

## The complaint

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

## What happened

In August 2021, Miss H made a claim under the policy for treatment for her dog. Miss H's dog had to be put to sleep, as the vet diagnosed that he had lymphoma.

C & G refused the claim on the basis that it related to a pre-existing condition. C & G says the dog had a previous "*fatty blob on sternum*" identified in 2011 and 2017. C & G says that Miss H should have disclosed this when she applied for the policy and if she had done so, it would have added an endorsement to the policy which would have meant any claims relating "*Growths, Tumours, Cancers and Associated Conditions*" would be excluded from cover. As it now knows this history, C & G says it is entitled to apply the endorsement retrospectively, which means Miss H's policy excludes claims for cancer.

Miss H is very unhappy with this. She says her dog had no previous conditions and neither she nor the vet had been concerned about the fatty lump found in 2011 and 2017. She has had to pay the vet's bills that she asks be reimbursed and says this has caused her a great deal of distress at a difficult time.

One of our Investigators looked into the matter. He recommended that it be upheld, as he did not think C & G had established that Miss H had made any misrepresentation when taking out the policy. C & G was unable to provide copies of the actual questions asked of Miss H at the time she took out the policy and as such could not establish she had failed to disclose anything. The Investigator recommended that the claim be paid together with interest at our usual rate and that C & G pay Miss H an additional £250 for the trouble caused to her.

Miss H has accepted the Investigator's assessment but C & G has not. C & G says that signs and symptoms of a condition were present before the start of the policy and it doesn't matter that there was no diagnosed condition.

As the Investigator has not been able to resolve the complaint it 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.

### Is the claim excluded on the basis it is a pre-existing condition?

C & G's letter to Miss H refusing the claim said it was on the basis that the policy does not cover pre-existing conditions. C & G has since clarified that it does not necessarily consider that the previous fatty lump was an early clinical sign of lymphoma and therefore is not

relying on this exclusion. However, for completeness I will explain why I do not think that it is entitled to rely on the exclusion of cover for pre-existing conditions.

Miss H's policy, like most other pet policies, does not cover pre-existing conditions. It says:

*"What is not insured? Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition."*

*"Pre-Existing Condition means any diagnosed or undiagnosed Condition and/or Associated Condition which has happened or has shown Clinical Signs or Symptoms of existing in any form before the Policy Start Date or within the Waiting Period."*

So it is not necessary for any condition to have been diagnosed for it to fall within this definition and exclusion but the symptoms which occur before the start of the policy must be a clinical sign or symptom of the condition claimed for. So in this case, this means that C & G must establish that the fatty lump was a clinical sign of the lymphoma to be able to rely on this exclusion.

Miss H's dog was seen by the vets in 2011 when it was noted he had a few warts and a fatty lump on his sternum. She also took him to the vet in 2017, when the lump was recorded as being 3cm in diameter and non-painful. The vet notes say he could do a biopsy and could remove it but there is no note that he thought it was of concern and no mention of any condition. The dog was recorded as being well.

The next relevant record in the vet's notes are in July 2021, when Miss H took her dog in as he had blood in his urine. Some test were carried out and the dog didn't improve. The vet records that he thought it was lymphoma. It was decided to put the dog to sleep. The vet that saw the dog in 2021 and who submitted the claim to C & G said "no" on the claim form in answer to a question *"has your pet had this condition or clinic signs before, or any related."*

In addition, I have not seen any mention by any vet of the fatty lump being connected with the symptoms displayed in 2021, or linked to lymphoma generally.

Given this, I do not consider that C & G has established that the dog was suffering from lymphoma or any associated illness or condition before Miss H took out the policy. I do not therefore think it is entitled to refuse the claim on the basis that it was for a pre-existing condition.

#### *Can C & G apply retrospective exclusion that means the claim is not met?*

Our approach is in line with the relevant law on this issue: 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. If a consumer fails to take reasonable care, the insurer has certain remedies provided the misrepresentation is, what CIDRA describes as, a qualifying misrepresentation.

For it to be a qualifying misrepresentation the insurer has to 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.

I've considered the circumstances of this case to consider whether C & G fairly added the exclusions given our approach, in line with CIDRA.

Miss H bought this policy online. When she did so, she would have been taken through various questions and options. C & G has not been able to provide the exact questions and information at that time but has said it would be similar to the current process, the parts of which relevant to this complaint are the following:

*"Are you looking for cover for a pre-existing condition? Yes / No"*

Later there is a statement of the assumptions made about Miss H's dog: including that the applicant accepts there will be no cover for pre-existing conditions, and a link to a definition of what C & G considers to be a pre-existing condition – *"any injury or illness that has exhibited signs/symptoms prior to the cover start date... It could be an ongoing condition (e.g hip dysplasia, epilepsy, heart condition etc) or a historic condition (healed soft tissue injuries, infections etc). Conditions deemed to be associated with an historic injury/illness are considered to be pre-existing conditions"*.

C & G says Miss H would have been required to confirm she understood that pre-existing conditions would not be covered in order to proceed with the purchase and that this was enough to elicit disclosure of the fatty lump. I do not agree and will explain why.

There is no evidence that Miss H was asked a clear question about any previous symptoms, whether resulting in a diagnosis of a condition or not. In my opinion, the questions set out above are not clearly asking an applicant about any symptoms or issues the dog has had but rather asks if cover is wanted for pre-existing conditions. I do not think it was clear that Miss H was aware that her dog had what C & G would have considered a condition. He simply had a fatty lump that neither she nor the vet were concerned about.

I don't therefore think Miss H failed to take reasonable care when answering the question she was asked about her dog on the application form, so I don't think C & G can alter the contract it entered into on the basis it's now found out about a fatty lump, which has not been linked to the later condition.

I appreciate that C & G might have applied the exclusion for any growths, tumours and cancers, if it had known about the lump but as Miss H didn't fail to take reasonable care, it's not though any fault on her part that she didn't let C & G know. CIDRA only allows C & G to alter the terms of the policy if a qualifying misrepresentation has been made. And as explained, Miss H didn't fail to take reasonable care, so, there is no qualifying misrepresentation.

So, to put things right I think C & G should meet the cost of the claim (subject to the remaining terms of the policy). As Miss H has paid the vet already, interest should be added on any amount reimbursed to her, at our usual rate.

I also agree with the Investigator that some additional compensation is warranted for the unnecessary and avoidable distress the refusal of the claim would have caused. I agree that £250 is reasonable.

### **My final decision**

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

1. pay Miss H's claim, in line with the policy limit and any applicable excess. If Miss H shows that she has paid the vet's bill it must add simple interest at the rate of 8% per

year to the claim payment from the date she paid the bill to the date of reimbursement;

2. pay Miss H £250 compensation for the distress and inconvenience caused by its incorrect refusal of his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 4 August 2022.

Harriet McCarthy  
**Ombudsman**