

Before the Arbiter for Financial Services

Case ASF 021/2024

MA

(‘the Complainant’)

vs

Building Block Insurance PCC Limited

(C 63128)

(‘Building Block’ or ‘the Service Provider’)

Sitting of 23 August 2024

The Arbiter,

Having seen the **Complaint** made against *Building Block Insurance PCC Limited* (‘Building Block’ or ‘the Service Provider’) relating to the denial of the insurance claim filed by the Complainant with the Service Provider under her pet insurance policy.

*The Complaint*¹

In her complaint form, the Complainant submitted that her insurer was not paying out in respect of her claim about her pet dog, XXXX, because it stated that

*‘As your vets have noted the first time XXXX was seen as 16 February 2023, we are unable to cover this condition as it is within the first 14 days of your policy start date’.*²

¹ Complaint Form on Page (P.) 1 - 6 with supporting documentation on P. 7 - 85

² P. 3

The Complainant contends that the claim that was refused, however, involved a separate issue. She explained that she had laid out the timeline of events to her insurer as per the feedback sent on 12 May 2023. She added that the vet who saw the Complainant's dog in February 2023, and then again six weeks later in March 2023, also stated that the issues were on separate legs. The Complainant indicated that the notes from February 2023 highlight that she brought her dog in with some lameness and after examination the findings were:

'Normal ROM and proprioception in all limbs, maybe slightly reluctant to hyperextension of the R shoulder'.³

The Complainant therefore contends that the vet specifically highlighted the issue being in the right shoulder, with no mention of issues in the left leg nor either elbow. She submitted that when she went back with her dog in March 2023, the issue was with the left leg, and this was when she was referred to the X-ray *'LF limb lameness. Painful to elbow on forced extension yelped'.⁴*

The Complainant explained that she felt her insurer let her down because of various different reasons. She explained that, firstly, one of the three vets incorrectly dated the period when the initial diagnosis was made. The Complainant referred, in this regard, to an attachment consisting of an email where she claimed the vet admitted being wrong.⁵ She noted that the other two vets correctly dated the diagnosis. Secondly, she noted that the insurer is linking a claim within the policy's 14-day cooling-off period. The Complainant rebutted that this is a separate issue as per medical notes. She referred to the explanations provided to the insurer in the email chain titled *'Claim delayed'* on this matter.⁶

Remedy requested

The Complainant is seeking all sums invoiced as per the documents attached to her Complaint, which she indicated totalled to GBP 8,424.04.⁷

³ *Ibid.*

⁴ *Ibid.*

⁵ P. 24 - 31

⁶ P. 3, 7

⁷ P. 3

Having considered, in its entirety, the Service Provider's reply, including attachments,⁸

Where the Service Provider explained and submitted the following:

1. That a copy of the 'Cover My Pet claim file' was being presented as part of its reply.
2. That the Complainant purchased the policy on the 14.02.2023 from the insurance intermediary *Reach Financial Services Limited* trading as *Cover My* and she selected for the policy to commence on the 14.02.2023.
3. That the Veterinary Notes outline that the Complainant visited the vet on 16.02.2023 where it was identified that her dog was suffering from a limp. The following entry from that date, was noted:

*'In as XXXX has been limping from the front legs, today is looking a bit better. O showed me a video, lameness grade 6/10 on RF leg.'*⁹

4. That the visit to the vet occurred within the waiting period of the policy where the waiting period is defined within the Policy Wording on pg. 5 as:

'A period of: 14 days from the Policy Start Date for an Illness that occurs or shows Clinical Signs or any symptoms'.

5. That illnesses that show signs or symptoms within the waiting period are excluded from this policy.
6. The Service Provider further noted that the customer states that the dog did not experience lameness in the left leg/elbow until March 2023. It pointed out that the notes from the visit to the vet on 20.03.2023, however, state:

'tn today far LF limb lameness unresolved since last appointment'.¹⁰

⁸ P. 91 - 92, with attachments on P. 93 - 265

⁹ P. 91

¹⁰ P. 92

7. Building Block submitted that this note suggests that the issues were linked, as it remained unresolved from the appointment on 16.02.2023, that occurred within the waiting period.
8. The Service Provider referred to, and pointed out that, the terms of the policy outline on page 4, the following:

'Definitions

Associated Condition: An Associated Condition is one that falls into any of the below categories:

- *Bilateral Conditions are any Illness or Accidental Injury that affect one body part of which can happen on both sides of the pet's body. E.g., ears, eyes, knees, cruciate ligaments). For example, Your Pet could have hip dysplasia on the left leg and then the right leg. Bilateral Conditions are most common for orthopaedic issues like cruciate ligament damage, hip dysplasia and elbow dysplasia. When applying the Benefit Limit or an exclusion, Bilateral Conditions are considered as one and the same Condition. This is the way that this Policy works rather than it necessarily being medical fact so Your Vet may say that Conditions aren't technically related but under the terms of Your Policy they will be treated as one and the same Condition.'*
9. The Service Provider submitted that in this instance, the lameness and limping would be considered a bilateral condition and therefore under the terms of this policy will be treated as one and the same condition. In accordance with this, the signs and symptoms of lameness were present within the waiting period, when the customer visited the vet on 16.02.2023. It, therefore, did not uphold the Complainant's claim for this reason.
 10. It further noted that this policy has a Benefit Limit of GBP 5000 for veterinary fees, as detailed within the Policy Schedule. Therefore, in the event that the claim was upheld, the maximum that would be paid to the Complainant is GBP 5,000.

Observations

Background

The Complaint, in essence, relates to the Service Provider's refusal of the insurance claim filed by the Complainant in respect of the expenses she incurred for the treatment of her pet dog XXXX. The Service Provider declined the Complainant's claim as it considered the claim to fall within the 14-day exclusion period from the Policy Start date – this being in February 2023 when the Complainant purchased the Policy and had first visited her vet on a condition which the Service Provider considered as being linked to the condition found in a subsequent visit to the vet in March 2023 which led up to the treatment/surgery of the Complainant's pet and the filing of her claim.

The Complainant considered that the matter giving rise to her claim (following the second visit to the vet in March 2023) was, however, a separate issue from the problem that the vet was first visited for in February 2023.

The Service Provider maintained that the issues identified during the two visits are linked and considered as a bilateral condition treating them as one and the same condition under the terms of the Pet Insurance Policy ('the Policy').

During the hearing of 28 May 2024, the Service Provider further explained that the lameness in the front left leg for which the Complainant made a visit to the vet in March 2023 was considered as a Bilateral Condition to the lameness in the right leg for which a visit to the vet was done in February 2023 within the 14-day waiting period of taking the policy.

The Service Provider testified during the said sitting that:

'Certain symptoms are therefore considered to be present within the waiting period due to visiting the vet within the first 14 days regarding the right leg, and therefore, the lameness on the left leg is considered to be pre-existing under this Policy and according to the definition of the Bilateral Condition.'

Any illnesses that show signs or symptoms in the waiting period are excluded from this Policy and that is the reason for the claim being declined'.¹¹

The Arbiter shall next consider the timeline of events as summarised in the ensuing section.

Timeline

The following is a summary of the timeline of key events and exchanges as emerging during the proceedings of the case:

- a) 14 February 2023 - The Complainant acquired a 'CoverMy Pet' insurance policy, underwritten by Building Block with an 'Original Inception Date' and 'Policy start date' of 14 February 2023.¹² The 'End Date' of the policy was 14 February 2024. The pet age was indicated as '9 months'.¹³
- b) 16 February 2023 – As per the Medical History Report issued by St YYYYY Veterinary, the Complainant took her pet to the vet on 16 February 2023 with the report stating *inter alia* the following:

'History – In as XXXX has been limping from the front legs, today is looking a bit better. O showed me a video, lameness grade 6/10 on RF leg?

Examination – BARH DUDE, mm pink, and moist, CRT<2, dental grade 0/4, dribbling, suffers from car sickness.

Normal ROM and proprioception in all limbs, maybe slightly reluctant to hyperextension of the R shoulder.

Nothing between pads/toes or nails.

Adv rest and metacam, increase exercise with lead after 5 days rest, then off lead but avoiding chasing ball, sprints.

¹¹ P. 270

¹² P. 72 - 74

¹³ P. 72

Adv xrays if no better with views of referral for CT scan if Xrays undiagnostic.

Discuss re car sickness ...'.¹⁴

- c) 20 March 2023 - As per the Medical History Report issued by St YYYYY Veterinary, the Complainant took her pet again to the vet on 20 March 2023, with the report stating *inter alia* the following:

'History – In today for LF limb lameness unresolved since last appointment, otherwise DUDE normal

Painful to elbow on forced extension yelped

Ddx – Elbow dysplasia, IOHC, other

Discussed largely can see elbow dysplasia other than FCP on xray but may need referral for CT if xrays clear

O happy to proceed – booked for Wednesday'.¹⁵

- d) 22 March 2023 – The Complainant took her pet to the vet on 22nd March 2023 as per the Medical History Report issued by St YYYYY Veterinary, which stated *inter alia*:

'History – Admitted for GA x rays. No limping/lame on admit.

...

DX: possible elbow dysplasia.

Disc with owner cant rule out elbow dysplasia, there is a possible sign of dysplasia. Needs ct scan to confirm. Dog insured, owner happy to proceed...'.¹⁶

- e) March to April 2023 – Communications exchanged regarding the CT scan options between the vets/clinics and the Complainant where ultimately the Complainant's dog was referred to *Valley Vets Hospital*, as per the Medical History Report issued by St YYYYY Veterinary.¹⁷

¹⁴ P. 17 - 18

¹⁵ P. 18

¹⁶ P. 18 - 19

¹⁷ P. 19 - 20

- f) 4 May 2023 – An email from Valley Vets Hospital was logged into the Medical History Report issued by *St YYYYY Veterinary*. The said email issued by the *‘Lead Orthopaedic Surgeon – Valley Veterinary Hospital’* and addressed to another vet,, (who was the same vet who examined the dog on 20 March 2023), *inter alia*, stated the following:

‘Hi

Thank you for referring XXXX to Valley Vets.

I saw last week with a history of intermittent left forelimb lameness since Dec 2022.

..... had been treated with rest and NSAIDs and showed evidence of improvement. Radiographs obtained at your practice suggested the presence of elbow dysplasia.

At walk here on Thursday XXXX was sound. Her owner reported that she had been rested prior to examination and that the lameness often improves thereafter. On observation in my consult room I noted a 2/10 lameness on the right forelimb.

On examination there was significant pain on manipulation of both elbow joints.

CT was performed under general anaesthetic and a CT report is attached. The summary of the findings are as follows:

Bilateral elbow dysplasia:

Left elbow:

- *Medial coronoid process fragmentation*
- *Marked elbow incongruity: radioulnar and humeroulnar*
- *Secondary changes: Moderate degenerative joint disease and severe joint effusion.*

Right elbow:

- *Severe medial coronoid process disease, with no visible fragments*
- *Mild radioulnar incongruity*
- *Mild secondary joint effusion*

I have discussed this case with a couple of other orthopaedic surgeons. The consensus of opinion is that XXXX may benefit from an oblique proximal ulnar osteotomy to address the elbow incongruity in the L elbow as well as possible arthroscopy/arthrotomy to address the medial coronoid disease. I do not have the facilities here at Valley Vets to perform arthroscopy on the elbow of a patient this size ...'.¹⁸

g) 13 April 2023 – Claim Form completed by the Complainant dated 13 April 2023.¹⁹

h) 4 May 2023 - In an email dated 4 May 2023, sent by St YYYYY Vet to a referral centre, the veterinary surgeon of St YYYYY Vet noted *inter alia* that:

'I'm writing in regards to a case that began at St YYYYY Vets for first presentation and xrays, was referred to Valley Vets for CT – which diagnosed bilateral elbow dysplasia which is worse in the left forelimb. All imaging can be forwarded onto yourselves if needed.

Left elbow:

- *Medial coronoid process fragmentation*
- *Marked elbow incongruity: radioulnar and humeroulnar*
- *Secondary changes: Moderate degenerative joint disease and severe joint effusion.*

¹⁸ P. 20

¹⁹ P. 101 - 102

Right elbow:

- *Severe medial coronoid process disease, with no visible fragments*
- *Mild radioulnar incongruity*
- *Mild secondary joint effusion*

Mrs MA would like both the arthroscopy for the fragment and the surgery for the elbow incongruity performed at the same time if this is possible/recommended ...'.²⁰

- i) 6 May 2023 – In reply to a question posed by the insurance company to the Complainant as to ‘*what date did you first notice signs of XXXX’s forelimb lameness*’, the Complainant replied ‘*I first noticed XXXXs condition around march 24th*’.²¹
- j) 11/12 May 2023 – During May 2023, the insurance company requested further clarifications from the Complainant as follows:

‘We queried with you when you first noticed XXXX’s Forelimb lameness as on the 16/02/2023 the Veterinary Surgeon has made the following note in XXXX’s medical records:

“In as XXXX has been limping from the front legs, today is looking a bit better. O showed me a video, lameness grade 6/10 on RF leg?”

You have confirmed with us by email that you first noted the lameness around march 24th.

As there is a discrepancy between the time-frame documented by the Veterinary Surgeon into XXXX’s records and the dates you have now provided – we do need to ask you why these dates/ time frame do not match?

²⁰ P. 22 - 23

²¹ P. 112 & 114

Please would you also confirm what prompted you to take out this insurance policy on 14/02/2023.’²²

On 12 May 2023, the Complainant then replied as follows:

‘XXXX had a bad leg in February, this prompted me to check my insurance policy and at this point I decided to take out a policy with yourselves.

I took her to the vet a few days later, they gave her some metcam, we kept her in for a few days as recommended, after that she was fine, the leg was better and she was back to normal walks/day to day activities. No claim was made for this as it was for a relatively small sum and there was no further treatment required.

5-6 weeks later (March 24th) we noticed she was starting to limp on the left front leg which was when we brought her in and the vet recommend an X-ray as they found some soreness in her elbow which wasn’t there in February.’²³

- k) May 2023 – An email was sent by the insurance company to the vet and to the Complainant where the insurer requested *inter alia* the following: *‘In order to proceed with the assessment, please could the Veterinary Surgeon advise if the lameness on 16/2/23 is related to the lameness in March 2023?’²⁴*
- l) 18 May 2023 – St YYYYY Vet replied to the insurance company by email where the vet stated *‘Lameness on 16/2/23 was associated with Right forelimb, lameness in March 2023 was associated with left forelimb. There was no lameness noted in right forelimb in March 2023’²⁵*
- m) 18 May 2023 – A further email was sent by the insurer to St YYYYY vet requesting the following clarification:

²² P. 117

²³ P. 119

²⁴ P. 123 & 124

²⁵ P. 99

*'Please could you clarify why you have submitted the claim for lameness 16/2/23-31/3/23 as one condition? You have noted that on the 16/2/23 pet was seen for right fore lameness and then in March 2023 left fore lameness, is the underlying issue the same and these are related or how are they unrelated?'*²⁶

- n) 19 May 2023 – Email from St YYYYY vet to the insurer where it was confirmed that: *'I have had a further chat with XXXX's vet and she confirms that the claim we processed is incorrect and that only treatment from 20/3/23-31/3/23 should be claimed and that the condition is Left Elbow Dysplasia. I have attached an updated invoice along with further notes the vet has made'*.²⁷
- o) 19 May 2023 – The insurer sent another email to St YYYYY vet requesting the following: *'Please could you provide further clarification from the Veterinary Surgeon how the issues with left and right fore limbs are separate issues other than they are different legs?'*²⁸
- p) 19 May 2023 – The subsequent reply sent by St YYYYY vet stated the following:

'Regarding the two visit for XXXX in Feb 2023 and March 2023. XXXX presented to a colleague of mine in Feb with lameness in Right Forelimb my colleague was unable to localise the lameness but noted reluctance to extend right shoulder. XXXX was treated with metacam and was never re-presented for this lameness, she has not, to my knowledge, been lame on her right fore since.

*In March 2023 she presented to myself for left forelimb lameness that I localised to the elbow and began investigations that have since followed.'*²⁹

²⁶ P. 127

²⁷ P. 130

²⁸ P. 134

²⁹ P. 139

- q) 1 June 2023 – Case Report issued by Langford Veterinary Services dated 1 June 2023 (with the pet discharged on 3 June 2023). The History of the case was explained as follows:

'XXXX presented to Langford Vets with a four month history of bilateral, intermittent, progressive forelimb lameness, with the left presenting as more severe and consistent than the right. XXXX was first presented to St YYYYY Veterinary group Swansea on the 16th February with 6/10ths right forelimb lameness, where initial radiographs were performed on the 22nd March. Valley Vets performed a CT scan on the 2nd May which diagnosed bilateral elbow dysplasia. XXXX was then referred to Langford Vets. XXXX is more uncomfortable after exercise and had subsequently been on rest and oral meloxicam for several weeks at the point of consultation'.³⁰

In the Case Report, it was noted that as part of the Investigations,

'XXXX was sedated for radiographs on 1st June to assess progression of disease and for surgical planning' and the diagnosis was 'Bilateral elbow dysplasia with bilateral shortening of the radius' where 'Bilateral surgery was not recommended given the osteotomy required. Therefore initial surgery was undertaken on the left forelimb on the 2nd June ...'.³¹

- r) 17 June 2023 – A further case report issued by Langford Vets was presented during the proceedings of the case, with a Discharge date of 17 June 2023. The History of the case was explained as follows:

'XXXX presented for further treatment of bilateral elbow dysplasia (positive radioulnar incongruence) two weeks following left elbow arthroscopy, medial coronoid fragment removal and left bi-oblique proximal ulnar osteotomy. XXXX recovered well from this procedure and returned today for right elbow arthroscopy ...'.³²

³⁰ P. 197

³¹ *Ibid.*

³² P. 217

In the said Case Report, it was further noted under 'Surgery' that:

'On 15.06.2023 XXXX underwent general anaesthesia for surgery. A right elbow arthroscopy was performed and a fragment of bone was identified on the medial coronoid process. This fragment was debrided ...'.³³

- s) June 2023 – In reply to an enquiry made by the insurer for clarification from the veterinary Surgeon, as to 'where the onset time of December 2022 came from?',³⁴ the Lead Orthopaedic Surgeon – Valley Veterinary Hospital replied on 6 June 2023 that:

'I have reviewed my contemporaneous notes from the consultation on 27th April 2023 at Valley Vets. From these notes, it appears that December 2022 was when the owner indicated to me that the forelimb lameness was first noted. The owner did however comment that the lameness was intermittent with periods of no lameness between.'³⁵

- t) June 2023 – Notification sent by the Claims Department to the Complainant stating the following:

'On this occasion, we are unable to offer settlement of your claim as from the information provided, the first clinical signs or symptoms of XXXX's condition, were noticed in December 2022 which is prior to the start of your policy on the 14/2/2023. Under the terms of your policy, pre-existing conditions are not covered. Please refer to your policy wording on page 5, Pre-existing conditions: Any diagnosed or undiagnosed Condition which has occurred or existed or has shown signs or symptoms of existing in any form before the Policy Start Date or within the Waiting Period in the first Period of Insurance. This also includes any diagnosis, or any Clinical Signs caused by or resulting from an Accidental Injury or Illness your per had on an Associated Condition before the Policy Start Date or within the Waiting Period in the first Period of Insurance.

³³ *Ibid.*

³⁴ P. 145

³⁵ P. 147

*Following the full assessment and investigation of the history received, the Underwriter has made the decision to follow your referral vets response. Your referral vet stated following the review of his contemporaneous notes on the 27/4/2023 the diagnosis was bilateral elbow dysplasia were symptoms were first noted in December 2022 and that the symptoms can be intermittent with this diagnosis.*³⁶

- u) 8 June 2023 – Email from the Lead Orthopaedic Surgeon – Valley Veterinary Hospital to the insurer noting that his client, the Complainant, was disputing *‘the information recorded in my clinical entry’*.³⁷ He noted that the Complainant indicated that the lameness began in February and outlined the record held by her vet of 16/92/2023. The surgeon noted that *‘I have no reason to believe that I have made an error in my records, but Mrs MA assures me they are incorrect’* and recommended that the insurer review this case and discuss it with the policyholder.
- v) June 2023 – The Claims Department informed the Complainant and Valley Vets that it was reassessing her claim and requested certain clarification from the surgeon.³⁸
- w) 28 June 2023 – Email from the Complainant’s partner to Valley Vets providing certain information regarding their case including a video showing XXXX *‘running without lameness on 17th December 2022’* and requesting the surgeon to correct the statement that *‘lameness started in December’* given that they deemed this as an error.
- x) 28 June 2023 – Email from the Lead Orthopaedic Surgeon – Valley Veterinary Hospital to the Complainant’s partner where he clarified *inter alia* that:

‘... I have also reviewed the clinical records of cases that were seen by myself on the morning of 27th April 2023. I have noted that the patient I examined immediately prior to XXXX was lame on the forelimbs and this lameness started in December 2022. Therefore, an inaccuracy in

³⁶ P. 148

³⁷ P. 150

³⁸ P. 169 & 172

XXXX's clinical records, relating to the date of onset of lameness, may be a possibility'.³⁹

- y) 28 July 2023 – Email sent to the Complainant, by the complaints handler on behalf of the Service Provider noted that the claim was referred to the policy underwriter on 7 June 2023, who confirmed the claim was to be declined. Building Block further noted that *'This was declined as a pre-existing condition because the vets had noted the start of the condition was in December 2022'*.⁴⁰ The following was further noted on behalf of Building Block:

'I understand you felt the vets had made a mistake on the notes for when this condition first started. We contacted [the Lead Orthopaedic Surgeon] to clarify and he emailed us to confirm:

I have had a telephone conversation with Mrs MA today regarding XXXX's records. Mrs MA disputes the information recorded in my clinical entry. Mrs MA has indicated the lameness began in February. This is recorded in her own vet's records, who state on 16 February 2023, 'in as XXXX has been limping from the front legs, today is looking a bit better'. I have no reason to believe that I have made an error in my records, but Mrs MA assures me they are incorrect.'

As your vets have noted the first time XXXX was seen as 16 February 2023, we are unable to cover this condition as it is within the first 14 days of your policy start date.

Based on my investigation, I am unable to uphold your complaint. We have assessed and declined your claim using the information provided in line with your policy ...'.⁴¹

- z) 9 August 2023 - Email from the Lead Orthopaedic Surgeon – Valley Vets wherein in reply to the insurer's requested clarification he *inter alia* noted that:

³⁹ P. 25

⁴⁰ P. 12

⁴¹ P. 12 - 13

- *After the owner strongly disputed the date of onset of lameness for XXXX and provided a video dated 17th December 2022, that shows XXXX walking with a normal gait, I have reviewed XXXX's clinical records and those of the patients seen either side of XXXX's consultation on 17th April 2023. I have noted that the patient I examined immediately prior to XXXX was lame on the forelimbs and this lameness started in December 2022. Therefore, an inaccuracy in XXXX's clinical records relating to the date of onset of lameness may be a possibility.*
 - *In light of this and in line with the regulations provided by the Royal College of Veterinary Surgeons, I have made an amendment to my clinical record for this patient to indicate the owner's dispute of the lameness onset date and a possible error in the records dated 27th April 2023. These updated records are attached.*
 - *When 'questioned' regarding the disparity, I had no reason to believe that there was an inaccuracy in my records. Additional information provided by the owner and their firm belief that an error was possible, led me to review XXXX's records and those of the other patients seen on the morning of 27th April 2023.*
 - *As stated in the updated records, the first reported date of lameness was February 2023 as per the clinical records provided to me by St YYYYYY Veterinary Clinic ...'.⁴²*
- aa) Other (refusal of claim) – In a notification⁴³ sent by the Claims Department to the Complainant in respect of the 'claim for XXXX's veterinary treatment for elbow dysplasia 15/06/2023', the Complainant was informed of the following:

'We regret that on this occasion we are unable to offer settlement of your claim. According to the information provided, the first clinical signs or symptoms of XXXX's condition were noticed within 14 days of

⁴² P. 175

⁴³ P. 221 - Date not indicated.

the start of your policy. Your policy incepted on 14/02/2023. The veterinary surgeon at Valley Veterinary Hospital has advised: 'the first reported date of lameness was February 2023 as per the clinical records provided to me by St YYYYY Veterinary Clinic'.

The Complainant was furthermore referred to page 5 of the policy wording.

Concluding remarks

The error in the timing of onset of the condition

It is noted that, in the Service Provider's communication of 28 July 2023 relating to the refusal of the Complainant's insurance claim, the Service Provider explained *inter alia* that the Complainant's claim was '... declined as a pre-existing condition because the vets had noted the start of the condition was in December 2022'.⁴⁴

The Medical History Report issued by *St YYYYY Veterinary* however includes no entries for December 2022.⁴⁵ The said claim seems to have been based on a reference included in the Medical History Report (on 04/05/2023) which detailed an email from the Lead Orthopaedic Surgeon of Valley Veterinary Hospital who *inter alia* stated that '*I saw last week with a history of intermittent left forelimb lameness since Dec 2022. had been treated with rest ...*'.⁴⁶

Whilst the reference to (which is actually the vet's name) is incorrect as the statement understandably relates to the Complainant's pet called XXXX, the statement that the lameness was '*since Dec 2022*' was eventually rectified by the same Lead Orthopaedic Surgeon as outlined in the timeline above. However, such rectification was carried out after substantial pressure from Complainant in the knowledge that the reference to December 2022 could prejudice her insurance on the basis of a pre-existent condition. The Surgeon eventually corrected his records noting that '*an inaccuracy in XXXX's clinical records relating to the date of onset of lameness may be a possibility*'.

⁴⁴ P. 12 – Emphasis added by the Arbiter

⁴⁵ P. 17

⁴⁶ P. 20

The Arbiter considers that the start date is still subject to doubt and is prepared to give the benefit thereof to the Complainant.

The Arbiter thus considers that the reason initially indicated by the Service Provider as to why the claim was declined, that is, based on *'a pre-existing condition because the vets had noted the start of the condition was in December 2022'*,⁴⁷ is not adequate basis in so far, however, it refers to the onset of the condition in December 2022, when this was February 2023 for the reasons indicated above.

However, irrespective of this, the fact that the onset was in February 2023 rather than December 2022, is ultimately considered by the Arbiter not to affect, in substance, the ultimate decision taken by the Service Provider to decline the claim on the basis that their pet dog was first seen for the condition on 16 February 2023, which was deemed within the first 14 days of the start date of her policy.⁴⁸ This is also when taking into consideration the aspects outlined in the next section.

Final position

Whilst the Arbiter sympathises with the Complainant's unfortunate circumstances with her new pet dog, the Arbiter, however, considers that there is no sufficient and justifiable basis on which he can uphold her Complaint, particularly when taking into consideration also the following aspects:

- a) *Context* – The Arbiter notes that the Complainant took a pet insurance policy just two days before taking her pet to the vet. The Policy was purchased on 14 February 2023 at a time when the Complainant's pet had already started showing signs of lameness in early February 2023 as acknowledged by the Complainant herself.

It is noted that in reply to a request made on 11 May 2023 by the insurance Claims Department as to *'Please would you also confirm what prompted*

⁴⁷ P. 12

⁴⁸ P. 13 & 221

you to take out this insurance policy on 14/02/2023,⁴⁹ the Complainant *inter alia* explained in her email of 12 May 2023, that:

'XXXX had a bad leg in February, this prompted me to check my insurance policy and at this point I decided to take out a policy with yourselves.

*I took her to the vet a few days later ...'*⁵⁰

It is noted that during the hearing of 7 May 2024, the Complainant testified that:

'Going back now to last early February, we noticed that our dog, XXXX, had a slight limp on her right front leg and, at that point it, was on and off. So, we checked to see if our insurance was still covered but that had lapsed. So, I took out a new insurance again at that point, not thinking anything aside from reminded me that I should check it'.⁵¹

With reference to the Complainant's comments about her previous insurance having lapsed, it is understood that the Complainant was here referring to a *'4 week free insurance'* which was *'accepted'* in July 2022 as listed in the Medical History record of St YYYYY Veterinary.⁵² This is given that her insured pet was only born on *'05/05/2022'* as listed in the Medical History record of St YYYYY Veterinary,⁵³ which also reflects the *'Pet Age'* of *'9 months'* indicated in the Policy Schedule/Statement of Facts.⁵⁴

The declarations and timings indicated above thus raise, in the first place, certain doubts about the timing of seeking coverage for pet insurance when the pet was already showing certain symptoms.

b) *Bilateral Condition –*

⁴⁹ P. 8

⁵⁰ P. 7

⁵¹ P. 266

⁵² P. 15

⁵³ *Ibid.*

⁵⁴ P. 255 & 263

The Complainant considered that the matters identified in the two visits to the vet (in February and March 2023) were separate and distinct and expected her insurer to treat them so. It is noted that in her email dated 11 August 2023, she pointed out *inter alia* that:

*'... as per the vet who saw XXXX in February and then 6 weeks later in March she also stated that the issues were on separate legs. Notes from February highlight that I brought her in with some lameness and after examination their finds were: 'Normal ROM and proprioception in all limbs, maybe slightly reluctant to hyperextension of the R shoulder.' She has specifically highlighted the issue being in the right shoulder, no mention of any issue in the left leg now either elbow. When I came back with XXXX in March the issue was in the left leg and this was when she was referred for the X-ray: LF limb lameness. Painful to elbow on forced extension yelped.'*⁵⁵

The fact that the lameness was on separate legs during the February and March 2023 visits (or that the dysplasia was worse in the left forelimb)⁵⁶ is, however, not considered sufficient basis for the Arbiter to uphold the Complaint.

Whilst it is noted that during the various exchanges between the insurer and the vet (from St YYYYY veterinary),⁵⁷ the said vet did not confirm to the insurer that the matters were related, however, the vet of St YYYYY veterinary did not confirm either that they were unrelated. The explanations provided by the vet of St YYYYY were just limited to the findings of the two separate visits.

It is considered that there are, however, various indications and factors which reasonably point toward and support the Service Provider's position to treat the conditions as being linked. This is particularly so when taking also the following into consideration:

⁵⁵ P. 11

⁵⁶ As indicated in an email of 4 May 2023.

⁵⁷ Exchange of communications of May 2023 as per the Timeline above refer.

- i. The report of the visit of 16 February 2023 also stated that *'Adv xrays if no better with views of referral for CT scan if Xrays undiagnostic'*,⁵⁸ which tests were eventually undertaken following the visit of 20 March 2023. Furthermore, in the history section of the visit to the vet of 20 March 2023, mention was made to the *'lameness unresolved since last appointment'*.⁵⁹
 - ii. The findings of the subsequent tests identified *'bilateral elbow dysplasia'*⁶⁰ with issues on both the left and right elbow being identified as described in the email of 4 May 2023, which indeed required a surgical intervention both on the left elbow (on 2 June 2023) and on the right (on 15 June 2023) as per the timeline indicated above.
 - iii. The case report of 1 June 2023, referred to the condition jointly, where it was stated that *'XXXX presented to Langford Vets with a four month history of bilateral, intermittent, progressive forelimb lameness, with the left presenting as more severe and consistent than the right.'*⁶¹
 - iv. The fact that in June 2023 XXXX's left elbow arthroscopy was followed up within two weeks with a right elbow arthroscopy.⁶²
- c) *Policy wording –*

It is noted that the Pet Insurance Brochure presented by the Complainant indicated that *'Any claim made within, or related to, the waiting period' was inter alia not covered.*⁶³

The *'CoverMy Pet' Policy Document*⁶⁴ defines the *'Waiting Period'* as:

⁵⁸ P. 18

⁵⁹ *Ibid.*

⁶⁰ Emphasis added by the Arbiter

⁶¹ P. 197 – Emphasis added by the Arbiter

⁶² P. 217

⁶³ P. 41

⁶⁴ P. 43 - 70

'A period of:

- *14 days from the Policy Start Date for an Illness that occurs or shows Clinical Signs or any symptoms;*
- *5 days from the Policy Start Date for Accidental Injury;*
- *14 days from the Policy Start Date for all other cover sections'.⁶⁵*

It is further noted that the Complainant replied in the negative to the question *'Do you want to cover any pre-existing medical condition for your pet?'* in the Declaration Section of the Policy Schedule and the Policy Statements of Facts document.⁶⁶

Furthermore, it is noted that *'Pre-Existing Condition'* is defined in page 5 of the Policy document as:

'Any diagnosed or undiagnosed Condition which has occurred or existed or has shown signs or symptoms of existing in any form before the Policy Start Date or within the Waiting Period in the first Period of Insurance. This also includes any diagnosis, or any Clinical Signs caused by or resulting from an Accidental Injury or Illness Your Pet had on an Associated Condition before the Policy Start Date or within the Waiting Period in the first Period of Insurance'.⁶⁷

The terms *'Condition'* and *'Associated Condition'* are in turn defined as follows in the Policy document:

'Associated Condition: An Associated Condition is one that falls into any of the below categories:

- *Bilateral Conditions are any Illness or Accidental Injury that affect one body part of which can happen on both sides of the pet's body. E.g. ears, eyes, knees, cruciate ligaments). For example, Your Pet could have hip dysplasia on the left leg and then the right leg. Bilateral Conditions are most common for*

⁶⁵ P. 49

⁶⁶ P. 74 & 83

⁶⁷ P. 233

orthopaedic issues like cruciate ligament damage, hip dysplasia and elbow dysplasia. When applying the Benefit Limit or an exclusion, Bilateral Conditions are considered as one and the same Condition. This is the way that this Policy works rather than it necessarily being medical fact so Your Vet may say that Conditions aren't technically related but under the terms of Your Policy they will be treated as one and the same Condition.

...

Condition: Means any injury sustained or resulting from a single Accident or any manifestation of an Illness having the same diagnostic classification or resulting from the same disease process regardless of the number of incidents or areas of Your Pet's body affected'.⁶⁸

The exclusion section under, Section 1. Veterinary Fees of the Policy further includes the following exclusions:

'... 2. Any claim where the Condition started before or during the Waiting Period.

3. Any claim for any Pre-Existing Condition'.⁶⁹

Having considered the policy wording and the definitions and provisions of the said policy as indicated above, the Arbiter accordingly finds no adequate basis on which he can refuse the Service Provider's position on the disputed claim.

Conclusion and Decision

For the reasons amply mentioned the Arbiter is accordingly not upholding the Complaint.

⁶⁸ P. 232

⁶⁹ P. 235

Due to the nature of this case, each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.