

The complaint

Mr D has complained that Casualty & General Insurance Company (Europe) Ltd (C&G) unfairly declined a claim under his pet insurance policy and added unfair exclusions to the policy.

What happened

Mr D first took out an insurance policy with C&G for his dog on 9 January 2022.

In May 2022 he took the dog to the vet because the dog had recently become blind in his left eye. The dog was referred to a specialist. That vet thought the blindness had been caused by a brain condition or nerve damage but he didn't rule out a tumour or other causes. He recommended further investigations.

Mr D made a claim on his insurance. C&G declined the claim. It said the policy didn't cover pre-existing conditions. Based on the clinical history, it said the dog had previously had symptoms of an eye condition and the vet had also noticed multiple lumps on earlier visits before the policy had been taken out. It said if it had been told about this, it would have added endorsements to the policy excluding cover on all claims relating to eyes and sight and also anything to do with growths, tumours and resulting conditions.

In response Mr D sent C&G a report from his vet which said that the most likely cause of the blindness was auto-immune inflammation. C&G said it needed definitive evidence that the blindness wasn't related to an underlying eye condition or a tumour.

As Mr D was unhappy with this response, he brought a complaint to this service. I issued a provisional decision explaining why I was minded to uphold the complaint. An extract from my provisional findings is set out below:

"Is the claim excluded on the basis that the dog had a pre-existing condition?"

Mr D's policy, like many other pet policies, doesn't cover pre-existing conditions. It says:

"What is not insured?"

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

The term "Pre-existing Condition" is defined 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 or within the Waiting Period."

So it is not necessary for any condition to have been diagnosed for it to fall within this definition but the symptoms which appear before the start of the policy or within the waiting period must be a clinical sign or symptom of the condition claimed for. That means C&G should establish that Mr D's dog had clinical signs or symptoms of the blindness he was suffering from in order to rely on this exclusion. With this in mind I've looked at the history of the dog's previous visits to the vet.

In February 2015 Mr D's dog was seen by the vet who noted a lump on the dog's testicles which he thought was probably a histiocytoma (a benign tumour).

In September 2015 Mr D took the dog to the vet because of a growth on the dog's right front foot. After testing the vet confirmed this was a viral papilloma (wart) which was removed.

In February 2016 Mr D took the dog to the vet as he'd noticed two new growths. The vet said they were similar to the papilloma that had been removed and just needed monitoring.

In 2019 the vet noted that the dog had interdigital cysts which healed but left swellings.

In May 2021 the dog's eye was examined by the vet as it had been "a bit weepy". The vet thought it looked like a healing ulcer. The notes don't say whether this was the right or left eye.

The vet to whom the dog was referred for blindness in the left eye said he couldn't find any abnormalities. He thought the blindness was "either due to a brain condition or partial damage to the nerve that supplies the eye for vision (as it can detect light but not process visual information). We consider this to be most likely due to an inflammation which is usually auto-immune in dogs, and less likely due to a tumour or other causes."

C&G said there hadn't been a definitive diagnosis of the blindness and therefore other potential causes such as a tumour or underlying eye condition couldn't be ruled out. But the onus is upon an insurer to prove that an exclusion applies. I haven't seen any mention by a vet that the previous benign tumour, lumps and previous eye condition are linked to an auto-immune inflammation or the cause of the dog's blindness. Given this, I think C&G acted unfairly in refusing the claim on the basis that the dog had a pre-existing condition.

Can C&G apply retrospective exclusions to the policy that mean the claim wouldn't be met?

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 retrospective endorsements to the policy for eyes and sight and also growths and tumours.

I haven't seen any evidence of a connection between:

- (i) any conditions with which the dog presented between 2015 and 2022 and the condition he presented with in May 2022; or*
- (ii) any conditions with which the dog presented between 2015 and 2022 and the endorsement added to the policy for eyes and sight.*

In the absence of persuasive evidence of such a connection, I don't think C&G treated Mr D fairly in retrospectively adding such an exclusion to the policy. By issuing this provisional decision I'm giving both parties the opportunity to provide whatever further evidence they have in this regard.

Since the dog did have a benign tumour in 2015, I think it was reasonable for C&G to add the exclusion for growths and tumours. However, as explained above, C&G hasn't shown that the dog's blindness was caused by a growth or tumour. So I don't think C&G is entitled to rely on this exclusion to reject the claim."

Both parties accepted my provisional findings. C&G said that Mr D had cancelled the policy on 9 September 2022, meaning there were four instalments of the premium outstanding. It said it would deduct these from the claim settlement.

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 neither party disagreed with my provisional findings, I see no reason to change them and they now form part of this final decision.

The policy says that for cover to be in place the policyholder must pay the agreed premium as shown in the Schedule. I don't think it's unreasonable for C&G to deduct any outstanding instalments of the premium from the settlement.

My final decision

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

- remove the exclusion for eyes and sight from the policy;
- settle the claim subject to the remaining terms and conditions of the policy;
- pay simple interest of 8% on any sum due to Mr D from the date his claim was made until settlement.
- If Casualty & General Insurance Company (Europe) Ltd considers it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it has taken off. It should also give Mr D a tax deduction certificate if Mr D asks for one so that he can reclaim the tax from HM Revenue & Customs if appropriate.

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

Elizabeth Grant
Ombudsman