

The complaint

Mr and Mrs M have complained that Casualty & General Insurance Company (Europe) Ltd (C&G) unfairly declined a claim under their pet insurance policy and added an unfair exclusion to the policy.

What happened

Mr and Mrs M first took out insurance for their dog with C&G on 12 October 2019.

In June 2020 they took the dog to the vet because of dental problems. The vet noted at the time that the dog's back legs were lame.

The policy was renewed in October 2020 and 2021.

In April 2022 Mr and Mrs M noticed that the dog was walking oddly and dragging his back legs. He was diagnosed with and treated for spondylosis of the spine.

Mr and Mrs M claimed for the cost of the treatment. C&G declined the claim. It said the policy only covered conditions for up to 12 months from the onset of the condition. It said the dog had suffered from lameness and stiff limbs in June 2020. It also said it was adding an exclusion to the policy with effect from the 2020 renewal for "*Degenerative Disease and any associated conditions*".

As Mr and Mrs M were unhappy with this response, they brought their complaint to this service. Our investigator thought C&G had acted fairly in declining their claim. But she thought C&G ought to remove the exclusion for degenerative disease and instead apply the appropriate exclusion for lameness.

Mr and Mrs M have asked for an Ombudsman's 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.

This policy is known as a "non-lifetime" policy. The terms state under "*What is insured?*":

*"Under **Our Essential Policy -Vet fees including Complimentary Therapy, You can claim per Condition up to the Benefit Limit of £1,000 for a maximum period of 12 months from the date the first Symptom and/or Clinical Sign was noticed, or Treatment started, whichever happens first (less the applicable Excess).***

*Once the 12 months has passed, or the **Benefit Limit** has been reached, no further cover will be provided for that **Condition**, even for future renewals."*

This is a normal term or restriction in this sort of policy. I'm satisfied that the policy paperwork made this sufficiently clear.

C&G has declined this claim because it says Mr and Mrs M made the claim more than 12 months after the date the first symptom of clinical sign of spondylosis was noticed.

The vet's notes from 5 June 2020 say that the dog was "*stiff on legs*" and had "*chronic bilateral hindlimb lameness*". The vet said they'd discussed the option of x-rays of the limbs while the dog was under general anaesthetic for dental treatment but "*Client opted to hold off x-rays for now*".

Mr and Mrs M say spondylosis is a degenerative disease that affects older dogs. Their vet has advised that spondylosis is a degenerative joint disease that can be "*caused by many things such as trauma, infection, the bodies own immune system, through repetitive stress as well as, of course, age*". The vet said this condition affects the spine and not the limbs or other joints. I have no reason to doubt that this is correct.

Prior to 2022 the dog had not been formally diagnosed with or treated for spondylosis. However, for the purposes of the policy it's not the cause of the condition that's relevant but rather the date that symptoms or clinical signs of spondylosis first appeared.

C&G has provided clinical evidence of the symptoms of spondylosis in dogs. It says some of the common symptoms include stiff movement and lameness or limping. It seems clear from the vet's history that Mr and Mrs M's dog showed these symptoms in 2020.

Mr and Mrs M's vet said he wouldn't expect the symptoms shown in the dog's case in 2020 to result in spondylosis. I accept that there might be a number of clinical reasons for stiffness and lameness in dogs and a vet might well not suspect spondylosis at the outset.

Where there's a dispute about what happened, I have to base my decision on what I think is more likely than not to have happened in the light of the evidence. I note that in 2022 the dog was diagnosed with "*severe spondylosis*". That suggests to me that the condition had been developing for some time. I also note that in 2020 Mr and Mrs M chose not to have any further investigations carried out into the cause of the lameness or stiffness. The dog has not been diagnosed with any other illness or condition causing lameness or stiffness. So, it seems to me more likely than not that the dog was showing early symptoms of spondylosis when it was seen by the vet in June 2020. On balance I find that C&G has fairly declined this claim in line with the policy terms.

With regard to exclusions the policy said that if C&G became aware of any pre-existing conditions at the time of a claim, these pre-existing conditions would not be covered and it reserved the right to add a relevant endorsement to the policy. I need to decide whether C&G acted fairly in applying a retrospective exclusion to the policy for degenerative diseases.

In reviewing this complaint I've considered the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It sets out the obligations of a consumer when entering into an insurance contract and the remedies available to an insurer if a consumer fails to fulfil their obligations.

Under CIDRA Mr and Mrs M had to take reasonable care not to make a misrepresentation when they first took out the policy and on each renewal. If they did make a misrepresentation, it is for C&G to show that this was a qualifying misrepresentation. To do this, it needs to show that if it had been given correct information, it wouldn't have offered the cover or it would have offered it on different terms.

When Mr and Mrs M applied online in 2019, they were asked whether they wanted to cover any pre-existing medical condition. They answered “No”. There was explanatory information saying that meant any medical conditions, illnesses or accidents that happened before the policy started would not be covered. They also answered “No” to the same question in October 2021.

One of the considerations under CIDRA is how clear the question was. I think the question was clearly put. At the time of the 2020 renewal Mr and Mrs M were aware that their vet had noted lameness in their dog’s hind limbs a few months previously and also stiffness. C&G has shown that if they had disclosed the lameness, it wouldn’t have offered insurance on the same terms. The underwriting guidelines show that signs of lameness would have led to an exclusion relating to lameness and associated conditions in the specified limbs.

C&G has since accepted that it should have applied this exclusion instead of one relating to degenerative diseases. I think that’s right. I’m satisfied that a fair resolution of this part of the complaint would be for C&G to apply the exclusion for lameness rather than degenerative diseases.

Putting things right

To put things right I think Casualty & General Insurance Company (Europe) Ltd should remove the exclusion for degenerative diseases from the policy and instead apply an exclusion for lameness from 12 October 2020.

My final decision

For the reasons set out above, I uphold this complaint in part and require Casualty & General Insurance Company (Europe) Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M and Mrs M to accept or reject my decision before 23 May 2023.

Elizabeth Grant
Ombudsman