

The complaint

Mrs R complains Casualty & General Insurance Company (Europe) Ltd (Casualty) unfairly declined her pet insurance claim when her dog was injured in a road traffic accident.

What happened

The complaint is well known to both parties, so I'll summarise the key points below:

- Mrs R was walking her dog, T, in an enclosed area. T saw a cyclist on the other side of the fence and chased. Mrs R believes the lead may have failed and T ran off
- T ran along a fence but was able to scale a lower part of it and ended up on a main road where she was struck by a car
- Mrs R made a claim to Casualty who declined it saying she'd failed to take proper care and attention which had resulted in the accident
- Our investigator considered the complaint and upheld it, saying that Casualty hadn't shown how Mrs R had failed to meet the conditions of the policy
- She also said that whilst no evidence of the lead being recalled had been provided by Mrs R, she still felt Casualty hadn't evidenced Mrs R failing to meet the policy terms
- Casualty disagreed, saying it hadn't received any information from Mrs R about the faulty lead. It said that Mrs R hasn't provided any information which shows T was kept under control and that Mrs R hadn't taken reasonable steps to ensure she didn't suffer any injury.
- As Casualty disagreed with our investigator's findings, the complaint has been passed to me, an Ombudsman, to make a decision on it.

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 this complaint and I'll explain why.

Mrs R hasn't provided any evidence of the lead being recalled by the manufacturer. Given that the accident happened in January 2022, and Casualty only requested this information ten months later, it's reasonable that Mrs R hasn't kept evidence of purchase or recall. I note that Mrs R had informed Casualty about the faulty lead in April 2022 however it didn't request any information on it at that time.

Without evidence of the recalled lead, I've focused on the conditions that Casualty say Mrs R hasn't met when declining her claim. They refer to the following:

General Conditions

The following conditions apply to the whole of this Policy. Any other claims conditions and procedures are shown in the section to which they apply.

4. You must also provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent accidents, injury or damage, as well as arranging and paying for Treatment for Your pet as recommended by Your Vet to reduce the likelihood of illness or Accidental Injury.

5. you must comply with all laws that relate specifically to Your pet – such as – Section 27 of the Road Traffic Act 1988, which states that a dog that is on a designated road must be on a collar and lead and under control.

6. You must ensure that Your dog is under control at all times, and due care should be maintained to prevent Your dog from escaping and causing Accidental injury to Your dog or any other persons or animals.

Term 5 refers to a dog which is on a designated road must be on a collar and lead and under control. The location of where Mrs R was walking T wasn't on a designated road and therefore, I'm not persuaded that this term is applicable in the circumstances of the claim, and Casualty haven't referred to any other relevant laws.

Term 4 required Mrs R to provide 'proper care and attention' and to take 'all reasonable precautions' to prevent accidents or injury. And term 6 says Mrs R must keep T 'under control' and that 'due care' should be maintained to prevent T from escaping. There's no definition of these phrases in the policy however if Casualty are to rely on these conditions, it needs to demonstrate that Mrs R didn't show 'reasonable care' on the day of the accident.

We'd expect Casualty to show that Mrs R had acted in a way that amounted to recklessness. In determining this, we use the test of recklessness set out in the leading legal case on "reasonable care" – *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559. Here, it was decided that in order for an insurer to show a policyholder was in breach of the policy condition that requires them to take "reasonable care", the insurer needs to show the policyholder was "reckless" – in other words, that they recognised the risk, but took either no or inadequate measures to avert the risk.

I've reviewed the area on Google Maps where Mrs R was walking T. I consider it's reasonable that Mrs R would've thought that the vast green area was protected by high fences, enclosing the space, and protecting it from the traffic on the neighbouring road. As Mrs R was walking T on a lead, in what seemed to be a completely enclosed area, I consider that she took due care to keep T under control.

I'm not persuaded that Casualty have shown that Mrs R was acting recklessly at the time of accident, or that she's failed to take reasonable care. Therefore, I consider that Casualty have unfairly declined the claim.

Putting things right

My final decision is that Casualty & General Insurance Company (Europe) Ltd must pay the claim costs, whilst applying any applicable policy claim excess. If Mrs R has already paid the vet fees, interest* must be added at 8% a year simple from the date she paid the fees to the date of settlement.

*If Casualty & General Insurance Company (Europe) Ltd considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs R how much

it's taken off. It should give Mrs R a certificate showing this if she asks for one, so she can reclaim the tax from the HM Revenue & Customs if appropriate.

My final decision

For the reasons given above I uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 6 January 2023.

Angela Casey
Ombudsman