

The complaint

Miss G complains about Casualty & General Insurance Company (Europe) Ltd (CG) declining a claim under her pet insurance policy for treatment of her dog.

References to CG include their agents who administer the policy.

What happened

Miss G took out a pet insurance policy with CG for her dog in June 2021. In December 2021 the dog began limping, so she took it to a vet. In January 2022 the vet diagnosed a ruptured cruciate ligament, requiring tibial plateau levelling osteotomy (TPLO) surgery. Miss G made a claim for the cost of treatment.

However, CG said they wouldn't accept the claim, as review of the dog's clinical history indicated a previous consultation in March 2018 when the dog was limping. They said they showed the dog had a pre-existing condition, before the policy was taken out. Pre-existing conditions weren't covered under the policy.

Miss G was unhappy about CG's decline of her claim, as she didn't think the previous clinical history indicated a pre-existing condition. Her vet also said that any cruciate ligament injury would not have taken from March 2018 to January 2022 before rupturing. So, Miss G complained to CG (and subsequently to this service) about their decline of the claim.

CG didn't uphold the complaint. In their final response they said when Miss G took out her policy, the terms and conditions provided to her made it clear pre-existing conditions (or where there were clinical signs of existence) wouldn't be covered. CG referred to information in the Insurance Product Information Document (IPID) and the *Policy Definitions*, *Veterinary Fees* and *General Exclusions* sections of the policy which stated pre-existing conditions weren't covered.

CG also referred to the clinical history of the dog, which they said indicated signs and symptoms of lameness prior to the start of the policy. Had they been disclosed to them, they would have applied an endorsement (exclusion) to the policy to exclude all cover on claims with respect to anything to do with [hind limb] lameness and associated conditions from the date the policy started.

CG also referred to the clinical history indicating the dog had 'hopped' since birth, indicating previous issues with its legs. In the absence of indications the ligament rupture was due to trauma (the other cause CG said was most commonly seen) then they confirmed their decline of the claim.

CG also said they would be applying two further endorsements to the policy (from the start date) to exclude cover for, firstly, both stifles and, secondly, cruciate ligament and any associated conditions.

In her complaint to this service, Miss G said CG had unreasonably declined her claim, as the vet's view supported the case the dog didn't have a pre-existing condition when the policy was taken out. The dog was examined in June 2021 for its annual check-up and booster

vaccinations and no issues with its leg joints were noted. She'd had to pay for the cost of the surgery, and she was concerned about the likelihood the dog's other cruciate ligament might also require surgery (because of the additional strain on the leg while the dog was limping). She wanted CG to settle her claim and reimburse her for the cost of surgery.

Our investigator upheld Miss G's complaint, concluding CG hadn't acted fairly. This was based on Miss G's vet's opinion the ligament rupture wasn't linked to the previous lameness in March 2018. That visit suggested the issue was a 'soft tissue injury', so the question asked of Miss G when the policy was taken out (whether she was looking to cover a pre-existing condition) didn't make it clear Miss G needed to tell CG of every previous injury. He didn't think the previous 'soft tissue injury' was a pre-existing condition. So, he concluded it wasn't fair for CG to add the retrospective endorsements (exclusions) to the policy.

To put things right, the investigator thought CG should settle Miss G's claim. CG declining the claim had also caused Miss G distress, so CG should pay £100 in compensation. They should also remove the endorsements (exclusions) placed on the policy.

CG disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they said one of the most common causes of cruciate ligament rupture was long-term degeneration, as the fibres within the ligament weaken over time – and it couldn't be ruled out that a pet could suffer from an underlying degeneration of the ligament over many years. They also referred to a published source saying limping was the most common sign of cruciate ligament damage. And the clinical history included reference to the dog always 'bunny hopping' since birth. Taken together, they thought these points confirmed that the signs and symptoms (of a cruciate ligament condition) began prior to the start of the policy. So, Miss G had made a misrepresentation when she took out the policy.

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 have acted fairly towards Miss G.

The key issue in Miss G's complaint is whether CG acted fairly in declining her claim for treatment of her dog. CG's view (as set out in their final response) is that they correctly declined the claim, on the grounds the dog's clinical history indicated a pre-existing condition (they refer to a previous consultation for lameness in March 2018). As a pre-existing condition, it was excluded from cover under the policy. Miss G's view is that the previous lameness wasn't linked to the subsequent cruciate ligament rupture. She points to the opinion of her vet that had the earlier lameness indicated cruciate ligament damage, it wouldn't have taken the time from March 2018 to when the ligament ruptured.

There's a second aspect to the complaint. While their final response doesn't explicitly refer to it as such (nor have they applied any of the remedies available in such circumstances), CG's conclusion there were signs of cruciate ligament issues prior to policy inception - which, had they known about at the time, they would have added the endorsement to exclude all cover on claims with respect to anything to do with lameness and associated conditions from the date the policy started - implies they believe Miss G made a misrepresentation when she took out the policy.

In their response to our investigator's view, they confirm they believe Miss G made a misrepresentation (under the Consumer Insurance (Disclosure and Representations) Act 2012 – CIDRA) when she took out the policy (as they think there were signs and symptoms of cruciate ligament issues prior to the start of the policy).

Miss G says CG unreasonably declined her claim, and her vet's view supports the case the dog didn't have a pre-existing condition when the policy was taken out. Which indicates she didn't think the dog had a pre-existing condition at the time she took out the policy – implying she wouldn't have needed to declare a pre-existing condition.

On the issue of the decline of the claim because of the exclusion for a pre-existing condition I've considered both views carefully, including the relevant terms and conditions of the policy (particularly those referred to by CG in their final response) together with the supporting information and evidence, including Miss G's vet's opinion and the clinical history of Miss G's dog. In their final response, CG refer to the following statement in the IPID:

"What is not insured?

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

CG refer to the Policy Definitions which state a 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."

Similar wording appears under the *Veterinary Fees* heading, where there's a sub-heading *What is not covered?*

CG also refer to the *General Exclusions* section of the policy that includes the following:

"As with all insurance policies, there are exclusions and conditions that apply to Your coverage. We have listed below the exclusions that apply to all sections of Your Policy coverage..."

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."*

I've then considered the question of whether the dog did have a pre-existing condition, specifically, to its cruciate ligament. Or whether there were any clinical signs or symptoms. Looking at the clinical history, particularly the issue in March 2018 that CG referred to when declining the claim, there's reference to the dog jumping up to Miss G then yelping. Which suggests some form of trauma. I've also considered the published source referred to by CG in their response to our investigator's view. CG say this confirms limping is the most common clinical sign (of a cruciate ligament issue) and this can be progressive or intermittent in a dog. However, given the emphasis on *can be*, this isn't definitive. I've also considered Miss G's vet's opinion. They say the clinical notes from the March 2018 lameness (*"ROM good on hindlimbs, no evidence of stifle instability, patella lux etc"*) suggests the vet then checked for cruciate ligament rupture (and patella luxation) and there was no evidence of either. While Miss G's vet acknowledges cruciate ligament disease is progressive and degenerative, there would have been signs including lameness and muscle atrophy – but there are no notes they can see to indicate this. Also, x-rays didn't indicate osteoarthritic changes (which the vet would have expected had the dog had cruciate ligament disease since March 2018).

As Miss G's vet also carried out the surgery on the dog, then I'm more persuaded by their view the dog didn't have cruciate ligament issues prior to the policy start (going back to March 2018). This would also mitigate against CG's point about the dog 'bunny hopping' since birth).

I've also considered the general principle, where an insurer relies on an exclusion, that onus is on them to show it's reasonable to apply it. Taking all these points into account, I'm not persuaded CG have shown enough to apply the exclusion for a pre-existing condition in the circumstances of this case. So, I've concluded CG acted unfairly to apply the exclusion to decline Miss G's claim.

I've then considered the second issue, whether Miss G failed to declare a pre-existing condition when she took out the policy – thereby making a misrepresentation. I've looked at the circumstances in which Miss G took out her policy. I've considered the questions asked of Miss G that CG refer to in their final response, which are:

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

Are you concerned that after 12 months a Condition is no longer covered?

The first question assumes that a consumer would reasonably have known their pet had a pre-existing condition and declared it. As I've said earlier, as Miss G says CG unreasonably declined her claim, and her vet's view supports the case the dog didn't have a pre-existing condition when the policy was taken out, this indicates she didn't think the dog had a pre-existing condition at the time she took out the policy – so she wouldn't have needed to declare a pre-existing condition. I've also noted the first question doesn't specifically ask whether the pet *has* a pre-existing condition – it asks whether the consumer is looking for *cover* for a pre-existing condition. If the consumer reasonably believes their pet doesn't have a pre-existing condition, then they would logically answer 'no' to the question.

Given my conclusion it wasn't reasonable for CG to apply the exclusion for a pre-existing condition, together with the vet's view the cruciate ligament rupture wasn't linked to the dog's previous lameness issue, then I don't believe it was unreasonable for Miss G to think her dog didn't have a pre-existing condition. So, I've concluded she didn't make a misrepresentation under CIDRA.

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 for pre-existing conditions, and Miss G didn't make a misrepresentation when she took out her policy, they should settle 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 settle the claim, they should also pay interest at a rate of 8% simple on the amount accepted, from the date Miss G paid the vet's bill, to the date they settle the claim.

And as I don't think CG can rely on the exclusion for pre-existing conditions, and Miss G didn't make a misrepresentation when she took out her policy, then I've concluded they've unfairly applied the two endorsements (exclusions) to the policy. So, they should remove the two endorsements (exclusions) from the policy.

I've also considered the issue of compensation. Given what Miss G has told us, having her claim [unfairly] declined and having to settle the vet's bill herself will have been distressing and inconvenient. Given my conclusion CG acted unfairly in declining her claim and applying

the two endorsements, I think compensation for distress and inconvenience would be fair. Considering 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 Miss G's complaint. I require Casualty & General Insurance Company (Europe) Ltd to:

- Settle Miss G's 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).
- Remove the two endorsements they applied to Miss G's policy.
- Pay Miss G £100 in compensation for distress and inconvenience.

If Casualty & General Insurance Company (Europe) Ltd settle the claim, they should also pay interest at a rate of 8% simple on the amount settled, from the date Miss G paid the vet's bill to the date they settle the claim.

If Casualty & General Insurance Company (Europe) Ltd consider they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss G how much they've taken off. They should also give Miss G a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Casualty & General Insurance Company (Europe) Ltd must pay the compensation within 28 days of the date on which we tell them Miss G 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 Miss G to accept or reject my decision before 15 June 2023.

Paul King
Ombudsman