

The complaint

Mrs P complains about Casualty & General Insurance Company (Europe) Ltd (HDi) declining claims under her pet insurance policy for treatment of her dog.

References to HDi include their agents who administer the policy.

What happened

In February 2023 Mrs P had treatment for her dog, which was suffering from rheumatoid arthritis in its front paws and shoulders (first observed and treated in April 2022). Mrs P made two claims for the cost of treatment as the treatment fell into two policy years (£589.13 and £429.49).

However, HDi said they wouldn't accept the claims, as review of the dog's clinical history contained a comment in October 2019 (before Mrs P's policy began in September 2020) referring to severe osteoarthritis in 'RH hock' (right hind leg, hock being located below the knee and corresponding to the ankle joint in a human). They said it showed the dog had a pre-existing condition, before the policy was taken out. Pre-existing conditions weren't covered under the policy.

Mrs P was unhappy about HDi's decline of her claims, saying her claims were for the front paws and shoulder, not the hind leg. The latter condition was caused by an injury to the leg in 2014, which over time had healed and partially fused, leading to the onset of arthritis. The other hind leg didn't have any problems. So, she maintained the arthritis in the front paws and shoulder was unrelated to the arthritis in the hind leg. She also said the vet said the arthritis in the front paws and shoulder was a type of rheumatoid arthritis (an autoimmune condition) whereas the arthritis in the hind leg was osteoarthritis (from joint wear and tear). So, she didn't think the arthritis in the front paws and shoulder was a pre-existing condition.

HDi treated her challenge as a complaint, but they didn't uphold it. In their final response they referred to the initial decline of the claims based on a pre-existing condition (the first signs or symptoms were noticed prior to the start of the policy). HDi also referred to the clinical notes comment in October 2019 and said the clinical history showed ongoing issues, the onset of which was prior to the start of the policy (based on when the condition was first seen – not when it was diagnosed).

Mrs P then complained to this service. She maintained the two conditions were unrelated, affecting different areas of the dog. And one was joint-related osteoarthritis and the other rheumatoid arthritis. She'd had to pay for the cost of treatment, and her dog would need continuing treatment (injections) for the condition (the arthritis in the front paws and shoulder). The cost of treatment would represent a large part of her income. She wanted HDi to pay her claims and agree to cover the cost of the ongoing treatment of her dog.

Our investigator upheld Mrs P's complaint, concluding HDi hadn't acted fairly. She didn't think HDi had done enough to demonstrate the arthritis in the front paws and shoulder was pre-existing, nor that it was related to the arthritis in the hind leg. The clinical history didn't indicate the onset of arthritis in the front paws and shoulder occurred before the policy start.

To put things right, she thought HDi should pay Mrs P's claims in line with the remaining terms and conditions of the policy and pay £100 compensation for distress caused to Mrs P.

HDi disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. They referred to the dog's clinical history and the arthritis in the hind leg (going back to 2016, through to October 2019). Which was before the start of the policy. HDi also referred to the full policy wording, specifically the definition of illness, which they considered meant it was irrelevant where in the dog's body the arthritis affected – the fact the dog had been diagnosed and/or showed signs and symptoms of arthritis prior to the policy start made the condition pre-existing. HDi also said the clinical history since the policy start indicated the treatment administered (particularly an injection at regular intervals) was generalised arthritis treatment (not area-specific). So, any arthritis wouldn't be covered under the policy, as the first signs or symptoms were present before the start of the policy.

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 HDi have acted fairly towards Mrs P.

The key issue in Mrs P's complaint is whether HDi acted fairly in declining her claim for treatment of her dog. HDi's view (as set out in their final response and response to our investigator's view) is that they correctly declined the claim, on the grounds the dog's clinical history indicated a pre-existing condition (arthritis). As a pre-existing condition, it was excluded from cover under the policy. Mrs P's view is that the previous arthritis (osteoarthritis in the right hind leg) isn't related to the current arthritis (rheumatoid arthritis in the front paws and shoulder). So, the latter isn't a pre-condition, meaning HDi should accept her claims.

I've considered both views carefully, including the relevant terms and conditions of the policy (particularly those referred to by HDi) together with the supporting information and evidence, including the clinical history of Mrs P's dog. In their final response, HDi refer to the following summary term in the policy:

"Pre-Existing Condition – The first signs or symptoms were noticed prior to the start of your policy"

While HDi haven't referred to it, the Policy Definitions state a Pre-Existing Condition means:

"...any illness or injury or complication directly resulting from an injury of illness, whether diagnosed or undiagnosed that has been identified or investigated by a vet or is otherwise known to you prior to the start of the insurance or within the first 14 days of the policy for illness or 72 hours in the case of injury."

In their response to our investigator's view, HDi refer to the policy definition of illness. I've considered the full wording of the definition, but I think the more relevant parts are as follows:

"Illness/illnesses: changes in your pet's state of health that are not caused by an accident, or any which may be resulting from gradual or biological cause. Recurring and/or on-going illness shall be considered as one loss. Such illness being defined as:-

- a) Clinical manifestations resulting in the same diagnosis (regardless of the number of incidents or areas of the body affected) to which your pet has an*

on-going predisposition or susceptibility related in any way to the original claim; or

- b) Illnesses which are incurable and likely to continue for the remainder of your pet's life.*

For illnesses that can have multiple sites...we shall treat all occurrences...as the same illness...if the condition diagnosis 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...We will always treat the same diagnosis as one condition irrespective of when or where in your pet's body the symptoms are found...

For the avoidance of doubt an illness is taken to start from the date the symptoms are first noticed, either by you or your vet...not the date the illness is first treated by your vet."

I've then considered the question of whether the dog did have a pre-existing condition, specifically, the presence of arthritis. What's not in doubt is that the dog had [severe] osteoarthritis in its right hind leg (hock). And the clinical history references between 2016 and 2019 referred to by HDi clearly indicate this to be the case. It's also clear the subsequent arthritis in the front paws and shoulder cysts was, in the vet's opinion and as stated in the claim forms, rheumatoid arthritis. So, the key issue is whether the two conditions (diagnoses) are the same (as HDi maintain from the policy definitions set out above) or (as Mrs P maintains) separate and unrelated because one is osteoarthritis and the other is rheumatoid arthritis.

Having considered the issue carefully, I'm more persuaded by the view the two conditions aren't related and therefore should be considered separate conditions (diagnoses). I say this for several reasons. First, I've not seen any evidence the incidence of osteoarthritis in the hind leg meant the dog had (taking the wording of the definition of illness) 'an on-going predisposition or susceptibility related in any way to the original claim'. In other words, the osteoarthritis didn't mean the dog was likely to develop rheumatoid arthritis (in another area). And HDi have not provided any evidence to show this is the case here.

And I think there's sufficient difference between the two forms of arthritis for them to be considered distinct diagnoses (conditions). Which would be consistent with the vet making the two diagnoses (rather than simply diagnosing the general term 'arthritis').

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. So, the onus isn't on Mrs P to show the two conditions are unrelated (so there isn't a pre-condition), It's on HDi to show they are related (so there is a pre-condition). Taking all the points set out above into account, I'm not persuaded HDi have shown enough to apply the exclusion for a pre-existing condition in the circumstances of this case. So, I've concluded HDi acted unfairly to apply the exclusion to decline Mrs P's claims.

Given these conclusions, I've thought about what HDi need to do to put things right. As I don't think they can rely on the exclusion for pre-existing condition to decline the claims, they should settle the claims in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment; any policy excess; and any co-payment proportion (as appropriate).

If HDi settle the claim, they should also pay interest at a rate of 8% simple on the amount accepted, from the date Mrs P paid the vet's bill, to the date they settle the claim.

In her complaint, Mrs P asked that HDi also pay for the ongoing costs of treatment of her dog. However, this decision focuses on the decline of her claims for treatment as submitted to HDi. While future claims for treatment of the arthritis in the front paws and shoulder would need to be assessed under the policy terms and conditions (as I would any other future claims) given my conclusion HDi didn't act fairly in applying the pre-existing condition exclusion to decline the claims submitted by Mrs P, then I don't think it would be fair and reasonable to use the same exclusion to decline any claims for ongoing treatment directly associated with the arthritis in the front paws and shoulder.

But as the osteoarthritis in the right hind leg clearly pre-dates the start of the policy, I wouldn't expect claims for treatment directly associated with that condition to be covered under the policy. This would also cover HDi's point about the ongoing treatment being general for arthritis. While treatment may be the same, I don't think that means the conditions (diagnoses) for which the treatment is prescribed are the same.

I've also considered what Mrs P had told us about the impact of having her claims declined. I think this will have caused her distress and inconvenience. Considering the circumstances of the case, I think £100 compensation for distress and inconvenience would be reasonable.

My final decision

For the reasons set out above, my final decision is that I uphold Mrs P's complaint. I require HDi Global Specialty SE to:

- Settle Mrs P's claims in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment; any policy excess; and any co-payment proportion (as appropriate).
- Pay Mrs P £100 in compensation for distress and inconvenience.

If HDi Global Specialty SE settle the claims, they should also pay interest at a rate of 8% simple on the amount settled, from the date Mrs P paid the vet's bill to the date they settle the claims (subject to Mrs P evidencing payment of the bills).

If HDi Global Specialty SE consider they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs P how much they've taken off. They should also give Mrs P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

HDi Global Specialty SE must pay the compensation within 28 days of the date on which we tell them Mrs P accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 6 September 2023.

Paul King
Ombudsman