

The complaint

Miss P complains about Casualty & General Insurance Company (Europe) Ltd (CG) declining a claim under her pet insurance policy for treatment of her dog.

References to CG include their agents who administer the policy.

This decision only covers Miss P's complaint to this service about CG's decline of her claim for treatment of her dog in August 2022. It doesn't cover other issues contained in CG's final response issued in February 2023 (use of the dog for breeding and third-party liability).

What happened

In August 2022 Miss P noticed her dog licking its tail. She took the dog to a vet, who noted two cysts on the dog's tail. The vet prescribed a course of treatment (medication) for the cysts. Miss P made two claims for the cost of treatment (£266.69 and £626.55).

However, CG said they wouldn't accept the claim, as review of the dog's clinical history indicated a previous consultation in December 2020 for lumps (suspected cysts) on the dog's back. They said they showed the dog had a pre-existing condition, before the policy was taken out. Pre-existing conditions weren't covered under the policy.

Miss P was unhappy about CG's decline of her claim, as she didn't think the previous clinical history indicated a pre-existing condition. Her vet also provided a statement saying the masses found in December 2020 were suspected to be possible cysts but were unrelated and separate to the cysts on the dog's tail first noted on a visit in January 2022. And there was no causal link between the masses on the dog's back and the later cysts on the tail. So, Miss P complained to CG.

CG didn't uphold the complaint. In their final response they said when Miss P took out her policy, the terms and conditions provided to her made it clear pre-existing conditions (or where there were clinical signs of existence) wouldn't be covered. CG referred to information in the Insurance Product Information Document (IPID) and the *Policy Definitions, Veterinary Fees* and *General Exclusions* sections of the policy which stated pre-existing conditions weren't covered.

Miss P then complained to this service, Miss P said CG had unreasonably declined her claim, as the vet's view supported the case the dog didn't have a pre-existing condition when the policy was taken out. She wanted CG to settle her claim and reimburse her for the cost of treatment for the cysts on the dog's tail in August 2022.

Our investigator upheld Miss P's complaint, concluding CG hadn't acted fairly. The small lump noted on the dog's back in December 2020 was suspected to be a cyst or scab, and by February 2021 no lump was felt and only scabs seen. Based on this, Miss P couldn't reasonably have thought this would lead to her having to make a claim for the cyst on the dog's tail, first noted in January 2022. The investigator also found persuasive the vet's statement the two conditions weren't linked, as their professional opinion.

To put things right, the investigator thought CG should pay Miss P's claim, in line with the policy limit and any applicable excess. Interest should be added from the date of the claim to the date of settlement.

CG disagreed with the investigator's conclusions, and requested an ombudsman review the complaint. In disagreeing, they referred to the dog's previous clinical history and the suspected cysts (December 2020) and cysts (treatment in August 2022, but first diagnosed in January 2022). CG also referred to policy terms and conditions, specifically the definitions of the terms *Associated Condition* and *Lump*. Given the definitions, CG said the lumps in December 2020 (prior to the policy starting) were suspected cysts and the masses tested in January 2022 were confirmed to be cysts, they were considered to be associated conditions. As cover wasn't provided for associated conditions (or pre-existing conditions) they maintained their decline of the claims was correct.

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.

My role here is to decide whether CG have acted fairly towards Miss P.

The key issue in Miss P's complaint is whether CG acted fairly in declining her claim for treatment of her dog. CG's view (as set out in their final response) is that they correctly declined the claim, on the grounds the dog's clinical history indicated a pre-existing condition (they refer to a previous consultation indicating suspected cysts on the dog's back in December 2020. As a pre-existing condition, it was excluded from cover under the policy. Miss P's view is that the previous cysts weren't linked to the subsequent cysts on the dog's tail (first noted in January 2022). She points to the opinion of her vet that the two incidences were separate and unrelated.

I've considered both views carefully, including the relevant terms and conditions of the policy (particularly those referred to by CG in their final response) together with the supporting information and evidence, including Miss P's vet's opinion and the clinical history of Miss P's dog. In their final response, CG refer to the following statement in the IPID:

"What is not insured?"

Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition

CG refer to the Policy Definitions which state a Pre-Existing Condition means:

"...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."

Similar wording appears under the *Veterinary Fees* heading, where there's a sub-heading *What is not insured?*

CG also refer to the *General Exclusions* section of the policy that includes the following:

"As with all insurance policies, there are exclusions and conditions that apply to Your coverage. We have listed below the exclusions that apply to all sections of Your Policy coverage..."

The following exclusions apply to the whole of this Policy. We will not pay claims for any of the following reasons:

- If we are made aware of any Pre-existing Conditions at the time of a claim, these Pre-existing Conditions will not be covered, and We reserve the right to add a relevant endorsement(s) to your Policy in respect of these Pre-existing Conditions.”*

I've then considered the question of whether the dog did have a pre-existing condition, specifically, the presence of cysts. Looking at the clinical history, particularly the issue in December 2020 that CG referred to when declining the claim, there's the following reference in the clinical notes for that date:

“...Owner a month ago noticed lump on back – almost like a scab – 4 inches away from tail near midline...

...Examination: 2 small scabs...look like possible superficial pyoderma on initial inspection but once scabs off and palpate underlying skin can feel two small lumps – suspect small cysts beginning...

...Assessment: suspect start of 2 skin cysts...”

There's a further note from a visit in February 2021 that notes the vet can't feel the lumps previously noted in December 2020.

I've also considered Miss P's vet's opinion. Their statement says:

“...[dog] attended the surgery on 1 December 2020 for an appointment related to lumps on his back...whilst the masses were suspected to be possible cysts, they are unrelated and separate to the cysts on his tail which were first noted on a visit on 25 January 2022. There is no causal link between the masses noted on its back and the cysts which later occurred on its tail.”

As Miss P's vet examined the dog in December 2020, February 2021 and then in August 2022, then I'm more persuaded by their view the suspected cysts in December 2020 weren't related (or linked to) the subsequent cysts on the tail in August 2022. Particularly given the cysts in December 2020 – which were only suspected – would seem to have disappeared when the dog was examined in February 2021 (the vet couldn't feel the lumps previously noted).

I've also considered the general principle, where an insurer relies on an exclusion, that onus is on them to show it's reasonable to apply it. Taking all these points into account, I'm not persuaded CG have shown enough to apply the exclusion for a pre-existing condition in the circumstances of this case. So, I've concluded CG acted unfairly to apply the exclusion to decline Miss P's claims.

While CG referred in their final response to the decline of the claim on the grounds the dog had a pre-existing condition, in their response to our investigator's view they referred to other policy terms and conditions, specifically the definitions of the terms *Associated Condition* and *Lump*. Given the definitions, they consider the lumps in December 2020 (suspected cysts) and the masses in January 2022 (confirmed to be cysts) to be associated conditions.

As cover wasn't provided for associated conditions (or pre-existing conditions) they maintain they acted correctly to decline the claims.

While the claims weren't originally declined (nor in their final response) on the grounds of associated conditions, I have considered what CG have now said. They refer to the following definitions, first that of *Associated Condition*:

"Associated Condition means 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 of Lump."

The definition of *Lump* is given as:

"Lump means any growth, tumour, cyst or general lump(s) that appear(s) on or in Your Pet's body. Any Lump that has the same diagnoses or displays the same Clinical Signs or Symptoms as a previous Lump will be treated as an Associated Condition."

I've considered these definitions in the context of the circumstances of this case. Looking at the wording of the definition of *Associated Condition* I don't believe the incidences in this case would reasonably be held to fall within the definition. I say this because the two incidences weren't a recurring illness or accidental injury or lump. Nor were they – given the vet's opinion – *related* (my emphasis) to a previous illness or accidental injury or lump or caused by a previous illness or accidental injury. And the clinical notes don't indicate the lumps had the same diagnosis.

So, I've concluded CG can't reasonably apply (even retrospectively) the *Associated Condition* exclusion to decline the claims.

Given these conclusions, I've thought about what CG need to do to put things right. As I don't think they can rely on the exclusion for pre-existing conditions, they should settle the claim in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

If CG settle the claim, they should also pay interest at a rate of 8% simple on the amount accepted, from the date Miss P paid the vet's bill, to the date they settle the claim.

My final decision

For the reasons set out above, my final decision is that I uphold Miss P's complaint. I require Casualty & General Insurance Company (Europe) Ltd to:

- Settle Miss P's claim in line with the remaining terms and conditions of the policy, including any limits on the costs of treatment and any policy excess (as appropriate).

If Casualty & General Insurance Company (Europe) Ltd settle the claim, they should also pay interest at a rate of 8% simple on the amount settled, from the date Miss P paid the vet's bill to the date they settle the claim.

If Casualty & General Insurance Company (Europe) Ltd consider they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Miss P how much they've taken off. They should also give Miss P 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 Miss P to accept or reject my decision before 17 August 2023.

Paul King
Ombudsman