

The complaint

Mr T has complained about the way that Casualty & General Insurance Company (Europe) Limited (C&G) dealt with a claim under his pet insurance policy and the cancellation of the policy.

What happened

Mr T took out a pet insurance policy for his dog in December 2022. This was done through a price comparison site.

When making the application, Mr T was asked about the dog's breed and given a choice of three options. They were Breed, Cross-Breed and Mongrel. He opted for Mongrel. He was then asked what size the dog would be when fully grown. The options were small (up to 10kg), medium (10-20kg) and large (over 20kg). He chose medium size.

After he made a claim under the policy, C&G noticed that according to the claim form the dog weighed 23kg and so was a large mongrel instead of a medium one.

C&G said Mr T had made a misrepresentation as to the dog's weight when taking out the policy. It said if it had been provided with the correct information, the premium would have been £35.43 a month instead of £18.56. It made a proportionate settlement of the claim reflecting the proportion by which the annual premium was underpaid as against the annual premium Mr T should have paid in the policy year if correct information had been given.

Mr T cancelled the policy. C&G said he owed it £350.37 in respect of outstanding premiums after cancellation and an overpayment of the claim. Mr T paid that but complained that he had been overcharged.

As C&G didn't change its decision, Mr T brought his complaint to the Financial Ombudsman Service. Our Investigator upheld the complaint. He thought it was unfair for C&G to charge Mr T the higher premiums at cancellation after proportionately settling the claim. He recommended that C&G should recalculate the outstanding balance based on the original premiums payable.

Since C&G didn't agree, 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 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.

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.

C&G thinks Mr T made a misrepresentation when he answered that his dog was a 'medium mongrel' when taking out this policy.

I've looked at screenshots C&G say are representative of what Mr T would have seen at that time. On balance, I find that Mr T didn't take reasonable care when answering this clear question about the size of the dog. I say this because:

- The dog was over 6 years old when the policy was taken out and so he was fully grown.
- According to clinical records he had weighed over 20kg since 2019.

On balance, I think the most appropriate answer to this question would have been "large mongrel".

C&G has provided evidence that shows if the question been answered correctly, they'd still have provided cover but charged a higher policy premium.

This means I'm satisfied that Mr T's misrepresentation was a qualifying one.

C&G hasn't been clear in how they've classified Mr T's misrepresentation here. I consider it to have been a careless misrepresentation - rather than deliberate or reckless. I say this because I believe it to have been a mistake by Mr T rather than an attempt to deliberately misrepresent the size of the dog he wanted to insure.

I've then looked at the actions C&G can take in accordance with CIDRA. As a claim had been made here, under CIDRA, C&G was entitled to settle the claim proportionately. C&G did that and deducted a percentage of the underinsurance amount from the claim.

The key point is that CIDRA doesn't give insurers the right to charge an additional premium. So, C&G shouldn't have required Mr T to pay the increased premium instalments on cancellation. This isn't listed as an option under CIDRA in this scenario.

The policy says the full annual premium will be due on cancellation if a claim has been made. I therefore accept that it would be reasonable for C&G to claim from Mr T the remaining premiums due for the policy year at the original monthly rate.

Putting things right

To put things right I think C&G should refund to Mr T the amount by which it increased his premium as a result of the error in specifying the dog's size.

As Mr T has been unfairly deprived of the use of that sum, I also think C&G should add simple interest at the rate of 8% a year from the date Mr T paid that sum to C&G to the date it makes the payment to him.

HM Revenue & Customs requires C&G to deduct tax from this interest. C&G must give Mr T a certificate showing how much tax it's taken off, if Mr T asks for one.

My final decision

For the reasons set out above, I uphold this complaint and require Casualty & General Insurance Company (Europe) Limited to do as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 November 2023.

Elizabeth Grant
Ombudsman