

## **The complaint**

Miss T complains about Casualty & General Insurance Company (Europe) Ltd's decision to decline a claim for the cost of an operation on her dog.

## **What happened**

The background to this complaint is well known to both parties, so I'll provide only a brief summary here. Miss T and C&G can be assured that I've read and considered all the evidence and information we have on file.

Miss T has pet insurance underwritten by C&G to cover her dog. She made a claim in 2022 after the dog had to undergo surgery for a ruptured cruciate ligament. The cost was round £3,000.

C&G declined the claim. They said the policy didn't cover pre-existing conditions.

Miss T then made a complaint to C&G about their claim decision. But they maintained their position and said the decision to decline the claim was correct.

They said Miss T hadn't disclosed to them, when she bought the policy, that her dog had previously suffered associated problems with its hind legs.

They said, in short, that if she *had* disclosed the dog's previous clinical history, they would have added endorsements to the policy which would have precluded any payment of a claim relating to his issues the dog had suffered in 2022. And they'd now added those endorsements retrospectively.

Miss T wasn't happy with this outcome and brought her complaint to us. She wants C&G to pay the claim. She also said she had to take out credit to pay for the operation, which has cost her interest payments on the amount borrowed.

Our investigator looked into it and didn't think C&G had acted fairly in declining the claim. She said they should settle the claim, pay interest on the settlement amount and remove the endorsements from the policy.

C&G disagreed and asked for a final decision from an ombudsman.

## **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'll start with the terms and conditions set out in Miss T's policy. There's no dispute that these say C&G will not pay for treatment for conditions (including associated conditions) which first showed clinical signs or symptoms (whether the condition was diagnosed or not at that time) before the policy was taken out.

This is not an unusual policy term. Nor is it unfair. In short, you can't wait until your dog is ill

or injured, only then insure it, and expect the insurer to pick up the bill for the treatment.

The policy is also reasonably clear that C&G will only pay out for treatment or medication in the first 12 months after the date that the first signs or symptoms of an illness or injury were noticed.

I'm satisfied that Miss T would or should have been aware of these terms and conditions before she took out the policy. They are made clear to the customer on-line during the process of purchasing the policy and/or in the documentation sent to the customer before they confirm their purchase.

C&G have somewhat complicated matters because in my view, they've given three different (if to some extent related) reasons for declining Miss T's claim.

One - their final response to Miss T's complaint says, in essence, that Miss T didn't tell them about the dog's clinical history when she bought the policy. And so, they're entitled to amend the terms by adding endorsements – which they would have added had they known about the history at the time - and to deal with the claim on the basis of those amended terms.

Two - they've said at various points that the claim isn't covered because the condition (or associated condition) pre-existed the purchase of the policy in November 2018.

Three – and they've only raised this since we began to investigate the complaint – they say the treatment in March 2022 was for a condition that, if not pre-existing, at the very least manifested itself (showed clinical signs etc) more than 12 months before the claim was made.

I'll address these three potential reasons for declining the claim in the order I've set them out above.

#### *One – Miss T didn't tell C&G about the dog's clinical history*

To be absolutely clear, it's my view that C&G can't justify declining the claim on this basis. I'll explain why.

Under the Consumer Insurance (Disclosure and Representation) Act (CIDRA) – which is the relevant legislation – customers, when buying an insurance policy, are required to disclose information requested by the insurer.

If they don't, then - in brief - insurers are entitled to either cancel the policy and decline any claims (if they wouldn't have offered a policy had they known the truth) or settle any claims based on the terms they would have offered had they known the truth.

That appears to be precisely what C&G say they're doing in their final response letter to Miss T.

They're basically saying that had they known the dog's clinical history, they would have offered Miss T a policy, but it would have had endorsements to say they weren't covering certain conditions. And so, they're entitled to add those endorsements retrospectively - and treat the claim as if those endorsements applied (i.e. decline it, in this case).

The problem with that argument is that CIDRA requires a customer to answer – to the best of their knowledge – the questions put to them by the insurer. And C&G have shown us exactly what Miss T would have been asked when she made the on-line application for her insurance policy.

In short, she wasn't asked to declare the dog's clinical history. She was asked to give a yes or no answer to the question: "*Are you looking for insurance cover for pre-existing conditions?*". She was also asked – and I'll come back to this later – whether she was "*concerned that after 12 months a condition is no longer covered?*".

Miss T answered 'no' to both of those questions. And then in effect confirmed she didn't want cover for pre-existing conditions – or for treatment after the first 12 months – when she agreed the policy schedule C&G sent her.

In summary, Miss T didn't fail to disclose information requested by C&G. She answered their questions perfectly well. She wasn't asked to disclose her dog's clinical history. And so, the remedies allowed an insurer when a customer makes a misrepresentation – that is, applying different terms retrospectively after a claim is made – weren't available to C&G.

In other words, C&G can't decline the claim based on different terms - retrospectively applied - on the basis that Miss T didn't tell them about the dog's clinical history at inception of the policy. Because they didn't ask her to disclose the dog's clinical history at the time.

#### *Two – it's a pre-existing condition (or associated condition)*

When we look at this kind of case, we take the approach that - no matter what the policy terms say when strictly applied - it's unfair to decline a claim because a condition was pre-existing *if* the customer couldn't have reasonably known when they bought the policy that there was something wrong with their pet which might likely lead to some investigation or treatment.

The vet's notes show that surgery Miss T's dog had in 2022 was to repair a completely torn cruciate ligament in his left hind leg.

C&G say that issue was the same as – or associated with – a condition which manifested in 2018, before the policy was bought.

In May 2018, the vet's notes show that the dog had surgery on his right hind leg (the other one) to address luxation (movement or slipping) of the patella.

At the time, it was noted that the left patella was in place and that neither leg had any suspected tear or rupture in the ligaments. But the left patella did appear to have a palpable "bump".

As I say, the question for me is whether that meant Miss T was aware – at the time – that there were any signs or symptoms of the condition which eventually led to the surgery in 2022.

I don't think the vet's notes support the idea that the 2022 condition was the *same* condition which manifested in 2018. Luxation of the patella in one leg isn't the same condition as a ruptured ligament in the other leg.

It's arguable that they are associated conditions. C&G have referred to research which seems to show an association between patella luxation and other problems with the joint – including ligament tear or rupture.

But I come back to the question I have to ask – which is not whether the conditions are *in fact* associated, but whether Miss T might reasonably have known, in 2018, that the problems experienced with her dog's right patella (and the indications noted on the left patella) might lead to a need for treatment for ligament rupture in 2022.

If Miss T did suspect – or should have suspected – in 2018 (before she bought the policy) that there might be ligament problems further down the line, then when she answered the question about whether she wanted cover for pre-existing conditions in the negative, she was in effect taking a risk she was aware of.

I have to bear in mind that Miss T isn't a vet herself. I don't think it would have been unreasonable, in May 2018, for Miss T to have thought that the vet who treated the dog had addressed the condition which presented itself at the time and put things right. I can't see any suggestion in the vet's notes that they told Miss T future problems were likely and/or that the problem hadn't been fully addressed.

On balance then, I'm satisfied that when Miss T took out a policy in 2018, knowingly choosing not to pay for additional cover for pre-existing conditions, she would have been aware that any further luxation of the patella would not be covered. But I don't think she would have been aware that cover for ruptured ligaments wouldn't be provided.

That being the case, it's unfair to decline the claim in 2018 on the basis that the treatment provided was for a condition (or associated condition) which pre-existed the purchase of the policy.

As I say, I'm fully aware that the conditions may *in fact* be linked. But I don't believe Miss T suspected (or should have), when she bought the policy, that she wouldn't be covered for the kind of problem her dog suffered in 2022. Ultimately, it's for C&G to ensure their customers understand what they are buying for the premiums they spend.

And I note it's C&G's choice to ask the questions they do – in the way they do – at policy inception. If they had asked Miss T to disclose her dog's clinical history, I'm sure she would have done so. If not they'd be entitled to decline the claim now. And if she had, they would presumably have offered a policy with endorsements - which Miss T could have chosen to take or leave.

### *Three – the condition treated in 2022 first manifested in 2020*

I'm not entirely surprised that C&G only raised this argument after our investigator gave her first view on the case, because in my view it's arguably the weakest of the three.

In short, Miss T took her dog to the vets in September 2020 because he was limping and/or holding up his leg. The vet said thorough assessment was impossible because the dog was nervous and skittish. But there was no patella luxation apparent – and the problem might be due to a soft tissue injury.

The dog was on painkillers for a while and was undertaking hydrotherapy. X-rays under sedation and/or surgery were under consideration, but by early 2021 the dog appeared to have recovered and was reportedly "*doing fine*". Pain medication and any other treatment ceased in around February 2021.

It's C&G's view that this was the first manifestation of the problem eventually treated with surgery in March 2022. And therefore, the 12 months of cover for any one condition provided under the policy had run out some time around August 2021 – 12 months after the first consultation in September 2020, at which Miss T said the dog had been struggling for the previous three weeks.

However, there's more than a year between the end of treatment / observation in February 2021 and the consultation in March 2022 which led to the surgery being undertaken. It's inconceivable that Miss T allowed her dog to suffer for a year or more before returning to the

vets. So, I have to assume the problem in late 2020 / early 2021 did in fact clear up entirely.

There's nothing in the vet's notes - partly due to the difficulty examining the dog – to suggest the dog already had torn or ruptured ligaments in late 2020 / early 2021. And as I say, it's very unlikely that if the same condition (or an associated one) persisted through to March 2022, Miss T would have taken no further action in the meantime.

In short, there's no justification in the veterinary record – or in Miss T's behaviour – to assume that the 2020/21 condition was the same as (or associated with) the issues which led to the surgery in 2022. And that being the case, it would be unfair for C&G to decline Miss T's claim on that basis.

### **Putting things right**

For the reasons I've given above, I'm satisfied on balance that it was unfair for C&G to decline Miss T's claim for the costs associated with the surgery in March 2022.

So, C&G should now settle the claim, subject to any benefit limits set out in the policy terms.

Because Miss T has been deprived of the money – and has had to borrow to cover the cost of the surgery - C&G should also pay interest on the settlement amount at 8% simple.

This should be calculated from the start of May 2022 – when the claim ought reasonably to have been paid – to the date the payment is now made.

C&G should also remove from Miss T's policy the endorsements added retrospectively after she made the claim.

As I've explained above, they weren't entitled – under CIDRA – to add these endorsements because Miss T made no misrepresentation to them when she bought the policy.

### **My final decision**

For the reasons set out above, I uphold Miss T's complaint.

Casualty & General Insurance Company (Europe) Ltd must:

- settle Miss T's March 2022 claim, subject to any benefit limits set out in the policy;
- pay interest on the settlement amount at 8% simple, calculated from 1 May 2022 to the date the payment is eventually made; and
- remove from Miss T's policy the endorsements added after she made the March 2022 claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 5 September 2023.

Neil Marshall  
**Ombudsman**