

The complaint

Mr M complains that Royal & Sun Alliance Insurance Limited ('RSA') unfairly declined his pet insurance claim.

What happened

Mr M's dog was in the garden and began limping on his left hind leg. The vet diagnosed a cruciate ligament rupture. The vet contacted the vet to pre-authorise the costs of surgery.

RSA said Mr M's policy covered accident and injury only. RSA did not consider the dog had been injured by an accident, which its policy defined as "*A sudden, unexpected, specific event, that results in an injury to the pet.*"

Mr M complained. RSA initially said that his policy did not cover treatment for any cruciate ligament problems however caused. But it later said that this was not correct as the exclusion applied only to more recent policies. RSA apologised and offered to pay Mr M £200 compensation for the distress and inconvenience it had caused him.

But RSA maintained there had not been any evidence of an accident. Mr M's vet submitted the claim as "*traumatic cruciate rupture*". The initial consultation indicated that the dog had been jumping for his food, which was a normal activity.

RSA said it had contacted Mr M's vet for further information including the x-rays. The vet sent the x-rays and clinical history and said: "*The owner reported [the dog] was running in the garden which caused the traumatic rupture.*" RSA said running in the garden was a normal activity for dogs and did not fit the policy definition of an accident, unless the joint had already been weakened by disease. RSA referred to two veterinary articles, which it said supported its position that cruciate ligament rupture is likely to be due to cruciate ligament disease.

Mr M came to us. On his complaint form, he included some more information about what had happened to his dog. Mr M said that his dog had been running on a fenced off area of decking behind his house having seen a fox and Mr M believed the dog had collided with a closed gate. Following our initial review of the complaint, RSA carried out some additional investigation because it said Mr M had given several different versions of what had happened to his dog. Having done so, RSA accepted the dog had been running in the garden but not that he had collided with a gate, as there had been no other injuries.

Our Investigator upheld Mr M's complaint. He thought the dog's injury had met the policy definition of an accident. He did not consider that RSA had shown that the dog's injury was due to illness or disease. He said RSA should pay Mr M's claim with interest and he thought the £200 compensation was fair.

RSA did not agree to pay the claim, saying that running and jumping would not have injured a healthy joint. It asked for an Ombudsman review, as it is entitled to do.

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.

I am very sorry to hear that Mr M's dog has recently passed away.

RSA says that Mr M's dog's injury was caused by an illness rather than an accident. And its policy excludes injury due to illness. As RSA is relying on an exclusion, the burden is on RSA to show that the exclusion applies. I don't think it has done so and so I think that RSA should fairly pay Mr M's claim. I'll explain my reasons.

Mr M's policy covered accident and injury to his dog. The policy defined "Accident" as "A sudden, unexpected, specific event, that results in an injury to the pet."

"Injury" is defined in the policy as "Damage to one or more parts of your pet's body, as a result of one accidental cause, including related problems, arising directly as a result of that one accidental cause."

The policy says RSA will not pay "Any claim for an illness which is not directly caused by an injury". Illness is defined as "Sickness or disease or any clinical signs which are not caused by an injury".

The note made at the time of Mr M's first consultation with his vet reported that the dog "was in the garden, no trauma O [owner] can remember was jumping for his food." The claim was for "traumatic cruciate rupture". The vet later said that the dog's "cruciate rupture is an injury" and that Mr M had reported the injury had occurred when the dog was running in the garden.

I appreciate that Mr M has added further information about what he thinks might have happened. But it seems to me from the evidence that neither he nor his relative saw what happened. Rather, they heard a yelp and saw that the dog could not stand on his own. But in any event, I can see from RSA's submissions that it is now common ground that the dog was injured while running in the garden.

RSA says that running in the garden is a normal activity for dogs and does not fit the policy definition of an accident. "It takes a lot of force of a twisting nature to rupture a healthy cruciate ligament. Running and/or jumping would not achieve this, however, it could possibly exacerbate a ligament weakened by disease." In support of its position, RSA has sent links to two internet based veterinary articles about cruciate ligament disease.

I've read the articles. In summary, they say that the cruciate ligament in dogs usually degenerates slowly over time, rather like a fraying rope. For the majority of dogs, the cranial cruciate ligament ruptures as a result of long-term degeneration, where the fibres within the ligament weaken over time. Dogs with cruciate ligament disease will commonly limp, and this may appear suddenly during or after exercise or it might be progressive and intermittent. Sudden rupture of a healthy ligament is very rare.

I see the point that RSA is making. But importantly I haven't seen anything in the clinical notes to say that Mr M's dog had cruciate ligament disease or that Mr M's vet suspected or discussed cruciate ligament disease. While the internet articles say that sudden rupture of a healthy ligament is very rare, there's no veterinary evidence in this case specific to Mr M's dog to say that his dog had cruciate ligament disease or that the cruciate rupture was likely due to cruciate ligament disease. And even if sudden rupture without underlying disease is very rare, this does not mean it can never happen.

The vet said the dog's cruciate rupture was an "*injury*". The clinical notes show the joint was unstable, and the x-rays showed a swollen ("*effused*") joint. There is not any reference to cruciate ligament disease in Mr M's dog.

Having considered all the evidence, I don't consider RSA has shown that the dog's injury was due to illness rather than an accident. The evidence suggests that the injury was a sudden, unexpected, specific event while the dog was running outside. As such, the fair and reasonable outcome is that RSA should pay Mr M's claim.

The clinical notes show that Mr M agreed to pay the vet's bill in instalments. Subject to evidence of the dates on which he made those payments, RSA should add simple interest to the claim payment at the rate of 8% per year from the date Mr M made each instalment payment to the date of settlement.

I think RSA made a fair offer of compensation of £200 to reflect the distress caused by quoting incorrect policy terms when turning down Mr M's claim. I appreciate that Mr M was concerned that RSA offered this amount to encourage him to withdraw his complaint. But I don't think this was the case. Mr M was able to pursue his complaint with both RSA and this service. I think RSA made a fair gesture to reflect its admitted error. If RSA has not already paid the £200 compensation to Mr M it should now do so.

Putting things right

I require Royal & Sun Alliance Insurance Limited to:

- Pay Mr M's claim/s for the dog's traumatic cruciate rupture, subject to the policy limit and any applicable excess; and
- Add interest* to the resulting claim payment at the simple rate of 8% per year from the date Mr M paid each instalment of the vet's bill until the date of settlement, subject to evidence of the instalment payments and dates of those payments; and
- Pay Mr M the £200 compensation, but only if it has not already done so.

*If RSA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint. I require Royal & Sun Alliance Insurance Limited to take the steps set out in the "*Putting things right*" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 November 2023.

Amanda Maycock
Ombudsman