

The complaint

Miss L has complained that Casualty & General Insurance Company (Europe) Limited (C&G) increased the premiums for the insurance for her pet dog because she mis-stated the dog's breed in her application form.

References to C&G include its agents and claims administrators.

I've previously issued a provisional decision in this case and have received comments from C&G which I'll refer to below.

What happened

Miss L took out an insurance policy with C&G for her pet dog, who I'll refer to as "A", starting on 19 April 2018. This was done via a price comparison website.

Miss L says that when making her application she was asked about A's breed type and was given a choice of 3 options. They were Breed, Crossbreed or Mongrel. She says she opted for the Crossbreed option but found that her dog's breed wasn't shown so she selected "small mongrel" as this seemed to her to be the most apt alternative. C&G issued her with a policy and assessed her premium on the basis of this information.

On 25 May 2021, A had to have a life-saving operation, a splenectomy. This cost £2,245.32 which Miss L claimed from C&G. Upon receipt of this claim, C&G noted A's breed from the vet's records and that he was not a mongrel as Miss A had stated in her application form and which had been stated on her policy schedule.

C&G says that Miss L made a misrepresentation as to A's breed. It says that if it had been provided with correct information about A's breed, the premium would've been higher. So C&G amended Miss L's policy details, and this resulted in an increase in her premium from £37.38 a month to £75.82 a month. It backdated the new higher premium to the policy's inception date, deducted the outstanding balance from her claim, and requested the remaining shortfall.

Sadly in August 2021, A's condition returned and it was necessary for him to be euthanised. Miss L was unable to claim for the cost of the treatment he'd received as her policy had fully paid out, but she did query why her premiums had increased. C&G said it was because she had misrepresented A as being a mongrel when he was in fact a crossbreed.

Miss L's concern is that the website was confusing. She says that if she'd been able to select the name of A's breed, and had then seen how much more it was to insure him as such rather than as a mongrel, she would've shopped around for a more competitive quote.

Miss L was unhappy with C&G's response to her complaint, so she brought it to this service.

Our investigator's view was that A was a mixed breed dog, and as the option to select his breed wasn't presented, he couldn't fairly say that Miss L has made a misrepresentation. As such, C&G couldn't rely on the remedies available under the Consumer Insurance

(Disclosure and Representations) Act 2012 (CIDRA). In any event, there is no option under CIDRA which allows for premiums to be increased. As a result, he didn't believe that C&G had acted reasonably towards Miss L in increasing and then retaining the premiums based on CIDRA and that it should refund to her the difference between her original premiums and the increased premiums it had charged her.

C&G doesn't agree with our investigator's view and has asked that the complaint be referred to an ombudsman. It's therefore been referred to me to make a final decision from this service.

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 Miss L's complaint for the reasons given in my provisional decision although I'm accepting a representation made to me by C&G in response to my provisional decision which I'll refer to below.

The reasons for my final decision are these:

I've visited the price comparison website used by Miss L and have seen the questions Miss L would've been asked.

A is a cross between two pedigree breeds and is therefore a crossbreed. One of the questions asked was whether or not A was a crossbreed. If she'd answered "No", she would've been asked to select A's breed from a drop-down list. A's breed is not listed. But as A is a crossbreed, Miss L answered "yes".

Having said that A was a crossbreed, the questions then moved on to ask for A's weight, and whether he'd been chipped and neutered. It doesn't ask for his breed. It then asks whether Miss L wanted to cover any pre-existing conditions. If she'd answered "yes" to this question, she would've been told that no cover could be provided and she should consult a specialist insurer. Miss L answered "No". She was then referred to C&G's website where further questions were asked.

I've visited C&G's website. It first asks the customer to select "Type of Breed" from three options. The options are "Breed", "Crossbreed" or "Mongrel". If "Crossbreed" is selected, the customer is then required to move on to select "Breed" and a drop-down menu then provides a long list of crossbreed dogs which includes A's breed.

C&G says that the questions asked if a direct application to its site is made are different to those asked if the customer is transferred by a price comparison website. Having seen a screenshot provided by C&G of the questions asked if the referral is through a price comparison website, I can see that the options from which Miss L could select A's breed category were "Pedigree", "Crossbreed" and "Mongrel". I have asked for, but have not been provided with, the options that would've appeared if Miss L had selected "Crossbreed".

I therefore can't be certain that Miss L would've seen the same large selection of crossbreed dogs that appear when visiting to C&G's website direct rather than on a referral from a price comparison website. Miss L says the "Crossbreed" option had limited choices so she selected "Mongrel" in good faith as the most appropriate option as A was of mixed breed. C&G hasn't provided any evidence that A's breed would've appeared as an option if Miss L had selected "Crossbreed".

I've looked at the terms of Miss L's policy, which makes clear the importance of providing accurate information and the consequences of failing to do so. I referred to these in my provisional decision.

My view is that when "Mongrel" was shown as A's breed on her policy schedule, this was inaccurate and misrepresented A's breed, and Miss L should've taken steps to correct this.

Under CIDRA, I need to consider whether this was a "qualifying misrepresentation" – that is whether the inaccurate information Miss L provided would've made any difference to the terms C&G would've offered or whether it wouldn't have offered cover at all. I think it's clear from C&G's correspondence that had it known A's correct breed it would still have provided cover, but for a higher premium.

But CIDRA doesn't allow for an insurer to simply increase a premium in these circumstances, or, as in Miss L's case, to deduct the underpayment of premium from any claim made. The fact that the policy terms do give this right doesn't assist C&G. It can't circumvent CIDRA by reference to a policy term.

But C&G informed Miss L on 3 December 2021 that £620.48 remained payable by her. After the deduction of a further claim of £175.18 in August 2021, it maintains that the amount still owing by her for underpaid premium is £445.30.

I consider that C&G has acted unfairly in making such deductions.

In circumstances of an underpayment of premium, an insurer can make a proportionate reduction in the amount of any claim paid. So for example if the premium actually paid was 80% of what it would've been had correct information been provided, the insurer need only pay 80% of any claim. It can offer its customer the option of paying any shortfall in premium which would ensure that any future claim would be paid in full, but it can't require it to be paid. Nor can C&G backdate the difference in premium to the inception of the policy as each policy year is a new contract.

In my view C&G has acted unfairly towards Miss L in claiming from her the additional premium it would've charged her had it been provided with the correct information about A's breed and it should refund the overpayment of premium. C&G may adjust any amount paid to Miss L in respect of any claim to reflect the underpayment of premium.

In my provisional decision I stated that I was proposing to require C&G to waive Miss L's monthly premiums falling due after A's death. Following a submission from C&G I've changed my view on whether this is appropriate. If Miss L had not made any claims under her policy in policy year commencing April 2021, I would've maintained this view, but as claims have been made on the policy in that year I accept that it would be unreasonable from C&G not to receive the full annual premium.

I therefore accept that it would be reasonable for C&G to claim from Miss L the remaining premiums due for policy year commencing April 2021. As I've decided that C&G was wrong to increase Miss L's premium, the monthly premiums should be based on the original monthly rate of £37.38.

My final decision

For the reasons I've given above, I'm upholding Miss L's claim. For clarity, I've expressed differently to my provisional decision what C&G should do.

I require Casualty & General Insurance Company (Europe) Limited:

1. to refund to Miss L the amount by which it increased her premium as a result of the error in specifying A's breed.
2. to reassess Miss L's claims by applying a proportionate reduction to the amount claimed or paid. This should reflect the proportion by which her annual premium was underpaid as against the annual premium she should've paid in the policy year in which the claim arose if correct information had been given.

C&G may deduct from the sum at (1) above:

- a. any instalments of premium remaining due from Miss L for the policy year commencing 19 April 2021.
- b. Any overpayment of claims paid calculated in accordance with (2) above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 21 March 2023.

Nigel Bremner
Ombudsman