

The complaint

Miss K complains about HDI Global Speciality SE's ("HDI") decision to settle only part of a claim made under her pet insurance policy.

Any reference to HDI includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

Miss K had a pet insurance policy for her dog – who I'll refer to as "M". Miss K contacted M's vet in the evening of Friday 26 May 2023 due to M's health having deteriorated since his visit to the vet a few days earlier.

An appointment was booked for M at a veterinary hospital the next morning because his condition was considered too severe to wait until Monday.

M required surgery. The veterinary surgeon needed an additional specialist vet and nurse for the surgery – and so they were called in to assist.

Miss K subsequently made a claim for the treatment cost. Whilst HDI agreed to cover some of the costs, it said it wouldn't cover the surcharges for calling in the staff to assist with the surgery as it didn't consider this to be part of the treatment cost.

Unhappy, Miss K complained to HDI, but it maintained its position saying its underwriters advised it would only make payments for veterinary fees when they constitute treatment. It said the surcharges amounted to staffing costs and overheads and so, weren't covered under the policy.

Miss K brought a complaint to this Service. An Investigator considered it and upheld it. He said owing to the severity of M's condition the treatment couldn't wait until Monday, and the surcharges formed part of M's treatment costs. He said that in any event, there wasn't a term in the policy which excluded surcharges and so, he said HDI needed to cover the cost of these.

HDI disagreed. It said the purpose of the policy is to pay for treatment costs, and the veterinary practice's overheads and staffing costs do not fall under this definition. But the Investigator wasn't persuaded by this argument.

HDI subsequently said the surcharges would fall under the "consultation fee" term which has a £100 limit for consults outside normal veterinary operating hours. It said the treatment wasn't carried out by M's normal veterinary practice, and so, it did happen out of hours and the limit therefore, applies.

The Investigator considered HDI's further comments. In summary, he was satisfied the

treatment couldn't wait until normal veterinary hours resumed due to M's vet's statement about his condition. The Investigator accepted treatment happened outside normal veterinary hours, but he remained satisfied that surcharges weren't excluded and so, HDI should cover this.

HDI maintained its position that "surcharges" do not fall under "treatment", and are instead overheads and staffing costs, and so, are not covered by the policy. Because HDI disagreed, the complaint has been passed to me for an Ombudsman's 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 agree with the outcome our Investigator reached. I'm upholding this complaint and I'll explain why.

The starting point is the policy document which says under "*what is covered*", that HDI will pay for all customary charges made for treatment carried out by a vet. The policy defines "treatment" as:

"Any examination, consultation, advice, tests, x-rays, ultrasounds, CT scan, MRI scan, drugs or medication administered or prescribed, surgery, nursing or care; provided by, or under the direction of, a vet."

HDI argues "surcharges" can't be considered "treatment" as such fees are to do with the veterinary practice's staffing costs. I am however, not persuaded by this argument. First, the policy makes it clear that "surgery", "nursing" and "care" costs are covered - and from what I've seen, the additional vet and nurse's attendance was fundamentally to enable the surgery to go ahead and for M to receive the relevant nursing care. And so, I'm not persuaded "surcharges" can reasonably be distinguished from the "surgery" costs. So, on its face, these surcharges appear to be covered.

I've considered whether HDI has shown an exclusion applies which mean the surcharge costs are excluded. As HDI is seeking to absolve itself from paying these costs, the onus is on it to prove the exclusion applies, but it hasn't been able to point to a relevant exclusion.

I note however, HDI's underwriter had mentioned the possibility of the surcharges being considered "*ancillary administration fees*" but given the vet and nurses' attendance was to assist with surgery, I don't consider it fair or reasonable for their attendance to be construed as an "administrative" task. I say this because examples of "*ancillary administration fees*" in the policy document include "*dispensing fees, late payment fees, claim form completion fees, administration referral fees to specialist vets [...]*" – none of which apply to these particular circumstances.

HDI has also said the "surcharges" should be capped at "£100" as this is the limit for out of hours consultation fees. The relevant term says:

"The cost of treatment outside normal surgery hours [won't be covered] except for treatment that a vet considered cannot wait until normal surgery hours (necessary treatment) because it would seriously endanger your pet's health regardless of your personal circumstances."

The vet that treated your pet must also confirm this in writing and explain why they advised this when your veterinary claim is submitted. For necessary treatment

outside of normal veterinary hours, the charge applied to consultations is limited to a maximum of £100.”

It's not in dispute that M was seen at a veterinary hospital which operates 24/7 and which isn't his normal veterinary practice. And so, I'm satisfied the treatment took place outside normal surgery hours.

For treatment outside normal surgery hours to be covered, the policy requires a statement from the vet explaining why waiting until normal clinic hours would endanger the pet's health. M's vet's statement said:

“I am writing to confirm that M did have to be referred as an emergency over the weekend (25-26/06/2023) and needed hospitalisation after this. He had a marked pleural effusion, which in itself is life threatening. Fluid had been drained on the 25/06/2023 but as a tumour was suspected as the causative factor it was very likely that the fluid would quickly return.

It was not in M's best interest to be left without further medical attention over the weekend. As a pleural effusion can compromise breathing and the circulation an emergency referral to a specialist centre was the appropriate action taken.”

Based on this, I'm in no doubt that waiting until normal surgery hours resumed would have seriously endangered M's life. And so, on the face of it, the surcharges - which I consider to be “treatment” costs - are covered under the policy.

HDI has said these would be capped at “£100” as this limit applies to out of hours consultation fees. In these circumstances, the additional vet and nurse were enlisted to assist with the surgery – so, I consider it reasonable for their costs to be considered part of the “surgery”, or “nursing”, or “care” costs, as opposed to a “consultation” fee. Particularly as the vet has confirmed the vet and nurse's surcharge fees weren't related to a consultation – and HDI's underwriter appears to have accepted that's the case. So, I don't consider the £100 limit to apply to the surcharges.

To summarise:

- The surcharge costs should be considered part and parcel of the surgery and is therefore, a treatment cost. The surcharges cannot reasonably be considered “*ancillary administrative fees*” either.
- The treatment happened out of hours, but M's vet has shown it was necessary, and that not doing so would seriously endanger M's life. So, the out of hours treatment is covered.
- The surcharges attributable to the additional vet and nurse are not “consultation fees”, and are therefore, not subject to the £100 consultation fee limit – and should instead, be covered in full.

My final decision

My final decision is I uphold this complaint and direct HDI Global Speciality SE to:

- Cover the surcharge fees.
- If Miss B has already paid this, HDI must refund her this amount and add interest at 8% a year to this from the date Miss K paid the invoice to the date this is refunded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 15 April 2024.

Nicola Beakhust
Ombudsman