DRN-4164965

The complaint

Mr H has complained that his pet insurer, Casualty & General Insurance Company (Europe) Ltd ("CGIC"), turned down a claim he made under the policy he has for his dog.

CGIC is the underwriter of this policy i.e. the insurer. Throughout the claim Mr H was dealing with a different company who acts as CGIC's agent. As CGIC has accepted it is accountable for the actions of the agent, in my decision, any reference to CGIC includes the actions of the agent.

What happened

I issued a provisional decision regarding this complaint in April this year. In that decision I said the following:

"In June 2022 Mr H made a claim for H requiring treatment as a result of her limping on her front right leg.

CGIC turned the claim down saying that it related to a condition that pre-existed the inception of the policy which Mr H failed to declare when taking out the policy and which was therefore excluded. It said H was seen by the vet in July 2020 with neck pain and a slightly sensitive lumbar spine. CGIC said it would add an endorsement on the policy excluding this and associated injuries.

Mr H wasn't happy with CGIC's response and complained. He said that CGIC was referring to a one-off issue where the vet had not diagnosed any real issue and only advised rest which seemed to resolve it. He said that the exclusion that CGIC was proposing to add to the policy was vague and questioned why it would exclude any injury without evidence of an underlying condition. He said in any case the claim was in relation to an injury to the front right shoulder caused by ligament damage which would not be captured by the exclusion.

Mr H was also unhappy he wasn't able to speak to anyone from the claims department. And he said when he took out the policy he wasn't asked whether his dog had a pre-existing condition but whether he wanted cover for a pre-existing condition. He said he did not want such cover because his dog did not have any pre-existing conditions.

CGIC didn't uphold the complaint. It said if Mr H had disclosed H's pre-existing condition CGIC would have added an exclusion which would have said: "excludes cover on all claims with respect to the back, spine and pelvis and any associated conditions with effect from 18 June 2021 and excludes cover on all claims with respect to degenerative disease and any associated conditions with effect from 18 June 2021". It said it appreciated that Mr H said that the claim did not relate to the previous neck and back pain but it would fall under the exclusion for degenerative disease due to the vet having indicated that there was a potential diagnosis of collateral ligament damage/rupture.

Mr H said that when he took out the policy he wasn't asked to disclose H's full medical history but only ongoing medical issues. He said the exclusion CGIC wanted to add to the policy wouldn't exclude shoulder injury as it applies to the spine and pelvis. And even if it

related to degenerative disease this wouldn't apply to the shoulder. He said H's injury was not a disease but a trauma injury to the ligaments.

Mr H brought his complaint to us in September 2022. He said he wanted CGIC to fully indemnify him for the cost of the treatment and to compensate him for the poor service provided plus interest.

One of our Investigators reviewed the complaint and thought it should be upheld. She thought CGIC should pay the claim subject to the policy limit and excess plus 8% simple interest. She said Mr H's claim did not relate to a pre-existing condition. She added that when he took the policy out Mr H was asked if he wanted cover for pre-existing conditions but not if his dog had any previous illness/condition or treatment. She felt Mr H had taken reasonable care to answer CGIC's question correctly. She also said the vet's evidence suggested that the current claim for the shoulder injury was not the result of degenerative disease and so CGIC couldn't rely on that exclusion to reject it.

CGIC didn't agree and asked for an Ombudsman's decision. It said that in its exclusion list both injuries are categorised in the same area. It also attached the sales journey Mr H would have gone through when he took the policy out via a price comparison website.

Our Investigator did not change her view and the complaint was passed to me for my consideration.

What I've provisionally 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.

The policy
Under the "veterinary fees" section the policy says it covers treatment carried out by a vet for treating an illness whilst the pet is insured with CGIC. Treatment includes consultation, examination, advice, tests, x-rays, slides, ultrasound, MRI scans, medication and surgery provided by the vet. The benefit limit under this section is £4,000 and the excess is £90.

The policy also enables the consumer to claim per condition up to the benefit limit in each and every policy period of insurance. At each renewal the benefit limit for each condition renews. "Condition" is defined as an "…illness or accidental injury or any symptoms or clinical signs of an illness or accidental injury affecting your pet". The policy defines illness as "… any disease, sickness, infection or any change to your pet's normal healthy state, which is not caused by an accidental injury".

Like most pet insurance policies, this one excludes claims relating to conditions that existed before the commencement of the policy and also events that happened early in the cover period – within the initial 14 days or first five days in relation to accidental injuries. A "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". A condition is as described above and an associated condition is a condition that is "…either a recurring illness and /or accidental injury or lump; or related to a previous illness and/or accidental injury or lump; or caused by a previous illness and/or accidental injury or lump". And an "accidental injury" is 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".

When H was seen by the vet in July 2020 she was described as being lethargic, shaky and hunched. She was also said to have convincing neck pain. The vet treated this as a soft

tissue/muscular/spasm injury and advised for H to be rested. H was said to be responding well to analgesia (painkillers). I can't see any further mention of these symptoms in H's records. So based on this, under the terms of the policy, I don't think it would be fair for CGIC to treat this incident as a "condition" as it seems to have been a one off event and therefore not an illness (disease, sickness, infection or change in the pet's normal healthy state) nor do I think it was an accidental injury or an associated condition – looking at how these are defined within the policy. And I, therefore, don't think it would be fair to treat it as a pre-existing condition either.

Declaring the pre-existing condition
Even if I were to accept that this was a pre-existing condition, I don't think this was something Mr H failed to declare and therefore something that would enable CGIC to add a retrospective endorsement to the policy.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

CGIC thinks Mr H failed to take reasonable care not to make a misrepresentation when he took the policy out. I've looked at the pre-existing condition question Mr H would have been asked when he took out the policy. The question was:

"Do you want to cover any pre-existing medical conditions for H".

There is also a yellow box above that question which says that "any medical conditions, illnesses or accidents that happened before this new policy starts will not be covered". There is also an "i" that one can click on which says "a pre-existing condition is any illness, injury, symptom or sign of a condition that happened before your new policy begins. Illnesses or conditions that are noticed or diagnosed during the first 14 days of a new policy aren't generally covered".

CGIC says that at that point Mr H should have declared any illness H may have had and if he was unsure he would have had to call CGIC for advice. It added that by purchasing the policy Mr H declared that H did not have any pre-existing conditions and therefore the exclusions were placed after false information at the point of purchase. It added that a pre-existing condition is not just the condition but also the signs and symptoms of the condition.

I am not sure I agree with what CGIC says above. Mr H was asked a factual question about whether he wanted cover for pre-existing conditions, he didn't and so he said "no". I think that meant that he took reasonable care when answering and that he answered the question correctly. It follows that I don't think that Mr H misrepresented the information he gave CGIC. And for that reason I don't think CGIC can add a backdated endorsement to the policy.

For completeness I should add that the policy says that CGIC may add a relevant endorsement to the policy in respect of a pre-existing condition if it becomes aware of one at the time of a claim. As I said above I don't consider the incident of July 2020 to be a pre-existing condition and this is another reason why I don't think it would be fair or reasonable for CGIC to add an endorsement such as the one it's proposed to add.

Are the two incidents related?
Mr H's vet wrote to CGIC and said that in July 2020 H was diagnosed with neck and back pain which was thought to be a muscular injury with no neurological signs. The symptoms resolved with analgesia and anti-inflammatory medication. The vet added that the current claim is for treatment for right forelimb lameness. The vet also said that she did not think the lameness was connected to the injury H sustained in 2020 and that it is clinically a separate issue.

In the absence of any conflicting veterinary evidence, overall, I am satisfied that the condition that the claim relates to was not a pre-existing one. And for that reason, I think the claim was unfairly declined.

I also don't think CGIC dealt with Mr H's claims fairly and reasonably because it did not appear to take into account the available expert evidence. Mr H has had to pay the claim himself. I also note that CGIC didn't respond to Mr H's complaint within the eight weeks available to it. For these reasons I think CGIC should pay Mr H £100 for the distress and inconvenience it caused him.

My provisional decision

For the reasons above, my provisional decision is that Casualty & General Insurance Company (Europe) Ltd must now pay the claim for the right forelimb lameness subject to any policy limit and any applicable excess. It must also pay Mr H interest at a yearly rate of 8% simple from the date he paid each claim to the date it pays him. And it must also pay Mr H £100 for the distress and inconvenience it caused him."

The parties' responses
Both parties responded to my provisional decision. Mr H's initial comments included the following:

- He didn't think that £100 was a fair reflection of the stress and inconvenience he suffered and felt that £500 would be more appropriate.
- He requested that the excess be taken off the claim amount rather than the policy limit- which is £4,000 in this case.

CGIC also responded and accepted my decision. It initially said it would pay a total of £214.05 plus interest and the £100 compensation. It also confirmed that the policy had been cancelled mid-term and that it had made deductions to the settlement amount as a result of this.

Our Investigator went back to CGIC and clarified that the claim amount was around £4,500. Mr H had submitted three separate claim forms for different types of treatment all relating to the same incident. It transpired that CGIC hadn't received all the claims Mr H had made.

A further claim form for around £4,700 was then sent to CGIC by Mr H who said he had originally submitted it in August 2022.

I went back to the parties and clarified that as far as I was aware there were three separate treatment invoices submitted and they all related to the same condition. I agreed that two excesses would be applied as the treatment H received spanned two policy years and also

confirmed that the excess should be deducted from the claim amount and not the policy limit. I also clarified that as I didn't consider that there was a relevant pre-existing condition all claims should be paid without CGIC needing to do any further assessment.

CGIC emailed Mr H with the amounts it believed were payable under the policy, subject to deductions for items that the policy doesn't cover. Mr H provided his own calculations and said that the total amount due was £3,808.89 plus interest payable from the date each invoice was paid. He also agreed that a deduction of £243.20 could be made from the claim amount as a result of the policy being cancelled mid-term. CGIC agreed to pay the £3,808.89 plus interest plus £100 compensation.

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.

I am pleased that the parties have come to an agreement as to the total claim amount (£3,808.89) which includes all three invoices and I have no further findings to make on that point.

The only point that remains is the issue of compensation. Mr H said he believes that £500 is a more appropriate amount. I appreciate that Mr H feels strongly about this but I feel that the £100 I awarded in my provisional decision is sufficient and in line with awards we have made in similar circumstances.

The rest of the findings I made in my provisional decision now form the findings of this my final decision including the fact that CGIC must pay the claim.

My final decision

For the reasons above, my final decision is that Casualty & General Insurance Company (Europe) Ltd must now pay the claim for the right forelimb lameness which comes to a total of £3,808.89. It must also pay Mr H interest at a yearly rate of 8% simple from the date he paid each claim/invoice to the date it pays him. And it must also pay Mr H £100 for the distress and inconvenience it caused him.

If Casualty & General Insurance Company (Europe) Ltd pays interest and considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 June 2023.

Anastasia Serdari
Ombudsman