

## The complaint

Miss G complains about Casualty & General Insurance Company (Europe) Ltd (CG) declining a claim under her pet insurance policy for treatment of her dog.

References to CG include their agents who administer the policy.

## What happened

In July 2022 Miss G's dog had a problem with pain from a swollen stomach. She wasn't able to take the dog to her normal vet, so she took it to an out-of-hours vet, who diagnosed acute gastroenteritis. The vet treated the dog and Miss G subsequently made a claim for the cost of treatment (£374.58).

However, CG said they wouldn't accept the claim, as review of the dog's clinical history indicated previous consultations involving diarrhoea and vomiting that would have affected the cover provided under the policy. They said had they been aware of the history when Miss G took out her policy they would have imposed specific exclusions (from October 2021, the date Miss G took out her policy). The exclusion would relate to the digestive system. CG added that at the time of taking out her policy, Miss G would have been advised of the importance of detailing all history relating to the dog's clinical history (which would have led them to apply the exclusion). As the condition claimed for (acute gastroenteritis) would have fallen within the exclusion, so they wouldn't accept the claim.

Miss G was unhappy about CG's decline of her claim, as she didn't think the previous clinical history indicated anything related to the current diagnosis of acute gastroenteritis. The vet that treated the dog also didn't think the current condition was related to any similar conditions in the past. Miss G thought there were no pre-existing conditions for her to declare when taking out the policy. Miss G then complained to CG.

CG didn't uphold the complaint. In their final response they said when Miss G took out her policy, she was asked if her dog had ever visited the vet for anything other than routine vaccinations. Had the clinical history prior to the policy been disclosed, CG would have placed an exclusion on the policy (for the digestive system) which Miss G would have been able to decide whether to accept (and proceed with the policy). As the clinical history wasn't provided, CG placed the exclusion on the policy retrospectively. They added the claim for treatment of acute gastroenteritis would fall under the exclusion, so CG confirmed the decline of the claim.

CG also noted the policy terms and conditions provided to Miss G made it clear pre-existing conditions (or where there were clinical signs of existence) wouldn't be covered. CG referred to information in the Insurance Product Information Document (IPID) and the *General Exclusions* section of the policy which provided for CG to add endorsements to the policy where they became aware of pre-existing conditions after a policy had been taken out.

CG also referred to the dog's clinical history prior to the policy's inception, including vomiting and diarrhoea, which they said confirmed there were signs and symptoms of gastroenteritis prior to the start of the policy. They also referred to two 'assumptions' statements that Miss

G would have been asked to confirm when taking out the policy, relating to whether she was looking for cover for pre-existing conditions, and whether she was concerned that after 12 months a condition wasn't covered. CG noted Miss G didn't disclose any pre-existing conditions for gastroenteritis – but it was discussed during a consultation in September 2014. Had Miss G disclosed the clinical signs and symptoms from the consultation, CG would have applied the exclusion (endorsement) to the policy.

Miss G then complained to this service, saying CG had unreasonably declined her claim in saying the dog's condition was pre-existing. She said the letter from her vet confirmed the condition wasn't pre-existing, as the vet said the previous conditions in the clinical history weren't shown to be related to the present acute gastroenteritis condition. She also said she wasn't asked about pre-existing conditions. Also that the diarrhoea her dog had suffered from at various points hadn't been diagnosed as gastroenteritis. She wanted CG to reconsider their rejection of the claim and to settle the claim.

Our investigator upheld Miss G's complaint, concluding CG hadn't demonstrated the claim (for acute gastroenteritis) was linked to a pre-existing condition. He was persuaded by the vet's opinion the acute gastroenteritis wasn't related to any conditions the dog had in the past, so it wasn't a pre-existing condition. The investigator also didn't think Miss G had made a misrepresentation, under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), as he didn't think CG had asked a clear, relevant question to make her aware she would need to make them aware her dog had previously visited the vets for diarrhoea. So, she hadn't failed to take reasonable steps not to make a misrepresentation. So, CG hadn't acted fairly by applying the exclusion and declining the claim. To put things right, the investigator thought CG should consider Miss G's claim in accordance with the remaining terms of the policy.

CG disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they referred to the clinical history showing a minimum of five visits to the vet due to diarrhoea and vomiting. This would fall under the exclusion for the digestive system. They also referred to a definition of gastroenteritis, including symptoms such as vomiting and diarrhoea.

CG also provided evidence of the 'sales journey' Miss G would have followed when taking out the policy. This included a question about whether she wanted cover for any pre-existing conditions (and a pop-up description of what would be a pre-existing condition ('any illness, injury, symptom or sign of a condition that happened before your new policy begins')). As Miss G answered 'no' to the question, she made a misrepresentation and that was why an exclusion was added to the policy.

### **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.

My role here is to decide whether CG have acted fairly towards Miss G.

There are two key issues in Miss G's complaint. The first is whether CG acted fairly in declining her claim for treatment of her dog, on the grounds the dog's clinical history confirmed signs and symptoms of acute gastroenteritis. Which would indicate a pre-existing condition, so excluded from cover under the policy. Miss G's view is that the previous conditions weren't shown to be related to the present condition, as her vet stated.

The second issue is whether Miss G made a misrepresentation when she took out the policy, by not declaring a pre-condition. Miss G says there were no pre-existing conditions

for her to declare (indicating she didn't make a misrepresentation). CG say the 'sales journey' she followed when taking out the policy included a question about whether she wanted cover for any pre-existing conditions (and a pop-up description of what would be a pre-existing condition). As Miss G answered 'no' to the question, she made a misrepresentation and that was why an exclusion was added to the policy.

On the first issue, the decline of the claim because of the exclusion for a pre-existing condition, I've considered both views carefully, including the relevant terms and conditions of the policy (particularly those referred to by CG in their final response) together with the supporting information and evidence, including the vet's notes and the clinical history of Miss G's dog. In their final response, CG refer to the following statement in the IPID:

*"What is not insured?"*

*Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition*

Similar wording appears under the *Veterinary Fees* heading, where there's a sub-heading *What is not covered?*

CG refer to the Policy Definitions which state a Pre-Existing Condition means:

*"...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."*

CG also refer to the *General Exclusions* section of the policy that includes the following:

*"As with all insurance policies, there are exclusions and conditions You accept and understand that medical conditions or diseases that apply to your coverage..."*

*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 to add a relevant endorsement(s) to your policy in respect of these Pre-existing Conditions."*

I've then considered the question of whether the dog did have a pre-existing condition, specifically, the [acute] gastroenteritis diagnosed by the vet in July 2022. Or whether there were any clinical signs or symptoms. Looking at the clinical history, there are notes of issues including vomiting and diarrhoea. However, none mention gastroenteritis as the cause. I've also considered the vet's opinion that the acute gastroenteritis wasn't related to these previous issues of diarrhoea and vomiting.

In their response to our investigator's view, CG refer to the clinical history showing a minimum of five visits to the vet due to diarrhoea and vomiting, which would fall under the exclusion for the digestive system. I've taken these five visits to be those set out in their final response. Looking at them, three cover a two-week period in 2014 when the dog was few weeks old and one in 2020 refers to similar issues *"when [the dog] was a puppy but nothing since then"*. None of the five episodes mention a diagnosis of gastroenteritis.

CG also refer to a definition of gastroenteritis, including symptoms such as vomiting and diarrhoea. While I accept they are symptoms, this doesn't mean they can't be the result of

other conditions (or one-off issues). Put another way, the occurrence of vomiting and diarrhoea doesn't automatically mean (or prove) the presence of gastroenteritis.

I've also considered the general principle, where an insurer relies on an exclusion, the onus is on them to show it's reasonable to apply it. Given the points noted above, I'm not persuaded CG have shown enough to apply the exclusion for a pre-existing condition in the circumstances of this case. So, I've concluded CG acted unfairly to apply the exclusion to decline Miss G's claim.

Turning to the second issue, whether Miss G failed to declare a pre-existing condition at the point she took out the policy, I've considered the circumstances in which Miss G took out her policy. I've considered the 'Assumptions' section statements Miss G was asked to respond to that CG refer to in their final response, which are:

*"Are you looking for insurance cover for a pre-existing condition?"*

*Are you concerned that after 12 months a Condition is no longer covered?"*

The first question assumes that a consumer would reasonably have known their pet had a pre-existing condition and declared it. Given my conclusion it wasn't reasonable for CG to apply the exclusion for a pre-existing condition, together with the vet's view the gastroenteritis wasn't linked to the dog's previous issues, then I don't believe it was unreasonable for Miss G to think her dog didn't have a pre-existing condition.

So, I've concluded Miss G didn't make a misrepresentation (under CIDRA) when she took out her policy.

Given these conclusions, I've thought about what CG need to do to put things right. As I don't think they can rely on the exclusion for pre-existing conditions, and Miss G didn't make a misrepresentation when she took out her policy, they should assess the claim in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

If CG accept the claim they should also pay interest at a rate of 8% simple on the amount accepted, from the date of Miss G paid the vet's bill to the date they reimburse her.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Miss G's complaint. I require Casualty & General Insurance Company (Europe) Ltd to:

- Assess Miss G's claim in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

If Casualty & General Insurance Company (Europe) Ltd accept the claim, they should also pay interest at a rate of 8% simple on the amount settled, from the date Miss G paid the vet's bill to the date they reimburse her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 30 May 2023.

Paul King  
**Ombudsman**