

The complaint

Miss D has complained that her pet insurer, Casualty & General Insurance Company (Europe) Ltd ("CGIC"), turned down various claims she made under the policy she has for her dog.

CGIC is the underwriter of this policy i.e. the insurer. Throughout the claim Miss D was dealing with a different company who acts as CGIC's agent. As CGIC has accepted it is accountable for the actions of the agent, in my decision, any reference to CGIC includes the actions of the agent.

What happened

I issued a provisional decision on this complaint earlier this month. An extract from that decision follows:

"Miss D has a pet insurance policy for her dog, T, which started on 30 July 2021. It renewed on 30 July 2022.

Miss D is unhappy with CGIC because it turned down three claims she'd made for T between 2021 and 2022. One claim was in relation to an incident which took place in January 2022 where T had a bout of diarrhoea and vomiting. The two other claims were linked and were in relation to the cost of a CT scan (a type of x-ray) in February 2022 and a subsequent leg/elbow operation in April 2022 which came to a total of around £4,000.

CGIC said all three claims were excluded under the policy. Specifically, it said that T had had diarrhoea as a puppy before the policy started which meant that had it been made aware of this when the policy started, it would not have agreed for the policy to cover any claims with respect to the digestive system. It said the condition which led to T's operation was relevant to an incident where T was injured after he had jumped out from a slow-moving car in November 2021. It said Miss D had failed to keep T under control at all times and prevent him from escaping.

Miss D made a complaint to CGIC in July 2022 and said that all claims should have been paid. She said she had evidence from the vets who treated T who said the diarrhoea did not relate to a pre-existing condition and also that the incident in November 2021 did not cause T's leg/elbow condition.

CGIC responded to Miss D's complaint in October 2022, after she brought her complaint to us, and upheld it in part. It agreed to pay the claim relating to diarrhoea and vomiting but not the claim regarding the leg/elbow injury. It said that claim was as a result of the incident where T jumped out of a moving car and where Miss D failed to keep him under control. It said the vet did not say that it didn't relate to this incident and as both incidents happened within such a small timeframe there was no guarantee that they were not related.

Miss D wanted to continue her complaint with us but was no longer claiming for the treatment T had for the diarrhoea and vomiting.

Our Investigator who looked at the complaint thought it should be upheld. She said she didn't think that the claim for lameness was related to the incident where T jumped out of a car, so she thought CGIC should pay the claim.

CGIC didn't agree and asked for an Ombudsman's decision. It said that the incident where T jumped out of the car was the proximate cause for the subsequent treatment to T's elbow which necessitated the CT scan and the operation.

Before I issued this decision our Investigator clarified to the parties that I would be asking CGIC to pay the claims for the CT scan and the operation and to also add 8% interest on the payment it makes from the date Miss D paid for the treatment up to the point where it pays her. I also said I would be awarding £200 for the distress and inconvenience Miss D suffered.

What I've provisionally 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 am currently minded to uphold it.

The policy

Under the "veterinary fees" section the policy says it covers treatment carried out by a vet for treating an illness whilst the pet is insured with CGIC. Treatment includes consultation, examination, advice, tests, x-rays, slides, ultrasound, MRI scans, medication and surgery provided by the vet. The benefit limit under this section is £4,000 and the excess is £90.

The policy also enables the consumer to claim per condition up to the benefit limit in each and every policy period of insurance. At each renewal the benefit limit for each condition renews. "Condition" is defined as an illness or accidental injury or any symptoms or clinical signs of an illness or accidental injury affecting your pet". It defines illness as "... any disease, sickness, infection or any change to your pet's normal healthy state, which is not caused by an accidental injury".

Like most pet insurance policies, this one excludes claims relating to conditions that existed before the commencement of the policy and also events that happened early in the cover period – within the initial 14 days or first five days in relation to accidental injuries.

The policy also has a number of conditions which include the need to keep the pet under control when on a designated road, ensuring they are on a collar and lead and making sure the pet is under control when loading them onto a vehicle.

So, according to the policy, I think the gastroenteritis/diarrhoea claim relates to a condition which is separate to the other two claims which relate to the elbow injury. So any benefit limit applied to the two elbow claims must be applied anew even if all the claims were made within the same policy year. In essence I don't think any settlement paid for the diarrhoea claim should be taken off the £4,000 benefit limit which applies to the elbow condition as it is a separate condition.

Miss D's claims

As I mentioned above, Miss D made three separate claims via her vet. The first was in relation to a bout of gastroenteritis. CGIC has since paid this claim which I was happy to note. So I will not consider this claim further.

There were two further claims which related to a separate condition which affected T's elbow. One claim was made in December 2021 which related to lameness and was in relation to the cost of a CT scan. The second was in relation to an elbow operation which took place in April 2022. These are the two claims CGIC has not settled and which Miss D wants to claim for.

The CT scan which took place in January 2022 concluded that there were changes in the left elbow which were consistent with elbow dysplasia (an abnormality of development). From the vet's notes it appears that an arthroscopy was booked subsequently and took place in April 2022.

CGIC said that the lameness claim, and presumably the subsequent operation, relates to the incident which took place in November 2021 where T jumped out of a moving car. It says this incident is excluded under the policy because Miss D failed to restrain T. CGIC added that the two incidents happened very close to each other and must therefore be related. CGIC also said it believes the proximate cause for the lameness that necessitated the operation was the incident with the car because it set in motion a train of events that brought about this result i.e. the elbow injury (without the intervention of any force and which started and worked actively from a new and independent source). Nevertheless, CGIC has not provided any expert evidence of its own in support of the above.

Miss D's vet wrote to CGIC and said that the incident with the car and the lameness incident were not related. He said that the car incident resulted in T having a graze to his right hind leg. He added that the second incident related to lameness to the right foreleg. He said the first incident led to a minor injury which resolved uneventfully over the following few days. He added the lameness discovered in December 2021 was caused by a "fragmented coronoid process (FCP) in the right elbow" – a condition where the joint separates from the bone and which is also referred to as elbow dysplasia. He said there was no evidence that the condition was in any way related to the accident. He added that the FCP is a developmental condition and not caused by trauma.

In the absence of any conflicting expert evidence, I think it is more likely than not that the incident with the car was not the cause of the FCP. And as I think the incidents are unrelated I don't think CGIC can rely on the exclusions it has relied on (i.e. that Miss D failed to restrain T, keep him on a lead etc) to reject the lameness and the operation claims. So I think CGIC acted unfairly and unreasonably in rejecting these claims.

It follows that my provisional decision is that CGIC should settle the lameness and the FCP/operation claims made in January and April/May 2022 respectively. It should settle them subject to any policy limit (though I believe they are within the policy limit) and any excess. And I think it should pay interest at a yearly rate of 8% simple from the date each claim was paid to the date it settles it.

As I said above, I don't think CGIC dealt with Miss D's claims fairly and reasonably because it did not appear to take into account the available expert evidence. Miss D has had to pay the claims herself. I also note that CGIC didn't respond to Miss D's complaint within the eight weeks available to it. For these reasons I think CGIC should pay Miss D £200 for the distress and inconvenience it caused her.

My provisional decision

For the reasons above, my provisional decision is that Casualty & General Insurance Company (Europe) Ltd must now pay the claim for the lameness (the cost of the CT scan) and the FCP claim (the cost of the operation) subject to any policy limit and any applicable excess. It must also pay Miss D interest at a yearly rate of 8% simple from the date she paid

each claim to the date it pays her. And it must also pay Miss D £200 for the distress and inconvenience it caused her.”

Both parties responded to my provisional decision and accepted it. CGIC said it was happy to settle the two claims but it would pay interest from the date the claims were received rather than from the date Miss D paid them. It said this was because Miss D settled each claim on the day of the treatment but submitted the claim later so it wasn't aware of each claim until it was received.

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.

As both parties accepted my provisional decision I see no reason to change any of my provisional findings. In relation to CGIC's point about the interest, I note that the claims were submitted to CGIC without much delay so any difference in the amount paid would be minimal. But in the circumstances I think what CGIC has proposed is fair and reasonable.

My final decision

For the reasons above, my final decision is that Casualty & General Insurance Company (Europe) Ltd must now pay the claim for the lameness (the cost of the CT scan) and the FCP claim (the cost of the operation) subject to any policy limit and any applicable excess. It must also pay Miss D interest at a yearly rate of 8% simple from the date each claim was received to the date it pays her. And it must also pay Miss D £200 for the distress and inconvenience it caused her.

Casualty & General Insurance Company (Europe) Ltd must pay the above within 28 days of the date on which we tell it that Miss D accepts my final decision. If it pays later than this it must also pay interest on the amount it pays from the date of my final decision to the date of payment at 8% a year simple.

If Casualty & General Insurance Company (Europe) Ltd pays interest and considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Miss D how much it's taken off. It should also give Miss D a tax deduction certificate if she asks for one, so she can reclaim tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 17 April 2023.

Anastasia Serdari
Ombudsman