

The complaint

Mrs H complains that Casualty & General Insurance Company (Europe) Ltd (CGICE) declined her pet insurance claim. My references to CGICE include its agents.

Mrs H is represented in her complaint by her husband but for simplicity I'll just refer to Mrs H.

What happened

Mrs H's pet insurance policy for her dog started on 1 September 2018 and renewed annually. She had an 'Essential' policy and the policy limit for vet fees for the policy starting in September 2021 was £1,000 per condition for up to 12 months from the date the symptom was noticed or the treatment started, whichever happened first.

In January 2022 Mrs H claimed for her dog's treatment for right hind leg cruciate instability.

CGICE declined the claim. The policy said that any treatment for bilateral conditions was considered to be treatment for one condition and the policy didn't cover pre-existing conditions. CGICE said that in 2014 Mrs H's dog's saw the vet for left hind leg lameness relating to her cruciate ligament, so the 2022 claim was for a pre-existing condition which wasn't covered under the policy terms.

CGICE also said that when Mrs H bought the policy she didn't disclose her dog had a pre-existing condition of cruciate disease, which she first discussed with her vet in 2014. If she had disclosed the condition CGICE would have applied the following endorsements to the policy from the start and also used the endorsements to decline the claim:

- Excludes cover on all claims with respect to Both Stifles with effect from 1 September 2018
- Excludes cover on all claims with respect to Cruciate Ligament and any Associated Conditions with effect from 1 September 2018.

Mrs H complained to us. In summary she said in 2022 her dog had an accidental injury to her right hind leg when jumping onto the sofa at home. Her dog had lameness in her left leg before the policy was taken out but that was a different situation and she had no previous problem with her right hind leg. Mrs H wants CGICE to pay the vet costs she'd paid which she said was about £2,000.

Our investigator said CGICE had unfairly applied the pre-existing condition exclusion to decline the claim. She recommended CGICE pay the vet costs subject to the policy limit, plus interest if Mrs H had already paid the vet costs.

CGICE disagreed and wanted an ombudsman's decision. It said as Mrs H's dog had pre-existing cruciate insufficiency in her left hind leg neither cruciate ligament was covered by the policy terms.

What I provisionally decided – and why

I made a provisional decision explaining why I was intending to uphold the complaint as I thought CGICE unreasonably declined the claim. I said:

'The policy excludes:

'Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition

Any claim for Illness or Accidental Injury that showed Clinical Signs or Symptoms before Your Policy Start Date...'

The policy says defines pre-existing conditions as:

'Any diagnosed or undiagnosed Condition and/or Associated Condition which has happened or has shown Clinical Signs or Symptoms of existing in any form before the Policy Start Date....'

The policy defines bilateral conditions as:

'Any medical Condition that can affect body parts of which Your pet has two, on either side of its body, such as ... cruciate ligaments...and which can occur at different times. When applying the Benefit Limit and the terms of this Policy, any Treatment for Bilateral Conditions will be considered as one Condition, regardless of when the Treatment occurred'.

Mrs H's dog's vet notes are clear that she had lameness in her left hind leg since 2014 and the problem was ultimately diagnosed in 2015 as 'cruciate insufficiency', which was before the policy started.

I've seen no evidence that Mrs H's dog had any lameness on her right hind leg before the policy started. The first evidence of a problem in the right hind leg is the vet record in January 2022, well after the policy started, which says *'Examination - Lamé RIGHT hind for about a week. on exam susp CCL rupture'*.

But, as the policy says cruciate ligaments are a bilateral condition, under a strict interpretation of the policy terms CGICE correctly declined the claim as a pre-existing condition.

However, I also need to consider whether it was fair and reasonable for CGICE to decline the claim. We generally say, unless there's evidence that the claimed for condition is causally linked to the pre-existing condition, it's not reasonable for an insurer to decline the claim on the basis of the claimed for condition being pre-existing because it's a bilateral condition.

Mrs H's dog's right hind leg cruciate ligament problem happened seven years after her left hind cruciate ligament problem was diagnosed. As I've said, I've seen no evidence in the vet notes to suggest there were any concerns about cruciate ligament problems in the dog's right hind leg before January 2022.

The vet notes in January 2022 gives the diagnosis of *'right cruciate DZ/ instability'*, which is similar to the diagnosis for the left hind leg seven years earlier. But apart from the diagnosis being the same there's no evidence to suggest the 2014/15 cruciate ligament condition and 2022 cruciate ligament condition were causally linked, particularly given the long period of time between the two.

CGICE referred to the vet note entry in June 2015; *'NB diagnose cruciate insufficiency'* which CGICE said indicated *'the vet felt that this was a particularly important diagnosis to be aware of'*. Whether or not CGICE's interpretation of the note is correct, in 2014/15 the vet made no reference to a potential issue with the dog's right hind leg in the future. Mrs H said on the claim form that her dog jumped up on her sofa and cried so it appears that the problem with the right hind leg, which caused the claim, was triggered by an injury.

In all the circumstances I think there's insufficient evidence for CGICE to show the two conditions are causally linked in this dog. So I'm satisfied that CGICE couldn't reasonably use the pre-existing condition exclusion to decline the claim.

CGICE also said that if when Mrs H bought the policy she had disclosed her dog had a cruciate problem it would have added the above endorsements from the start of the policy and used those to decline the claim. It said when taking out the policy Mrs H would have been taken through the options for selecting a policy type and asked:

'Are You looking for insurance cover for a pre-existing condition?'

And Mrs H would also have been taken through the 'Assumptions' sections where it was stated that:

'You accept that no cover will be provided for any illness or injury that is pre-existing or if it were to arise within the first 14 days from the policy start date'.

But I've seen no evidence that CGICE asked Mrs H any direct questions about her dog's medical history and vet treatment when she bought the policy. If it had, and Mrs H misrepresented the answers, it might be fair for CGICE to apply the above endorsements retrospectively – if that's what it would have done had it known the true position. The relevant law, the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), allows this in some circumstances where there's been a relevant misrepresentation. But as CGICE hasn't shown me it asked Mrs H those clear questions there isn't an issue of misrepresentation.

On the evidence I have I don't think CGICE could fairly add, backdate and apply the endorsements for exclusions on cover on all claims with respect to both stifles, and with respect to cruciate ligament and any associated conditions, with effect from 1 September 2018.

So I think CGICE unreasonably declined the claim. But I'm not intending to say in this decision that CGICE has to pay all the vet costs Mrs H wants it to pay.

The only claim I've seen that's been submitted to and assessed by CGICE is for £533.05, which on the information Mrs H gave is for the first consultation, x-rays and medication.

In her complaint form to us Mrs H says she also wants CGICE to pay the surgery costs of £1,407.75. But I haven't seen that she's made a claim to CGICE for those costs and she'll need to, with the vet evidence and invoice to support that claim, so that CGICE can assess the claim.

When CGICE receive the claim for the surgery costs it would be reasonable for it to assess that claim taking into account what I've said above. If Mrs H and CGICE can't agree about the settlement of that claim Mrs H can ultimately make a complaint to us about that matter. It's fair for me to tell Mrs H now that given the policy limit of £1,000 per condition it's unlikely CGICE will pay her all the surgery costs.

In this decision I'm intending to say that CGICE must pay the claim for £533.05. Under the policy terms it can deduct the £90 excess and the 15% co-payment that applies due to Mrs H's dog's age. If Mrs H has already paid the costs CGICE must add interest as detailed below'.

Responses to my provisional decision

Mrs H and CGICE accepted my provisional decision. Mrs H said she'd now submitted a claim for £1,407.75 for her dog's surgery. CGICE said although the claim was submitted outside the time limit stated in the policy terms on this occasion it would assess the claim.

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 Mrs H and CGICE have accepted my provisional decision I've no reason to change my mind. For the reasons I've given in my provisional findings and these findings I think CGICE unreasonably declined Mrs H's claim for £533.05 for the first consultation, x-rays and medication.

Mrs H has now submitted the claim for her dog's surgery and CGICE has reasonably said it will assess the claim even though the claim was submitted outside the time limit set out in the policy terms. As I've said in my provisional decision, if Mrs H and CGICE can't agree about the settlement of that claim she can ultimately make a separate complaint to us about that matter.

Putting things right

CGICE must pay the claim for £533.05. Under the policy terms it can deduct the £90 excess and the 15% co-payment that applies due to Mrs H's dog's age. If Mrs H has already paid the vet costs CGICE must add interest as detailed below.

My final decision

I uphold this complaint and require Casualty & General Insurance Company (Europe) Ltd to pay Mrs H's claim for £533.05, less the £90 excess, less the 15% co-payment. If Mrs H has already paid the vet costs Casualty & General Insurance Company (Europe) Limited must add interest* at 8% simple a year from the date she paid the costs to the date of its settlement to her.

*If Casualty & General Insurance Company (Europe) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 21 June 2023.

Nicola Sisk
Ombudsman