

The complaint

Mr R complains that Casualty & General Insurance Company (Europe) Ltd unfairly turned down his pet insurance claim.

What happened

In September 2022 Mr R's dog was chasing a ball when he suddenly yelped and stopped. The dog held his back leg off the ground and could not put weight on it.

Mr R's vet diagnosed a left cranial cruciate ligament rupture, which was repaired during surgery. Mr R made a claim to Casualty for the investigation and treatment costs.

Casualty turned down Mr R's claim. It said that the dog had a pre-existing condition, because he had signs and symptoms of lameness in 2020 and 2021, before Mr R had taken out the policy in early January 2022. It did not cover pre-existing conditions under its policy. Casualty said that if it had known about the dog's medical history of lameness it would have excluded claims for both the dog's stifles (knee joints) and related conditions from the policy's start date.

Mr R did not agree and said that he had been unaware of the entries in his dog's medical history notes about isolated episodes of lameness. This is because he had mentioned isolated episodes to his vet during check-ups for other issues. He provided evidence from his usual vet and the specialist vet surgeon who both said the dog's cruciate rupture was not related to earlier episodes of lameness.

Casualty referred to the detailed medical records including an entry which said that the usual vet suspected cruciate rupture based on the dog's clinical history. It still thought the dog had a pre-existing condition and so would not change its position.

Mr R came to us. Our Investigator looked into the complaint and upheld it. He did not think Casualty had shown that the dog's condition was a pre-existing one. He recommended that Casualty should pay the claim, with interest and pay Mr R £100 compensation for distress and inconvenience. Our Investigator also said that Casualty had not been entitled to apply a retrospective exclusion for the dog's stifles.

Casualty did not agree and asked for an Ombudsman review as it is entitled to do. It referred again to entries in the dog's medical history that it said supported its 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 uphold this complaint for the following reasons.

I've looked carefully at the policy to see if Casualty has acted fairly, reasonably and in line with the policy terms and conditions when declining Mr R's claim.

The policy excludes:

*“Any claim for **Illness** or **Accidental Injury** that relates to a **Pre-existing Condition***

*Any claim for **Illness** or **Accidental Injury** that showed **Clinical Signs** or **Symptoms** before **Your policy Start Date...**”*

The policy defines a pre-existing condition 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**.”*

Casualty says that several entries in the dog's clinical history about the dog's lameness in 2020 and 2021 are related to the cruciate ligament rupture. The lameness occurred before the policy's start date in early 2022. Although there had not been a diagnosis in 2020 and 2021 Casualty says the lameness were signs and symptoms of the later cruciate ligament rupture. As such, Casualty says it is a pre-existing condition.

The entries to which Casualty has specifically referred say:

29 May 2020 – the owner reported the dog was “*limping after walk*”. The vet advised rest and prescribed an anti-inflammatory medication.

16 December 2020 – owner reported “*occasional v short lived lameness on one of HLs [hind legs] – not lame today.*”

29 June 2021 - “*limping on LH [left hind] – started this morning after run in park.... 4/10 lame LH, resist full ext [extension] of hip, nad [nothing abnormal discovered] joint swelling or crepitus....suspect soft tissue injury*”

Mr R said that in December 2020 he had mentioned an isolated incident to his vet during his dog's annual check-up, which had happened several months previously when his dog jumped off a chair and stood still for about half an hour without moving. His dog had then started moving again without showing any ill-effects and seemed fine. As a responsible owner he mentioned this during the annual check-up and the vet examined his dog's legs, but they seemed fine which is why they thought it was a soft tissue/muscle pull that had cleared.

In June 2021 his dog had had a brief incident of lameness, which he mentioned to the vet as this had happened on the same day as a follow up appointment for a skin condition. The vet again thought it was likely a soft tissue injury.

I can see that there were no further investigations for the above episodes of lameness, and the May 2020 and December 2020 entries do not specify which leg/s were affected. As Mr R says the vet's records show that the December 2020 entry was a routine health check and vaccination appointment. So I don't accept Casualty's suggestion that Mr R had taken his dog back to the vet after experiencing short lived lameness on one of his hind legs.

The medical records also show that the June 2021 appointment was for the dog's skin condition, as Mr R says, and so again I don't agree with Casualty that Mr R took his dog to the vet for lameness. The vet suggested a soft tissue injury, which is supported by the fact there are no further notes about the injury during the two July 2021 follow up appointments about the skin condition.

Casualty has also highlighted an entry on 3 September 2022, the day that Mr R had taken the dog to the vet because of his lameness following a walk. In that entry the dog's vet said that they were "*suspicious of cruciate from clinical history*". But it's not clear to me that Casualty properly reviewed the later evidence provided by the dog's usual vet and the specialist orthopaedic surgeon who treated the dog.

The dog's usual vet said on 29 September 2022 that the dog required:

"cruciate surgery for an acute rupture. This is separate from previous sporadic and short-lived bouts of lameness noted in his clinical notes over a year ago."

The specialist orthopaedic surgeon who operated on the dog included in his 11 October 2022 report that:

"The [left pelvic limb] lameness developed acutely post a period of uncontrolled activity three weeks prior to referral...Prior to the recent lameness [the dog] enjoyed 1-2 hours of activity daily without concern."

"I understand that [the dog] exhibited a short lived period of pelvic limb lameness approximately 18 months ago. A soft tissue injury was considered to be the most likely aetiology and the lameness resolved post a short period of conservative management. The acute nature of the current lameness, and the relatively mild degenerative joint disease present leads me to conclude that it is unlikely that [the dog's] previous pelvic limb lameness is related to the current cranial cruciate ligament rupture."

I find the above evidence to be persuasive. The vets both saw and treated Mr R's dog before giving their professional opinions. Casualty says that the vet surgeon had not been present when the dog was examined in 2020 and 2021. That's correct but importantly, the vet surgeon has clearly explained his reasons for concluding that it was unlikely the previous lameness as reported in the dog's medical records was related to the cruciate ligament; that is, because the cruciate injury was acute (something that had happened suddenly) and because there was relatively mild joint disease present.

Casualty has said that the dog's earlier clinical history does not indicate that the lameness was related to the pelvis in any way - referring here to the surgeon's comments about the dog's "*pelvic limb lameness*". But the vet was not referring to the dog's pelvis. The pelvic limb is another name that vets give to the rear limb (or leg) of the dog. It is clear to me that the vet surgeon was discussing the dog's left rear limb lameness when he referred to the pelvic limb.

I don't think Casualty has shown that the dog's cruciate rupture was related to the signs of lameness that the dog experienced before the policy was taken out. As such, Casualty has not shown that it can fairly apply the pre-existing condition exclusion. I think the fair outcome is for Casualty to pay the claim, together with interest as set out below.

I also don't consider that Casualty was fairly entitled to place an exclusion for all claims with respect to both the dog's stifles and related conditions backdated to the policy's start date.

The relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). In line with CIDRA, I would usually consider it fair for an insurer to apply a retrospective exclusion if its policyholder didn't take reasonable care in answering its clear questions when they bought the policy and the insurer can show it would have added an exclusion had it been given the information.

In this case I don't consider Casualty has shown that it asked Mr R a clear relevant question that would have enabled him to tell it about his dog's previous medical history. Instead, it says during the policy application it asked Mr R to read and tick a box to confirm that he read the "*assumptions*" and policy terms.

I don't consider that an assumption is a clear question that would enable Mr R to tell Casualty about his dog's health. So I don't think Casualty has shown that Mr R failed to take reasonable care not to make a misrepresentation. As a clear question was not asked it is not necessary for me to consider whether Casualty would have offered the policy on different terms.

It follows that I don't consider Casualty was entitled to backdate the policy exclusion for claims with respect to both of the dog's stifles and related conditions to the policy's start date. If applied and not removed Casualty must remove the exclusion, with effect from the policy's start date.

I think that Casualty's decision not to pay the claim has caused Mr R some distress and inconvenience. I think it should fairly pay him some compensation for that and I assess £100 to be a reasonable amount.

Putting things right

Within 28 days of the date on which we send it Mr R's acceptance of this final decision I require Casualty to:

- Pay Mr R's claim and continuation claim for the investigation and treatment of his dog's left cruciate rupture, subject to any applicable excess and policy limit; and
- Pay interest on the resulting claim payment at the simple rate of 8% per year from the date Mr R paid the vet's fees until the date of settlement (subject to Mr R providing evidence to Casualty showing the date he paid the fees); and
- Remove any retrospective policy exclusion that it applied with respect to claims for both the dog's stifles and resulting conditions from the policy's start date; and
- Pay Mr R £100 compensation for distress and inconvenience.

If Casualty considers it is required by HM Revenue & Customs to deduct income tax from the interest payment, it should let Mr R know how much it's taken off. If requested, it should also provide him with a certificate showing the amount deducted, so that he can reclaim it from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I require Casualty & General Insurance Company (Europe) Ltd to take the steps set out in the "*putting things right*" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 June 2023.

Amanda Maycock
Ombudsman