

## **The complaint**

Mrs and Mr W complained about Casualty & General Insurance Company (Europe) Ltd. They weren't happy that it turned down a claim under their pet insurance policy.

For ease of reading any reference to Casualty & General includes its agents.

## **What happened**

Mrs and Mr W's made a claim under their pet insurance policy in relation to a "gastroenteritis/obstruction". But when Casualty & General looked into the claim it declined the treatment costs for their pet and added an exclusion in relation to '*the digestive system*'.

Casualty & General referred to the veterinary history and highlighted that Mrs and Mr W's pet had suffered a previous similar episode around the time the policy was taken out so it thought the claim should be turned down. And thought it was entitled to add the exclusion to the policy. Mrs and Mr W weren't happy about the decline of the claim and so they complained to Casualty & General and then this Service.

Our investigator looked into things for Mrs and Mr W and upheld their complaint. She didn't think Casualty & General had acted fairly in declining the claim or adding the exclusion to the policy. She thought there wasn't sufficient evidence to say the previous issue, in relation to their pet eating a slug and being sick, was linked to the present claim. So she asked Casualty & General to pay the claim plus 8% simple interest. And she asked it to remove the exclusion in respect of the digestive system.

As Casualty & General maintained its position and didn't agree the matter has been passed to me for review.

## **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 agree with our investigator that the complaint should be upheld, I'll explain why.

Casualty & General have declined the claim and added the exclusion in relation to '*the digestive system*' as it feels the problem Mrs and Mr W's pet had around the time the policy was taken out is linked to the subsequent claim a few months later. But I don't think there is sufficient evidence to support its position. I'll explain why.

Mrs and Mr W took their pet to the vet around the beginning of December 2021 as their pet had been vomiting and the problem cleared up after that. There is nothing to suggest this issue continued in any form and they subsequently made a claim in February 2022 in relation to "gastroenteritis/obstruction". Casualty & General have said that these issues are linked.

But the vet notes from the time of the first vet attendance suggests, on balance, that the vomiting was caused by the pet eating a slug – indeed the treating vets notes say there was evidence of the slug within the pet's vomit. So, it is difficult to say that Mrs and Mr W's subsequent claim for "gastroenteritis/obstruction" was linked to the pet eating a slug a few months earlier.

The clear suggestion is that the first instance was caused by eating the slug around the time they attended the vets. Whereas the second claim talked about the possibility of an obstruction alongside other changes (including dietary) that may have caused the second attendance in relation to a possible blockage or gastroenteritis.

So, although Mrs and Mr W's pet had a '*similar episode of v+*' a few months before I don't think there is sufficient evidence to say the two issues are linked. There is no evidence that their pet was ill and vomiting regularly or constantly between claims and it seems likely, on balance, that their pet eating a slug caused the first vomiting episode and the second is unrelated. And as our investigator outlined pets such as Mrs and Mr W's are often going to be sick throughout their lifetimes but that doesn't mean every episode is linked.

Given this, I think the fair and reasonable thing to do in the particular circumstances of this case is for Casualty & General to pay the claim, subject to the policy excess, in line with the remaining policy terms and conditions.

Finally, I agree that the exclusion in relation to the '*the digestive system*' should be removed. The relevant law here relating to misrepresentation is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This sets out remedies an insurer has where a qualifying misrepresentation has been made at the point of application.

As Casualty & General is aware to apply this clause retrospectively it would have to show that, at the point of application, Mrs and Mr W were asked a clear question that led them to make a qualifying misrepresentation i.e. one which led to the insurer taking different action regarding the terms on which it would provide cover. And the question Mrs and Mr W was asked was a factual one about whether they wanted cover for pre-existing medical conditions – and they didn't. So, they answered this question correctly and the question didn't ask them to detail any veterinary history or provide any further information about this.

So, Mrs and Mr W didn't make a misrepresentation and so Casualty & General isn't entitled to add a backdated exclusion to the policy or to decline the claim in line with this.

### **My final decision**

It follows, for the reasons given above, that I think Casualty & General Insurance Company (Europe) Ltd should pay the claim in line with the remaining terms and conditions adding 8% simple interest from the date of claim until the date of settlement. And remove the exclusion in respect of *the digestive system*.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 31 March 2023.

Colin Keegan  
**Ombudsman**