

## **The complaint**

Miss K has complained about Casualty & General Insurance Company (Europe) Ltd. She isn't happy that it turned down a claim under her pet insurance policy.

For ease of reading any reference to Casualty & General includes its agents.

## **What happened**

Miss K's pet received treatment from her vet in relation to gastric issues and so she made a claim under her pet insurance policy with Casualty & General. But when it looked into the claim it turned it down.

Casualty & General referred to the veterinary history and highlighted Miss K's pet suffered previous digestive issues that it said Miss K didn't disclose and so it added an exclusion to cover '*all claims with respect to the digestive system...*' with effect from the start date of the policy and turned down the claim. It said it was entitled to add the exclusion to the policy covering digestive issues. And as Miss K's present claim was in relation to this it was entitled to rely on the clause in turning down the claim. Miss K wasn't happy about this and so she complained to Casualty & General and then this Service.

Our investigator looked into things for Miss K and upheld her complaint. She didn't think Casualty & General had acted fairly in declining the claim or adding the exclusion to the policy. She explained to Casualty & General that it didn't ask Miss K any clear questions during the sales process about her pet's history before the policy was taken out so she didn't think it was fair to add the exclusion which it used to turn down the claim. She asked it to pay the claim in line with the remaining terms and conditions of the policy (plus 8% simple interest). And she asked it to remove the exclusion in respect of the digestive system.

Casualty & General said it agreed the exclusion should be removed as it didn't ask reasonable questions about this before the policy was taken out, but it still felt the claim should be declined as the condition was pre-existing. So, the matter has been passed to me for review.

## **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 Casualty & General have gone on to accept that it shouldn't have applied the exclusion to the policy '*in respect of the digestive system...*' I don't propose to go over this again in detail now. It is aware of our approach to these issues and that the relevant law here relating to misrepresentation is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This sets out remedies an insurer has where a qualifying misrepresentation has been made at the point of application. Miss K wasn't asked a question that led her to make a qualifying misrepresentation – i.e. one which led to the insurer taking different action regarding the terms on which it would provide cover.

Put simply, the question Miss K was asked was a factual one about whether she wanted cover for pre-existing medical conditions – and she didn't. So, she answered this question correctly and the question didn't ask Miss K to detail any veterinary history or provide any further information about this. So, Miss K didn't make a misrepresentation and so Casualty & General isn't entitled to add a backdated exclusion to the policy or to decline the claim in line with this – which it now accepts.

Casualty & General relied on this exclusion, which it applied retrospectively, when it turned down Miss K's claim. But in accepting it was wrong to have applied the exclusion it has gone on to say that the claim shouldn't be met now as it stemmed from a pre-existing condition, but I don't think it has sufficient evidence, or undertaken sufficient investigation, to say this. I'll explain why.

When Miss K complained to Casualty & General about the decline of the claim she made the point that her pet's previous issues were different to the present claim. And Casualty & General clearly accepted this when it told Miss K *'We are aware that the conditions are unrelated, however - had we been made aware of the previous issues, we would have placed an exclusion on your policy for the digestive system.'* And it went on to say this claim was correctly declined as *'the current condition you are claiming for would therefore fall under this.'*

Given Casualty & General's acceptance here that the two issues were not related I tend to agree with our investigator that there isn't sufficient evidence to say the two claims, which were about eight months apart, are linked and so pre-existing. And as it is accepted the claims aren't clearly linked I agree that the fair and reasonable thing to do, in the particular circumstances of this case, is for Casualty & General to pay the claim in line with the remaining terms and conditions of the policy adding 8% simple interest for the time she has been without the money.

### **My final decision**

It follows, for the reasons given above, that I think Casualty & General Insurance Company (Europe) Ltd should pay the claim in line with the remaining terms and conditions adding 8% simple interest from the date of claim until the date of settlement. And remove the exclusion in respect of *'the digestive system'* as already agreed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 28 March 2023.

Colin Keegan  
**Ombudsman**