

The complaint

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

References to CG include their agents who administer the policy.

What happened

In December 2021 Mr G took his dog to a vet as it was reluctant to eat and showed signs of pain when eating. The vet diagnosed suspected oesophageal haematoma caused by severe coagulopathy (a problem with clotting of the blood). Unfortunately, the condition meant the dog had to be euthanised. Mr G contacted CG to tell them and subsequently made a claim for the cost of treatment (£3,988).

However, CG said they wouldn't accept the claim, as review of the dog's clinical history indicated previous consultations (and conditions) that would have affected the cover provided under the policy. They said had they been aware of the history when Mr G took out his policy they would have imposed specific exclusions (from November 2018, the date Mr G took out his policy). The exclusions related, firstly, to growths, tumours and resulting conditions. And, secondly, anything to do with the digestive system and any resulting conditions. As the claim related to the dog's oesophagus, this would have fallen under the exclusions, so CG said they wouldn't accept the claim.

Mr G was unhappy about CG's decline of his claim, as he didn't think the previous clinical history indicated anything other than minor illnesses. His vet also didn't think the current condition (that led to the dog being euthanised) was related to the previous conditions recorded in the clinical history. So, Mr 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 Mr G took out his policy, the terms and conditions provided to him 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 *General Exclusions* section of the policy which provided for CG to add endorsements to the policy where they became aware of pre-existing conditions after a policy had been taken out.

CG also referred to the dog's clinical history prior to the policy's inception, including vomiting, gastroenteritis, diarrhoea, masses on the jaw and spots in the eye. Also the notes relating to the visits to the vet leading to the diagnosis of oesophageal haematoma and the decision to euthanise the dog. CG concluded there were signs of digestive issues and undiagnosed lumps prior to policy inception which, had they known about at that time, they would have added the two endorsements referred to when initially declining the claim. While no definitive diagnosis had been made for the dog's condition, as there was a possibility the condition was the result of a digestive issue or a tumour, CG confirmed their decline of the claim.

In his complaint to this service, Mr G said CG had unreasonably declined their claim, which their vet supported. He thought the previous conditions in the clinical history weren't shown

to be related to the present condition that led to the dog being euthanised. He also thought that as the previous issues were minor, it wasn't reasonable to expect them to all be declared when taking out the policy. If CG required a full clinical history, then they should have been stipulated as part of the process to take out the policy. He was out of pocket by £4,000 (the claim limit in the policy) although the cost of treatment was considerably greater. He wanted CG to reconsider their rejection of the claim (given the support of their vet) and to settle the claim in line with the policy limits (less any deductibles).

Our investigator upheld Mr G's complaint, concluding CG hadn't acted fairly. He didn't think the evidence (and the opinion of the vet) indicated the dog had the conditions (or symptoms of the condition the vet suspected affected the dog in December 2021. So, CG had acted unfairly in declining the claim on the basis of a pre-existing condition. In respect of the two endorsements CG said they would have applied had they been aware of the dog's clinical history, the investigator thought CG hadn't asked sufficiently detailed questions for Mr G reasonably to have concluded he needed to disclose any of the issues in the dog's clinical history/ So, the investigator concluded Mr G had taken reasonable care in answering the questions asked when he took out the policy. As such, he hadn't made a qualifying misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

To put things right, the investigator thought CG should settle Mr G's claim in accordance with the remaining terms of the policy. As Mr G had paid the vet's bill himself, the investigator thought CG should add interest to the settlement amount from the date Mr G paid the vet's bill to the date CG reimbursed him. The investigator also thought the decline of his claim had caused Mr G trouble and upset, along with the inference he hadn't taken sufficient care in answering the questions asked when he took out the policy. In the context of the distress at the loss of his dog, the investigator thought CG should pay Mr G £150 in compensation.

CG disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they referred to the clinical history, including that a tumour could not be ruled out. And that the diagnosis of Oesophageal Haematoma would fall under both endorsements that they would have applied. CG also said Mr G made a misrepresentation when he didn't inform them of what they considered a 'material change' (when the dog was being looked after by other family members in a different location, which would have affected the policy premium).

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.

I'd first want to express my sympathy to Mr G at the loss of his dog, which would have been distressing for him and his family. My role here is to decide whether CG have acted fairly towards Mr G.

The key issue in Mr G's complaint is whether CG acted fairly in declining his claim for treatment of his dog. CG's view is that they correctly declined the claim, firstly on the grounds the dog's clinical history indicated a possibility the condition was the result of a digestive issue or a tumour. Which would indicate a pre-existing condition, so excluded from cover under the policy. Mr G's view is that the previous conditions weren't shown to be related to the present condition that led to the dog being euthanised.

There's a second, linked 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 digestive issues and undiagnosed

lumps prior to policy inception - which, had they known about at the time, they would have added the two endorsements referred to when initially declining the claim - implies they believe Mr G made a misrepresentation when he took out the policy. Mr G says the previous issues were minor, so it wasn't reasonable to expect them to all be declared when taking out the policy. If CG required a full clinical history, they should have stipulated this as part of the process to take out the policy.

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 the vet's notes and the clinical history of Mr G's dog. Looking at the policy terms and conditions, under the *Your Cover* part of the policy, it states:

"What is not insured?"

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

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

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."

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 You accept and understand that medical conditions or diseases that apply to your 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, the oesophageal haematoma caused by severe coagulopathy that the vet diagnosed. Or whether there were any clinical signs or symptoms. Looking at the clinical history, there are notes of issues including vomiting, gastroenteritis, diarrhoea, masses on the jaw and spots in the eye. However,, none mention oesophageal haematoma or coagulopathy. And I've also considered the vet's opinion that the condition that led to the dog being euthanised was related to the previous conditions recorded in the clinical history.

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. As well as the points noted above, I've also considered CG's final reference to there being no definitive diagnosis of the condition that led to the dog being euthanised. CG add that there was a **possibility** (my emphasis) that his illness was caused by a digestive issue or a tumour. However, as the onus is on CG to show the exclusion applies, I don't think it reasonable to rely on a 'possibility'.

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 Mr G's claim.

Turning to the second issue, whether Mr G failed to declare a condition at the point he took out the policy, I've considered the circumstances in which Mr G took out his policy. I've considered the questions asked of Mr 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. Mr G says the previous issues were minor, so it wasn't reasonable to expect them to all be declared when taking out the policy. If CG required a full clinical history, they should have stipulated this as part of the process to take out the policy. 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 condition they suspected was the cause of the dog's illness (and subsequent euthanasia) wasn't linked to the dog's previous issues, then I don't believe it was unreasonable for Mr G to think his dog didn't have a pre-existing condition (and the clinical history makes no reference to the condition at the time of the dog's final illness).

In their response to our investigator's view, CG said Mr G made a misrepresentation when he didn't inform them of what they considered a 'material change' (when the dog was being looked after by other family members in a different location, which would have affected the policy premium). I've considered this point carefully. However, this wasn't raised as an issue either in CG's initial decline of the claim, nor in their subsequent final response. Nor have they provided any evidence to suggest that the dog's location had any bearing on the illness and subsequent suspected diagnosis that led to the dog's euthanasia. So, it doesn't change my conclusion that CG acted unfairly and unreasonably in declining Mr G's claim.

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 Mr G didn't make a misrepresentation when he took out his 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 settled, from the date Mr G paid the vet's bill to the date they reimburse him.

I've also considered the issue of compensation. Having his claim [unfairly] declined and so having to settle the vet's bill himself will have been distressing and inconvenient to Mr G, at a time when his dog had been euthanised. Given my conclusion CG acted unfairly in declining his claim, I think compensation for distress and inconvenience would be appropriate. Considering all the circumstances of the case, I think £150 would be fair and reasonable.

My final decision

For the reasons set out above, my final decision is that I uphold Mr G's complaint. I require Casualty & General Insurance Company (Europe) Ltd to:

- Settle Mr 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).
- Pay Mr G £150 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 Mr G paid the vet's bill to the date they reimburse him.

Casualty & General Insurance Company (Europe) Ltd must pay the compensation within 28 days of the date on which we tell it Mr 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 Mr G to accept or reject my decision before 18 May 2023.

Paul King
Ombudsman