

The complaint

Mr H has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has declined two claims he has made for the cost of veterinary treatment for his pet dog.

I previously issued a provisional decision in this case to which C&G has responded.

What happened

Mr H has insured his dog, who I'll refer to as "M", with C&G since 11 November 2017. During that time, C&G has declined two claims he has made under his policy. I'll refer to each of these in turn.

Claim 1 (the "2020 claim")

On 20 November 2019, Mr H took M to the vet as she had been vomiting, was lethargic and wasn't eating. The vet's notes record "*Discussed ddx gastritis, pancreatitis, CKD, liver.*" She was prescribed gastritis medication and a special diet.

On 22 February 2020 Mr H took M back to the vet. According to M's veterinary notes, she was:

"still on and off being sick with some episodes of lethargy (sic), now even some light brown diarrhoea, very watery. OR also 2-3 times in 2 weeks weeing herself while sleeping".

Initial tests indicated everything was fine but as she was lethargic with sickness and diarrhoea, the vet advised an abdominal scan.

On 26 February 2020 the scan result showed "*no free fluid, no evidence of masses or changes in intestinal architecture (sic), abdominal organs unremarkable*". It was advised that she stick to diet food.

Mr H claimed for the cost of this treatment.

Claim 2 (the "2022 claim")

On 3 February 2022, Mr H took M to the vet again. On this occasion the vet's notes say:

"sore paw, front right. Looking pink, licking a lot. Confused, last few months. Licking sofa, anxious, not wanting to walk last few days (could be paw). Unsettled. Shivers in the morning after eating."

The vet checked out M's paw which she considered "*overall seems ok*". She advised pain relief and wash.

As to the signs of confusion, she recorded:

“Behaviour could be medical, anxiety or CCD. Improve mental activity for CCD. Wait for bloods for rest.”

The tests done showed that biochemistry, haematology and electrolytes results were normal. She was prescribed Loxicom.

On 11 February 2022 Mr H took M back to the vet for vomiting and diarrhoea. It was thought that this was due to the Loxicom she'd been prescribed.

Mr H claimed for the cost of both visits.

C&G's response to the claims

C&G responded to both claims on 29 June 2022.

It rejected Mr H's 2020 claim as it was of the opinion that the treatment being claimed for was connected to previous incidents of vomiting and diarrhoea with which M had presented in 2012 and 2014, before the inception of the policy.

C&G had noted that on 24 January 2012 M's vet had recorded:

“upset stomach, o reports v+ last week, none since Friday, last night gassy and rumbling stomach, no more V+. off food slightly, otherwise well in self upset stomachs about twice yearly”.

During a consultation on 20 November 2012, Mr H informed the vet that M suffered from diarrhoea intermittently.

On 27 January 2014, M was seen by the vet who noted:

“sickness and D+ on and off over a couple of weeks, no blood in either, on and off appetite. ddX: gastroenteritis? parasites? pancreatitis?”

C&G referred Mr H to the terms of his policy which excludes cover for pre-existing conditions, defined 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 or within the Waiting Period”.

It also referred to the following policy term which gives C&G the right to apply an exclusion to a policy in respect of any pre-existing condition:

“The following exclusions apply to the whole of this Policy. We will not pay claims for any of the following reasons:

• 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 add a relevant endorsement(s) to Your Policy in respect of these Pre-Existing Conditions”.

C&G says if Mr H had disclosed M's previous clinical signs and symptoms it would've applied the following endorsement:

“Excludes cover on all claims with respect to The Digestive System with effect from 16 November 2021.”

C&G says that as Mr H's claim for vomiting and diarrhoea falls under this endorsement, his claim was correctly declined in accordance with the terms and conditions of his policy.

However Mr H has provided a letter from M's vet dated 24 December 2020 which refers to M's visit on 20 November 2019. This records that on that date the vet discussed M's primary symptoms with Mr H which he said:

"...were most likely linked to one of the following possible differential diagnoses: acute gastritis, acute pancreatitis, chronic renal disease and chronic liver disease".

Treatment was prescribed for acute gastritis and M improved on this treatment. The vet went on to say:

"From the history provided therefore, it is clear that the initial condition diagnosed and treated on 20 November 2019, could not [be] related to any previous or pre-existing chronic medical condition. It was of an acute nature, most likely linked to her diet." (my emphasis underlined).

C&G also rejected Mr H's 2022 claim. It was declined on the ground that it related primarily to a "behavioural issue", and the policy states that no cover is provided for claims relating to behavioural issues. These are defined as *"a change in the normal, everyday behaviour of Your pet caused by a medical, mental or emotional ailment"*. It also states that *"The costs for any diagnosis and investigations into the cause of Behavioural Issues are also excluded"*.

Mr H maintains that M was not treated for a behavioural issue. He has provided a letter from the vet which states:

"During the consultation the contemporaneous clinical notes indicate that you informed the veterinary surgeon that you were concerned because [M] had a sore foot and also that she had seemed confused at times over the last few months. The notes record that the veterinary surgeon considered a list of differential diagnoses for this confused behaviour including medical, anxiety or canine cognitive dysfunction (CCD) which could include a number of degenerative brain diseases. They discussed possible referral to a neurologist for assessment. It is my opinion that the clinical notes do not record a diagnosis of 'behavioural issues' rather that [M] was displaying abnormal behaviour which could be explained by several medical scenarios". (my emphasis underlined)

Mr H would like a refund of all the premiums he has paid since inception of his policy on the basis that C&G hasn't provided the cover or service that he's paid for. He says he hasn't received C&G's decision within the 8 weeks he says he was promised and hasn't had any response to his chasing.

As he doesn't accept C&G's rejection of his claims, Mr H brought his complaint to this service. Our investigator's view was that C&G should pay the 2020 claim on the ground that C&G didn't ask a clear question about M's health before policy inception and therefore it wasn't fair to add a retrospective exclusion to the policy. She didn't consider that C&G had acted unreasonably in declining the 2022 claim.

C&G didn't agree with our investigator's view and asked that the matter be referred to an ombudsman. I issued a provisional decision which C&G has largely accepted.

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.

Having done so, I'm upholding Mr H's complaint in relation to the 2020 claim but not in relation to the 2022 claim, and I'll explain why.

In my view Mr H didn't make any misrepresentations to C&G when applying for his policy in 2017. C&G hasn't evidenced that Mr H was asked any questions about M's health to which Mr H could've given an incorrect or incomplete answer. In the absence of a misrepresentation, C&G can't rely on any of the remedies provided by the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) where a qualifying misrepresentation has been made, one of which is that a retrospective exclusion or endorsement can be applied to the policy.

But I do consider that C&G can introduce a retrospective endorsement by virtue of the policy term which states:

The following exclusions apply to the whole of this Policy. We will not pay claims for any of the following reasons:

- 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 add a relevant endorsement(s) to Your Policy in respect of these Pre-Existing Conditions.*

But C&G does have to provide evidence of the existence of a pre-existing condition, in this case that M had an undiagnosed condition that had shown clinical signs or symptoms prior to the inception of the policy on 16 November 2017 or within the following 14 days.

My view is that the incidents of vomiting and diarrhoea that M had in 2012 and 2014 were isolated incidents some years before inception of the policy and not clinical signs and symptoms of the condition with which M presented in 2019. I also place reliance upon the professional opinion expressed by M's vet, quoted above, that there was no connection between the acute gastritis for which M was treated in November 2019 and any previous or pre-existing chronic medical condition.

My view is therefore that C&G did not act fairly in adding a retrospective exclusion. I also observe that the exclusion was only stated to take effect from 16 November 2021. Mr H's claim was made in 2020.

I'm therefore going to require C&G to settle Mr H's 2020 claim subject to the other terms and conditions of his policy.

Turning to the 2022 claim, I'm of the view that C&G has acted reasonably in declining this claim to the extent that it relates to behavioural issues. The greater part of the claim would appear to relate to investigation of M's confusion. I have noted that M's vet's opinion is that:

"the clinical notes do not record a diagnosis of 'behavioural issues' rather that M was displaying abnormal behaviour which could be explained by several medical scenarios."

However I consider that what the vet described as "abnormal behaviour" is in line with the policy definition of a behavioural issue, namely "a change in the normal, everyday behaviour of Your pet caused by a medical, mental or emotional ailment".

I therefore consider that C&G has not acted unreasonably in declining this claim on the basis that the policy states that "The costs for any diagnosis and investigations into the cause of Behavioural Issues are also excluded".

I consider that C&G should pay any costs associated with M's sore paw and for the treatment of vomiting/diarrhoea.

As Mr H has received benefits under this policy, I don't consider that it is appropriate for me to require C&G to provide a refund of premiums. However I do consider that the length of the delay in C&G's response to his 2020 claim was unacceptable. As I am finding that this claim should've been paid, I consider that compensation of £150 for this delay would be appropriate.

In response to my provisional decision, C&G has said it accepts responsibility for the 2020 claim and has agreed to settle it and has also agreed to cover the cost of treating M's sore paw claimed for in 2022. For the avoidance of doubt as to what I require C&G to do, I'm issuing a final decision.

My final decision

For the reasons I've given above, I'm upholding Mr H's claim for M's treatment in November 2019 and February 2020 and I require Casualty & General Insurance Company (Europe) Limited to settle his claim subject to the other terms and conditions of his policy.

I also require Casualty & General Insurance Company (Europe) Limited to settle Mr H's claim in 2022 to the extent only that it relates to the cost of treating M's sore paw and vomiting/diarrhoea, and subject to the other terms and conditions of his policy.

I also require Casualty & General Insurance Company (Europe) Limited to pay Mr H interest on any sum paid to him at the simple rate of 8% from the dates of his claims until payment is made to him.

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

Nigel Bremner
Ombudsman