

The complaint

Mr N's complaint is about a claim he made on his ELI pet insurance policy for the treatment of his pet.

ELI considered the claims and determined that they were for a condition affecting opposing body parts and therefore applied one policy limit to those claims.

Mr N feels this is unfair and wants ELI to treat the conditions separately.

What happened

Mr N took out pet insurance underwritten by ELI in July 2023. In September 2023 his pet had surgery on both of his legs for humeral condylar fissures ('HCF').

ELI considered the claims which totalled around £6,500 and treated them as one claim on the basis that the condition affecting the pet's limbs were bilateral and the policy allowed them to do this in that situation. As such they applied the policy limit of £4,500 leaving Mr N with a shortfall to pay for his pet's veterinary fees.

Unhappy, Mr N complained and provided evidence from his vet to support that the cause of the problems to his pet's two limbs must be assumed to be unrelated unless definitive proof could be provided as to a common cause.

Our investigator considered Mr N's complaint and concluded that it should be upheld because the evidence didn't support that the cause of the conditions affecting both of the pet's limbs was related. She also said ELI should pay Mr N £150 in compensation for the distress and inconvenience caused by their decision to turn down cover and interest on the shortfall of the claim payable by Mr N. ELI didn't agree so the matter was passed to me to determine.

In December 2024 I issued a provisional decision in which I said:

"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 don't uphold Mr N's complaint."

The starting point is the policy terms. They apply one limit on claims for bilateral conditions. These are defined as:

"any Condition affecting body parts of which Your Pet has two, one each side of the body such as (but not limited to) ears, eyes, cruciate ligaments, hips and patellae. Note: when applying a benefit or exclusion Bilateral Conditions are considered as one Condition."

"Condition" is defined as "all Clinical Signs of Injury or Illness resulting in the same diagnosis regardless of the number of incidents or the areas of the body affected."

So, the issue I need to determine is whether the clinical signs of illness or injury in Mr N's pet

resulted in the same diagnosis regardless of the areas of the body affected. In this case Mr N's pet had surgery for both limbs for the treatment of HCF. And whilst I accept the evidence Mr N's vet has given states that the cause of the HCF could be different in the case of each limb, I don't think that means ELI weren't entitled to turn down this claim.

In order to reach the conclusion that an insurer has wrongly applied a bilateral exclusion clause in their policy, we would need to be satisfied that the cause of the condition to each opposing body part is, on balance, different. In this case Mr N's vet has said that in the absence of evidence to support the cause, one must assume, by default that the cause is different. I don't agree. And I don't think that's a question of clinical opinion. Rather it's a matter of evidence. In this case Mr N's pet was treated for both limbs for the same problem at the same time. There is no evidence to support what the cause of the problems were. In that scenario, I consider it reasonable to assume that on balance, there is nothing to support that ELI shouldn't have applied their policy limit in the way that they did. I say so because the definition of 'Condition' in the policy terms supports that the pet had the same diagnosis in two different limbs, for which it required treatment. In the absence of any significant evidence to support that the diagnosis in each limb arose from different illnesses or injuries, ELI were entitled to decline Mr N's claim.

Whilst I know my decision will be disappointing for Mr N, I can't say that ELI were wrong to decline his claim in the way that they did. The evidence Mr N has adduced from his vet is not persuasive and does not go far enough to support what we'd expect to see to support that the bilateral exclusion clause should not be applied here."

I asked both parties to provide me with any further comments or evidence for me to consider. Both parties have now responded. ELI has accepted my provisional findings, but Mr N has not.

Mr N has made some very detailed submissions in response to my provisional decision. He disputes the approach I've adopted and feels the findings of his vet, who he says is an expert in his field and the world's leading surgeon in the relevant area of pet injury, should be accepted. Mr N takes the view that my failure to take the same approach as the investigator is unreasonable, particularly in the absence of ELI providing any veterinary evidence of their own. He feels therefore that ELI have failed to disprove his pet's vet's opinion. In addition, Mr N feels that it is wrong for me to give priority to ELI's policy terms over his pet's vet's evidence.

Mr N has cited both statute and case law that he feels supports him. He's also gone on to say that ELI's terms are unfair, that I've not abided by the relevant laws in reaching my conclusions and that the policy terms ELI are relying on are unclear so that they should be interpreted in his favour.

Mr N says there is a substantially higher likelihood that the diagnosis in each limb in his pet has arisen from a different illness rather than the same and this is supported by his pet's vet. He's also made representations about the role of expert witnesses like his pet's vet and how he feels their evidence should be taken into account. In addition, he's made representations about how he feels I should treat his complaint which I won't repeat here save to say that I have read and considered everything he's said.

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, there's nothing in the submissions made by Mr N that persuades me that I

should reach a different conclusion to that set out in my provisional decision.

Mr N has made a number of detailed submissions in response to my provisional findings. I won't be addressing them all here, but I can assure him I've read them. That's not intended to be disrespectful but rather represents the informal nature of the Financial Ombudsman Service. Instead, I've focussed on the crux of his further representations and addressed those as far as they relate to the outcome of his complaint.

I appreciate that Mr N might have expected his complaint to be successful given the investigator's view of it and that my findings will have been disappointing for him. However, my provisional findings accord with this Services' longstanding approach to complaints like the one that Mr N has brought for the reasons I've already explained.

I know Mr N thinks the way I've considered his complaint is unreasonable and unfair. But it is consistent with how we generally approach bilateral conditions especially in cases where an insurer has relied on the term that ELI have and in circumstances where the weight of the evidence does not show the cause of the treatment to a pet's opposing body parts is distinctly distinguishable. In this case there's nothing to support that, on balance, the cause of this pet's diagnosis was different in each limb despite Mr N's contention that it's more likely this was the case. I might have been more persuaded if Mr N had provided contemporaneous evidence, for example, showing that the cause of the problem to one of the pet's limbs was clearly down to injury and the other to illness. But that's not the case here. Rather the evidence Mr N is relying on is that of his pet's vet, which sets out that the cause must be assumed to be different in the absence of definitive proof as to a common cause. That simply isn't enough to show that on balance the cause is different, nor does it support that this is more probable as Mr N says. For this reason and those set out in my provisional findings, the vet's credentials and indeed his evidence make no difference to the outcome of Mr N's complaint. Equally the absence of any veterinary evidence by ELI has no bearing on this. That's because ELI have in my view established that the policy limit they applied in this case was correct.

I don't consider the term that ELI are relying on in this case is either unclear or unfair. It's a common feature of most, if not almost all pet insurance policies currently on the market. And we wouldn't generally look behind it unless there was sufficient evidence to show the cause of the conditions being claimed for was on balance different- and not that it must be assumed to be so in the absence of anything to support the cause.

Mr N has said I needed to apply a different approach to his pet's vet's evidence in this case and to the fact that I gave preference to ELI's policy terms. That isn't I'm afraid a matter for Mr N to determine. The Financial Ombudsman Service is entitled to decide how to approach complaints brought by consumers and my decision is consistent with the approach that we have and do apply in very similar circumstances to the one Mr N is seeking to challenge here.

My final decision

For the reasons set out within my provisional findings and this decision, I don't uphold Mr N's complaint against The Equine and Livestock Insurance Company Limited trading as The Insurance Emporium.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 January 2025.

Lale Hussein-Venn
Ombudsman