

The complaint

Mrs M complains that when she claimed for her dog's treatment for Gastric Dilatation and Volvulus (GDV) Casualty & General Insurance Company (Europe) Ltd declined her claim, and added an exclusion to her policy in respect of all claims related to the digestive system. She wants them to remove the exclusion from her policy and pay her claim.

What happened

Mrs M has cover for her dog with C&G. Her cover started on 11 July 2021 and covers vet fees up to £4,000 subject to a policy excess of £90.

On 14 January 2022 Mrs M took the dog to her vet as he had a massively distended stomach. He was referred for emergency surgery for GDV which was carried out the same day. Mrs M has told us that she paid the vet £1,285.43 and an administration fee on £120. And she gave her vet C&G's details so they could submit a claim for the balance of their fee. The vet submitted a claim to C&G on 14 January 2022 with a copy of the clinical notes in respect of the dog's treatment and confirmation of the sums paid by Mrs M.

C&G declined Mrs M's claim as they said her dog had problems with retching and vomiting in July 2021, a few days before she took out her cover, which she hadn't declared. And had she declared this they'd have added an exclusion to her policy in respect of all claims relating to 'the digestive system'. So they added the exclusion to her policy, backdating it to 11 July 2021, and declined her claim based on this.

Mrs M wasn't happy with C&G declining her claim, so she raised a complaint. While C&G accepted that her dog didn't have GDV before his policy started, they said he'd been seen by her vet for vomiting and retching, and had she told them about this they'd have added an exclusion to her policy. So they said the exclusion regarding her dog's digestive system had been correctly added to the policy. And they'd acted correctly in declining the claim based on the exclusion.

Mrs M wasn't happy with C&G's response and complained to our service. Our investigator considered the case and upheld Mrs M's complaint. She said C&G should remove the exclusion from Mrs M's policy and reconsider her claim under the remaining policy terms.

Our investigator said that the relevant legislation she needed to consider was the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out insurance. And it's for insurers to show that it asked clear questions at the point of sale.

When Mrs M purchased her policy, she was asked whether she was looking for cover for pre-existing conditions. She was also asked to read the policy assumptions and as part of that, she was able to read the definition of pre-existing, and confirm that she understood this.

C&G have confirmed that they're not saying GDV is a pre-existing condition but say had Mrs M declared her dog's history of retching and vomiting, they would have applied an exclusion. But our investigator said there's no evidence that Mrs M was asked a clear question about

any previous symptoms whether these resulted in a diagnosis of a condition, or not.

So our investigator didn't think Mrs M had failed to take reasonable care to not make a misrepresentation. And she didn't think it was fair for C&G to apply a retrospective exclusion to Mrs M's policy and decline the claim based on it.

C&G didn't accept our investigator's opinion. They've said that the terms and conditions of Mrs M's policy say they will apply an exclusion if they become aware of a pre-existing condition. Which is what they've done, as they became aware the dog was seen about an episode of retching and vomiting on 5 July 2021, when Mrs M made her claim for GDV. And as the dog's records refer to vomiting the appropriate exclusion is in respect of 'anything to do with the digestive system'. And in respect of bloat the appropriate exclusion is for 'gastric torsion, dilation and bloat'.

The case has now come to me for decision.

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.

For C&G to be able to add exclusions to Mrs M's policy when she made her claim, I have to be satisfied that there was a misrepresentation when she took out her policy. CIDRA says that when taking out insurance a consumer must take reasonable care not to make any misrepresentations. CIDRA also says that an insurer must ask clear questions at the point of sale.

When setting up her policy online Mrs M was asked to select the type on policy she wanted. She was then asked to read and to agree to a number of policy assumptions. The relevant assumption in this case is that she wasn't seeking cover for any pre-existing conditions. A link was provided to the policy definition of a pre-existing condition. This definition is '*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.*'

Mrs M confirmed that she'd read the assumptions and wasn't seeking cover for any pre-existing conditions. The question about whether she wanted cover for pre-existing conditions doesn't require her to disclose anything. She wasn't asked about previous illnesses or conditions, so she didn't have to disclose them.

C&G have said Mrs M didn't declare that her dog had an episode of retching and vomiting in July 2021, but as she wasn't asked about it, she didn't need to disclose it.

As there was no misrepresentation by Mrs M, C&G weren't entitled to add an exclusion to her policy when she submitted her claim in January 2022, and to decline her claim on the basis of that exclusion. So I require them to remove the exclusion added to her policy in January 2022 and to pay her claim subject to any applicable policy limit and excess. Together with interest at 8% on any amount paid by Mrs M from the date of payment until the date of settlement.

My final decision

For the reasons set out above my final decision is that I uphold Mrs M's complaint about Casualty & General Insurance Company (Europe) Limited.

And I require them to pay her claim for her dog's January 2022 surgery, subject to any applicable policy limit and excess. Together with interest at 8% on any amount paid by Mrs M from the date of payment until the date of settlement. And to remove the exclusions added to her policy following her claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 14 March 2023.

Patricia O'Leary
Ombudsman