

The complaint

Mrs H complains about Casualty & General Insurance Company (Europe) Ltd (CG) rejecting a claim under her pet insurance policy for treatment to her dog.

This decision only covers the decline of a claim made by Mrs H for removal of a lipoma. It doesn't cover a separate claim for treatment of lameness, which fell within the period of the policy when underwritten by a separate insurer. The decline of that claim will be considered as a separate complaint by this service.

References to CG include their agents who administer the policy.

In making her complaint, Mrs H was supported by a representative. References to Mrs H include her representative.

What happened

Mrs H had a dog covered by a pet insurance policy with CG, taken out in August 2020. In December 2020 Mrs H's vet noticed a lump on the dog's chest and a wart on its withers (the ridge between the shoulder blades) but wasn't worried initially. However, some months later the vet noticed the lump had grown and thought it was a lipoma (a benign fatty mass), which was subsequently removed as a precautionary measure (August 2021).

Mrs H made a claim covering the cost of removing the lump (£203). But CG declined the claim, saying the lump was linked to earlier issues with the dog before the policy was taken out. As such, the policy didn't cover the removal of the lump.

Unhappy at the rejection of her claim, Mrs H complained. But CG didn't uphold her complaint. In their final response they said when she took out her policy, the terms and conditions made it clear it wouldn't cover any condition that was pre-existing or had shown clinical signs of existence in any form before the policy inception. They said the clinical history of the dog indicated symptoms of a fatty mass before the inception of the policy. CG noted that when she took out the policy, Mrs H didn't disclose any pre-existing conditions (for a lump). Had she done so, CG said they would have included an endorsement to exclude cover for the condition. Based on this, CG confirmed their decline of Mrs H's claim.

Unhappy at CG's response, Mrs H complained to this service. The main part of her complaint was that CG had unfairly declined her claim. She wanted CG to accept her claim and pay for the cost of treatment.

Our investigator upheld Mrs H's complaint, concluding CG hadn't acted fairly. She didn't think Mrs H had made a misrepresentation (by not declaring the dog's previous clinical history that CG referred to when declining the claim) as CG hadn't asked a specific question about the condition. So, CG couldn't use the pre-existing condition exclusion to decline the claim. The investigator also thought the lipoma wasn't related to the issues in the clinical history, which again meant CG couldn't fairly decline the claim.

To put things right, the investigator thought CG should remove the policy exclusion that had

been used to decline the lipoma claim and assess the claim under the remaining policy terms and conditions (without relying on the exclusion they'd used to decline the claim). She also thought CG should pay £150 compensation for distress and inconvenience.

CG disagreed with the investigator's conclusions and requested an ombudsman review the complaint. In disagreeing, they raised several points. These included details of the dog's clinical history they thought showed the lipoma was linked to a pre-existing condition.

Secondly, they said the questions asked on policy inception were clear and in line with industry standard practice. Linked to this, thirdly, they said Mrs H knew of the pre-existing presence of lumps and so had made a misrepresentation by not declaring them when she took out the policy. They also disagreed with the award for distress and inconvenience.

In my findings, looking at the clinical history of the dog, on balance I concluded it indicated the existence of a condition (or clinical signs or symptoms) that would fall within the exclusion used by CG to decline the claim. As such, I concluded CG acted fairly in declining the claim.

I also considered CG's point Mrs H didn't disclose any pre-existing conditions. And that had she done so, they would have included an endorsement to exclude cover for the condition. By not disclosing the condition, CG said Mrs H made a misrepresentation. I concluded it wasn't reasonable to say Mrs H made a misrepresentation, so it wasn't fair or reasonable to add the endorsement (retrospectively) to the policy.

On the question of compensation, while my conclusion was that CG acted fairly in declining the claim, I thought the case caused Mrs H distress and inconvenience. CG offered a one-off compensation payment of £100. Having made the offer, I thought it fair and reasonable in the circumstances of the case.

Because I reached different conclusions to our investigator, I issued a provisional conclusion to give both parties the opportunity to consider matters further. This is set out below.

What I've provisionally decided – and why

I've considered 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 has acted fairly towards Mrs H.

The main issue in Mrs H's complaint is whether CG acted fairly in declining her claim by applying a policy exclusion for pre-existing conditions. Mrs H says CG acted unfairly in applying the exclusion. CG say it was fair to apply the exclusion to decline Mrs H's claim.

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 Mrs H's dog.

Looking at the policy terms and conditions first, CG refer to the Insurance Product Information Document that states:

"What is not insured?"

Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition.” CG also refer to the Policy Definitions section of the policy, which includes the following:

“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.”

The policy terms and conditions include a similar exclusion for Veterinary Fees as part of any claim for illness or accidental injury that relates to a pre-existing condition (or showed clinical signs or symptoms) before the policy start date. There is also a General Exclusions condition along similar lines.

I think these conditions (exclusions) are clear (and would have been clear to Mrs H at the time she took out her policy).

Having concluded these exclusions were clear, I’ve gone on to consider whether it was reasonable for CG to apply them to decline the claim. As a general principle, where an insurer relies on an exclusion, the onus is on them to show it’s reasonable to apply it.

Looking at the clinical history of the dog, CG point to notes mentioning the presence of warts (skin masses) and their subsequent removal (in 2020) and the presence of a lump on the dog’s withers that Mrs H discussed with the vet (in 2019). Taking these points together, on balance, I do think they indicate the existence of a condition (or clinical signs or symptoms) that would fall within the exclusion set out above. As such, I’ve concluded CG acted fairly in declining the claim for the removal of the lump (lipoma).

While I’ve reached this conclusion, I’ve also considered CG’s point that Mrs H didn’t disclose any pre-existing conditions (for a lump). Had she done so, CG said they would have included an endorsement to exclude cover for the condition. By not disclosing the condition, CG say Mrs H made a misrepresentation. This was also referred to in CG’s final response as a reason to confirm their decline of Mrs H’s claim. The final response states that when taking out the policy Mrs H was asked whether:

- “Are You looking for insurance cover for a pre-existing condition?”*
- Are you concerned that after 12 months a Condition is no longer covered?”*

CG say Mrs H didn’t disclose a pre-existing condition for the lump, when answering ‘no’ to the first question (and ‘yes’ to the second). Had she done so, CG say they would have added an endorsement that would have stated:

“Excludes cover on all claims with respect to Growths, Tumours, Cancers and Resulting Conditions with effect from 05 August 2020.”

I’ve thought about this, but to have shown Mrs H made a misrepresentation (and added the endorsement) CG needs to have asked her clear questions. But the two questions above don’t specifically ask about the dog’s previous medical history (or claims). So, I don’t think it reasonable to say Mrs H made a misrepresentation when she answered ‘no’ and ‘yes’ respectively. It follows that it wouldn’t be fair or reasonable to add the

endorsement (retrospectively) to the policy and then use this as a basis to decline the claim.

On CG's second point when disagreeing with our investigator's view, I agree it's industry practice for pet insurance policies to often exclude pre-existing conditions from cover. But the issue here is whether CG acted fairly in using the exclusion to decline the claim. Given my conclusion above, I think they did (although not in adding a retrospective endorsement).

On the question of compensation, CG disagreed with our investigator's view they should pay Mrs H £150 in compensation for distress and inconvenience. While my provisional conclusion is that CG acted fairly in declining the claim, I think the case has caused Mrs H distress and inconvenience. CG have now offered a one-off compensation payment of £100. Having made the offer, I think it's fair and reasonable in the circumstances of the case.

My provisional decision

For the reasons set out above, my provisional decision is that I uphold Mrs H's complaint in part. I intend to require Casualty & General Insurance Company (Europe) Ltd to:

- *Remove the endorsement to exclude cover on all claims with respect to Growths, Tumours, Cancers and Resulting Conditions*
- *Pay Mrs H £100 in compensation for distress and inconvenience.*

Mrs H responded to say the lipoma was diagnosed in December 2020 (after the policy was taken out). The previous examination in 2019 diagnosed a fatty area, which the vet had said wasn't something to be concerned about (so wouldn't need to be declared). As such, she could understand CG seeking to apply the exclusion if the earlier issue had been a problem (prior to the start of the policy) but it hadn't been.

CG responded to restate their view the lump was pre-existing

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 Mrs H.

On Mrs H's point about the previous diagnosis of a fatty lump, I accept she was told it was nothing to worry about or a problem. But I don't think this changes my view that the clinical history mentions the presence of warts and their subsequent removal, as well as the presence of a lump that Mrs H discussed with the vet (in 2019). Considering this in the context of the wording of the exclusion, I still think, on balance, they indicate the existence of a condition (or clinical signs or symptoms) that would fall within the exclusion. So, I haven't changed my mind about CG fairly applying the exclusion to decline the claim. This is also consistent with CG's point about the lump being pre-existing (insofar as it fell within the wording of the exclusion).

Taking these conclusions together, my final decision remains the same as my provisional decision.

My final decision

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

- Remove the endorsement to exclude cover on all claims with respect to Growths, Tumours, Cancers and Resulting Conditions
- Pay Mrs H £100 in compensation for distress and inconvenience.

Casualty & General Insurance Company (Europe) Ltd must pay the compensation within 28 days of the date on which we tell them Mrs H 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 Mrs H to accept or reject my decision before 6 December 2022.

Paul King
Ombudsman