

The complaint

Ms M has complained that Casualty & General Insurance Company (Europe) Ltd (C&G) unfairly declined a claim on her pet insurance policy.

What happened

Ms M took out a pet insurance policy for her dog with C&G in August 2021. She contacted C&G to make a claim after it appeared her dog had bumped into a pane of glass in the garden and injured her left eye. Ms M said the glass in question was a glass shelf made out of tempered glass which was being disposed of.

Ms M says she was given the impression her claim would be covered before the dog had further treatment for the injury from a specialist.

Later C&G declined the claim. It said Ms M was in breach of the policy conditions as the injury could have been prevented by removing the glass from the area where it had been left or paying proper attention to the dog while she was outside.

Ms M brought a complaint to this service. Our investigator upheld it. She didn't think C&G hadn't acted fairly in relying on the fact that the accident was preventable to decline the claim. She recommended that C&G should settle the claim and pay 8% simple interest on any amount payable to Ms M.

As C&G didn't agree, the matter has been referred to me.

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.

Ms M's policy states that it will cover vet fees "for treating an **Illness** or **Accidental Injury** suffered by **Your** pet whilst insured with **Us**".

The term "Accidental Injury" is defined as "*a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of **Your** pet's body.*"

This cover is subject to the following condition:

"You must provide proper care and attention to **Your** pet at all times and take all reasonable precautions to prevent **Accidental Injury** or damage, as well as arranging and paying for **Treatment** for **Your** pet to reduce the likelihood of **Illness** or **Accidental Injury**."

A dog bumping into a pane of glass is an accidental injury that would fall within this section of cover. What I have to decide is whether it was reasonable for C&G to rely on the condition set out above in order to decline the claim.

When looking at these complaints we take into account the test of recklessness as that of the legal case on 'reasonable care' – *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep 559.

So if an insurer turns down a claim because the consumer failed to take reasonable care, there needs to be evidence to show the consumer acted recklessly. That's the case where the consumer recognised a risk but took no measures at all to lower the risk or they knew the measures were inadequate.

Ms M has explained that the glass shelf wasn't broken and was placed behind the recycling bin in her garden. It had been there for a few days before the accident happened. The glass was tempered glass which is a lot stronger than ordinary glass. Tempered glass breaks into small rounded fragments rather than pointy shards and is less likely than ordinary glass to cause injury. I don't think it was reckless to leave such glass in the garden out of the way for a few days.

C&G says the glass shouldn't have been left where the dog could reach it. But it seems unreasonable to me to expect Ms M to monitor her dog in the garden and stop her from walking into anything which might cause an eye injury such as a low branch. Just because an accident was preventable doesn't mean that reasonable care wasn't taken. I'm not persuaded C&G has shown that Ms M acted recklessly in this case.

To put things right, I think C&G should settle the claim subject to the terms of the policy and also pay interest on any amount due to Ms M.

My final decision

For the reasons set out above, I uphold this complaint and require Casualty & General Insurance Company (Europe) Ltd to settle Ms M's claim subject to the other terms and conditions of the policy limit and to pay interest on any amount paid to her at the simple rate of 8% from the date her claim was made until payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 7 August 2023.

Elizabeth Grant
Ombudsman