

The complaint

Mr N has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has rejected his claim for treatment for his dog on the ground that her medical condition was pre-existing at the start of his policy.

What happened

Mr N acquired his pet dog, who I'll refer to as "M", on 16 February 2020. On 20 February, M had a veterinary check-up. The vet noted that M had a reduceable hernia and recommended that this be monitored.

Mr N took out a policy with C&G to insure M on 1 March 2020.

At another check-up on 18 December 2021, Mr N and the vet discussed a repair to M's hernia, and the vet provided an estimate as to what this would cost. M underwent surgery on 18 February 2022 which included some dental treatment.

During the course of M's surgery, it became apparent to the vet that a hernia operation wasn't necessary, but a mass was found which the vet thought could be a cyst or an abscess. This was removed.

Mr N claimed for the cost of M's treatment under his policy which amounted to £1,170.34. The claim form stated that it was for treatment of an umbilical hernia. M's vet later confirmed that M had been diagnosed as having a follicular cyst and not the umbilical hernia stated on the claim form.

C&G reviewed M's medical history. It noted that on 20 February 2020, before Mr N took out the policy, M's check-up had identified that she had a reduceable hernia.

C&G therefore rejected Mr N's claim. It initially referred to the following terms from Mr N's policy:

Insurance Product Information Document

"What is not insured?"

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

Policy Definitions

"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".

Veterinary Fees

"What is not insured?"

- Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition:*
- Any claim for Illness or Accidental Injury that showed Clinical Signs or Symptoms before Your Policy Start Date or within the Waiting Period."*

In its final response to Mr N's complaint, C&G maintains that M's clinical history confirms that she had shown signs and symptoms of cysts prior to the inception of the policy and that the cyst that was removed was present prior to policy inception. It maintains that cysts was a pre-existing condition that wasn't disclosed, and had it been, it would've imposed an endorsement excluding cover for all claims with respect to cysts and warts with effect from the 2021 policy renewal.

As he was dissatisfied with C&G's rejection of his claim, Mr N brought a complaint to this service. Our investigator's view was that he didn't think C&G had acted fairly in declining Mr N's claim. He didn't find any medical history that confirmed that M had shown any signs of M having cysts prior to the inception of the policy.

In response to our investigator's view, C&G referred to the references in M's medical history to her having a hernia and referred to a policy term that specifically excludes claims for umbilical hernias. It asked that the complaint be referred to an ombudsman. It's therefore 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 Mr N's complaint and I'll explain why.

I consider it clear from M's medical history that she had a history of having a hernia that predated the policy. Any claim for treatment for an umbilical hernia could therefore legitimately be excluded by C&G both because of an express policy term excluding such treatment from cover, and also because it was a pre-existing condition which C&G can exclude by introducing a retrospective endorsement in reliance on the following policy term:

"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."

But M's surgery wasn't for a hernia. It was for removal of a follicular cyst and it is the cost of this treatment that Mr N is claiming for.

C&G has said in its final response to Mr N, giving its reasons for the rejection of his claim that:

"As part of our review, we take into account the full clinical history provided to us. We have been provided with [M's] clinical history and within the clinical history, it confirms that there have been signs and symptoms of Cysts prior to the inception of the policy.

We note that you did not disclose any pre-existing condition for the Cysts here although it was discussed with your vet during the consultation on 20 February 2020. We do appreciate that this was not the original diagnosis, however this cyst was still present prior to the inception of the policy."

Further, the endorsement which it says it would've applied had Mr N disclosed to it M's clinical signs and symptoms states:

“Excludes cover on all claims with respect to cysts and warts with effect from 2021 Renewal.”

The reasons behind C&G's final response are factually incorrect. M's medical records make no references at all to M having a cyst until the date of her surgery, when it was referred to as a possible cause of the mass that was removed. There's no evidence in her medical records of M having previously shown any signs or symptoms of a cyst.

Mr N could not be expected to disclose a condition of which there were no signs or symptoms when taking out his policy, and in any event, he wasn't requested to provide any information about M's health when taking out his policy.

In my opinion M didn't have any pre-existing condition other than that of a reduceable hernia, but that isn't what M's surgery was ultimately for. There are no grounds for C&G's endorsement as M had shown no previous signs or symptoms of cysts. Nor has C&G provided any evidence that might suggest a connection between M's reduceable hernia and a follicular cyst.

I therefore consider that C&G has failed to satisfy the burden that is upon it to prove that the exclusion it relies upon is applicable.

My final decision

For the reasons I've given above, I'm upholding Mr N's complaint.

I require Casualty & General Insurance Company (Europe) Limited:

1. to settle Mr N's claim subject to the other terms and conditions of his policy;
2. if Mr N has already paid his vet, to reimburse to him the sum so paid with interest thereon at the simple rate of 8% from the date he paid the vet to the date payment is made to him.

If it considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr N how much it's taken off. It should also give him a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 16 May 2023.

Nigel Bremner
Ombudsman