

The complaint

Miss C has complained that Casualty & General Insurance Company (Europe) Ltd (C&G) unfairly declined a claim on her pet insurance policy.

What happened

Miss C took out a policy with C&G for her dog, T, on 5 October 2020. The policy has since been renewed annually.

In April 2022 Miss C made a claim to C&G after T had a knee operation on his right hind leg due to a patella luxation (dislocated kneecap). C&G declined the claim on the ground that it was a pre-existing condition because the dog had been lame in his left hind leg in October 2020. Miss C said the lameness in the left hind leg appeared to have resolved itself after a course of pain relief and so wasn't a pre-existing condition. After Miss C brought a complaint to this service, another Ombudsman upheld the complaint. She didn't think the lameness noted in 2020 and the patella luxation in 2022 were the same condition.

In August 2022 T was lame again in his right hind leg and the vet diagnosed a torn cruciate ligament. T had surgery for that in September 2022. Miss C made a claim to C&G for that. C&G declined the claim. It said T had a pre-existing condition because he had been lame previously in his left hind leg and the policy didn't cover pre-existing conditions.

After Miss C brought another complaint to this service, C&G said it was willing to settle the claim in line with the policy terms. It said it would consider this a continuation claim of that made for the patella luxation because it thought the right stifle joint had been weakened by the dislocated kneecap and subsequent surgery. It offered to pay £1,229.72 being the balance of the policy limit of £4,000 plus 8% interest from 3 October 2022 being the date when the claim was made to the date of acceptance of the offer. Our Investigator thought this was reasonable.

As Miss C didn't agree that the second claim was a continuation of the first, the matter has been referred to me.

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.

The terms of the policy state that up to £4,000 will be paid in respect each condition during the policy period. I need to decide whether C&G has treated Miss C fairly in saying that the patella luxation and the cruciate ligament damage were part of the same injury.

According to the clinical history the patella surgery was carried out on 27 April 2022. On 21 May 2022 Miss C told the vet that T was "*limping a little*" and had a sore right hind leg. After examination the vet's assessment was that this was possibly due to an inflammation related to injury or infection. On 24 May the vet was concerned about cellulitis given there was

“significant swelling of lower limb”. In August T was due to start physiotherapy but that was cancelled due to T’s lameness. On 14 September the vet noted a positive cranial draw in right hind leg. I understand that is used to diagnose a ruptured cranial cruciate ligament in dogs. On 17 September after cruciate surgery Miss C said T was *“happier this time compared to the last operation he had.”*

Unfortunately the vet who treated T before his cruciate surgery could not be contacted for his opinion as to whether the patella luxation and torn cruciate ligament should be treated as one condition. The vet who operated on T for cruciate surgery commented as follows:

“In my experience, most insurance companies will class patella instability as a separate condition to cruciate disease. It is possible for some dogs to develop patella instability as a result of a cranial cruciate injury. This is due the increased internal tibial rotation caused by the loss of the support and stabilisation from the cranial cruciate ligament. This was not the case for [T], as his patella instability preceded the cruciate injury. From my understanding, [T] initially did well and his lameness improved following his original patella surgery. It was only later that he deteriorated and was diagnosed with a failed cranial cruciate ligament. This seems to suggest that the two conditions were independent from one another. The original implants used to correct the luxating patella had to be removed to allow use to perform the TPLO surgery.”

According to C&G’s in-house specialist T’s right stifle (knee) had been weakened by the patella luxation and subsequent surgery which led to the cruciate ligament rupture.

Where there is conflicting evidence, I have to weigh up which is more persuasive. There are two factors which lead me to believe that it’s more likely than not that the patella luxation and cruciate repair operation should be regarded as the same condition. Firstly, there’s the fact that there was only a four-month gap between the patella operation and the dog being diagnosed with a cruciate rupture in the same leg. Secondly T doesn’t seem to have made a good recovery from the first operation. He was limping for at least another month and presumably was still not right in August 2022 which was why he was due to have physiotherapy treatment.

On balance I’m satisfied that it is not unreasonable for the patella luxation and the cruciate rupture to be regarded as the same condition and subject to the monetary limit of £4,000. That means a further £1,229.72 is due to Miss C.

In view of the delay in settling this part of the claim I also think it’s fair that C&G should pay 8% interest on the settlement amount of £1,229.72 from 3 October 2022 being the date when the claim was made to the date of acceptance of the offer.

My final decision

For the reasons set out above, I uphold this complaint and require Casualty & General Insurance Company (Europe) Ltd to pay Miss C the sum of £1,229.72 plus simple interest at a rate of 8% on that amount from 3 October 2022 being the date when the claim was made to the date of acceptance of the offer.

If Casualty & General Insurance Company (Europe) Ltd considers that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss C how much it’s taken off. It should also give Miss C 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 C to accept or reject my decision before 29 August 2023.

Elizabeth Grant
Ombudsman