

The complaint

Mrs C complains that Casualty & General Insurance Company (Europe) Ltd declined a claim for her dog's surgery in March 2022 as they say she had pre-existing problems with her breathing. Mrs C doesn't agree and wants her claim to be paid.

What happened

Mrs C has insurance for her dog with C&G. Her policy started on 16 April 2020 and clearly states that cover isn't provided for pre-existing conditions.

In March 2022 Mrs C's dog had surgery for Brachycephalic Obstructive Airway Syndrome (BOAS). When she submitted a claim for the cost of this surgery to C&G it was declined on the basis that her dog had breathing difficulties before the policy started, so the condition was pre-existing and wasn't covered by her policy.

And C&G said had they been made aware of the dog's breathing difficulties, they'd have added an exclusion to her policy in respect of all claims with respect to 'The Respiratory System.' So they added this exclusion to the policy from the date of inception.

C&G referred to the following entries in the dog's clinical records:

7.11.2014 – O reports dude well, breed related noises when breathing.

15.10.2021 – Problems with breathing worse in hotter months ... Adv BOAS surgery.

10.03.2022 – Discuss BOAS and sx, including aims/risks/ option of referral, etc

15.03.2022 – BOAS. Bilateral nasal fold wedge resection. Sutured with 2M Vicryl. Soft palatine shortening.

Mrs C didn't accept C&G's decision to decline her claim and raised a complaint. C&G didn't uphold this as they said she hadn't declared the breathing noises discussed with her vet on 7 November 2014. And had she declared these when her policy was taken out, they'd have excluded any claims relating to her dog's respiratory system, and the claim wouldn't have been covered.

Mrs C wasn't happy with C&G's response and complained to our service. Our investigator considered the case and said she didn't think C&G had acted fairly in declining the claim.

Mrs C had told us she felt C&G had acted unfairly as her dog is snub-nosed and she declared this when she took out the policy. Her breed is prone to breathing difficulties, but C&G never raised this, or said they couldn't provide cover.

Our investigator said she'd considered whether C&G had fairly applied the policy terms and conditions in the circumstances. And whether Mrs C had reasonable knowledge when she took out the policy of something she'd might have to claim for in the future.

She said C&G say the dog had shown signs of breathing difficulties as early as 2014, prior to

the policy commencing in April 2020. And they relied on her medical history which shows the vet noted problems with breathing getting worse in hot weather in October 2020 and BOAS surgery being advised in October 2021.

Our investigator looked at the policy terms and conditions and said these define a pre-existing condition as '*a diagnosed or undiagnosed condition and/or associated condition which has happened or shown clinical signs or symptoms of existing before the policy start date or waiting period*'. While our investigator accepted that Mrs C's dog had shown clinical signs of having breathing issues in 2014, she said there's no further evidence to support that they were discussed or noted by a vet until October 2020. So she wasn't convinced Mrs C had known she'd need to make a claim for BOAS when the policy commenced in April 2020.

C&G also relied on the note stating the dog's breathing worsened in hotter weather in 2020, which they say is a symptom of breathing difficulties. Mrs C's vet advised BOAS surgery was required in October 2021, after renewal in April 2021. Our investigator didn't think Mrs C would reasonably have thought that the issues her dog had in October 2020 would have led to the need for BOAS surgery, and that she'd need to make a claim for this in the future.

And she also thought it was unfair for C&G to add the exclusion in respect of respiratory symptoms to Mrs C's policy as she wasn't asked about this during the sale of the policy, and when she was asked the policy was already in force.

So our investigator recommended C&G pay the claim in line with the policy limit and any applicable excess, with 8% interest on any amount paid by Mrs C from the date of payment until the date of settlement.

Mrs C was happy with our investigator's opinion, but C&G weren't. They said that BOAS is usually only diagnosed in certain breeds of dogs, and that with dogs of the same breed as Mrs C's, less than half will suffer from BOAS. So it would be unfair to decline cover for respiratory symptoms from the start of a policy based purely on the dog's breed.

They said they declined Mrs C's claim as her dog suffered from respiratory noises, which they say is a clear symptom of BOAS, prior to policy inception. And while there was an extended period of time between the dog suffering from respiratory noises and undergoing BOAS surgery, they say this is quite common as the risk of undergoing general anaesthetic often outweighs the benefits of the BOAS surgery, and many vets will avoid placing a brachycephalic pet under sedation unless it is absolutely necessary.

Another investigator reviewed C&G's further comments and provided a further opinion. She agreed that the complaint should be upheld, and C&G should pay the claim in line with the policy limit and any applicable excess, together with 8% interest on any payments made by Mrs C. And she said the exclusion for the 'respiratory system' should be removed from Mrs C's policy.

She said C&G are well aware of our approach in respect of pre-existing conditions. And that we consider it fair for an insurer to decline a claim where a consumer had reasonable knowledge, when taking out the policy, of something that they may need to claim for in the future.

But in this case the last noted problems with the dog's breathing were in November 2014 and there's no further mention of her breathing in her clinical records. In addition, the breathing difficulties are described as 'breed associated noises when breathing'. So she didn't think Mrs C could reasonably have thought in April 2020, that the breathing noises made by her dog in 2014, were a symptom of a condition she'd need to claim for in the future.

And in respect of the exclusion she said Mrs C wasn't asked any direct questions during the sales process. And while there are questions detailed on the schedule, the policy was already in force at that stage, so she didn't think it was fair to add the exclusion.

Mrs C was happy with our investigator's opinion, but C&G didn't accept it, so the case has now come 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.

The issue for me to consider in this case is whether, based on Mrs C's dogs' clinical records she had a pre-existing condition when her policy started in April 2020. And if she did whether it was reasonable for C&G to decline the claim for her BOAS surgery and add an exclusion to her policy in respect of 'the respiratory system'.

Our approach to pre-existing symptoms is that we consider it reasonable for an insurer to decline a claim where a consumer had reasonable knowledge, when taking out the policy, of something that they may need to claim for in the future.

Mrs C took out her policy in April 2020. Her dog is of a breed that can be prone to breathing difficulties. But C&G themselves have said that less than half of this breed of dogs ever require BOAS surgery. Prior to Mrs C taking out her policy the only reference to her dog's breathing in her clinical records, is a note on 7 November 2014 of 'breed related noises when breathing'. But the note also says that the dog was well. And there were no concerns noted about her breathing.

There's nothing further in the clinical records about the dog's breathing until October 2020, when it's noted that the dog has BOAS. It's also noted that she'd put on a little weight and this could be contributing.

Then in October 2021 it's noted that the dog had problems with her breathing, which were worse in hotter months, and BOAS surgery was recommended.

C&G have said that because of the risks of anaesthetic with a snub-nosed breed of dog, vets with often put off BOAS surgery, because the risks outweigh the benefits. But there's no evidence that this is what happened here. There's simply no mention of BOAS surgery before October 2020.

Based on the available evidence I don't think Mrs C would reasonably have known, when she took out her policy, that her dog was likely to require BOAS surgery. So I don't think C&G acted fairly in declining her claim for the cost of her dog's surgery, as there was no pre-existing condition. And I require them to pay her claim subject to any applicable policy limit and excess.

And based on the dog's clinical history and the questions Mrs C was asked when she took out her policy, I don't think it was fair for C&G to add an exclusion to her policy in respect of 'The Respiratory System'. So this exclusion should be removed.

My final decision

For the reasons set out above I uphold Mrs C's complaint about Casualty & General Insurance Company (Europe) Ltd.

And to put things right I require them to pay her claim for the cost of her dog's BOAS surgery subject to any applicable policy limit and excess. Together with interest at 8% simple on any amount paid by Mrs C from the date of payment until the date of settlement. And to remove the exclusion from her policy in respect of all claims related to 'The Respiratory System.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 21 February 2023.

Patricia O'Leary
Ombudsman