

## The complaint

Mrs P has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has rejected her claim for the cost of veterinary treatment for her pet dog.

I've previously issued a provisional decision in this case. C&G responded to this and I'll refer to their response below.

## What happened

Mrs P has had her dog, who I'll refer to as "L", since 2010. Between 2010 and August 2021, L's veterinary history shows that she was seen by her vet on a number of occasions following incidents of diarrhoea and vomiting. The vet's notes for a visit on 21 June 2010, when she was brought in as a puppy because of diarrhoea, say "suspect colitis signs". There were some large gaps of two, three and four years between some of these visits and no further mention of colitis.

On 1 August 2021, Mrs P took out a new insurance policy for L with C&G. Subsequent to that, on 17 February 2022, L was taken to the vet again as she was "a little bloated with some stomach distension". Mrs P was particularly concerned about the possibility of L having bloat (gastric dilation-volvulus) as this is very serious and has the potential to be fatal if not addressed rapidly.

C&G rejected Mrs P's claim. It said that at the time of taking out the policy for L, Mrs P would've been advised of the importance of detailing all L's veterinary history, and she hadn't disclosed L's pre-existing condition of abdomen pain. It said that if Mrs P had disclosed L's clinical signs and symptoms, it would've imposed the following exclusion on her policy from its inception:

*"Excludes all cover with respect to the digestive system and resulting conditions with effect from the 1st August 2021".*

Mrs P says she never sought to hide L's health, which was generally good and excellent for her age, and her previous insurer had not imposed any exclusions on cover.

Mrs P bought her C&G policy online through a price comparison website. C&G has provided screenshots of the questions Mrs P was asked as part of her purchase journey. One of these was:

*"Are you looking for insurance cover for a pre-existing condition?"*

Mrs P would've been required to answer either "Yes" or "No". If Mrs P were to have selected "Yes", she would've been advised that C&G was unable to provide Mrs P with a quote and that she should contact it for more information. If Mrs P had answered "No", she was able to complete her purchase journey.

To complete the purchase process, Mrs P would've been required to confirm her understanding and acceptance of the policy's assumptions and terms.

The “Assumptions” section of Mrs P’s policy states that:

*“You accept that no cover will be provided for any illness or injury that is pre-existing or if it were to arise within the first 14 days from the policy start date or 5 days in the event of an accident”.*

The terms state that pre-existing conditions are not covered, and that C&G reserved the right to place any relevant exclusions if it was made aware of a pre-existing condition. The policy states:

*“General Exclusions*

*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”.*

C&G says that as L’s veterinary records show that she suffered from “numerous digestive Concerns” prior to the policy’s inception, Mrs P had made a qualifying misrepresentation and this entitled it to place an exclusion on any claims relating to L’s digestive system. It says that as Mrs P’s claim fell under this exclusion her claim was correctly declined.

Mrs P brought her complaint to this service. Our investigator’s view was that Mrs P wasn’t asked a clear enough question about any previous illnesses or injury’s L had. She wasn’t satisfied that C&G should have retrospectively altered the terms of Mrs P’s policy by adding the exclusion. Her view was that this should be removed, and that Mrs P’s claim should be assessed subject to the other terms of the policy. It should also pay her compensation of £100 for the upset caused.

C&G didn’t agree with our investigator’s view and asked that the complaint be considered by an ombudsman. It was referred to me to make a final decision from this service. I issued a provisional decision upholding Mrs P’s complaint but asking C&G to provide further support for its rejection of her claim.

### **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 Mrs P’s complaint and I’ll explain why.

I consider that this complaint raises two questions.

Firstly, is it reasonable for C&G to decline Mrs P’s claim on the ground of misrepresentation?

My view is that it is not. For there to be a misrepresentation, Mrs P would need to have provided incorrect information to C&G, either carelessly, deliberately or recklessly, and I don’t consider that she did so. She wasn’t asked any questions about L’s previous veterinary history. She was only asked if she was looking for insurance cover for a pre-existing condition.

There is no right or wrong answer to that question. Mrs P answered “No” as she was able to complete her purchase journey. Had she answered “Yes”, then she would’ve had to have

given accurate answers to any subsequent questions C&G asked about L's veterinary history in order for it to decide whether to insure L or if any exclusions should be added to the policy. I therefore conclude that there was no misrepresentation by Mrs P as to L's previous medical history and it is unreasonable of C&G to have imposed an exclusion on Mrs P's policy on this ground.

That leads to the second question – was it reasonable for C&G to have added the exclusion for any other reason?

C&G has said that as part of her policy purchase journey, Mrs P would've been taken to the C&G website where she would've been required to confirm her understanding and acceptance of the policy's assumptions and terms. These included the assumption *"that no cover will be provided for any illness or any injury that is pre-existing or has displayed symptoms (changes in my pet's normal healthy state, condition, appearance, bodily functions or behaviour)..."*

The policy terms (quoted above) also give C&G the right to add an exclusion if it becomes aware of any pre-existing condition.

"Pre-existing condition" is defined as:

*"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."*

An "Associated Condition" is defined as:

*"a Condition that is either a recurring Illness and/or Accidental Injury or Lump; or related to a previous Illness and/or Accidental Injury or Lump; or caused by a previous Illness and/or Accidental Injury or Lump. When applying the Benefit Limit and the terms of this Policy, any Treatment for an Associated Condition will be considered as one Condition, regardless of when the Treatment occurred".*

C&G has stated that L suffered from *"numerous digestive concerns prior to the policy's inception"*. What L's medical records actually refer to are a number of incidents of diarrhoea and vomiting over an 11-year period.

In my provisional decision I said that what C&G had failed to do in my view was to provide sufficient grounds for its conclusion that there was a connection between these and the bloating condition for which L was assessed in 2022. I said that these were matters upon which veterinary evidence should be provided as I didn't consider it fair for C&G to make its own assessment of such a connection.

By issuing a provisional decision I gave both C&G and Mrs P the opportunity to provide whatever further evidence they were able to provide as to:

(i) the connection, or lack of connection, between the condition with which L presented in February 2022 and any conditions with which she presented between 2010 until 1 August 2021; and

(ii) the connection between the current endorsement on the policy and any conditions with which L presented between 2010 until 1 August 2021.

I said that in the absence of persuasive evidence of a connection, I was proposing to uphold Mrs P's complaint.

In response to my provisional decision, C&G has largely repeated information originally contained in its decline letter to Mrs P. It hasn't provided any additional evidence to support its contention that the condition for which Mrs P is claiming is a condition, or is associated with a condition, that L had prior to the inception of the policy. It hasn't said what that condition is.

In order to decline Mrs P's claim, it is incumbent on C&G to provide persuasive evidence that the condition claimed for is a pre-existing condition. There are two reasons for this. Firstly, Mrs P answered "No" to the question "*Are you looking for insurance cover for a pre-existing condition?*" Secondly, pre-existing conditions are expressly excluded under the terms of the policy and C&G could add a specific endorsement to Mrs P's cover.

But in my view C&G hasn't provided any evidence that the bloating with which L presented in February 2022 is connected with the diarrhoea and vomiting that L displayed on a number of occasions over an 11-year period, which C&G has described as "*digestive concerns*".

My conclusion is therefore that C&G has acted unfairly in rejecting Mrs P's claim on the ground relied upon and it should remove the endorsement and reconsider her claim subject to the other terms and conditions of her policy.

I also agree with our investigator that Mrs P has suffered considerable stress and upset by the rejection of her claim given her personal circumstances for which I consider that £100 compensation is fair and reasonable.

Lastly, I should mention that in its response to my provisional decision C&G also referred to Mrs P having provided an incorrect date of birth for L. If C&G believes this is a qualifying misrepresentation, it has its remedy under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

### **My final decision**

For the reasons I've given above, I'm upholding Mrs P's complaint.

I require Casualty & General Insurance Company (Europe) Limited to remove the endorsement from Mrs P's policy and to settle her claim subject to the other terms and conditions of her policy and to pay interest on any amount paid to her at the simple rate of 8% from the date her claim was made until payment.

I also require it to pay Mrs P compensation of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 December 2022.

Nigel Bremner  
**Ombudsman**