

The complaint

Ms M complains that Casualty & General Insurance Company (Europe) Ltd declined a claim for treatment of her dog's eyes as they say his condition was pre-existing. She doesn't agree and wants them to pay her claim.

What happened

Ms M has insurance for her dog with C&G. Her policy started on 14 May 2021. She has a lifetime policy for her dog which includes cover for vet's fees of up to £4000 in each policy year, subject to a £90 policy excess.

Ms M's dog has a history of 'cherry eye' in his left eye. This was first diagnosed in 2015. This condition arises when the dog's third eyelid, or nictating membrane, prolapses and protrudes as a red fleshy mass in the corner of the dog's eye, near to their nose.

Ms M was aware that her dog suffered from 'cherry eye'. Her vet had offered surgical repair on a number of occasions, but as her dog wasn't bothered by the condition, she didn't want him to have surgery.

Ms M has told us that she declared the condition when she took out her policy and was aware that she wouldn't be covered for any claim related to it.

In mid-December 2021 Ms M says she noticed her dog was blinking repeatedly and his eyes looked slightly bloodshot. He was taken to the vet and diagnosed with conjunctivitis. He was prescribed an oral suspension and eye drops. On 28 December 2021, even though his eyes looked better, Ms M was worried as he was walking into things and she thought he couldn't see clearly. She took him to her vet the following day, who couldn't find any reason for his problems. She was given further eyedrops and referred to a specialist veterinary practice.

The dog was seen there on 4 January 2022 and was prescribed steroids and further eyes drops. In was seen again a week later when his left eye had improved, he was able to see through it and play with his toys, but his right eye was still red and bulging.

On 18 January 2022 Ms M was told that due to glaucoma her dog appeared to be irreversibly blind in his right eye, and the eye might have to be removed. On 18 February 2022, as his right eye was causing discomfort, it was removed and at the same time the dog's left 'cherry eye' was repaired. Ms M paid for the 'cherry eye' repair herself. But submitted a claim to C&G for the treatment of her dog's eye condition and removal of his right eye.

C&G declined her claim as they said her dog's clinical records showed that he had a pre-existing condition, 'cherry eye' in his left eye, which she hadn't told them about when taking out her policy. And had she declared this they'd have added an exclusion to her policy – "Excludes cover on all claims with respect to The Eyes and Sight".

On 11 April 2022 Ms M complained to C&G about her claim being declined. On 10 May 2022

Ms M's vet wrote to C&G in support of her claim. He said that when seen on 4 January 2022 her dog was acutely blind. On examination he was diagnosed with bilateral pan-uveitis (inflammation of all layers of the eye), with secondary retinal detachments. The dog responded well to medication in his left eye, and regained vision. But his right eye developed secondary glaucoma due to the uveitis (inflammation) and had to be removed.

The dog's long standing 'cherry eye' was repaired to the same time as his right eye was removed. The vet confirmed that this repair was paid for separately to the removal of his right eye. And that the 'cherry eye' was an unrelated, incidental condition, and had no link to the dog's bilateral uveitis or the glaucoma which developed in his right eye.

C&G didn't uphold Ms M's complaint. They said that her dog had a history of problems with his left eye. They said she hadn't declared these when she took out her policy. Had she done so they'd have added an exclusion to the policy in respect of any claims relating to her dog's eyes or sight. And they also said the condition was pre-existing so wasn't covered by her policy.

Ms M wasn't happy with C&G's response and complained to our service. Our investigator considered the case and upheld the complaint. He looked at the provisions of the Consumer Insurance (Disclosure and Representations) Act 2021 (CIDRA) and wasn't satisfied that Ms M made any misrepresentation when she took out her policy.

When taking out her policy online Ms M was asked "Are you looking for insurance cover for a pre-existing condition". Ms M answered no to this as she wasn't looking for cover for her dog's 'cherry eye'. Our investigator felt Ms M had answered this question taking reasonable care, as CIDRA required her to do.

Ms M wasn't asked any questions about whether her dog had any pre-existing conditions, only if she wanted cover for any. And if they'd wanted to know about any pre-existing conditions our investigator said C&G should have asked a more direct question. So he wasn't satisfied that Ms M had made any misrepresentation when taking out her policy.

In addition our investigator said that Ms M's vet had said that the pan-uveitis and glaucoma her dog was treated for weren't linked to his 'cherry eye'. And C&G hadn't provided any evidence to show this wasn't correct.

So he didn't think C&G had correctly applied CIDRA when declining Ms M's claim and said they should reassess her claim in line with the remaining policy terms and conditions.

Ms M accepted our investigator's opinion, but C&G didn't. They said they accepted that the provisions of CIDRA may not be relevant to the case, but the dog had suffered from 'cherry eye' for seven years and this underlying condition is likely to have caused the development of uveitis due to repeated trauma to the eye. So they maintain that the claim was correctly declined under the exclusion for pre-existing conditions.

The case has now come to me for a 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.

C&G have said that they accept the provisions of CIDRA may not apply to this case, so I'm only going to deal briefly with the issue of misrepresentation.

Under CIDRA if Ms M made a qualifying misrepresentation when she took out her policy, and if they'd been no misrepresentation C&G would have acted differently, then they'd have a remedy against her. And in this case, it would allow them to add an exclusion to Ms M's policy in respect of conditions related to her dog's eyes and sight.

When taking out her policy Ms M wasn't asked a direct question about whether her dog had any pre-existing conditions. She was simply asked whether there were any pre-existing conditions she wanted cover for. She answered no to this question, as she was aware her dog had 'cherry eye' and didn't expect to be covered for this. So I'm satisfied she answered this question accurately and with reasonable care.

As there was no misrepresentation the provisions of CIDRA don't apply and it wasn't reasonable for C&G to add this exclusion to her policy, "Excludes cover on all claims with respect to The Eyes and Sight", from the start of her policy.

C&G maintain that even if CIDRA doesn't apply it was reasonable for them to have declined Ms M's claim under the general policy exclusion in respect of pre-existing conditions.

It's not in dispute that Ms M's dog has suffered from left 'cherry eye'. His clinical records confirm that this was first diagnosed in 2015. Nor is it in dispute that Ms M's vet had suggested surgery to correct this on a number of occasions. Ms M declined the offer of surgery as the condition wasn't bothering her dog. This was her decision as the dog's owner, and seems perfectly reasonable, given that every surgery carries certain risks.

So what evidence is there that the pan-uveitis and secondary retinal detachments, and subsequent glaucoma in his right eye, that Ms M's dog developed in late December 2021, was related to his 'cherry eye'? There isn't any. In his letter of 11 May 2022 the specialist vet the dog was referred to, who is an 'Advanced Practitioner in Veterinary Ophthalmology' makes it quite clear that the left 'cherry eye' was incidental and the condition was "not related in any way to the claim for bilateral uveitis".

C&G haven't provided any veterinary evidence to counter this opinion. They've simply said that "There are numerous causes of uveitis, including trauma to the eye and lens damage. Untreated cherry eye for such an extended period of time is likely to have caused the development of uveitis due to repeated trauma to the eye." And they haven't provided any evidence to support this statement.

So I'm persuaded by the evidence of the treating vet that the condition Ms M's claimed for in 2022 wasn't a pre-existing condition. And it wasn't reasonable for C&G to decline her claim.

Mrs M has told us that the way in which C&G have dealt with her claim has caused her anxiety, worry and sleepless nights, as her dog is part of her family and she loves him dearly. I accept what's she's told us and that she's suffered distress and inconvenience as a result of this.

We let the parties know that I intended to award Ms M compensation for this. Neither party has commented on the £250 compensation I've said I intended to require C&G to pay.

Putting things right

To put things right I require C&G reassess Ms M's claim on the basis that there was no pre-existing condition. And as her vet has confirmed that she paid separately for the surgery to correct her dog's left 'cherry eye', no deductions should be made in respect of this.

If Ms M has made any payments to her vet in respect of her dog's treatment, other than for

the repair of his left 'cherry eye' then C&G should pay 8% simple interest from the date of payment until her claim is settled.

In addition I require C&G to pay Ms M £250 compensation for the distress and inconvenience she's experienced as a result of how her claim has been handled.

My final decision

For the reasons set out above my final decision is that I uphold Ms M's complaint about Casualty & General Insurance Company (Europe) Ltd.

And I require them to take the steps set out above to resolve her complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 25 May 2023.

Patricia O'Leary
Ombudsman