DRN-3875642

The complaint

Ms S complains Casualty & General Insurance Company (Europe) Ltd (C&G) has rejected claims made for veterinary treatment for her dog.

What happened

The details of the claim are well known to both parties, so I won't repeat them again here. Instead, I'll summarise the background and focus on the reasons for my decision.

Ms S had a pet insurance policy with C&G for her dog, who I'll refer to as "F", since April 2019.

On 25 November 2021, F was seen by a vet for two reasons the first being a second opinion on a diagnosis about masses on the mammary glands. The second was because F had gone off her food and had a temperature – recorded by C&G as 'Inappetence and Vomiting'. She was given medication but by 27 November the vet records she was vomiting this up. Due to raised liver enzymes, F was treated by the vet for a gastrointestinal (GI) tract infection. Over the next few days, the notes record improvements in F at each visit – the vomiting had stopped, temperature reduced, and she was much perkier – and so the vets continued the medication.

When Ms S submitted a claim for the above-mentioned treatment to C&G, C&G reviewed F's previous medical history and noted F had been treated for diarrhoea on 27 December 2019. It declined the claim, saying it was excluded under the policy. This is because under Ms S's policy, it said conditions are only covered for 365 days from the date the problem is first noticed. After this period, no further cover would be provided for that condition or associated condition. As diarrhoea was related to the digestive system, no further claims (after 365 days from 27 December 2019) for the digestive system would be covered. And the claim in November 2021 was for vomiting which C&G considered to be part of the digestive system. Further, it said Ms S changed her policy in April 2021 and so, due to previous issues with the digestive system, an exclusion was placed on the policy at that point about digestive system issues.

Ms S sent C&G a letter from her vet in March 2022 to explain the conditions were unrelated, but it didn't change its decision. Ms S complained to C&G about this which I will call Claim 1.

In its response to this service, C&G said Ms S was also unhappy it'd declined two other claims because it said she'd made the claims more than 90 days after the onset of the condition.

- Claim 2 - A claim for a skin condition (diagnosis of Epitheliotropic Lymphoma) where the claim related to treatment on 16 November 2019 but C&G said the claim form wasn't received until 2 March 2020.
- Claim 3 - A claim recorded as being for 'ulcer in left eye' where the treatment was on 7 December 2021 as another dog caught an ulcer on F's eye. The claim form was received on 15 April 2022. However, C&G stated the mass was brought to Ms S's attention as early as 6 February 2020.

In response, Ms S said all claims had been submitted in time by the vets. C&G didn't change its decision and Ms S brought her complaint to this service for an independent review.

The Investigator considered matters as follows:

Claim 1 - he didn't accept C&G had shown the issues were linked in any way as the cause of the diarrhoea was the general anaesthetic (GA) given to F and the vomiting was caused by a GI infection. So, he didn't agree C&G had declined the claims fairly and reasonably. To put this right, he asked C&G to reassess and, likely, pay the claim.

Claim 3 – In terms of timing, he considered the claim relating to treatment in December 2021 was made in time. Further, even if the claim form wasn't submitted in time, he hadn't seen any evidence the delay caused a detriment to or prejudiced C&G. So, following Insurance Conduct of Business Sourcebook (ICOBS), he didn't agree C&G was entitled to decline Claim 3 for this reason. To put this right, he asked C&G to reassess the claim. The Investigator explained C&G would likely need only to pay the parts of the treatment which related to the scratch and associated damage, and he anticipated the treatment likely didn't relate to this. This is because, ultimately, the vet recommended F was euthanised on welfare grounds as there wasn't likely to be a good outcome from treatment given F's pre-existing condition.

As Ms S didn't have the funds to cover treatment, she had to pay for the treatment on credit cards. So, the Investigator recommended C&G cover the interest Ms S has incurred for any treatments it should've paid out.

Finally, after a detailed explanation, the Investigator asked C&G to pay Ms S compensation of £300 for the distress and inconvenience caused by it in having these claims declined unfairly, approaching the vet on different occasions for evidence and the insensitive communications sent to Ms S after F had been euthanised when C&G was aware of this.

The Investigator couldn't comment on Claim 2 - which had been mentioned by C&G - as it had also sent our service evidence there was a different underwriter at that time. Therefore, it wasn't a claim our service is able to consider in this complaint.

C&G didn't agree. It said it didn't have medical evidence from before F was insured with it but considered there enough to say the digestive exclusions was placed fairly. It argues that its underwriting criteria treats both diarrhoea and vomiting as "digestive system" problems. Therefore, if F suffered a digestive system problem (diarrhoea) in 2019, this is a clinical sign or symptom of a digestive system problem (vomiting) in 2021. Therefore, the exclusion relating to digestive system problems started on 26 December 2020. Further, it said the 90-day time limit for claims to be submitted was explained throughout its material and the vet reminded Ms S of this, as stated in the notes from 6 February 2020. It also didn't consider ICOBS applied to it as it doesn't apply to businesses who have terms in place. In relation to the compensatory award, it said this is above the usual awards given by our service.

The Investigator communicated with C&G about the points raised and explained why this didn't change his mind. He also shared a link to our external website with information about awards made for distress and inconvenience.

As C&G didn't agree, the matter was passed to me for a decision.

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.

I recognise I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this and it reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I've given careful consideration to all of the submissions made before arriving at my decision and I'm satisfied I don't need to comment on every individual argument to be able to reach what I consider to be a fair outcome.

Having done so, I must explain to C&G I consider the Investigator reached a fair outcome in this matter. I'll explain why.

The starting point of any claim made under an insurance policy is the contract between the customer and the insurer - the policy document.

Claim 1

Ms S took out pet insurance in April 2019. At this point, I don't consider it likely it was a time limited policy based on a claim form I've seen from February 2020 completed by the business which selected a different type of policy. Therefore, I don't agree the 365-day exclusion applies to any conditions which occurred during that time.

From the information provided, the 365-day policy started in April 2021. At that time, previous problems F had experienced *may* have been excluded from cover if they were pre-existing conditions, defined as follows.

> Pre-existing condition - '*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...*'
>
> Condition - '*Illness or Accidental Injury or any Symptoms or Clinical Signs of an Illness or Accidental Injury affecting Your pet*'.
>
> Illness - '*any disease, sickness, infection or any change to Your pet's normal healthy state, which is not caused by an Accidental Injury*.'

F was seen on 27 Dec 2019 and put under GA for a skin biopsy. The vet's notes record - '*pale brown diarrhea passed when waking up from GA. Given logic for few days*'.

Considering the evidence, I'm not satisfied it's reasonable for C&G to rely on the instance of diarrhoea *caused* by F having GA as a condition related to the digestive system which should fairly exclude all digestive conditions as a 'Pre-existing condition' under the terms of the policy.

Further, I consider C&G to have made an unreasonable connection resulting in an unreasonably wide exclusion that wouldn't have been clear to Ms S when she took out her policy as she wouldn't have been aware of C&G's underwriting criteria.

F's vet has provided her professional opinion that F's previous episode of diarrhoea is not related to the vomiting claim. C&G hasn't provided any medical evidence to the contrary.

In light of this, I don't consider C&G has demonstrated it has fairly and reasonably declined Claim 1.

To put things right, C&G should pay the claim for Inappetence and Vomiting (recorded on its system as having been received by C&G on 3 February 2022), subject to the remaining terms and limits in the policy. In addition, it should pay interest at 8% simple or, if greater, an amount sufficient to cover the interest paid by Ms S on the credit card used to cover treatment for F (subject to Ms S submitting evidence of the rate she paid). This is for the period from one month from the date the claim was made up to the date of actual payment.

Claim 2

Given the evidence I've seen, I consider it likely there was a different underwriter at the time this claim was made. I note it was C&G who raised this as an issue in its response to this service. However, if Ms S wants to complain about the decline of this claim, she will need to raise this with the policy administrator and give it an opportunity to consider the complaint. If this can't be resolved to Ms S's satisfaction, she may then return to our service to raise a new complaint against the underwriter from that policy year.

Claim 3

Firstly, I think it's important to be clear – the regulator's ICOBS does apply to C&G.

So, even if C&G can show Ms S failed to submit her claim within 90 days, it also needs to show it was prejudiced by the late notification. That's because ICOBS says an insurer shouldn't reject a claim for a breach of a conditions unless the circumstances of the claim are connected to the breach.

I appreciate there's a dispute about when Claim 3 was received by C&G. However, even if I was persuaded Ms S had breached the 90-day time limit, I still don't think it would be fair for C&G to rely on this to decline her claim. That's because I'm not satisfied C&G was prejudiced by the late notification. The cost of the claim hadn't changed, and the documentation C&G needed to validate the claim was still available.

To put things right, C&G should pay the claim for 'Ulcer in left eye' (recorded on its system as having been received by C&G on 15 April 2022), subject to the remaining terms and limits in the policy. In addition, it should pay interest at 8% simple or, if greater, an amount sufficient to cover the interest paid by Ms S on the credit card used to cover treatment for F (subject to Ms S submitting evidence of the rate she paid). This is for the period from one month from the date the claim was made up to the date of actual payment.

compensation

I consider the compensation of £300 recommended by the Investigator for the emotional upset, stress and inconvenience suffered by Ms S is fair and reasonable in the circumstances. I agree with the detailed rationale the Investigator set out regarding this. Further, I think it's important to explain to C&G our awards are made on a case-by-case basis and so they will likely differ depending on the individual circumstances of the case.

Putting things right

Casualty & General Insurance Company (Europe) Ltd should settle Ms S's complaint by:

1. Settling Claim 1 and Claim 3 in full, subject to any other terms and conditions of the policy;
2. Pay interest on any amount due to Ms S at 8% simple* or, if greater, an amount sufficient to cover the interest paid by Ms S on the credit card used to cover

treatment for F (subject to Ms S submitting evidence of the rate she paid). This is for the period from one month from the date the claim was made up to the date of actual payment; and
3. Pay Ms S £300 compensation.

*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 Ms S how much it's taken off. It should also give Ms S a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is I uphold this complaint against Casualty & General Insurance Company (Europe) Ltd. It should now put things right by following the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 19 September 2023.

Rebecca Ellis
Ombudsman