

The complaint

Mr H complains that Casualty & General Insurance Company (Europe) Ltd unfairly refused to pay his pet insurance claims.

My references to Casualty & General include its agents.

What happened

Mr H made two separate claims for his dog. The first was for ear infections. The second was for vet treatment after the dog was found to have a stick lodged in his mouth.

Casualty & General turned down both claims. It said the ear issues were pre-existing and were not covered under its policy. It placed an exclusion for ear related claims backdated to the policy's start date in 2019. It would not pay the claim for the stick injury because it said this didn't meet its policy definition of accidental injury.

Mr H thought Casualty & General's rejection of his honest claims had been unfair. His vet had supported his claims. Also, he had sent his dog's medical history to Casualty & General and it had not put an exclusion on the policy at that time. He asked us to look into his complaint. He also mentioned the removal of public liability cover for his dog, but only in the context of having sent his dog's medical history to Casualty & General.

Our Investigator thought Casualty & General had fairly turned down the ear related claims, under its pre-existing conditions policy exclusion. Although Mr H had sent his dog's medical records, this had been after the policy had started and so Casualty & General had not been aware of the ear issues from the outset. But she didn't consider Casualty & General could fairly add a retrospective exclusion for any claims with respect to the dog's ears, because it could not show that Mr H had failed to answer questions with reasonable care before taking out the policy. So, she said Casualty & General should remove the retrospective ear related exclusion. She noted that Mr H had accepted Casualty & General could remove the public liability cover.

Our Investigator upheld Mr H's complaint about the stick injury. She thought the injury met the policy definition of an accidental injury. She recommended that Casualty & General pay Mr H's claim with interest together with £200 compensation for distress and inconvenience.

Mr H thought that this was a fair outcome. He restated that he felt he had acted throughout in a fair, honest and reasonable manner. Casualty & General did not agree with our Investigator's findings. In summary, it said that our Investigator had not properly applied its policy wording to the stick injury claim. It did not agree the proposed settlement was fair.

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.

Mr H accepted that Casualty & General can remove the public liability cover from the policy.

He has agreed that our Investigator's findings are fair, which includes her view about the ear related claim. As these issues are not in dispute, I will focus on the stick injury claim and the retrospective exclusion.

The stick injury claim

Mr H made a claim for accidental injury under his policy after discovering a stick in his dog's mouth, which was removed by a vet. In turning down his claim, Casualty & General referred to the following policy terms:

The policy says in Section 1 Veterinary Fees, under "*What is not insured*":

*"Any **Dental and Oral Treatment**, including any **Dental and Oral Treatment** that is not due to an **Accidental Injury**, including but not limited to: cosmetic dentistry, routine cleaning and descaling or treatment for root canal **Dental and Oral** tumours, cleft palette and over/under shot jaw;"*

The policy defines the relevant terms as:

*"Dental and Oral... Means any claim or **Condition** relating to the gums, mouth, inner cheek, cheek bone, lips, palette, teeth, tongue, and tonsils."*

*"Accidental Injury...Means a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of **Your** pet's body."*

Mr H told Casualty & General that "*we do not know exactly when the injury occurred. [The dog] showed no signs of distress at any time. It was only when playing with him that the stick was observed stuck in his upper jaw. We also then noticed that his breath was beginning to smell.*"

Casualty & General says its policy states that a specific time and place is required. As Mr H cannot give a specific time or place for the stick injury it does not meet the policy definition of Accidental Damage.

I don't agree that it is fair for Casualty & General not to pay the claim because Mr H could not give a specific time and place for the injury. In any event, I can look beyond the strict policy wording in deciding what is fair and reasonable in all the circumstances.

In this case, I think it is reasonable to find that the stick getting caught in the dog's mouth was "*a sudden, unforeseen, unintended action or event*". The fact that Mr H did not observe the exact time and place this happened is not, in my view, a fair reason to reject the claim for this injury. I think it is more likely than not, on balance, that this injury occurred at a specific time and place even if Mr H did not observe it. I haven't seen anything to suggest it is likely the stick injury itself happened gradually over time.

I find Mr H's vet's evidence about the injury to be persuasive. She wrote to Casualty & General to say:

Your own policy wording states you do not cover dental or gum treatment that is not due to an "accidental injury", which in my professional opinion I strongly believe a stick stuck in [the dog's] mouth/gums would be considered an accidental injury. We have no reason to believe the stick was forced into [the dog's] mouth intentionally.

Your policy wording then goes on to define accidental injury as "a sudden,

unforeseen, unintended action or event” which, again in my professional opinion, I strongly believe [the dog] having a stick stuck in his mouth would be classed as. Your definition also states an accidental injury will result in damage to one or more parts of the pets body and, as mentioned in the clinical history, damage/direct trauma was caused to [the dog’s] mouth which the consulting vet has noted as “erosion and inflammation of the gingiva on palatal aspect of 108 and 208.”

The vet went on to explain that it was necessary to sedate the dog to remove the stick.

I appreciate that Casualty & General has decided not to insure the risk of dental and oral treatment, except for accidental injury. But in my view the veterinary evidence is clear and persuasive that the damage to the dog’s mouth was due to the accidental injury of a stick being wedged in his mouth.

In asking for a review, Casualty & General has referred to its policy conditions which say that **“You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent *Accidental Injury* or damage...”**

To rely on this condition to reject Mr H’s claim Casualty & General would need to show that Mr H did not use reasonable care at the time of the accidental injury.

To show a lack of reasonable care I would expect Casualty & General to show that Mr H had acted in a way that amounted to recklessness. It has not provided any evidence to show that, and I don’t consider, of itself, the dog having had a stick caught in its mouth is evidence of recklessness on the part of Mr H. As set out above, the vet says there is no evidence to suggest the stick was caught in the dog’s mouth anything other than accidentally.

The clinical history shows that the stick caused damage to the dog’s mouth, which required treatment under sedation/general anaesthesia. I think it is both fair and reasonable for Casualty & General to pay Mr H’s claim for the treatment costs, subject to the policy excess and limit, together with simple interest at the rate of 8% per year as set out below.

The policy exclusion

I don’t consider that Casualty & General was fairly entitled to place an exclusion for all claims with respect to the dog’s ears backdated to 30 October 2019, being 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 & General has shown that it asked Mr H a clear relevant question that would have enabled him to tell it about his dog’s previous ear condition. Instead, it says during the policy application it asked Mr H to read and tick a box to confirm that he’d read the *“assumptions”* and policy terms.

I don’t consider that an assumption is a clear question that would enable Mr H to tell Casualty & General about his dog’s health. So I don’t think Casualty & General has shown that Mr H 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 & General would have offered the policy on different terms.

It follows that I don't consider Casualty & General was entitled to backdate the policy exclusion for claims in respect to the dog's ears to the policy's start date. It must remove the ear related exclusion, with effect from the policy's start date.

Compensation

I consider Casualty & General has caused Mr H material distress and inconvenience in its handling of the claim about the dog's stick injury and by applying the retrospective exclusion. I don't think the outcome is impacted by his decision to accept our Investigator's findings about the ear condition claim, given she had reached her view on the complaint as a whole before issuing her recommendation for compensation. I think £200 compensation is fair and reasonable.

Putting things right

Within 28 days of the date on which we send it Mr H's acceptance of this final decision I require Casualty & General Insurance Company (Europe) Ltd to:

- Pay Mr H's claim for the stick caught in his dog's mouth, 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 H paid the vet's fees until the date of settlement; and
- Remove the retrospective policy exclusion that it applied for all claims in respect to the dog's ears with effect from the policy's start date; and
- Pay Mr H £200 compensation for distress and inconvenience.

If Casualty & General considers it is required by HM Revenue & Customs to deduct income tax from the interest payment, it should let Mr H 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 in part and I require Casualty & General Insurance Company (Europe) Ltd to take the steps set out above under "*Putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 June 2023.

Amanda Maycock
Ombudsman