

The complaint

Mrs W has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined her claim for veterinary treatment for her dog on the ground that it related to a pre-existing condition.

What happened

Mrs W insured her dog, who I'll refer to as "B", with C&G from 22 October 2020. On 29 January 2022 Mrs W took B to his vet for rear leg lameness and made a claim for his treatment.

C&G referred to B's veterinary history which it says confirmed that there had been signs and symptoms of left hind leg lameness prior to the inception of the policy. It referred specifically to an incident on 26 May 2020. According to Mrs W, this incident involved B skidding on gravel while playing and damaging his pads, causing him to limp. C&G refers to the vet's notes which say that when playing B started to become unsteady on his legs and became lame on his left hind leg. He was prescribed analgesia.

In its final response letter to Mrs W declining her claim, C&G states that when applying for her policy, Mrs W hadn't disclosed a pre-existing condition of the left hind leg lameness she had discussed with B's vet on 26 May 2020. It says that if she'd done so, it would've applied an endorsement to her policy from inception stating:

"Excludes cover on Hind Limb Lameness and any resulting conditions with effect from 26th May 2020".

C&G says that Mrs W's claim was denied as it falls within this endorsement.

Mrs W maintains that in 2020 B suffered only skinned pads and once these had healed he had no limp or other leg problems until his cruciate ligament injury some 18 months later. She's provided a letter from B's current vet who had also seen the notes from B's previous vet who'd treated him in May 2020 for skinning the top layer of leather off both hind feet. It was noted that this vet expressed no other concerns about B's feet or legs. At a visit to the same vet on 3 December 2020 for an annual booster vaccination, no further problems were reported by Mrs W with B's legs and the vet found no issues including with his legs.

On 9 December 2021, B attended his new vet for his annual booster and again no issues were raised by either Mrs W or the vet. The vet's opinion was that an initial wobbliness that Mrs W had mentioned in 2020 (and which was only her observation, not the vets), was secondary to B's painful pads and wasn't an underlying mobility problem.

The vet goes on to state that it was only on 2 February 2022 that B presented for the first time in relation to his mobility. He was limping and had swelling in the left hind limb which the vet suspected was related to cruciate damage. The vet concluded:

"I can confirm and I'm sure you can agree by looking at the relevant history above that the recent condition claimed for is not related to any previous condition. I ask you to therefore reconsider the rejection of the claim".

Mrs W wasn't happy with C&G's rejection of her claim and brought her complaint to this service. Our investigator's view was that C&G should not have declined Mrs W's claim as it hadn't clearly evidenced why the claim for B's left hind leg lameness made in 2022 was linked to injury sustained in 2020. Her view was that C&G should reconsider the claim and also pay Mrs W £150 for the trouble and upset she had sustained.

In response to our investigator's view, C&G maintained its position and also introduced a new ground for declining the claim, namely that B was overweight. It referred to another exclusion within the policy which states:

"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."

Our investigator advised C&G that this was a new issue and Mrs W's complaint was limited to the matters raised in C&G's final response letter.

As C&G doesn't agree with our investigator's view, Mrs W's complaint has been referred to me for a final decision from this service.

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 W's complaint and I'll explain why.

I don't consider that it was fair for C&G to have introduced the endorsement to Mrs W's policy upon which it seeks to rely to decline her claim. It's clear that the policy doesn't cover pre-existing conditions, and it gives C&G the right to add an endorsement retrospectively if it is made aware of any pre-existing conditions at the time of a claim.

But in my view, for any such endorsement to be fair, there must exist a pre-existing condition, that is one that has shown clinical signs or symptoms prior to the inception of the policy or within the following 14 days, that is connected to the condition to which the claim relates.

I agree with our investigator's view that there's no evidence showing that B had lameness when he was seen by the vet in 2020 other than that attributable to having sustained damage to his pads. The vet's notes at the time said, "*rest of paws and legs fine*". At two subsequent visits to the vet in December 2020 and 2021 for annual vaccinations no reference was made to any lameness. Lameness was only noted in February 2022. I consider it likely that if there had been clinical signs or symptoms of lameness attributable to a cruciate issue in 2020, this would have shown recurring signs in the period between 2020 and 2022.

In coming to my view, I also rely upon the professional opinion expressed by B's vet, quoted above, that the condition for which B was treated in 2022 was not connected to any previous condition. C&G was asked to provide any medical evidence upon which it relied to support a connection, but it hasn't done so.

My conclusion is therefore that I don't consider that the treatment for which Mrs W is claiming relates to a pre-existing condition, or that C&G is acting fairly in declining her claim on the basis of an endorsement that I consider was unreasonably applied.

I agree with our investigator that C&G should reconsider Mrs W's claim subject to the remaining policy terms and conditions and pay her compensation of £150 for the trouble and upset the rejection of her claim has caused her.

My final decision

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

I require Casualty & General Insurance Company (Europe) Limited to settle Mrs W's claim subject to the other terms and conditions of her policy.

I also require Casualty & General Insurance Company (Europe) Limited to pay Mrs W interest on any sum paid to her at the simple rate of 8% from the date of her claim until 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 W how much it's taken off. It should also give Mrs W 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 W compensation of £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 February 2023.

Nigel Bremner
Ombudsman