

## **The complaint**

Mr B says Casualty & General Insurance Company (Europe) Ltd (CGIC) mis-handled his pet insurance policy and a claim he'd made on it.

All references in this decision to CGIC include its appointed administrative agents.

## **What happened**

Mr B contacted CGIC to claim on the policy after his pet fell ill and needed treatment. At first, CGIC declined the claim because it believed the medical condition giving rise to it was pre-existing and that it would have been excluded had Mr B told CGIC about the condition when taking the policy out.

CGIC subsequently agreed to consider the claim following Mr B's appeal. But, in doing so, CGIC paid a reduced amount as it believed he'd misrepresented his pet's date of birth when he applied for the policy. CGIC felt it would have charged a higher premium had it known the correct date of birth and so it reduced the settlement by the amount he'd underpaid in premiums.

Unhappy with the reduced settlement, Mr B complained to us. He explained he didn't know the pet's age when he became its owner or when he applied for the policy and so answered the question he was asked to the best of his knowledge at that time.

Our investigator looked into the complaint and recommended that it should be upheld. They went through the deductions CGIC had made for the claim and agreed it was entitled to take off 15% as a co-payment under the policy terms because Mr B's pet was eight years old or older. But the investigator didn't think CGIC could fairly deduct the premium Mr B had underpaid due to misrepresenting his pet's date of birth. Instead, the investigator asked CGIC to recalculate the settlement figure in proportion to the premium he paid and the premium he would have paid had there been no misrepresentation. The investigator also asked CGIC to pay Mr B £100 as compensation for the trouble and upset its actions had caused him.

Mr B replied to say that he accepted the investigator's findings. CGIC didn't reply to the investigator, despite being chased for a response.

As the complaint wasn't resolved informally by the investigator, it was passed to me to review afresh.

## **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've decided to uphold the complaint. I'll explain why.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies available to it provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer must show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

CGIC thinks Mr B failed to take reasonable care not to make a misrepresentation when he gave the date of birth of his pet that he did when he applied for the policy.

It's no longer in dispute that Mr B failed to take reasonable care in answering the question as he did. It's been established that his pet was older than CGIC had been led to believe. And I'm satisfied that this made a difference to CGIC and, as such, can be considered a qualifying misrepresentation. That's because CGIC's brought underwriting evidence to show it would likely have charged Mr B a higher premium to insure his pet based on the correct date of birth.

It's also not in dispute that Mr B's misrepresentation could reasonably be considered to have been careless as opposed to deliberate or reckless. I agree that this classification's fair given the explanation Mr B's provided as to how the misrepresentation arose. Namely, that he took ownership of the pet from a rescue home and that he was given no official date of birth at that time. That meant there was uncertainty as to the correct date from the outset.

As I'm satisfied Mr B's misrepresentation should be treated as careless, I've looked at the actions CGIC can take in accordance with CIDRA in those circumstances. Where there's been a claim, CIDRA says an insurer can:

- If it wouldn't have provided the policy on any terms, avoid the policy and refuse all claims. If the insurer would still have provided the policy but on different terms (other than terms relating to the premium) the policy should be treated as if it had been provided on those terms if the insurer requires; or
- If the insurer would still have provided the insurance but would have charged a higher premium, it may reduce 'proportionately' the amount paid on a claim where the misrepresentation was discovered as a result of the claim.

Of these two options, I'm satisfied that the second applies in this case. In effect that means, for example, that if Mr B only paid 50% of the premium he'd have paid but for the misrepresentation, then CGIC would need to pay 50% of the claim payment.

Instead of that, CGIC reduced the claim payment by the amount Mr B underpaid in premiums as a result of the misrepresentation. Mr B lost out as a result. I don't believe that approach was consistent with the range of options set out in CIDRA, and because of that I think CGIC's actions were unfair.

In the light of all this, I think it would be fair for CGIC to recalculate the claim settlement in line with the proportionate approach set out in CIDRA and in accordance with the remaining policy terms and conditions. For the avoidance of doubt, I see no reason why CGIC isn't

entitled to apply the co-payment deduction of 15% that it has in line with those policy terms and conditions.

Finally, I believe Mr B's been caused a degree of distress and inconvenience because of CGIC's actions. He felt he had little option but to challenge the actions of CGIC at what was a difficult time for him already given the poor health of his pet.

As compensation for that, I believe CGIC should pay Mr B £100.

### **Putting things right**

CGIC should:

- Pay Mr B's claim in line with CIDRA and the remaining policy terms and conditions; and
- Add interest at the simple rate of 8% a year\* to any relevant claim amounts Mr B's already paid himself, calculated from the date he paid them to the date of settlement by CGIC; plus
- Pay Mr B £100 as compensation for the distress and inconvenience it's caused him.

\*HM Revenue & Customs requires CGIC to take off tax from this interest. CGIC must give Mr B a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons given, I uphold this complaint. I require Casualty & General Insurance Company (Europe) Ltd to put things right for Mr B as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 March 2022.

Nimish Patel  
**Ombudsman**