

## The complaint

Mrs B has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined to cover her claim for injury to her pet dog when it was hit by a vehicle.

## What happened

Mrs B's 5-month-old dog, who I'll refer to as "H", was insured by C&G. On 6 August 2022 Mrs B took H from her house for his evening walk. She says that H was on his lead, which was not extendable. She says that they crossed the road outside her house when a van approaching from behind pulled over to the wrong side of the road to avoid a parked car. H was spooked and stepped back into the road and was hit by the van which ran over his paw. He was taken to two vets and sadly his front left leg had to be amputated.

Mrs B submitted a claim to C&G for the cost of H's initial treatment. Rehabilitation treatment is ongoing.

C&G declined Mrs B's claim. It referred to the following conditions of Mrs B's policy:

- *You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage, as well as arranging and paying for Treatment for Your pet to reduce the likelihood of Illness or Accidental Injury.*
- *You must comply with all laws that relate specifically to Your pet, including but not limited to "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.*
- *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 itself Accidental Injury or any other persons or animals.*

By implication, C&G's view was that Mrs B had failed to ensure that she had provided proper care and attention to H, and that he wasn't under control.

Mrs B says that H was under control and that all reasonable precautions were taken. H was on a non-retractable lead and collar on the pavement until he was spooked and stepped off the pavement and into the road. As he is a puppy, he can move extremely fast. She says the policy requires owners to take reasonable care to prevent injuries or damage but just because an injury occurred doesn't mean reasonable care wasn't taken.

H's accident has caused Mrs B and her family great emotional distress. The cost of H's treatment has also caused additional anxiety. She's dissatisfied with C&G's response to her claim and wants C&G to meet it. She brought a complaint to this service.

Our investigator's view was that Mrs B had exercised reasonable care when walking H and that accidents can still occur when reasonable care is being taken. He didn't consider that C&G had acted fairly in rejecting Mrs B's claim and recommended that C&G pay it.

C&G doesn't agree with our investigator's view. It suggested that H was dangerously out of control and could've caused a serious accident. It asked that the case be referred to an ombudsman. It's therefore been referred to me for a final decision from this service.

### **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.

Mrs B's policy states that it will cover veterinary fees *"for treating an illness or accidental injury suffered by your pet whilst insured with us"*. "Accidental injury" is defined as:

*"a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of your pet's body."*

In my view, a dog being hit by a car is an accidental injury that would fall within this section of cover.

I then have to consider whether the conditions I've quoted above that C&G relies upon to decline Mrs B's claim have been reasonably applied in this case. It is for C&G to prove that they have been.

I don't consider that C&G has provided any evidence that H wasn't under control or that Mrs B wasn't taking reasonable precautions other than the fact that the accident occurred. H was on a non-retractable lead and therefore under Mrs B's control. She wasn't in breach of any law. C&G hasn't suggested any precautions that Mrs B should've taken that she failed to take. In my view it wasn't reasonably foreseeable that H, upon being spooked by something as a young puppy might be, would step back into the road at the exact time that a vehicle was approaching from behind on the wrong side of the road.

My conclusion is that C&G hasn't provided sufficient evidence that H's injury was due to a lack of control or of proper care and attention, or indeed was anything other than a very unfortunate accident. The policy conditions that C&G relies upon to deny Mrs B's claim don't apply in the circumstances of this case.

### **My final decision**

For the reasons I've given above, I'm upholding Mrs B's complaint. I require Casualty & General Insurance Company (Europe) Ltd:

1. to settle Mrs B's claim subject to the other terms and conditions of her policy;
2. if Mrs B has already paid her vet, to reimburse to her the sum so paid with interest thereon at the simple rate of 8% from the date she paid her vet to the date payment is made to her.

If it considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give her a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 19 May 2023.

Nigel Bremner

**Ombudsman**