

## The complaint

Miss D's complaint is about Casualty & General Insurance Company (Europe) Ltd's ("C & G") refusal of her claim under her pet insurance policy.

## What happened

On 30 April 2021, Ms D took her dog for a walk. As she was crossing a road to avoid a larger dog coming towards them, her dog pulled the lead from her hand and ran off. The dog was hit by a car around a mile away and taken by a member of the public to a vet. Ms D collected him and took him to her usual vet for treatment. The dog had fractured his hind leg and needed surgery.

Ms D made a claim under the policy for the cost of the treatment. However, C & G declined the claim as it said Ms D had not taken "*reasonable precautions to prevent Accidental Injury or Damage*", as required by the policy. C & G has made a number of points in support of its position, which I've summarised below:

- it is likely the dog was not on a lead, as he did not have a lead attached when he was seen by the vet.
- Even if he was on a lead, the dog was not under control, as he would not have been able to pull the lead from Ms D's hand if he was.
- The vet's notes show that Ms D's dog had been castrated only a few days before this incident and it is advised that walks are generally restricted during recovery.
- Ms D should have picked her dog up to avoid the larger dog.
- It is unlikely that Ms D's dog could have outrun her, given its size.
- The vet that the dog was taken to after the accident referred to someone with a different name collecting the dog, saying it was hers. It asks for an explanation of this.

There was also a query about Ms D's address but this was an administrative error on our part.

One of our Investigators looked into the matter and recommended that the complaint be upheld, as she did not think C & G had established the dog had not been on a lead.

C & G does not accept the Investigator's assessment, so the matter has been passed to me.

## 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.

Ms D's policy states that it will cover veterinary fees "*for treating an illness or accidental injury suffered by your pet whilst insured with us*"

*“Accidental injury” is defined as “a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of your pet’s body.”*

This cover is subject to the following conditions:

*“You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage, as well as arranging and paying for Treatment for Your pet to reduce the likelihood of Illness or Accidental Injury.*

*You must comply with all laws that relate specifically to Your pet, including but not limited to “Section 27 of the Road Traffic Act 1988”, which states that a dog that is on a designated road must be on a collar and lead and under control.*

*You must ensure that Your dog is under control at all times, and due care should be maintained to prevent Your dog from escaping and causing itself Accidental Injury or any other persons or animals.*

*When walking near or in an area where Your pet could escape onto a designated road You must ensure Your dog is on a collar and lead.”*

A dog being hit by a car is an accidental injury that would fall within this section of cover. What I have to decide is whether the conditions also set out above have been reasonably applied in this case to exclude the claim.

C & G says the dog was not on a lead, as the evidence shows he did not have a lead attached when he was found. I do not agree that there is evidence to support this.

Ms D said in her claim form, and consistently since, that the dog was on a lead. The vet’s notes state the dog was wearing a “buster” collar when he was brought in but I cannot see that a lead is mentioned at all – either to record the presence of one or the absence of one. I can understand why the vet noted the collar but I do not consider that the mere fact a lead was not mentioned by the vet is sufficient evidence to establish that Ms D was walking the dog without a lead. And even if the dog had been taken to the vet without a lead attached (which is not proven) it seems to me possible the lead became detached, or was taken off by someone attending to the dog when it was injured. There’s no statement from the person that found the dog to assist but overall I do not consider that C & G has established that the dog was not on a lead while being walked by Ms D.

C & G also says that, even if the dog was on a lead, he cannot have been under control, as he is a small dog and would not have been able to pull the lead out of Ms D’s hand; and that, as it is a small breed of dog, he could not have outrun Ms D.

I am not sure if C & G is implying by this that the dog was unattended but I have not seen any evidence to suggest this was the case. And I do not agree with its assertions. A lead held in a reasonable grip, can slip out of a hand quickly; and all dogs, whatever their size, can run fast. In my opinion, there is no reason to doubt that Ms D was with the dog when he ran off or that she tried to catch him. C & G also says that walks should have been restricted as the dog had recently undergone surgery. I do not think this is relevant to the claim or complaint.

The vet notes refer to someone of a different name coming and claiming the dog. C & G has said this raises a query about who was with the dog when it ran off. Our Investigator asked Ms D about this but she has no explanation as to why the vet recorded a different name and assumes it is an error on the vet’s part. As the vet that wrote this is not the usual vet and was apparently unknown to Ms D, this seems credible and I do not think this in itself casts any doubt on the claim.

I also do not agree that it is a reasonable expectation that dog owners should pick up their dogs in the event of any perceived threat or nervousness around another dog, rather than crossing the road.

The policy requires owners to take reasonable care to prevent injuries or damage but just because an injury occurred does not mean reasonable care was not taken. Overall, I do not agree that C & G has established that Ms D did not take reasonable care to prevent her dog escaping or suffering an injury, and it seems to me this was simply an unfortunate accident.

I therefore consider C & G should meet the claim. I understand there is a policy limit on the amount that will be paid in the event of a claim and the costs incurred are in excess of that limit. C & G only needs to meet the costs up to that limit. Interest should be paid however, at our usual rate, on any costs to be covered under the policy that Ms D has already paid.

I also consider C & G should pay the sum of £100 compensation for the trouble the wrongful refusal of the claim has caused Ms D, including taking three months before making its decision on the claim.

### **My final decision**

I uphold this complaint against Casualty & General Insurance Company (Europe) Ltd and require it to do the following:

1. meet Ms D's claim, subject to the remaining terms of the policy, including any claim limit. If Ms D has already paid the vet's invoice, then 8% simple interest should be added to any settlement from the date the invoice was paid, to the date of settlement.
2. Pay the sum of £100 compensation of the distress and inconvenience caused by its incorrect refusal of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 5 April 2022.

Harriet McCarthy  
**Ombudsman**