

The complaint

Miss G complains that Casualty & General Insurance Company (Europe) Ltd unfairly turned down her pet insurance claim.

My references to Casualty include its claim and complaint handling agent.

What happened

In June 2021 Miss G's dog was unfortunately injured in a traffic accident and was treated by more than one vet practice. Miss G made a claim for the treatment costs.

Casualty turned down the claim. It said that under the policy conditions Miss G must pay proper care and attention to her dog at all times and take all reasonable precautions to prevent accidental injury. Miss G had told it that whilst her partner was looking after the dog her toddler had been able to obtain the key and unlock the front door allowing her dog to escape and be injured. It said that had her partner been paying full attention to the dog, he would have been able to intercept their child opening the door and stop the dog from escaping.

Unhappy with the outcome, Miss G came to us. She said Casualty's response to her claim had caused her huge financial detriment and a great deal of upset and emotional distress at a traumatic time.

Our Investigator initially upheld the complaint. She thought Miss G had taken reasonable precautions to prevent an unforeseen accident and that Casualty should pay the claim.

Casualty didn't agree. It said Miss G's partner cannot have been paying proper attention both to the dog and their child for the door to have been unlocked and opened. The accident had not taken place at a specific time and place as required under the policy's terms.

Miss G's version of events on her claim form and a further statement was contradicted by the information in the dog's medical records. The medical records suggested that the dog had fallen from a moving vehicle, contrary to Rule 57 of the Highway Code.

Our Investigator said this information had changed her view of the complaint and she thought Casualty had, in fact, fairly assessed the claim.

Miss G did not agree. She explained that her vet had made an error in recording the accident's circumstances, which had been amended in the medical records. She said that this error was copied across to the other vets' notes and there were, in fact, multiple inconsistencies between the vets' medical records. So she thought the notes should not be relied on. Miss G provided CCTV evidence to support her evidence of the way the accident had occurred.

Our Investigator noted that Miss G's front door was already open and asked Miss G for video evidence from before the door was opened. Miss G explained that other clips had been automatically deleted. Her partner had downloaded the shared clip by chance without

thinking it would be needed for insurance purposes. She provided the CCTV settings to show that the video was set to record only when the camera detected the upper half of a human body, and also that footage is automatically deleted to preserve memory space. She said the CCTV confirmed the notes made by the vets about the dog falling from a moving vehicle were incorrect.

Our Investigator said the evidence didn't change her view that Casualty had made a fair decision on the basis the accident was not a sudden event.

Miss G did not agree and asked for an Ombudsman review. In summary, she said:

- Our Investigator had previously agreed she had taken reasonable steps to keep her dog safe.
- She had shown that Casualty's suggestion that her dog had jumped from a moving vehicle was incorrect, with supporting CCTV evidence. That evidence showed her partner had acted immediately he realised their child had opened the door but by then she had moved away in her van unaware her dog had escaped. She could not have seen the dog from her driving position in the van. Her evidence has been consistent but Casualty keeps moving the goal posts. The policy has failed to provide the peace of mind that she had paid for.
- She had taken reasonable steps to ensure her child's safety and her dog's safety. It was not clear what more she could have done.

Casualty also provided a summary of its reasons for turning down the claim.

My provisional decision

I issued a provisional decision saying that I intended to uphold the complaint. I said:

"The claim

When it turned down Miss G's claim, Casualty relied on several of its "General conditions" which apply to all sections of its policy:

- *"**You** must provide proper care and attention to **Your** pet at all times and take all reasonable precautions to prevent **Accidental Injury** or damage..."*
- ***You** must ensure that **Your** dog is under control at all times, and due care should be maintained to prevent **Your** dog from escaping and causing itself Accidental Injury or any other person or animals.*
- ***You** must ensure **Your** pet cannot escape or stray from **Your** property.*
- ***You** must ensure that any area in which **Your** pet is kept is secure and appropriately fenced or otherwise secured and all reasonable steps must be taken to prevent escape."*

"You" is defined in the policy as the person named as the "Policy Holder" in the Schedule". The policy holder is Miss G.

"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."

Casualty's original reason for turning down the claim was that Miss G's partner (rather than Miss G) had failed to take reasonable care. He had not paid "proper care and attention" or taken "all reasonable steps" to prevent the dog from escaping the house.

After our Investigator upheld the complaint, Casualty gave a different reason for rejecting the

claim. It said that Miss G had been inconsistent in her version of events about what happened when her dog was injured. It said the evidence suggested her dog had jumped from a moving vehicle.

I think it was unfair for Casualty to provide additional reasons for rejecting the claim that were not included in its original claim rejection. But in any event, I am not persuaded by any of its reasons. I'll explain:

*Casualty has not defined in the policy what it means by "proper care and attention" or "all reasonable steps". The test we use is set out in the leading legal case on 'reasonable care' – *Sofi v Prudential Assurance* (1993) 2 Lloyd's rep. 559. For Casualty reasonably to be able to turn down the claim on the basis that Miss G failed to take reasonable care, it needs to show she acted in a way which amounted to recklessness. That means that Casualty needs to show that Miss G recognised a risk but took it anyway by taking measures she knew to be inadequate or no measures at all.*

I don't consider that Casualty has shown that Miss G acted in a way that amounted to recklessness.

Miss G says, and I accept, that she closed and locked the front door behind her when leaving the house. She has a young child and I have not seen any evidence to suggest she did not, and would not, have closed her front door before leaving her house.

Miss G's work van was parked on the driveway outside her house. She has provided a video from her home's CCTV evidence of what happened. I have viewed the video, which shows her child standing in the house's open front doorway and her dog running out to and under the van as it began to move away. The video shows Miss G's partner promptly running out of the door to warn Miss G and then, distressingly, Miss G picking up her dog who was lying injured on the driveway.

Miss G says the CCTV records only human movement, which is why it showed both her child standing at the front door and her partner running out of the door. What she says is supported by the evidence she has provided from screenshots of the CCTV settings. Her partner had saved that entry, but others were automatically deleted so don't show her locking the door.

Miss G says, and I accept, that she could not have seen the dog running out suddenly while moving away because of her high position in the driver's seat of her panel van. I don't think that Casualty has provided any plausible evidence to show that she acted recklessly.

I think the CCTV evidence shows a very unfortunate sudden and unforeseen accident, which happened at a specific time and place and caused damage to one or more parts of Miss G's dog's body.

Casualty has suggested that Miss G's version of events has been inconsistent. It has referred to various entries from the dog's medical records to support this. Miss G says that the vet used the wrong information which was then read across to the two vet practices to which her dog was referred. She asked her vet to correct its records, which it did.

I think Miss G's explanation is correct for the following reasons:

Miss G's usual vet's first entry about the accident on 2 June 2021 says "Jumped out of a moving van and got caught under wheel. O [owner] bought straight down." But Miss G has sent the medical records that show that immediately after that entry it says: "History – AMENDMENTS TO CLINICAL NOTES: [dog] ran under a moving van and was knocked.

Unsure what knocked her. It was thought to be a wheel."

The hospital notes say the following day 3 June 2021: "Last night seen OOH [out of hours] – fell out of van landed under wheel." This is followed by a note that says "run over by van at roughly 10mph" and a later entry that says "Run over by car yesterday, has been stabilised at [the stated vet practice]." On 4 June 2021 the notes say the dog was referred "following a Road traffic accident".

The medical records history from the second vet to which the dog was referred says for 2 June 2021 at 20:24: History – Transfer from [Miss G's usual vet] post RTA. Os own van, child opened the door while rolling out of driveway, [dog] jumped out and went under the [vehicle] – O unsure if went fully under wheels or not."

The note immediately above does not clarify which door the dog came out of, which might explain the confusion. But Miss G's usual vet amended the notes to show the correct information. And we know from the clear CCTV evidence that the dog did run out of Miss G's front door under the van. So I don't consider Casualty can fairly reject the claim because the dog was not secured in a moving vehicle, as required under the Highway Code.

The first claim form signed by Miss G describes the dog's symptoms following the "Road traffic Accident". The second claim form which appears to have been completed by the second vet practice said "pet ran out under van pulling off. Pet immediately injured and could not walk". I don't think there is any inconsistency in Miss G's evidence.

In my view, this was a very unfortunate accident, and exactly the type of event that the insurance policy provided for. I intend to uphold this complaint and require Casualty to pay the claim, subject to the applicable policy excess and limit.

The claim handling

Miss G has described the impact on her of Casualty's handling of her claim:

"Having to pull up that video and re-live the events is extremely traumatizing for me and is having a huge emotional impact on my wellbeing. [My dog] has been hugely impacted by this accident and as a result we are still dealing with her health issue to this day. We are really wanting this claim now to be settled so that we can try to move past what happened and be able to focus on improving [my dog's] quality of life, without the ongoing financial concerns that have been caused by our insurance policy decline to cover us for what was clearly an unforeseen accident."

I consider that Casualty has handled this claim poorly and insensitively, given the circumstances. It is required by its regulator to deal with claims fairly and I don't consider it has done so. If it considered that Miss G had been inconsistent in her evidence and had failed to secure the dog in a moving vehicle then it should have referred to those issues in its response to the claim. It's not reasonable for it to raise new issues when its original reason for rejecting the claim is deemed to be unfair.

In response to this provisional decision, I invite Miss G to let me know whether she has been able to pay any of the vets' bills and, if so, when she paid them – with evidence of amounts and dates paid. If she has incurred interest charges either on a credit card or to the vets' practices, she should let me know, again with evidence. I will share this information with Casualty before reaching my final decision.

In line with our usual approach, I intend to award interest on the claim payment at the simple rate of 8% per year, but this will depend on whether the vets' bills have been paid and, if so,

whether Miss G has incurred interest at a higher rate than 8%.

I intend to award compensation for the distress and inconvenience that Casualty's handling of the claim caused Miss G at an already difficult and upsetting time for her. Based on the evidence that I have seen to date, I assess fair compensation to be £300."

Responses to my provisional decision

In summary, Miss G responded to say that:

- She was grateful for my thorough review of her claim. She had paid the vets' bills for her dog's treatment using child benefit money and a family loan.
- When she explained the circumstances, both vets waived the charges but they now require her to pay for further vet treatment up front.
- She paid the referral vet the following amounts: £986.17 on 8 February 2022 and £1,646.30 on 5 December 2022. She paid the vet hospital £3,683.18 on 8 July 2022. She has provided her bank statements as evidence, which we have sent to Casualty.
- She had switched insurers due to loss of trust in Casualty and the new policy did not cover treatments to manage her dog's injury.
- The whole ordeal has had a financial impact on her, meaning the family has gone without a holiday and she has also taken a loan. She has had to continue to fund her dog's injury treatment including pain relief, physiotherapy, and hydrotherapy. Her dog had since been diagnosed with other medical conditions, including a terminal illness. The new policy funded the treatment but she had to contribute 20% due to her dog's age. Recently, and very sadly, the difficult decision was taken to put her dog to sleep.

In summary, Casualty responded to say that:

- It was fair for it to provide additional reasons for rejecting the claim that were not included in its original claim rejection. It has been able to do this in other cases. In this case, it did so due to inconsistencies in Miss G's evidence and in response to additional information not provided to it at the time of its claims decision.
- Miss G has repeatedly not disclosed key evidence to it. When she did disclose evidence, this service has not referred evidence to Casualty at the earliest opportunity. Miss G's behaviour has impacted on its ability to assess her claim fairly.
- It accepts the claim and complaint has caused Miss G distress and inconvenience, but disputes that this was caused solely by Casualty. Therefore, it does not feel that £300 is a fair award of compensation.
- It explains why it maintains that Miss G's partner failed to take due care and attention and questions how Miss G's young child could have obtained a key and unlocked the door.
- It points out that the vet hospital claim for treatment in June 2021 was not submitted until March 2022. This was well outside the 90 days period within which claims must be submitted under the policy terms. It says its position was prejudiced by this because Miss G failed to respond promptly to its request for information and a continuation claim form for a different insurer was sent to it in error. This meant it could not properly assess the claim as required by its regulator and, because the vet had to chase it for an outcome the delay jeopardised its relationship with the veterinary practices. Had Miss G renewed her policy it would not have been able to take the full claim into account when setting the new year's policy premium.
- It asked me to pass on its condolences to Miss G on the sad loss of her dog.

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 too send my condolences to Miss G for her loss. I am sorry to have to repeat some distressing details about the accident given how recently she has lost her dog. But I also realise that she and Casualty both want this matter drawn to a close.

Having considered everything again I uphold this complaint for the reasons given below and in my provisional decision. I will focus on the points raised in response to my provisional decision.

The video evidence shows Miss G's dog escaping the house and running under her van. I have read Casualty's comments about why it considers her partner did not take reasonable care to prevent the dog from escaping. But I don't agree that it has shown that Miss G was reckless as it must do to show a lack of reasonable care or that her evidence about what happened has been inconsistent such that it is not reliable.

I don't require any additional evidence to decide this complaint, such as further detail about how Miss G's child was able to open the door. I don't think the evidence suggests that Miss G's partner failed to pay due care and attention to her dog or failed to supervise their child such as to allow the dog to escape. Rather, I am satisfied that this was an unfortunate and sudden accident at a specific time and place, and is one the policy is intended to cover. Casualty should pay the claim, in line with the policy limit and excess as set out below.

I have noted Casualty's point about it not raising the concern about inconsistencies in evidence and the Highway Act at the point of claim. It says it did not have the vets' notes with Miss G's amendment at that point. But it did have the other notes which it said supported that there were inconsistencies and I think could have raised these issues earlier than it did.

To be clear, I am not saying that Casualty could not respond to our assessment of the complaint. Rather, I was saying that it should fairly have explained its various reasons for rejecting the claim at the time it was submitted.

I've read Casualty's point about other cases we have decided. We consider each complaint on its own facts and merits, which is what I have done here. I do agree that we should have shared the new material evidence provided by Miss G earlier in our process. That is why I gave Casualty the opportunity to comment on all the evidence by both sharing it and issuing a provisional decision on this complaint. And I have thought about its comments in response to my provisional decision before reaching my final decision.

This service is an inquisitorial one, which means that we look into a complaint and decide the evidence we need to assess and decide a complaint. So there is not a requirement for the parties to 'disclose' all evidence as might be the case at the 'discovery' stage of a court process. I don't consider that Miss G failed to disclose evidence. She brought her complaint to us because she thought Casualty's decision to reject her claim was unfair. When our Investigator explained why she wasn't upholding the complaint, Miss G provided evidence to support her position.

Casualty has drawn my attention to the time taken by Miss G to provide details of the sequence of events. Casualty also says that the continuation claim was on the wrong claim form and was submitted more than 90 days after the dog's treatment. This is outside the time in which a claim must be submitted under the policy's terms.

I have explained to Casualty that where an insurer is refusing to pay a claim because of a breach in a policy condition (here, the condition is that a claim must be submitted to it within 90 days of the vet treatment) then it must also show that it has been prejudiced by that breach. This approach is underlined by the regulator's (Financial Conduct Authority) Insurance Conduct of Business rules (ICOBS).

I explained to Casualty that it was not clear to me that it has been prejudiced by the delay in the claim being submitted. I said this because Casualty had been provided with all the medical records and vets' bills. In any event, Casualty would still not have paid the claim even if submitted earlier.

In response Casualty says that it is concerned about its reputation with the vet practices. But it was able to explain the reasons for the delay had it needed to and also that it had decided not to pay the claim. I think any vet practice would be familiar with these types of insurance issues and I don't think Casualty has provided persuasive evidence that its relationship with the vet practices had been jeopardised.

Casualty mentioned that it would have taken into account the claim when setting the next year's policy premium. But it accepts that as Miss G did not renew her policy this is not relevant to the issue of prejudice.

Casualty says it was not able to assess the claim quickly as required by its regulator. But if required by its regulator to explain the time taken to review this individual claim then it could simply have pointed out that it had taken Miss G some time to return to it with the information it had requested and that there had been a delay in the submission of the continuation claim. I don't consider Casualty has provided persuasive evidence of its position being prejudiced such that it should not now fairly pay the claim.

I have shared with Casualty Miss G's evidence of the payments that she has made to the vets. These payments were made after she had submitted the claim and the requested information. So it is fair that Casualty pay interest at the simple rate of 8% per year on the amounts she paid, from the date she made each payment to the date it settles the claim subject to the applicable excess and policy limit.

I have considered the comments of both Miss G and Casualty about my proposed award of £300. I remain of the view that this is a fair and reasonable amount of compensation. I have explained to Miss G that I cannot compensate her for her decision to move to a new vet. She has accepted this.

I have not sought to compensate Miss G for issues that were outside Casualty's control. Rather I have reflected in my compensation award that Casualty's decision not to pay the claim caused Miss G material distress and inconvenience not least as it happened at an already difficult time following the dog's injuries. I have also reflected in my award the financial impact on Miss G when she could not afford immediately to pay the claim.

Putting things right

Within 28 days of the date on which we send it Miss G's acceptance of my final decision I require Casualty & General Insurance Company (Europe) Ltd to:

- Pay Miss G's claim for the vets' fees following her dog's accident, subject to any applicable excess and policy limit; and
- Pay interest on the resulting claim payment at the simple rate of 8% per year from the date Miss G paid each amount to the vets to the date of settlement (subject to the applicable excess and policy limit); and

- Pay Miss G £300 compensation for distress and inconvenience.

If Casualty considers it is required by HM Revenue & Customs to deduct income tax from the interest payment, it should let Miss G know how much it's taken off. If requested, it should also provide her with a certificate showing the amount deducted, so that she can reclaim it from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I require Casualty & General Insurance Company (Europe) Ltd to take the steps set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 19 July 2023.

Amanda Maycock
Ombudsman