

The complaint

Mrs W 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.

In making her complaint, Mrs W was supported by a representative. References to Mrs W include her representative.

What happened

Mrs W took out a pet insurance policy with CG in February 2022 for her dog, which was three months old. The following month, the dog had a problem with its eye. She took it to a vet, who diagnosed 'cherry eye' condition. The vet carried out treatment, including surgery in April 2022. Mrs W subsequently made a claim for the cost of treatment (£1,108.89).

However, CG said they wouldn't accept the claim, as review of the dog's clinical history indicated consultations in February 2022 (before the policy start date) including mild watery discharge in the dog's eyes and bilateral marked epiphora with tear overflow and staining. They said had they been aware of this when Mrs W took out her policy they would have imposed an exclusion for eyes and sight. CG said that when taking out her policy, Mrs W would have been advised of the importance of detailing the dog's clinical history (which would have led them to apply the exclusion). As the cherry eye condition would have fallen within the exclusion, they wouldn't accept the claim.

Mrs W was unhappy at CG's decline of her claim, as she didn't think the clinical history indicated anything related to the cherry eye diagnosis. The vet said the breed meant its eyes were relatively big and exposed, which could lead to mild tear staining, something 'normal for the breed'. The vet added they had no concerns (when treating the dog in February 2022) about its clinical pathology with its eyes, including conjunctivitis and cherry eye. The vet also thought there was no indication of cherry eye at the second consultation in February 2022, the first signs didn't become apparent until March 2022.

CG considered the points made by the vet but didn't change their view to decline the claim. Mrs W then complained to CG. CG didn't respond to the complaint within the eight-week period businesses have to respond, so Mrs W complained to this service.

In her complaint, Mrs W said her claim should be accepted. She also didn't think the dog (as a young puppy at the time the cherry eye arose) was unhealthy and didn't receive treatment for the points noted by the vet at the consultations in February 2022. She also referred to the vet's opinion the cherry eye condition wasn't related to the previous issues. CG's decline of the claim had a significant financial effect on her (covering the cost of treatment) as well as emotional strain. She wanted CG to accept her claim (after deduction of the policy excess).

As CG hadn't issued a final response, our investigator considered the complaint. She issued an initial view, upholding the complaint. CG's decline of the claim was based on their view that had they been aware of the dog's clinical history when Mrs W took out her policy they

would have imposed an exclusion for eyes and sight. And that Mrs W would have been advised of the importance of detailing the dog's clinical history (which would have led them to apply the exclusion).

Given this, our investigator considered whether Mrs W had made a misrepresentation, under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), when she took out the policy. She concluded Mrs W hadn't made a misrepresentation, as she wasn't asked a clear question about any previous illnesses. She was asked whether she was looking for cover for a pre-existing condition and asked to agree to an assumption confirming there was no cover for a pre-existing condition. Based on the evidence and information available, the investigator concluded Mrs W had taken reasonable care when she answered the question (and agreed the assumption). So, she hadn't made a misrepresentation and CG had acted unfairly in declining the claim by seeking to apply a retrospective exclusion.

To put things right, the investigator thought CG should remove the exclusion and assess the claim in line with the remaining terms and conditions of the policy.

CG disagreed with the investigator's view. They said the cherry eye condition was a 'developmental eye issue' for the dog, referring to the vet's notes from the visit shortly before the policy started. CG said this indicated a problem with the dog's eye and (had they known) they would have applied the exclusion to the eyes and sight to the policy. CG also referred to the policy terms and conditions relating to pre-existing conditions – including what a pre-existing condition was – stating they wouldn't be covered. CG said Mrs W hadn't complied with the policy terms and conditions, due to the eye problems before the policy began.

CG also provided details of the 'sales journey' Mrs W would have followed when taking out the policy. This included a question about whether she wanted cover for any pre-existing conditions. CG also referred to the policy definition of a pre-existing condition. As Mrs W declared there were no pre-existing conditions when taking out the policy, she made an incorrect declaration (and so, made a misrepresentation).

Our investigator considered CG's response. But she concluded the question Mrs W was asked wasn't whether her dog had a pre-condition – it was whether she was "*...looking for insurance cover for a pre-existing condition?*" So, the question wasn't clear and specific (as required by CIDRA) and didn't ask what pre-existing conditions her dog had. So, Mrs W hadn't made a misrepresentation.

Our investigator also considered CG's point about pre-existing conditions (as this was a separate exclusion in the policy, different to their view Mrs W made a misrepresentation) including information they'd provided listing epiphora (mentioned in the second visit to the vet in February 2022) as showing cherry eye pre-existed before the policy began.

Our investigator didn't agree with CG's position, concluding the evidence (including that from the vet) didn't indicate the cherry eye condition wasn't related. The clinical notes didn't indicate the epiphora was linked to (or caused) the cherry eye. The first sign or symptom of cherry eye was in March 2022 (when Mrs W sent a picture of the dog's eye to the vet). She concluded the evidence from the vet was persuasive, so CG couldn't use the pre-existing condition exclusion to fairly decline the claim.

CG disagreed with the investigator's additional view and asked that an ombudsman review the complaint. They maintained their view there were signs and symptoms of the cherry eye condition prior to the start of the policy, so they had fairly declined the claim.

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.

Your text here

Putting things right

My role here is to decide whether CG have acted fairly towards Mrs W.

There are two key issues in Mrs W's complaint, reflected in the views issued by our investigator. Taking them in order, the first is whether Mrs W made a misrepresentation when she took out the policy, by not declaring a pre-condition. Mrs W says she didn't think the dog unhealthy and refers to the vet's opinion the cherry eye condition wasn't related to the previous issues. Which implies there wasn't a pre-existing condition to declare when she took out the policy (so 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. As Mrs W answered 'no' to the question, she made a misrepresentation and that was why an exclusion was added to the policy (or would have been had they been aware of the clinical history and the eye issues recorded).

The second issue is whether the dog had a pre-existing condition (the cherry eye). CG say the dog's clinical history confirmed signs and symptoms of cherry eye before the policy was taken out. Which would indicate a pre-existing condition, so excluded from cover under the policy. Mrs W's view is that the previous issues weren't related to the cherry eye, based on her vet's opinion.

Taking the second issue first whether it would be fair for CG to 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 response to our investigator's views) together with the supporting information and evidence, including the vet's notes and the clinical history of Mrs W's dog as well as the vet's opinion.

In their 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 *Veterinary Fees* section of the policy that includes the following:

- *"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 cherry eye diagnosed by the vet in March 2022. Or whether there were any clinical signs or symptoms. Looking at the clinical history, there are notes of issues including 'bilateral marked epiphora with tear overflow' (second February 2022 visit). CG say this is a symptom of cherry eye (and cite a website listing epiphora as a sign of cherry eye). Having looked at the website, it lists a number of signs of cherry eye (including epiphora – excessive tear production).

I've also considered the clinical notes of the two visits to the vet in February 2022 (before the policy was taken out). The first visit notes mild watery discharge bilaterally – but no evidence of conjunctivitis and *"likely normal for breed"*. There's no mention of cherry eye (either as a diagnosis or possible presence). The second visit notes bilateral epiphora (and conjunctival vessel dilation). But again there's no mention of cherry eye, and there's reference to differential diagnoses of trauma, developmental or idiopathic. The vet's opinion also states:

"This epiphora is not related to her [the dog's] later...development of cherry eye."

The vet's opinion also states that a further eye issue (enlarged blood vessel) was asymptomatic and not associated with the later development of cherry eye. The vet also states the first symptom of cherry eye was the picture of the eye sent to them by Mrs W in March 2022, and the subsequent consultation at the end of the month.

As the vet's opinion is based on their examination of the dog over the period, then I find it more persuasive than CG's view.

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 would have acted unfairly to apply the exclusion to decline Mrs W's claim.

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

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

The question assumes a consumer would reasonably have known their pet had a pre-existing condition and declared it. Given my conclusion it wouldn't be reasonable for CG to apply the exclusion for a pre-existing condition, together with the vet's view the cherry eye wasn't linked to the dog's previous eye issues, then I don't think it unreasonable for Mrs W to think her dog didn't have a pre-existing condition.

That being the case, it would have been reasonable for her to have answered 'no' to the question (which is what she did) as logically if she didn't think there was a pre-existing condition then she wouldn't have needed (be 'looking for') cover for a pre-existing condition.

It would also be reasonable for Mrs W to have accepted the assumption (as part of the sales journey) stating the policyholder accepts no cover would be provided for pre-existing conditions (if she thought there were no pre-existing conditions).

So, I've concluded Mrs W 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 Mrs W 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 Mrs W 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 Mrs W's complaint. I require Casualty & General Insurance Company (Europe) Ltd to:

- Assess Mrs W'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 Mrs W paid the vet's bill to the date they reimburse her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 June 2023.

Paul King
Ombudsman