

The complaint

Miss M and Mr W have complained that Casualty & General Insurance Company (Europe) Ltd, unfairly refused to pay their claim for the removal of hairbands from their dog's stomach. They've also complained that Casualty wrongly imposed a retrospective exclusion for anything to do with their dog's digestive tract.

For ease I shall just refer to Miss M throughout my decision as she was our main contact through their complaint.

What happened

Miss M bought this policy online on 2 June 2021 for her dog who was born on 26 January 2021, so he was 6 months old at the time.

In July 2021 Miss M's dog swallowed some hair bobbles and needed surgery to remove them. Initially the dog presented with some diarrhoea issues at the vet before the decision for surgery was then made. So, she claimed from Casualty. On reading the vet history, Casualty decided that Miss M's dog has pre-existing diarrhoea issues which wasn't disclosed. On that basis it refused to pay Miss M's claim and imposed a retrospective exclusion on the policy excluding all claims in relation to her dog's digestive tract.

Miss M didn't agree. She said the vet history showed her dog's diarrhoea didn't start until after the policy started. More importantly she said it didn't have anything to do with the fact that her dog required surgery because he had eaten some hair bobbles. Casualty wouldn't change its stance, so Miss M brought her complaint to us.

The investigator was of the view that it should be upheld as she didn't think the ingestion of hair bobbles had anything to do with any previous bouts of diarrhoea. More so given the evidence given by Miss M's vet.

She also thought that because Casualty didn't ask any questions on its application form about pre-existing conditions, Miss M had no opportunity to explain about her dog's diarrhoea (if it had existed at the time she took out the policy) therefore she didn't think Casualty could impose the retrospective excluding issues with the entire digestive tract either.

Miss M agreed but Casualty didn't. So, Miss M'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 I'm upholding this complaint along the same lines as the investigator. I'll now explain why.

First, as regarding Casualty's decision to decline Miss M's claim, I don't consider this was reasonable to say it was somehow related to a previous bout of diarrhoea given the particular evidence of the vet history for Miss M's dog.

The history shows that the owner (Miss M or Mr W) phoned the vet clinic on 19 July 2021 to say the following:

'that [name of dog] had been admitted to [name of emergency clinic] last night for a foreign body op as he had eaten bobbles.'

That was nearly a month after the previous entry about diarrhoea. There is singularly no evidence that any diarrhoea was continuing between the last episode and this entry. So, there is no evidence this ingestion event was somehow connected to previous issues of diarrhoea, notwithstanding that at the time, he had some diarrhoea. The reason Casualty refused to pay this claim is because it had decided on reading the vet history to impose a retrospective exclusion on the dog's digestive tract. Therefore, because this was an operation on his digestive tract, it believed the costs of the operation were thereby so excluded.

It's a fact the dog swallowed the hair bobbles and that in itself can't be connected to any other medical issues at all. Simply an opportunistic puppy eating and swallowing something he shouldn't, which is unsurprisingly common with young dogs. Miss M's vet is very clear that Miss M's dog could not have ingested these hair bobbles over six weeks previously either before the policy started or at the time the policy started and that's a plainly rational observation too. Most certainly the dog would have just got sicker and sicker if that had been the case and there would have been no gap of a month in the vet history either.

So, although the dog's symptoms were initially looking like a recurrence of the previous diarrhoea issue, that wasn't the case because on opening the dog up the hair bobbles were found. The costs that Casualty has refused to pay relate to the costs of the operation to remove the hair bobbles, which were of course incurred following the investigation of how the dog presented at the vet on the day in question.

Turning now to the imposition of the exclusion by Casualty on Miss M's policy. As the investigator detailed the law surrounding this is contained in the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). In order to rely on a qualifying misrepresentation by the consumer, the insurer has to show it asked the consumer questions which the consumer didn't answer correctly. Only then are the remedies available to the insurer. Which would also include imposing an exclusion but only if the insurer can show that if it knew the content of the correct answers to the questions it asked the consumer, it wouldn't have offered the policy on the terms it did.

So, the first point to analyse is what questions did Casualty ask Miss M about this. In Casualty's letter to Miss M of 8 December 2021, Casualty 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.'

However, in Casualty's final response letter it didn't keep to this wording and said the following instead:

*'Are you looking for insurance cover for a pre-existing condition?
Are you concerned that after 12 months a condition is no longer covered?'*

In response to the investigator's questions about Miss M's online journey in buying the policy Casualty said she would have been asked the following, *'Do you want to cover any pre-existing medical conditions for [name of dog]?' with the only option to answer 'yes' or 'no', there was no ability for Miss M to provide any details had she wished to.*

Later, in the online process, Casualty said there was a list of assumptions that included the following:

'You accept that no cover will be provided for any illness or injury that is pre-existing or has displayed symptoms (changes in my pet's normal healthy state, condition, appearance, bodily functions or behaviour) 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.'

It's concerning to me Casualty has provided all of these different wordings as that doesn't show me with any clarity what exactly Miss M would have seen. Notwithstanding that issue, none of these are questions on which any answer or agreement given by Miss M, could be seen as a qualifying misrepresentation under CIDRA. None of them ask Miss M to disclose anything about her dog's vet history at all. So, there was no opportunity for Miss M to either disclose truthful answers or indeed answers that were wrong. Asking a consumer whether they wanted cover for pre-existing conditions doesn't in my view show the consumer is under any duty to disclose anything. Therefore, because nothing was asked to be disclosed, there is no ability to say Miss M misrepresented anything. Therefore, it follows there isn't any existence of a qualifying misrepresentation under CIDRA, here.

On that basis the remedy Casualty has sought to use, namely imposing the exclusion for the digestive tract of Miss M's dog isn't available to Casualty to use here. Further Casualty also hasn't shown us any underwriting evidence from its underwriting guide that dogs as young as Miss M dog was at the time could fairly have an exclusion for the entire digestive tract imposed in these circumstances. Given puppies might often have diarrhoea from new surroundings, new or changing food, or even possibly some sensitivity to things like chicken-based food which is so common in dogs anyway. That in turn doesn't mean there is anything endemically wrong with the dog's digestive tract to show it's a risk from an underwriting perspective either. Normally in such young dogs we might also see that the exclusion would be reviewable after a year or so also. But Casualty didn't disclose any of this information to us.

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 to do the following:

- Review Miss M and Mrs W's claim in line with the remaining terms and conditions with a firm view to paying it.
- If Miss M and Mr W have already discharged their vet's fees, it should refund them the fees adding interest of 8% simple per year from the date they discharged their vet's fees to the date of the refund. If income tax is to be deducted from the interest, appropriate documentation should be provided to Miss M and Mr W for HMRC purposes.

- Remove the exclusion in relation to the dog's digestive tract.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M and Mr W to accept or reject my decision before 25 November 2022.

Rona Doyle
Ombudsman