

## **The complaint**

Mrs W has complained that Casualty & General Insurance Company (Europe) Ltd unreasonably refused to pay her claim under pet policy and impose several exclusions to her cover.

## **What happened**

Mrs W bought her policy to start on 12 April 2021 for her dog. It covered vet fees up £4,000 per condition in each policy year with an excess of £90.

In November 2021 as her dog was limping on her right hind limb as she had slipped when running, Mrs W took her to the vet. The dog was diagnosed with a cruciate ligament rupture which required surgery. So, Mrs W made a claim to Casualty in the sum of £3,677.75 for vet fees.

On assessment of the vet history of Mrs W's dog, Casualty decided the condition which Mrs W was claiming had showed clinical signs before the policy started so it was excluded. Therefore, it refused to pay her claim.

Mrs W obtained further information from her vet, the referral vet and the previous vet which disputed Casualty's conclusions, but Casualty wouldn't change its stance. So, Mrs W brought to us.

The investigator was of the view Mrs W's complaint should be upheld. He was persuaded by the evidence from Mrs W's vets showed her dog hadn't suffered this condition before the policy started. He didn't feel there was any weight issues of the dog which caused her condition. And it didn't think it was appropriate Casualty then imposed exclusions on Mrs W's policy as on the application form it didn't ask Mrs W sufficient questions to then show she had misrepresented in order to permit Casualty impose these exclusions.

Casualty disagreed so Mrs W's complaint has been passed to me to decide.

## **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'm upholding this complaint. I'll now explain why  
There are two issues in this complaint. The first as to whether Mrs W's dog's condition was pre-existing and whether her weight had anything to do with the condition and the second whether Mrs W misrepresented the situation with her dog's pre-existing conditions.

Turning to Mrs W's claim, Casualty's policy like almost all other pet policies doesn't provide cover for pre-existing conditions. This is a significant term of the policy and I'm satisfied the policy documentation made this clear.

Whilst the vet history showed Mrs W's dog did have previous issues with her right hind limb, I'm satisfied from the evidence from Mrs W's own vet, her previous vets and indeed the referral vets, clearly shows the dog issue with this cruciate ligament rupture was not pre-existing. Sadly, Casualty has offered no independent evidence of its own to counter Mrs W's evidence other than to simply disagree with it. Plus, it also produced extracts from a well-known referral vet's website on cruciate ligament disease along with other literature concerning weight and cruciate ligament issues.

Mrs W's previous vet explains that Mrs W's dog was seen in November 2018 for lameness in her right hind leg. Whilst there was quite rightly in my view some discussion of cruciate ligament issues at that time, the issue was treated as a sprain and she recovered fine and wasn't seen again for two years. This vet explains that if she had had problems with cruciate ligament then, she would not have recovered like she did, and it would have reoccurred or persisted.

This vet also explained that Mrs W's dog was seen again in December 2020, where she presented with left hind leg flaccid paralysis with the right hind leg being stiff. She was referred to a specialist neurological vet who diagnosed with an infarct causing ischemic myelopathy or non-compressive slipped disc. This isn't related in any way to cruciate ligament rupture. The referral vet's report of February 2021 confirms and explains it was limited to the left hind leg only (rather than the right hind leg) and she was recovering well with no ongoing issues.

Mrs W's present vet confirms the above and details that any cruciate issue that started in 2018 would have certainly progressed to a level where an examination by referral vets two years later in 2020 would have identified it. Also given Casualty's notion that it was pre-existing for three years then it should have presented as progressive lameness during that time and this wasn't the case with Mrs W's dog. This would also concur with the extracts from the well-known referral vet's website too. As that clearly identifies it would have progressed which for Mrs W's dog, this didn't happen on the actual vet evidence in this dog's case. So, I'm persuaded given the recovery and no further issues for three years, this dog's cruciate ligament issues were not pre-existing.

Casualty also referred to its term concerning the weight of the pet. I have previously dealt with this term in other decisions and I remain of the view that the term's wording means the weight issue has to be singularly causative of the condition being claimed. It says the following:

*'Veterinary Fees... 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**.'*

Casualty in its final response letter to Mrs W said the following:

*'I note your comments regarding [name of dog] weight. A dog, much like a human who is overweight, may not only experience issues with joint mechanics but with inflammation, as fat tissue can cause systemic inflammation throughout the body. The by-products of which can alter the enzymes that keep cartilage and connective tissue healthy, which can lead to degeneration in the cartilage and Joints. As [name of dog] has been overweight since 2019, I am satisfied that her weight was likely a contributing factor in her developing cruciate disease.'*

As I have detailed previously, cruciate ligament rupture does not concern the cartilage or the joints of any dog, so this reasoning is flawed and does not in any event meet the requirements of the policy term as to causation.

The policy term requires the weight issue to be wholly causative of the condition claimed and based on this reasoning that wouldn't the case anyway. There is no evidence here that the weight of Mrs W's dog caused her cruciate ligament to rupture and the reasoning given in the final response letter for relying on it is also flawed given no joints or cartilage issues cause a cruciate ligament to rupture anyway.

It a disease solely of the ligament itself fraying and weakening. It is also for Casualty to prove any weight issue is causative and I don't consider it has discharged this burden of proof by what was said in the final response letter.

It's important to note Mrs W's dog was just at the top end of the normal weight for her breed so was not excessively overweight. The average weight for her breed was between 22.4kg and 34.8kg. Mrs W's dog was 34.9kg. I don't consider 0.1kg would have been wholly causative as the term requires, in causing her cruciate ligament rupture. There is simply no vet evidence before me to show me this was the case.

Therefore, I don't consider Casualty's view that this was a pre-existing condition to be either fair or reasonable. I also consider the weight of Mrs W's dog had no bearing on the claim made by Mrs W. So, there is no reason why Mrs W should not be reconsidered within the remaining terms and conditions of the policy with a firm view that it should be paid. With interest if Mrs W has already paid her vet.

Turning now to the imposition of exclusions on Mrs W's policy which Casualty imposed. In order to do this, Casualty must follow the provisions of the Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). Essentially that says it is for the insurer to ask the consumer clear questions on the application form. If it does that and the consumer doesn't answer those questions honestly, then it becomes a qualifying misrepresentation and Casualty, on showing it would have offered on different terms via its underwriting guide, is then entitled to change the terms of the cover in accordance with the remedies laid out in the Act. That can include exclusions, other limitations of cover, increasing the premium, or in deliberate misrepresentation even cancelling the policy.

Casualty though didn't ask Mrs W any questions about the vet history of her dog. Instead it listed just one question, namely *'Are you looking for insurance cover for a pre-existing condition?'* Mrs W replied no.

It also had one assumption which said the following:

*'You accept that no cover will be provided for any illness or injury that is pre-existing or if it were to arise within the first 14 days from the policy start date or 5 days in the event of an accident.'*

Mrs W ticked a box to indicate she accepted this.

And on this basis Casualty then decided Mrs W had misrepresented things and it imposed the following exclusions, saying had it known her dog's vet history, it would have excluded these.

- *'Excludes cover on all claims with respect to Anything to do with the Right Hind Lameness that occurred on 23 November 2018 and Associated Conditions with effect from 12 April 2021.'*

- *Excludes cover on all claims with respect to The Back and Spine with effect from 12 April 2021.*
- *Excludes cover on all claims with respect to Both Stifles with effect from 12 April 2021 AND Excludes cover on all claims with respect to Cruciate Ligament and any Associated Conditions with effect from 12 April 2021.'*

Answering no to the question above and accepting the assumption above doesn't show that Mrs W somehow misrepresented anything though, not given I have decided the condition claimed for wasn't pre-existing given the vet evidence.

However, I consider it significant that Casualty never asked Mrs W about her dog's vet history and it ought to have done if it is now saying if it knew her dog's vet history it would have imposed these exclusions. I don't consider the assumption and question to be enough under CIDRA to impose these exclusions. Normally we would see questions asking about any vet visits in the past relevant amount of time for example, where the consumer has the ability to detail these in the application form, not such a simply yes or no assumption and question.

CIDRA also demands that it's Casualty's burden of proof to show the consumer didn't take reasonable care in answering the questions before Casualty can change the contract terms including limiting the extent of the cover. From Mrs W's point of view, she didn't think she was asking for any cover for pre-existing conditions so she was unaware she could be misrepresenting anything. Further as I have now deemed her claim didn't concern a pre-existing condition, it is somewhat irrelevant.

So, I don't consider Casualty has shown Mrs W failed to take reasonable care. And, as a consequence, that means I don't consider it can now use the remedies in CIDRA to change Mrs W policy coverage by imposing these exclusions. So, these exclusions should be removed.

### **My final decision**

So, for these reasons it's my final decision that I uphold this complaint.

I now require Casualty & General Insurance Company (Europe) Ltd

- Reconsider Mrs W's claim under the remaining terms and conditions of the policy with a firm view of paying it.
- Remove the exclusions from the policy.
- If Mrs W has already discharged her vet fees, it should add interest of 8% simple per year from the date Mrs W paid her vet fees to the date it refunds her. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mrs W for HMRC purposes.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 October 2022.

Rona Doyle  
**Ombudsman**