

## The complaint

Mr B complains about Casualty & General Insurance Company (Europe) Ltd (CG) rejecting a claim under his pet insurance policy for treatment to his dog, because it was overweight.

References to CG include their agents who administer the policy.

## What happened

Mr B had a dog covered by a pet insurance policy with CG, taken out in December 2020. In March 2021 the dog started limping, so Mr B took it to a vet. The vet referred the dog to a specialist clinic (M), who diagnosed the dog needed surgery for a condition known as Osteochondritis dissecans (OCD<sup>1</sup>). M performed surgery on the dog (July 2021) and Mr B submitted a claim to CG for the cost (£2,172.12).

CG considered the claim but rejected it on the grounds the dog was overweight. They said the policy didn't cover a condition where a pet had been deemed overweight and had a condition associated with being overweight. CG referred to notes from the vet indicating the dog weighed 28kg (in April 2021) and had a Body Condition Score (BCS) of 7/9 (which would indicate the dog was overweight).

The vet provided further information in response to the decline, saying a more recent examination (September 2021) indicted a BCS of 5/9, which would not be classified as overweight. CG reassessed the claim, but they maintained their decline, referring to the earlier clinical notes. Their view being the dog was overweight and this was a contributing factor to the OCD.

Unhappy at the rejection of his claim, Mr B complained. But CG didn't uphold his complaint. In their final response they said when he took out his policy, the terms and conditions made it clear it wouldn't provide cover if a pet was overweight and had an associated condition. CG noted the dog's clinical history (April 2021) included a comment from the vet that the dog was overweight. CG also noted the vet's subsequent further information but said they had to take the vet's initial response (which referred to the April 2021 comment) not the subsequent information. CG also said the dog being overweight could lead to degeneration in cartilage and joints. Based on this, CG confirmed their decline of Mr B's claim.

Unhappy at CG's response, Mr B complained to this service. The main part of his complaint was that CG had unfairly declined his claim on the grounds his dog was overweight. He said the vet who treated the dog had confirmed the dog's weight wasn't relevant to the condition for which the dog had been treated. He also noted the vet's reference to the dog's BCS score of 5/9 (in September 2021). He wanted CG to accept the claim and reimburse him for the £2,082.12 he'd had to pay for the treatment.

Our investigator upheld Mr B's complaint, concluding CG hadn't acted fairly by using the exclusion relating to a dog being overweight. She noted reference in the clinical history to the

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<sup>1</sup> OCD is an abnormal development of bone from cartilage affecting joints in large dogs, particularly rapidly growing large or giant breed dogs. It tends to be seen more in male dogs, likely a result of their larger size.

dog being overweight, but M's view there wasn't an obvious instigating cause and that being overweight didn't fit with it being the cause of the OCD. She also considered the points and references to clinical sources provided by CG, but on balance didn't think CG had done enough to show the dog being overweight was the cause of the condition. So, CG hadn't acted in applying the exclusion to decline the claim. To put things right, the investigator thought CG pay the claim in accordance with the remaining policy terms, without using the exclusion. CG should also pay interest from the date Mr B paid for the treatment (less any excess payable under the policy) to the date it reimbursed him.

CG disagreed with the investigator's conclusions and requested an ombudsman review the complaint. In disagreeing, they said the policy terms about the exclusion for a pet being overweight were clear and they didn't agree the dog's weight didn't have an impact on the dog's lameness (and the clinical notes mentioned the dog being overweight when reference to the lameness was made, as well as a reference to "*must lose weight*").

### **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.

My role here is to decide whether CG has acted fairly towards Mr B.

The main issue in Mr B's complaint is whether CG acted fairly in declining his claim by applying the policy exclusion for his dog being overweight. Mr B says CG acted unfairly in applying the exclusion, as the dog's weight wasn't relevant to the condition and treatment of his dog, as the vet (M) who treated the dog stated.

CG say it was fair to use the exclusion to decline Mr B's claim. They refer to the dog's clinical history which they say indicates it was overweight, and that this is mentioned alongside the references to lameness in the period leading up to the surgery. They also say the dog being overweight could lead to degeneration in cartilage and joints.

I've considered both views carefully, including the relevant terms and conditions of the policy (particularly those referred to by CG in their final response) together with the supporting information and evidence, including the regular vet's statement, the statement from M and the clinical history of Mr B's dog. Looking at the policy terms and conditions first, CG refer to the Insurance Product Information Document that states:

*"What is not insured?*

*Any claims resulting from Your pet being medically overweight or underweight and this results in Your pet needing Treatment as a result of not being the recommended medical weight for its age, breed type and sex as recommended by a Vet."*

Similar terms and conditions are included under *Veterinary Fees* as part of a claim.

The first point to consider is whether Mr B's dog was overweight. The dog's clinical history indicates its weight was 28kg in April 2021 (when the dog was seen by the vet for lameness) and reference made to being overweight. This information was initially provided to CG by the vet on request in September 2021. However, the vet then clarified their response to say they examined the dog later in September, recording a weight of 33.6kg and had given the dog a BCS of 5/9 (indicating it wasn't overweight, as the dog was growing over the period). Thinking about these points, while the dog was subsequently said not to be overweight, that was at a point some two months after the surgery – whereas three months before surgery it

was noted to be overweight. Based on these points, I think it's reasonable to conclude the dog was overweight ahead of the surgery.

The second point to consider is whether the dog's weight led to the condition (OCD) that was diagnosed and for which surgery was carried out. So, whether it was reasonable for CG to apply the exclusion to decline the claim. As a general principle, where an insurer relies on an exclusion, the onus is on them to show it's reasonable to apply it.

However, I'm not persuaded CG acted fairly and reasonably in applying the overweight exclusion to decline this element of the claim. I say that because the policy wording above (my emphasis in bold) refers to claims **"resulting from Your pet being medically overweight or underweight and *this results in Your pet needing Treatment as a result of not being the recommended medical weight for its age, breed type and sex as recommended by a Vet.*"**

Given this wording, the onus is on CG to show the claim (surgery) was caused by the dog being overweight. CG say the dog being overweight could lead to degeneration in cartilage and joints. While they acknowledge (when confirming their decline of the claim following reassessment) the dog's weight may not have been the only cause, they thought being overweight would be a contributing factor for the condition.

Mr B says the views of his vet and M (as the treating vet) support his view the condition wasn't caused by his dog's weight. In particular, M states the following:

*"The pathophysiology of osteochondrosis is not well understood, large breed dogs are over represented as are males – both the case here. That fact that [dog] is overweight does not fit with this being the cause of his OCD as his lesion presents in the standard expected location and in a breed which presents with the condition regardless of the weight of the presenting animal."*

As M was the vet who performed the surgery (and would have examined the dog to determine the diagnosis) I find this opinion persuasive, as it clearly states the dog being overweight doesn't fit with it being the cause of the OCD.

Taking all these points into account, while being overweight may have increased the general risk of OCD (as the published sources suggest) M's opinion about Mr B's dog indicates this isn't the case here. CG haven't shown enough to apply the exclusion in the circumstances of this case. So, I've concluded CG acted unfairly to apply the exclusion to decline the claim.

Given these conclusions, I've thought about what CG need to do to put things right. As I don't think they can rely on the exclusion for the dog being overweight, then they should settle the claim in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

In settling the claim, as Mr B has already paid for the cost of the surgery (£2,082.12 – being the claim cost of £2,172.12 less the policy excess of £90) CG should also pay interest at a rate of 8% simple on the amount settled from the date Mr B paid for the surgery to the date they settle it.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mr B's complaint. I require Casualty & General Insurance Company (Europe) Ltd to:

- Settle Mr B's claim in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

In settling the claim, as Mr B has already paid for the cost of the surgery (£2,082.12), Casualty & General Insurance Company (Europe) Ltd should also pay interest at a rate of 8% simple on the amount settled from the date Mr B paid for the surgery to the date they settle it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 August 2022.

Paul King  
**Ombudsman**