

The complaint

Miss H has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined her claim for the cost of treatment for her dog on the ground that it is excluded by endorsements relating to pre-existing medical conditions.

What happened

Miss H insured her dog, who I'll refer to as "F", with C&G with effect from 4 January 2019. In 2021, F was treated for a 'Right Medial Humeral Condylar Fracture', and Miss H made a claim under her policy for the significant cost of this treatment.

C&G reviewed F's previous veterinary history. This showed that on several occasions prior to the inception of the policy, F had issues with his front left leg. It therefore applied a number of endorsements to F's policy including:

"Excludes cover on all claims with respect to Anything to do with the Front Left Leg Lameness that Occurred on 27 February 2017 and Associated Conditions with effect from 04 January 2021."

"Excludes cover on all claims with respect to Both Elbows with effect from 04 January 2021."

C&G says it retrospectively applied these in accordance with its underwriting criteria when it was made aware of the pre-existing conditions that it says Miss H didn't disclose when she purchased the policy.

Miss H referred C&G to a letter from F's vet, and a report from a specialist radiographer who examined a number of X-rays of F's leg. These both supported her argument that F's fracture was not caused by a pre-existing condition and there were no abnormalities in F's right elbow.

C&G says it declined Miss H's claim in reliance on the above endorsements. It did this by reference to the following term 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 F's fracture fell within the terms of the endorsements.

Miss H wasn't satisfied with C&G's rejection of her claim and brought her complaint to this service.

Our investigator initially didn't uphold Miss H's complaint, but then after re-consideration did so. She didn't believe C&G had acted fairly in applying the endorsements so her view was that it wouldn't be fair decline the claim.

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 Miss H's complaint and I'll give my reasons.

I've considered firstly whether or not C&G has acted fairly in adding the endorsements upon which it relies to decline Miss H's claim.

I don't consider that Miss H was asked any direct questions about F's medical history when she took out her policy. She therefore didn't misrepresent F'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 the pre-existing medical condition at that time.

But in my view C&G can rely upon its right under the General Exclusion that I've quoted above to add reasonable endorsements. Given F's history of pre-existing issues with his left front leg over a number of years, I think it is reasonable for C&G to have added the endorsement relating to any future left leg issues. But I can see no basis for adding the endorsement that excludes cover for both elbows. There is no evidence that F suffered any problems with his right elbow before policy inception and this is confirmed by the specialist radiographer who examined F's X-rays and concluded, referring to F's right elbow:

"There are no clinically significant abnormalities detected in the elbow joint or in the humerus or antebrachium. There is no evidence of acute or congenital injury. No soft tissue swelling is seen in the study."

C&G has made reference to Bilateral Conditions, but I consider this is relevant only to the application of the Benefit Limit. The policy states that when applying the Benefit Limit and the terms of the policy, any treatment for Bilateral Conditions will be considered as one condition, regardless of when the treatment occurred. It doesn't state that an issue with one body part, of which a pet has two, is to be treated as applying equally to the other. So my first conclusion is that it is unreasonable for C&G to have introduced any endorsement relating to F's right leg.

But even if I hadn't come to this conclusion, I would've upheld Miss H's complaint on a second ground.

In my view C&G hasn't acted fairly in relying upon the specific endorsements that I've quoted above.

I've taken into account the following policy term:

"Veterinary Fees

What is not insured?

- *Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition*
- *Any claim for Illness or Accidental Injury that showed Clinical Signs or Symptoms before Your Policy Start Date or within the Waiting Period"*

The treatment being claimed for was for a fracture. A fracture is not a pre-existing condition – it is an accidental injury, but it can only relate to a pre-existing condition if that condition creates a pre-disposition to the accidental injury.

F's vet has addressed this. He has stated (with his emphasis retained):

- *From the radiographs taken back in 2017 when the left elbow was repaired due to a fracture, **no significant abnormalities were detected in the right elbow** according to a radiology specialist from [Specialists] which has been attached for you to review.*
- ***Elbow dysplasia** could be a condition which can affect **BOTH elbows**, and therefore it would be a pre-existing condition. It is well known it can cause severe osteoarthritis (OA) in both elbows, as mentioned from his medical records in 2019. Elbow radiographs is not a sensitive diagnostic method to confirm/rule out elbow dysplasia in the right elbow. A CT scan of the elbow should have been performed to have a better idea if elbow dysplasia was present back in 2017. However, taking into consideration the signalment [breed and age] and the clinical and radiographic signs, it is fair to assume F suffered from bilateral elbow dysplasia, especially they mentioned severe OA in the right elbow in 2019, according to the LV medical records.*
- ***Bilateral elbow dysplasia WILL NOT predispose any dog to have a fracture in the elbow** (dogs do not get spontaneous fractures from elbow osteoarthritis). Elbow dysplasia can cause pain (and therefore a lameness) due to OA, as mentioned in 2019 from the medical records of the LV.*
- *Therefore, we do not currently have any radiographic evidence from F's medical and radiographic records to confirm that F was suffering from any pre-existing condition that predispose him to an intracondylar fracture on that right elbow (such as Humeral Intracondylar Fissure or HIF, also known as IOHC or incomplete ossification of the humeral condyle)*

Having taken this into account and having seen no alternative medical opinion from C&G, my conclusion is that there is no connection between the fracture of F's right front leg and any pre-existing condition affecting his right leg.

So on two grounds I have concluded that C&G has not acted fairly in declining Miss H's claim. I'm therefore going to require C&G to settle it.

My final decision

For the reasons I've given above, I'm upholding Miss H's complaint.

I require Casualty & General Insurance Company (Europe) Limited to settle Miss H's claim subject to the other terms and conditions of her policy. If Miss H has already paid to the vet any part of the sum claimed, this should be reimbursed to her.

I also require Casualty & General Insurance Company (Europe) Limited to pay Miss H interest on any sum so paid to her by way of reimbursement at the simple rate of 8% from the date she made payment to the date that payment is made to her.

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 Miss H how much it's taken off. It should also give Miss H a tax deduction certificate if Miss H 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 Miss H to accept or reject my decision before 13 January 2023.

Nigel Bremner
Ombudsman