

The complaint

Ms L complains about Casualty & General Insurance Company (Europe) Ltd (CG) rejecting a claim under her pet insurance policy for treatment to her dog for vomiting and diarrhoea.

References to CG include their agents who administer the policy.

What happened

Ms L had a dog covered by a pet insurance policy with CG, taken out in 2017. In December 2021 the dog experienced a problem with vomiting and diarrhoea. The dog was examined by a vet and treated for the problem.

Ms L made a claim for the cost of treatment (£1037.99) but CG declined the claim, saying the dog's clinical history indicated two previous incidents involving diarrhoea (in 2012 and early 2017). CG referred to the policy not covering pre-existing conditions that occurred or existed (or had shown signs or symptoms of existing in any form) before the policy began. They also said, had they been told of the previous incidents at the start of the policy, they would have added an endorsement, meaning cover wouldn't be provided for anything to do with the dog's digestive system and any resulting conditions.

Ms L then complained to CG, but they didn't uphold her complaint. In their final response they again referred to the policy not covering pre-existing conditions. CG also noted the previous incidents of vomiting and diarrhoea before Ms L took out the policy and the point about – had they known - applying an endorsement to exclude cover for the dog's digestive system. Based on this, CG confirmed the decline of the claim.

Ms L then complained to this service, saying CG unfairly declined her claim on the grounds it related to a pre-existing condition. She didn't think the problem with vomiting and diarrhoea was due to pre-existing condition, saying the incident in 2017 was a post-operative reaction following surgery to remove a mass from the dog's eye. She wanted CG to settle her claim.

Our investigator upheld Ms L's complaint, concluding CG hadn't acted fairly. On CG's point that they would have applied (retrospectively) an endorsement had Ms L told them of the previous incidents involving vomiting and diarrhoea, she thought this would be a remedy under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) had Ms L made a misrepresentation (by not disclosing the previous incidents). She also thought Ms L hadn't been asked clear questions about - or disclose information on - the dog's clinical history or any existing pre-conditions. So, she didn't think CG could apply a (retrospective) endorsement to the policy and they should remove it.

On the decline of the claim under the pre-existing condition clause, she thought (given the policy definition of the clause) the previous incidents could fall within the definition. However, she noted the incident in 2017 had been explained as a post-operative reaction. And the 2012 incident was a transient digestive upset in a one-year old dog. She also noted Ms L's vet said the two incidents were unrelated to the dog's problem in 2021 (when no other digestive symptoms were noted). In the vet's opinion, this meant there wasn't a pre-existing

condition. The Investigator concluded CG couldn't rely on the pre-existing condition exclusion to decline the claim (or add an endorsement to the policy).

To put things right, the investigator thought CG should remove the endorsement and assess Ms L's claim under the remaining terms and conditions. If CG accepted the claim (and Ms L had already paid the vet's bill) interest should be added to the settlement of the claim. CG should also pay Ms L £100 in compensation for distress and inconvenience.

CG disagreed with the investigator's conclusions and requested an ombudsman review the complaint. In disagreeing, they noted Ms L hadn't declared the previous incidences of vomiting and diarrhoea when she took out the policy. Had she done, they would have applied the endorsement relating to the dog's digestive system. They also said as the second of the two previous incidents had occurred only five months prior to the policy being taken out, it would have been sufficiently recent for Ms L to have disclosed it – so they maintained their view she had made a misrepresentation.

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 Ms L.

The main issue in Ms L's complaint is whether CG acted fairly in declining her claim by applying the policy exclusion for a pre-existing condition (the previous incidences of vomiting and diarrhoea). Ms L says CG acted unfairly in applying the exclusion, as she doesn't think the problem with vomiting and diarrhoea in 2021 was due to pre-existing condition. In support of this view, she's provided a statement from her vet saying the two previous incidents aren't related to the problem in 2021. CG say it was fair to use the exclusion to decline Ms L's claim. They refer to the two previous incidents of vomiting and diarrhoea and to the policy definition of a pre-existing condition.

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

"What is not insured?"

Any claim for Illness or Accidental Injury that relates to a Pre-Existing Condition"

Secondly, the policy terms and conditions include the same exclusion for *Veterinary Fees*, as well as an additional exclusion that states:

"Any claim for Illness or Accidental Injury that showed Clinical Signs or Symptoms before Your Policy Start Date or within the Waiting Period"

Thirdly, CG refer to the *General Exclusions* section that states:

"The following exclusions apply to the whole of this policy. We will not pay claims for any of the following reasons:

- *If We are made aware of any Pre-Existing Conditions at the time of a claim, these Pre-Existing Conditions will not be covered and We reserve the right*

[to] add a relevant endorsement(s) to Your Policy in respect of these Pre-Existing Conditions."

While CG's final response doesn't include the definition of the term *Pre-Existing Conditions* the policy defines the term as:

"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."

I think these policy terms and conditions (about the exclusion) are clear (and would have been clear to Ms L at the time she took out the policy). Having concluded the exclusion was clear, I've gone on to consider whether it was reasonable for CG to apply it to decline the claim in 2021 for vomiting and Diarrhoea. As a general principle, where an insurer relies on an exclusion then the onus is on them to show that it's reasonable to apply it. To that extent, I don't think it's relevant to consider the specific issue of the decline of the claim in terms of whether Ms L made a misrepresentation when she took out the policy (given it's clear that pre-existing conditions aren't covered under the policy). I've also noted CG, in their final response, didn't seek to decline Ms L's claim because she made a misrepresentation when taking out the policy (they sought to rely on the policy exclusion).

I also know it's industry practice for pet insurance policies to often exclude pre-existing conditions from cover. Given this, I wouldn't have expected CG to have asked a specific question about a particular condition (which would imply they'd have to ask about each individual condition separately, which I don't think reasonable, or practicable).

Coming back to the specific issue of whether CG acted fairly in applying the pre-existing condition exclusion to decline the claim, I'm not persuaded they did act fairly. I'll set out why I've come to that view. Ms L's view is that the 2021 incident wasn't due to a pre-existing condition and wasn't related to the two previous incidents in 2012 and 2017. In support of this view, she's provided a statement from her vet, which says:

"...in my opinion the bout of post-operative diarrhoea 5 years ago (...2017), and the transient digestive upset episode as a 1 year old dog 10 years ago (...2012) are not related to [the dog's] recent problems."

As no other digestive symptoms have been noted in the intervening 10 years there is no evidence that this dog has had an underlying pre-existing condition. These two historical episodes were transient, of a commonly occurring nature, and not what a normal person would recognise as a previous condition."

I think, coming from a familiar with the dog and its clinical history, this is persuasive. So, I've concluded it wasn't reasonable for CG to treat the 2021 incident as being a pre-existing condition (and therefore declining the claim).

While the decline of the claim was the key issue in Ms L's complaint, I have considered the other issues. On the question of whether CG can reasonably include in the policy an endorsement to exclude from cover the dog's digestive system, given my conclusion that applying the pre-existing condition exclusion to decline Ms L's complaint was unfair, then it follows it would be unfair to retrospectively apply an endorsement to the policy (as that would have the effect of enabling CG to decline the claim).

However, it wouldn't preclude CG including an endorsement in the future (when the policy comes up for renewal). That's because it's a commercial decision for CG to take (and include it within the terms and conditions of the cover they're willing to offer). It's then for Ms

L to decide whether to accept a policy on those terms (and the premium to be charged). The documents I've seen indicate the policy is an annual one, so CG can propose changes to the policy including the terms and conditions (and any endorsement) and for Ms L to decide whether to accept them.

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 to decline the [2021] claim for treatment of the dog's vomiting and diarrhoea, then they should reassess 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).

If CG accept the claim following their reassessment, if Ms L has already paid for the cost of treatment, then in addition CG should also pay interest at a rate of 8% simple from the date Ms L paid the cost of treatment to the date they settle the claim.

On the question of compensation, given my conclusion CG unfairly declined Ms L's claim I think CG should pay compensation for the distress and inconvenience caused the Ms L. Taking account of all the circumstances of the case I think £100 would be reasonable.

My final decision

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

- Reassess Ms L's claim for treatment of the dog's vomiting and diarrhoea 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).
- Pay Ms L £100 in compensation for distress and inconvenience.

If Casualty & General Insurance Company (Europe) Ltd accept the claim following their reassessment, if Ms L has already paid for the cost of treatment, then in addition they should also pay interest at a rate of 8% simple from the date Ms L paid the cost of treatment to the date they settle the claim.

Casualty & General Insurance Company (Europe) Ltd must pay the compensation within 28 days of the date on which we tell it Ms L accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 28 September 2022.

Paul King
Ombudsman