

The complaint

Mr and Mrs C have complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined their claims for treatment of their dog on the ground that the conditions claimed for were pre-existing and are therefore excluded by their policy.

What happened

Mr and Mrs C's dog, who I'll refer to as "A", was insured by C&G from 5 February 2019.

On 16 December 2021, A was taken to the vet and was diagnosed as suffering from haemorrhagic gastroenteritis (HGE) for which he received treatment and supportive care. Mr and Mrs C submitted a claim to C&G for the cost of this treatment.

On 24 December 2021, A wasn't able to get up and he was again taken to the vets, who suspected that he might be suffering from pyrexia. He was admitted to hospital but ultimately and sadly the decision was made that he should be euthanised. Mr and Mrs C also submitted a claim for the associated veterinary costs.

After having looked at A's veterinary history, C&G declined Mr and Mrs C's claims. It noted that A had had an episode of vomiting on 9 March 2015 and of soft stools in February 2017, both of which pre-dated the inception of their policy. It referred to the following terms of the policy:

"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".*

A 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."

C&G maintains that A's treatment for HGE in December 2021 was related to A's episode of vomiting in 2015 and was therefore a pre-existing condition. It therefore added the following endorsement to Mr and Mrs C's policy:

"Excludes cover on all claims with respect to The Digestive System with effect from 05 February 2021."

This endorsement was in line with C&G's underwriting criteria in relation to vomiting.

Mr and Mrs C weren't satisfied with C&G's rejection of their claims and brought their complaint to this service.

Our investigator upheld their complaint as she didn't consider that C&G had asked a clear question about A's previous medical history at the policy inception, so it wasn't fair for it to add the retrospective endorsement.

C&G doesn't accept our investigator's view and has asked that the matter 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.

Having done so, I'm upholding Mr and Mrs C's complaint and I'll give my reasons.

I've considered whether or not C&G has acted fairly in adding the endorsement upon which it relies to decline Mr and Mrs C's claim.

I don't consider that Mr and Mrs C were asked any direct questions about A's medical history when they took out their policy. They therefore didn't misrepresent A's health. C&G can't therefore rely on the remedy available to it under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), to retrospectively add an endorsement or exclusion it would've applied at policy inception had it known about a pre-existing medical condition at that time.

But in my view it's clear from the policy terms that it doesn't cover pre-existing medical conditions, and C&G can rely upon its right under the General Exclusion that I've quoted above to add an endorsement should a claim be made for a condition that was pre-existing at policy inception.

But that right has to be exercised fairly. That requires there to be sufficient evidence of a connection between the condition claimed for and one that had *"happened or has shown Clinical Signs or Symptoms of existing in any form before the Policy Start Date or within the Waiting Period."* The endorsement must also relate to the pre-existing condition in accordance with C&G's underwriting criteria.

I don't consider that C&G has done enough to establish a connection between A's vomiting in 2015 and the diagnosis of HGE in December 2021. There was no formal diagnosis of any reason for A's vomiting in 2015. A's vet has stated as follows:

"I was involvement in the treatment of [A] during his hospitalisation in December 2021. He presented for collapse, haemorrhagic diarrhoea and pyrexia of unknown origin. A diagnosis was not established. He did not present for vomiting. The presented in December 2021 is not related to the single episode of vomiting [A] was seen for in March 2015." (sic)

I also don't consider that a single episode of vomiting in 2015 could reasonably be described as a pre-existing "condition". It appears to have been a one-off event. It could well just have been due to something A ate.

In the statement quoted above, the vet has described A's pyrexia as being *"of unknown origin"*. In A's notes the vet has also noted *"pyrexia – origin currently unknown, possibly related to recent HGE episode ... his case appears to be more complex than just a gastroenteritis"*. The endorsement added by C&G doesn't cover pyrexia, and C&G hasn't

claimed a direct connection between A's pyrexia in 2021 and his vomiting in 2015 or any other pre-existing condition.

My conclusion is:

- (1) that in relation to Mr and Mrs C's claim for A's treatment for HGE in December 2021, there is no evidence that this condition was connected to his vomiting in 2015, and that it was unfair and unreasonable for C&G to have added the endorsement upon which it seeks to rely to decline their claim; and
- (2) that Mr and Mrs C's claim for the treatment of A's pyrexia of unknown origin was also unfairly declined as it wasn't connected to any pre-existing condition or excluded by any endorsement.

I'm therefore going to require C&G to settle both claims.

My final decision

For the reasons I've given above, I'm upholding Mr and Mrs C's complaint.

I require Casualty & General Insurance Company (Europe) Limited to settle Mr and Mrs C's claims subject to the other terms and conditions of their policy. If Mr and Mrs C have already paid to the vet any part of the sum claimed, this should be reimbursed to them.

I also require Casualty & General Insurance Company (Europe) Limited to pay Mr and Mrs C interest on any sum so paid to them by way of reimbursement at the simple rate of 8% from the date they made payment to the date that payment is made to them.

If Casualty & General Insurance Company (Europe) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs C how much it's taken off. It should also give Mr and Mrs C a tax deduction certificate if Mr and Mrs C ask for one so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 28 January 2023.

Nigel Bremner
Ombudsman