

The complaint

Mr C has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined his claim for investigation and treatment for his pet dog.

What happened

On 23 March 2022, Mr C took his dog, who I'll refer to as "E", to her vet as he was concerned about pain she was displaying in her right hind leg. The vet noted that her right stifle was particularly painful and joint supplements were discussed. At a further visit on 4 April 2022 E was limping quite badly and the vet noted that her right stifle was swollen compared to the left. On 6 April, X-rays were taken of her back legs and hips. E was diagnosed as having bilateral cruciate disease which would require an operation. Mr C submitted a claim to C&G for the cost of the X-rays.

C&G declined Mr C's claim. It's ground for doing so was that E was overweight and had been for some time which was recorded in her medical records. It relies on the following exclusion within the policy:

"What is not insured?

General Exclusions

Any claims resulting from Your pet being medically overweight or underweight and this results in Your pet needing Treatment as a result of not being the recommended medical weight for its age, breed type and sex as recommended by a Vet;"

In its final response to Mr C, C&G has acknowledged that the cause of lameness is multifactorial, and that:

"there have been numerous studies into the cause of cruciate disease and osteoarthritis, which have all noted that there are multiple factors involved, the fact remains that these studies have also shown that weight is one such factor. Studies in dogs show that being overweight not only increases the occurrence of osteoarthritis but also the severity of the disease".

C&G also quoted the following from the "Vetsnow" website:

"There are several risk factors for lameness. These include your dog's breed. Frequent, vigorous activity may also be a factor, as is your dog's weight. Overweight dogs are more prone to developing some of the conditions that can lead to lameness."

In response to C&G's rejection of his claim, Mr C obtained further information from E's vet. The vet stated:

"During my consultations I referred to [E's] weight, as always when you deal with joint diseases, overweight is a concern as would aggravate the problem, but the fact [E] is overweight doesn't equal with the fact that her weight was the one to trigger the disease. It is true the fact she managed to lose weight till the day she came in for Xrays was

beneficial as the body put less pressure on the joints but this doesn't mean her problem with her cruciate ligaments is gone and just because she will hopefully lose more weight will fix the problem."

The vet also stated, in a second opinion:

"It is very true that [E] been overweight at some point but I do believe the main cause for her problem is genetic. It is hard to say if her weight caused more damage to the ligament/joint but is very true her symptoms (lameness, pain) were more pronounced while she was overweight. We don't know if it is a partial or full rupture of the ligament or how the condition progressed since been diagnosed, but losing weight has helped to reduce the severity of symptoms."

In response to this, C&G maintained its position that as weight was a contributing factor to E's cruciate problem, it was unable to overturn its original decision to decline Mr C's claim.

Mr C brought his complaint to this service. Our investigator's view, after receiving the second opinion from E's vet, was that E's weight wasn't a deciding factor as to whether E needed surgery or not, and that no matter what E's weight was she would still need the surgery, so he thought it was unfair of C&G to decline the claim.

C&G doesn't agree with our investigator's view. It referred to various authorities supporting a link between lameness and a dog being overweight. These included reference to fat itself contributing to inflammation and potentially influencing the bone changes associated with osteoarthritis.

C&G has also introduced a further ground upon which to decline Mr C's claim. It noted that E's medical records on 25 July 2019 showed that E was lame on her left fore-limb for a day. It says that as lameness had been identified in 2019 for which no claim had been submitted, Mr C's current claim was time limited by a term of his policy. This term requires claims for any condition to be brought within 12 months from the date the first symptom and/or clinical sign of that condition was noticed, or treatment started. A claim for lameness in 2022 was therefore out of time.

As C&G continues to maintain that Mr C's claim results from E being overweight, his complaint has been referred to me as an ombudsman 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 C's complaint and I'll explain why.

I've considered the exclusion upon which C&G relies to deny Mr C's claim on the grounds of E's weight. In my view for this exclusion to be fairly applied there must be some persuasive evidence that E's obesity was the cause of her cruciate problem rather than just a contributing factor which exacerbated the symptoms.

C&G accepts that there are multiple possible causes for cruciate issues and a dog's weight is just one of these, although excessive weight can contribute to symptoms being exacerbated. It has said:

"Whilst we appreciate that weight is not the sole cause, as your vets have confirmed that the weight is a contributing factor, we would be unable to overturn our original decision."

If there are multiple possible causes, I consider that it's unfair for C&G to identify one possible cause in the absence of medical evidence and rely upon it to deny a claim.

I've looked at the additional information provided by C&G and the links it has provided to various relevant on-line articles. I note that C&G has quoted selectively from the Vetsnow website in omitting the following which appears in the section it quoted:

"Some of the ailments and muscular diseases that can cause lameness are passed from generation to generation".

Of the various potential underlying causes, E's vet has identified genetics as, in her view, being the main cause of E's cruciate problem – I've quoted what she's said above. So in the absence of any medical evidence from C&G as to any other underlying cause, I consider that it is fair to rely on the professional opinion of E's treating vet.

I'm therefore of the view that C&G has unfairly applied the exclusion it relies upon.

Turning to the other ground that C&G has latterly introduced that Mr C's claim is time barred on the ground that lameness was identified in 2019, I don't consider that a rejection on this ground is reasonable. There's no evidence as to what caused the lameness in 2019, which in any event was very temporary and was noted in E's front leg. There's also no evidence that it was in any way related to the cause of E's back leg lameness in 2022.

In conclusion, I'm not persuaded that C&G's rejection of Mr C's claim is fair or reasonable and I'm going to require it to settle his claim with interest.

My final decision

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

I require that Casualty & General Insurance Company (Europe) Limited settle Mr C's claim subject to any other term of his policy.

I also require it to pay Mr C interest on any sum paid to him at the simple rate of 8% from the date of his claim until payment is made to him.

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 C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one so he 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 to accept or reject my decision before 4 July 2023.

Nigel Bremner
Ombudsman