

The complaint

Ms H complains about a declined claim she made on a pet insurance policy with Casualty & General Insurance Company (Europe) Ltd ('CGICE'). She also complains about an exclusion applied to the policy by CGICE.

CGICE are the underwriters (insurers) of this policy. Part of this complaint also concerns the actions of their appointed agents. As CGICE have accepted they are accountable for their actions (the appointed agents), in my decision, any reference to CGICE includes their appointed agent's actions.

What happened

The background to this complaint is well known to both Ms H and CGICE. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Ms H had a 'time limited' pet insurance policy for her dog with CGICE, since 2019. In summary, the policy provided cover for a specific condition for 12 months only (or the policy limit had been reached) from the onset of symptoms. In August 2022, she took her dog to the vets as they were unwell, with upset stomach symptoms. The dog was treated for a period of time and made a recovery.

Ms H made a claim against her pet insurance policy - but CGICE declined the claim. CGICE referred to previous recorded instances of an upset stomach that the dog had in previous years. They also applied an endorsement (exclusion) to the policy as they said if Ms H had fully disclosed the previous instances of sickness they'd have not provided cover for any claims arising because of it.

Unhappy, Ms H referred her complaint to our Service for an independent review. Our Investigator recommended that the complaint be upheld. CGICE didn't accept their recommendations – so the complaint has been referred to me for a final 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.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. This isn't meant as a discourtesy to either party – it simply reflects the informal nature of our Service.

Have CGICE fairly and reasonably considered the claim in line with the policy terms?

CGICE have declined this claim, relying on the following policy exclusion:

"...there would be no cover for any condition that was pre-existing or had shown clinical signs of existence in any form prior to the policy inception."

Having carefully considered the evidence here, I find that CGICE have unfairly relied on this term. I say this because although it's not in dispute that the dog had experienced episodes of vomiting and diarrhoea ('V and D') in the past – prior to policy inception, no persuasive supporting evidence has been provided that would allow a fair conclusion that the root cause of the previous V and D was the same cause that made the dog unwell here.

I've carefully considered the medical records provided and it's apparent that other factors may have caused the previous instances of V and D. For example – in July 2013 it's stated that the dog had been scavenging and may have eaten a rotten plant, in August 2013 it's stated *"inapprop ingestion..."*. Regarding the more recent instances (in 2017, 2020 and May 2022), no clear reason has been recorded as to the cause of those illnesses.

I find that CGICE have unfairly relied on the relevant exclusion here when considering the claim. Whilst not an animal expert, a quick research online suggests that there are over a dozen causes of V and D in dogs. For example; viruses, changes in diet, parasites, toxins, pancreatitis and other environmental factors such as stress. CGICE have not at all shown that the (likely) cause of the V and D here was the same as what had caused previous incidents. In addition, no medical evidence or arguments have been submitted to support that any investigative/root cause analysis took place to determine what had caused the previous incidents and if they were all linked.

Therefore, CGICE can't fairly decline the claim for the reasons they've given.

Have CGICE treated Ms H fairly and reasonably overall – including when applying a policy endorsement?

CGICE have said that if Ms H had disclosed the relevant information about previous instances of V and D either at policy inception or at renewal, they'd have applied the following policy endorsement/exclusion:

"Excludes cover on all claims with respect to The Digestive System with effect from 05 June 2021."

Their rationale was that the medical history showed that there had been instances of V and D prior to policy inception and although this had been discussed with a vet it wasn't disclosed at either policy inception or renewal.

I've then looked at what CGICE say Ms H would've been asked at policy inception and renewal about PEMCs. CGICE have said Ms H would've been asked:

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

Are you concerned that after 12 months a Condition is no longer covered?"

They've also said that it was stated in the 'assumptions' section (I'll return to this point later in the decision) of the policy information:

*"You accept that no cover will be provided for any illness or injury that is **pre-existing** [bold added for emphasis by Ombudsman] or if it were to arise within the first 14 days from the policy start date or 5 days in the event of an accident".*

The relevant law around non-disclosure here is: 'The Consumer Insurance Disclosure and Representation Act 2012' (CIDRA). Our Service's general approach to this complaint issue (having considered CIDRA) is that if a policyholder hadn't taken reasonable care in answering clear questions when they took out the policy *and* if they insurer had been given

correct information they'd have added a policy exclusion or limitation – we'd generally say that an insurer can add a retrospective policy exclusion.

But crucially, in this complaint, CGICE haven't sufficiently demonstrated that Ms H was asked a clear question about previous instances of V and D. Therefore, given the questions asked, I don't find that Ms H acted unreasonably here. I don't find that Ms H failed to take reasonable care. It follows that it's unfair to add the relevant exclusion here.

I also find it unusual that CGICE have stated the following in their final response letter: *"no investigations have ever been carried out for previous episodes of vomiting and diarrhoea, and therefore these episodes were not given definitive diagnoses."* After our Investigator's assessment they also said:

"As [dog's name redacted by Ombudsman] has presented with the same clinical signs and symptoms on several occasions with no diagnosis being given for any of these episodes, I am satisfied that the episode that began on 25 August 2022 was correctly considered to be an associated condition and we are therefore unable to provide cover for this treatment."

In my opinion (even placing to one side my finding about Ms H not being asked a clear question), this supports that it would've been unreasonable to expect that Ms H should've reasonably answered the question about PEMCs differently.

As referenced above, Ms H also was presented with an 'assumptions' statement. But for similar reasons to those already stated, I'm not persuaded that Ms H ought to reasonably have considered that her dog had a PEMC.

Therefore, it's unfair of CGICE to now apply an endorsement. In any case, the questions asked by CGICE weren't sufficiently clear here to extract the information that CGICE now wants to rely on to decline the claim and apply the exclusion.

For completeness, CGICE *can* apply the usual policy time limits to the specific condition Ms H has claimed for here, but can't (for the reasons they've relied on so far) blanket exclude any claims that arise out of illnesses with V and D symptoms.

Summary

Overall, I find that CGICE have unfairly and unreasonably declined this claim and can't fairly apply the policy endorsement they want to - for the reasons they've given.

Putting things right

I direct Casualty & General Insurance Company (Europe) Ltd to:

- Reconsider the claim and settle it in line with the remaining policy terms and limits. Should the claim be successful, Casualty & General Insurance Company (Europe) Ltd need to add 8% simple interest per annum, to be calculated from four weeks after Ms H initially registered her claim* until the date any claim settlement is paid to her.
- Remove any policy endorsement that has been applied as a result of this claim, back dated to policy inception.

*This recognises that even if things had happened as they should have in this case, there would've been an initial period of admin/waiting before any successful claim was paid to Ms H.

My final decision

I uphold this complaint and direct Casualty & General Insurance Company (Europe) Ltd to follow my direction, as set out under the heading 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 27 June 2023.

Daniel O'Shea
Ombudsman