

The complaint

Mrs M complains Casualty & General Insurance Company (Europe) Ltd (CGI) refused to pay her claim and asked for additional premiums after she made a claim under her pet insurance policy.

What happened

Mrs M took out a pet insurance policy for her dog with CGI; and did so online. Mrs M made a claim after her dog fell ill. CGI said that when Mrs M applied for her policy, she answered the question about her dog's breed incorrectly. They considered this entitled them to charge her the additional premium she would have paid had she answered the question correctly, and that they wouldn't settle her claim until this was paid. Mrs M was unhappy with this and brought her complaint to our Service.

Our Investigator felt Mrs M's complaint should be upheld. She explained Mrs M could have taken more care when applying for her policy. However, she didn't think CGI had provided enough evidence to show they would have offered Mrs M a policy on different terms had she answered the question about her dog's breed differently. Following this, CGI said they felt The Consumer Insurance (Disclosure and Representations) Act 2012 applied, and as such Mrs M was only entitled to a proportionate settlement.

Our Investigator wasn't persuaded to change her mind as she felt CGI hadn't provided sufficient evidence to demonstrate it would have charged Mrs M a higher premium had she answered the question correctly. CGI disagreed with our Investigator and asked for an ombudsman's decision.

I issued my provisional decision on 30 May 2023. In this, I explained I was minded to uphold this complaint because I didn't consider I could safely conclude Mrs M hadn't taken reasonable care when she declared the breed of her dog. Both parties had until 20 June 2023 to provide any further points and/or evidence they wanted me to consider.

Both parties accepted my decision. CGI confirmed they would consider the claims for splenic mass and vomiting and diarrhoea, in line with the terms and conditions of the policy. So, my decision has remained the same.

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.

Having considered everything, I'm upholding Mrs M's complaint – but for different reasons to our Investigator. I'll explain my reasoning below.

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. CGI thinks Mrs M failed to take reasonable care not to make a misrepresentation when she stated in her policy application that her dog was a Mongrel.

CGI hasn't been able to provide a copy of Mrs M's completed application. However, they have sent me screenshots of the question Mrs M was asked, and the information that would have been available to help her answer it.

I've seen that when completing the question regarding the type of breed, Mrs M could click for guidance if she was unsure of how to answer the question. Had she done that, the website would have said:

"A breed is a dog or cat whose parents are of the same breed.

A cross breed is a dog or cat whose parents are of two different breeds, please choose the most dominant breed of your pet. If your pet is a Mongrel the breed will be unknown. If you are unsure the breed of your pet please call..."

Mrs M says when she adopted her dog, the charity advised her to insure him as a Mongrel, so she followed that guidance. I've noted CGI consider Mrs M's dog was a German Pointer because that is what was detailed on the claim form. However, the claim form wasn't completed by Mrs M – it was completed by her vet. So, I'm satisfied Mrs M's understanding about her dog's breed has been consistent.

While CGI appear to have relied on the information provided on the claim form, I've been unable to ignore the fact that one claim form describes the breed as "German Pointer/Mix" and on another the same is written, but it looks like "mix" is crossed out. I've also noticed that throughout the many documents sent from the vet to CGI, the breed was listed as a Cross Breed, German Pointer or the breed wasn't listed at all.

Following my involvement CGI has argued that vets have a responsibility to keep accurate records. And this isn't something I'm disputing. However, I consider CGI also have a responsibility to ensure they have all the information they need to reach fair and reasonable outcomes when considering claims. But, from what I've seen, I consider CGI had enough conflicting information to warrant them asking further questions of Mrs M and/or her vet before determining that her dog was a German Pointer. Had they done so, they would have received information from the vet (that I've received during my investigations) confirming their systems listed the breed as a "Cross Breed".

The evidence suggests a mistake was made by Mrs M's vet when submitting evidence to support her claim. I appreciate CGI should have been sent accurate information, but I don't consider it would be fair to hold Mrs M responsible for this – especially considering CGI could have done more to seek clarification before finalising their decision on Mrs M's claim.

Unfortunately, Mrs M's dog has now passed away, so there is no way for his breed to be conclusively determined. But based on what I've seen, I don't consider it would be fair to treat Mrs M's claim as if he was a German Pointer.

The key point is whether Mrs M failed to take reasonable care when she gave the breed of her pet. Given the above, I'm not minded to agree that Mrs M misrepresented the breed of her dog when taking out her policy. As such, while CGI has now sent further evidence to demonstrate the premiums they would have charged if the dog was a German Pointer, I don't consider a proportionate settlement is a fair or reasonable way to settle Mrs M's claim. If there hasn't been a misrepresentation then the remedies set out in CIDRA don't apply.

Having reviewed everything, I consider Mrs M's claim should be settled in full unless there are any other policy exclusions that apply.

My final decision

My final decision is that I'm minded to uphold Mrs M's complaint.

To put things right Casualty & General Insurance Company (Europe) Ltd should settle Mrs M's claim in line with the terms and conditions of her policy.

If Mrs M has already settled the bill with her vet, CGI should reimburse Mrs M and pay her simple interest at 8% a year, from the dates she made payment to the vet until the date it is refunded.

If Casualty & General Insurance Company (Europe) Ltd considers they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs M how much they've taken off. They should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

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

Sarrah Turay
Ombudsman