arthritis, muscle atrophy and limited mobility. It most commonly affects large-breed dogs and research indicates the condition is hereditary.

Our investigator initially didn't uphold Mrs S's complaint, concluding Red Sands didn't need to take any action. She referred to the clinical history of the dog in January 2023 and subsequently in February 2023, which together she thought indicated the same fracture in both the right and left hips, respectively, in January and February 2023. Looking at the policy wording, she thought it was clear that if a pet developed a condition in one part of their body which previously occurred in another part of the body (of which the pet had two, such as legs), that would be considered to be bilateral and treated as one condition and subject to the same policy limit of £4,000 in any one policy year. Based on this, the claims for the investigation and treatment of the left hip were correctly declined as the policy limit had already been reached from the claims for the right hip in January 2023.

The investigator noted subsequent information from Mrs S's vet confirmed that while the initial diagnosis of the condition was incorrect, the dog had the same 'femoral head and neck excision' (FHNE) condition in both the right and left legs. So, Red Sands had correctly applied the policy terms and conditions in treating these as one condition, with one policy limit for the year, declining the second claim as the limit had already been reached..

Mrs C challenged the investigator's initial view, saying her specialist vet's opinion there was no evidence of hip dysplasia or the initial (incorrect) diagnosis (Legg Perthes). The specialist vet also stated their professional opinion the condition wasn't bilateral. In their opinion the fractures in both legs in successive months were physeal fractures, fractures through the physis (growth plate) which meant a weak point in the bone in growing animals. This was different to a pathological fractures, which were spontaneous, occurring as a consequence of disease in the bone. In the vet's view, pathological fractures would be bilateral – but it would be unfair to classify physeal fractures as bilateral. It was an unfortunate coincidence the dog suffered two fractures of the same type within a short period, to which the dog was predisposed due to its immature age.

Our investigator considered the further points and evidence from Mrs S and her specialist vet. However, considering it against the policy wording, she maintained her view Red Sands had acted fairly in treating the two fractures as one (bilateral) condition in line with the policy terms and conditions.

Mrs S disagreed with the investigator's revised conclusions, and requested an ombudsman review the complaint. In disagreeing, she said Red Sands had initially declined the claim on the grounds of the original diagnoses of Legg Calve Perthes and hip dysplasia. But they'd changed their position when her specialist vet said there was no evidence of either condition. Mrs S said the policy terms didn't state fractures were a bilateral condition. Taking her vet's opinion, she said the only time fractures could be classified as a bilateral condition was if they were caused by a disease or illness (a pathological fracture as the vet had stated). That wasn't the case with the fractures that occurred with her dog.

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 Red Sands have acted fairly towards Mrs S.

The key issue in Mrs S's complaint is whether Red Sands acted fairly in treating the two episodes of surgery and treatment of Mrs S's dog in January and February 2023 as a bilateral condition, and therefore as one condition for the purposes of assessing the claims against the policy limit of £4,000 in any one year for any one condition. Red Sands say they acted in line with the policy terms and conditions in treating the two episodes as one,

bilateral condition and then assessing them against the policy limit. Mrs S, supported by the view of her specialist vet, says it's unfair to treat the two episodes as one condition, that they weren't bilateral. So, Red Sands should consider the second claim as a separate condition, against the policy limit of £4,000.

In considering the issue, I've first considered Mrs S's point that Red Sands initially treated the two episodes as one condition, based on the original diagnoses of Legg Calve Perthes and hip dysplasia. But they'd changed their position when her specialist vet said there was no evidence of either condition and the two episodes were hip fractures (with the cause being physeal fractures, not pathological fractures). While there is some indication from the clinical notes about hip dysplasia, given the central point of disagreement is whether the two hip fractures (in the right leg and left leg respectively in January 2023 and February 2023) should be considered a bilateral condition, I've focused on this issue given the opinion of the specialist vet that carried out the surgery on both occasions.

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 S's dog and the views of her specialist vet. Starting with the terms and conditions of the policy, Red Sands refer to the following extract from the policy booklet in their final response, in respect of bilateral conditions, under a heading *Conditions that affect both sides of the body*:

"If your pet develops a condition in one part of their body that they've previously had in another part of their body, we'll class it as one condition. This is called a 'bilateral condition', and both cases will be covered under the same vet fees limit. Bilateral conditions usually appear in places your pet has more than one of, such as ears, eyes and elbows.

For example, your pet may need treatment for an injured cruciate ligament in their left leg that costs £500. If you have our Super policy, which has a £1,000 limit, there would be £500 left for treatment if they injured the cruciate ligament in their right leg. This is because we'd class these as the same condition."

A similar wording is contained in the Insurance Product Information Document (IPID) which summarises the key elements of the policy. Under a heading *Are there any restrictions on cover?* it states:

"! If your pet has a condition affecting a body part of which your pet has two, this will be considered as one condition."

Red Sands say that 'condition' means any injury or illness with a single cause or diagnosis.

So, the key in this case is whether the clinical history of the dog (and the views of Mrs S's specialist vet) indicates the same condition treated in January and February 2023, albeit on different legs of the dog. In considering this point, I've carefully read the full opinion of Mrs S's specialist vet and I think it's important to set out what I think are the key aspects of their view. They say:

"...By definition a bilateral condition is a medical condition that affects both sides of the body...A fracture can technically be classified as bilateral if it happens on both sides, and that may occur in 'pathological fractures'. Pathological fractures are spontaneous fractures that occur as a consequence of a disease in the bone (example is bone cancer). A physeal fracture (or Salter-Harris fracture), is a fracture through the physis (growth plate). Immature animals have open physis while they are growing. These physis are weak points in the bone because they are cartilage

instead of bone. Due to the intrinsic weakness, fracture through the physis can occur with mild trauma. This is not considered a pathological fracture, as the bone has no disease.

[Name of dog] suffered a physeal fracture of the proximal right femur and approximately one month later suffered the same fracture on the left femur. This is a very unfortunate presentation and is unfair to classify it as bilateral. [Name of dog] had two fractures in a very short period of time, it was a coincidence that it happened to be the same type of fracture...

In [name of dog's] case, it was predisposed to physeal fracture due to the age (immature). There was no confirmation with the investigations carried out that [name of dog] suffered hip dysplasia..."

Looking at the vet's opinion, it's clear Mrs S's dog suffered the same fracture in both legs, which the vet thinks the dog was pre-disposed to because of its age. Looking at this opinion against the wording of the policy terms and conditions about bilateral conditions, I think it would be reasonably considered to be 'a condition in one part of the body that they've previously had in another part of their body'. That is, a condition that occurred in the right leg and then in the left leg a month later.

While the vet draws a distinction between a pathological fracture and a physeal fracture, the wording of the policy doesn't make such a distinction, so I can't say Red Sands have acted unfairly in applying the bilateral condition wording to the case of Mrs S's dog.

Mrs S also says the policy terms don't state fractures were a bilateral condition. But I don't agree this means Red Sands have acted unfairly. That's because I wouldn't expect the policy to list every conceivable condition or injury that might be considered bilateral. Rather, the wording of the policy would be interpreted in the specific circumstances of a case.

I'm satisfied the policy wording can reasonably be interpreted to conclude the respective fractures were the same (bilateral) condition and so Red Sands acted fairly in treating them as one condition and applying the policy limit of £4,000 for any one condition in any one policy year, to decline the second claim for the cost of treatment.

My final decision

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

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

Paul King
Ombudsman