

The complaint

Mr S complains that Casualty & General Insurance Company (Europe) Ltd (CGICE) declined his pet insurance claim. My references to CGICE include its agents.

What happened

On 1 July 2021 Mr S' pet insurance for his dog started, insured by CGICE. He'd taken out the policy online. Mr S says he's had pet insurance for both his dogs from the day he had them but switched to this policy following the previous insurer's unacceptable increase in premiums.

On 17 January 2022 Mr S took one of his dogs to the vet as the dog had been continually sick the night before. The dog was referred to a specialist and diagnosed with gallstones. Mr S claimed for the vet costs.

CGICE declined the claim. CGICE's final response letter declined the claim for two reasons (although its final response letter to Mr S isn't very clear about that).

First, CGICE said when Mr S took out the policy online he'd ticked a box to confirm he'd read the 'assumptions' which said:

'You accept that no cover will be provided for any illness or injury that is pre-existing or if it were to arise within the first 14 days from the policy start date or 5 days in the event of an accident'.

CGICE said Mr S didn't tell it about any pre-existing condition for the vomiting and diarrhoea and if he'd done so it would have applied a specific exclusion on the policy for cover 'on all claims with respect to the digestive system with effect from 1 July 2021'. CGICE added that exclusion to apply from the start of the policy and said the claim fell within that exclusion.

Second, CGICE said Mr S' dog's vet notes showed he had a history of vomiting and diarrhoea before the policy started and the policy excluded pre-existing conditions.

Mr S complained to us. In summary he said his dog's vomiting and diarrhoea were months apart, nothing to do with gallstones and his vet had sent evidence to CGICE that the symptoms weren't related to gallstones. He also said that before he took out the policy his dog had problems with allergies, so he knew CGICE wouldn't cover the allergies, but his dog hadn't shown symptoms of any other illness to tell it about. He wants CGICE to pay his claim and, as it may be an ongoing condition, future claims as well.

Ultimately our investigator said CGICE couldn't fairly apply a retrospective exclusion to the policy and use that exclusion to decline the claim. But she said CGICE could fairly decline the claim using the exclusion for pre-existing conditions.

Mr S disagreed and wanted an ombudsman's decision.

What I provisionally decided – and why

I made a provisional decision that I was intending to uphold the complaint. I said:

'I have to decide whether CGICE fairly and reasonably declined the claim on the basis of either of the two exclusions it relied on and I don't think it did. I'll explain why.

Did CGICE fairly add and rely on the specific exclusion for claims for the digestive system to decline the claim?

In line with the relevant legislation about non-disclosure, The Consumer Insurance Disclosure and Representation Act 2012 (CIDRA), I generally say an insurer can fairly add an exclusion to the policy retrospectively if:

- the policyholder didn't take reasonable care in answering clear questions asked when they bought the policy, and
- if the insurer had known the correct information it would have added the exclusion.

CGICE hasn't shown that when Mr S bought the policy he was asked a clear relevant question that would have enabled him to tell it his dog had previously visited a vet for vomiting and diarrhoea. Instead it says during the policy application Mr S was asked to read and tick a box to confirm he'd read the 'assumptions' and policy terms.

The 'assumption' isn't a clear question that enabled Mr S to disclose previous ill health his dog may have had. So I disagree with CGICE's suggestion that Mr S failed to take reasonable steps to not make a misrepresentation.

That means I don't think CGICE fairly and reasonably added and applied the retrospective exclusion for claims for the digestive system to decline the claim.

As I find that CGICE unfairly added the retrospective exclusion it must remove the exclusion for cover on all claims with respect to the digestive system, the removal to be effective from the start of the policy, 1 July 2021.

Could CGICE fairly rely on the pre-existing condition exclusion?

The policy doesn't cover:

*'Any claim for Illness .. that relates to a Pre-existing Condition, or
Any claim for Illness ... that showed Clinical Signs or Symptoms before Your Policy
Start Date ...'*

The policy defines 'pre-existing condition' 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 ...'*

In CGICE's final response letter to Mr S it referred to three entries on the vet notes to support that his dog had a pre-existing condition.

In 6 June 2018 Mr S' vet noted *'diarrhoea 2 days still bright/eating no vom watery diarrhoea nothing abnormal detected on exam'*. The vet recommended a bland diet and then a gradual reintroduction of normal food.

I've seen no evidence to support that the episode of diarrhoea in 2018 was a symptom of the gallstones which the vet first suspected in January 2022. As this episode occurred two and half years before the gallstone diagnosis I think it's highly unlikely this episode was a clinical sign of the gallstones.

On 20 November 2020 Mr S' vet noted that his dog had vomited six times that morning but didn't have diarrhoea and that the dog had been *'off lead in park yesterday and did eat something but O(wner) doesn't know what'*. The vet noted possible diagnoses as *'infectious gastritis, pancreatitis, ingestion of substance that has caused gastritis, fb'*.

On 25 November 2020 the vet notes show Mr S had reported that his dog was *'much better since appt last week, vomiting stopped'*.

Mr S' dog's vet evidence to CGICE about that vomiting episode is:

'We are unsure as to how the current diagnosis of gallstones can be related to an episode of suspected ingestion of a foreign body? (The dog's) symptoms were treated and no investigations were performed. He improved quickly and our assumption is that he ate something that he shouldn't have (as the notes state)'.

So the vet has given clear expert opinion that the vomiting wasn't a symptom of the dog's gallstones.

On 7 June 2021 Mr S' vet notes show Mr S spoke to the vet as his dog *'had occasional softer poos, occasionally diarrhoea, sometimes mucous. other days normal poos. otherwise well in self'*.

Mr S' vet told CGICE they didn't see the dog on 7 June 2021 and that:

'His owner reported that (the dog) had occasional soft stools and occasional diarrhoea but normal stools on other days. (The dog) suffers from allergies and therefore if anything, we would be more inclined to link this episode to his history of allergies. We would not consider this to be indicative of gallstones'.

So the vet has given clear expert opinion that this episode of diarrhoea was likely to be due to the dog's history of allergies. The vet is clear the episode wasn't a symptom of the dog's gallstones.

I've seen no evidence from CGICE to show that the vomiting and diarrhoea Mr S' dog had before the policy started was a symptom of gallstones. The clear evidence from Mr S' vet is that his dog didn't have symptoms of gallstones before the policy started.

I find that CGICE didn't fairly and reasonably rely on the pre-existing condition exclusion to decline the claim.

I think the fair outcome is for CGICE to pay the claim in line with the policy terms, limits and subject to the policy excess. If Mr S has already paid the vet costs CGICE must add interest as I've detailed below.

I note Mr S says he had to make another claim for further treatment for his dog's gallstones and may have to make claims for the condition in the future, which he wants CGICE to pay too. My decision is only about the claim Mr S made before he complained to us. CGICE will need to assess the further claim and any future claims on the evidence it has at the time. If it declines those claims and Mr S disagrees he can make a separate complaint to it and ultimately to us to consider'.

Responses to my provisional decision

CGICE didn't respond to my provisional decision and neither did Mr S.

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.

As neither CGICE nor Mr S responded to my provisional decision I've no reason to change my mind. For the reasons I've given in my provisional findings and these findings I uphold this complaint as I think CGICE unfairly added the specific exclusion to the policy and unfairly declined Mr S' claim.

Putting things right

CGICE must pay Mr S' claim in line with the remaining policy terms and limits and subject to any excess. If Mr S has already paid the vet it must add interest as detailed below. CGICE must also remove the exclusion for the digestive system with effect from the start of the policy.

My final decision

I uphold this complaint and require Casualty & General Insurance Company (Europe) Ltd to:

- pay Mr S' claim in line with the remaining policy terms and limits and subject to any excess. If Mr S has already paid the vet it must add interest* at 8% a year simple from the date of payment until the date of settlement, and
- remove the exclusion for the digestive system with effect from the start of the policy.

*If Casualty & General Insurance Company (Europe) Ltd considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr S how much it's taken off. It should also give Mr S a certificate showing this 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 S to accept or reject my decision before 27 December 2022.

Nicola Sisk
Ombudsman