

The complaint

Mrs P has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined her claim under her pet insurance policy on the ground that the claim was for treatment of a pre-existing condition which is excluded by the policy terms.

What happened

The background to Mrs P's complaint has been given in our investigator's view of the fair and reasonable outcome so I won't repeat it here in detail. Briefly stated, Mrs P had a pet insurance policy with C&G from 3 June 2021 for her dog who I'll refer to as "D".

On 10 December 2021, D visited the vet who diagnosed that he was presenting with "*diffuse neoplasia of the liver with spread to spleen – HCC or bile duct adenocarcinoma most likely*". Further investigation was undertaken over the following weeks to identify what was causing his condition and what potential treatment might be possible, but very sadly on 26 December 2021 D was euthanised as a consequence of liver cancer.

Mrs P made a claim against C&G for the treatment D had received. Having reviewed D's veterinary history, it noted that on 20 June 2019 D had attended the vet who had recorded the presence of a mass on D's right inner thigh, which the vet thought looked like a fluid filled cyst. Mrs P say this subsequently healed well.

C&G declined Mrs P's claim on the ground that the mass noted on D's thigh in 2019 was a pre-existing condition.

C&G referred Mrs P to a number of terms of her policy, which she had taken out on-line and which would've been brought to her attention during the purchase process. It says that when setting up her policy for D she would've been taken through a section called 'Assumptions'. Within this section is the following statement:

'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'.

A Pre-existing condition is defined in the policy as:

"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".

An "Associated Condition" is defined as:

"a Condition that is either a recurring Illness and/or Accidental Injury or Lump; or related to a previous Illness and/or Accidental Injury or Lump; or caused by a previous Illness and/or Accidental Injury or Lump. When applying the Benefit Limit and the terms of this Policy, any Treatment for an Associated Condition will be considered as one Condition, regardless of when the Treatment occurred".

By a further term of the policy, C&G reserves the right to place any relevant exclusions if it is made aware of a pre-existing condition. The policy states:

“General Exclusions

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 add a relevant endorsement(s) to Your Policy in respect of these Pre-Existing Conditions”.*

C&G maintains that D had on an Associated Condition before the Policy Start Date and therefore introduced a retrospective exclusion to Mrs P's policy, excluding from cover:

“Anything to do with the Growths, Tumours, Cancers and Associated Conditions with effect from 3 June 2021”.

As the condition being claimed for did not satisfy the terms and conditions of the policy, C&G declined payment for D's veterinary treatment.

On 8 February 2022, in response to C&G's rejection of Mrs P's claim, D's vet provided a fuller report on the condition D presented with on 10 December 2021 and the treatment that was considered. The vet's opinion was that:

“Given the diffuse nature of the disease, the only neoplasia which would have been amenable to any form of treatment was lymphoma. Whilst the biopsies did not give a definitive diagnosis they convincingly ruled out lymphoma....The 'growth' previously mentioned in 2019, and any other skin growth before or after, are completely unrelated to the condition and investigations described above and in no way connected at all.”

D's vet also stated that if the condition noted in December 2021 had been connected with D's condition in June 2019, he would not have survived so long.

The opinion that there was no connection between the two conditions was shared by three vets who had been involved in D's treatment.

C&G maintains that whilst it appreciated the comments by D's vet that the mass noted in 2019 was unrelated to the possible histiocytic sarcoma noted in December 2021, the condition falls under the endorsement for *“Growths, Tumours, Cancers and Associated Conditions”*. As D had suffered from a dermal mass prior to the policy's inception, Mrs P had made a qualifying misrepresentation which entitled it to add the endorsement. It says Mrs P's claim was correctly declined.

Mrs P therefore brought her complaint to this service. Our investigator's view was that she didn't think it was fair to conclude that a pre-existing condition was present before the policy started which was linked to the condition claimed for. Nor did she consider that there had been any misrepresentation which would entitle C&G to rely on the remedies provided for misrepresentation under the Consumer Insurance (Disclosure and Misrepresentations) Act 2012 (CIDRA). She concluded that C&G shouldn't have added a backdated exclusion to Mrs P's policy and didn't act fairly when it declined the claim in reliance on that exclusion.

C&G doesn't agree with our investigator's view and has asked that the complaint be referred to an ombudsman for a final decision.

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 Mrs P's complaint and I'll explain why.

When Mrs P purchased her policy on-line, she was asked:

"Are you looking for insurance cover for a pre-existing condition?"

Mrs P would've been required to answer either "Yes" or "No". If Mrs P were to have selected "Yes", she would've been advised that C&G was unable to provide Mrs P with a quote and that she should contact it for more information. If Mrs P had answered "No", she was able to complete her purchase process.

To complete the purchase process, Mrs P would've been required to confirm her understanding and acceptance of the policy's assumptions and terms, one of which was that the policy didn't cover pre-existing or associated conditions.

For there to be a misrepresentation, Mrs P would need to have provided incorrect information to C&G, either innocently, negligently, or recklessly, in response to a direct question about D's health. Insurers require such questions to be answered accurately as the answer will influence whether they are willing to provide cover, and if so, subject to what conditions and what premium.

But Mrs P wasn't asked any questions about D's previous veterinary history. She was only asked if she was looking for insurance cover for a pre-existing condition. In my view any answer to such a question can't be regarded as misrepresentation. Therefore the remedies open to C&G under CIDRA don't apply, and I consider that it's unreasonable for C&G to have imposed an exclusion on Mrs P's policy on this ground.

The policy terms, however, are clear that pre-existing conditions aren't covered. In answering "No" during the purchase process, Mrs P said she didn't want cover for any such conditions. Mrs P's complaint is therefore only able to succeed if C&G can provide evidence that the condition claimed for is connected to any health matters that D had prior to the inception of the policy on 3 June 2021. The evidence I have, provided by three vets who treated D, is that there was no such connection. C&G hasn't provided any evidence as to why it says there is a connection. To deny Mrs P's claim, it relies on the exclusion that it retrospectively added to her policy, which I have found to be unfair.

My conclusion therefore is that C&G has acted unfairly towards Mrs P in denying her claim, and at a particularly difficult and distressing time for her. Her veterinary bill was significant, and the worry of having to pay this because of C&G's rejection of her claim will have added to her distress at the loss of a much-loved pet. I agree with our investigator that this merits compensation and that £250 is appropriate in the circumstances.

My final decision

For the reasons I've given above, I'm upholding Mrs P's complaint.

I require Casualty & General Insurance Company (Europe) Limited to re-assess Mrs P's claim without reference to the exclusion it introduced and subject to any other terms and conditions of her policy.

I also require it to pay Mrs P interest on any sum paid following such reassessment at the simple rate of 8% from the date of her claim to the date that payment is made to her.

If Casualty & General Insurance Company (Europe) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs P how much it's taken off. It should also give Mrs P a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

I also require Casualty & General Insurance Company (Europe) Limited to pay Mrs P compensation of £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 30 November 2022.

Nigel Bremner
Ombudsman