

The complaint

Mrs B complains that Casualty & General Insurance Company (Europe) Ltd ('C&G') turned down her pet insurance claim and placed exclusions on her policy.

What happened

In May 2021 Mrs B took out pet insurance with C&G. In 2022 her dog needed vet treatment for left foreleg weakness. But C&G declined Mrs B's claim because it said the dog's condition was pre-existing under the policy's terms. It referred to treatment to the dog's hips and an accident, both of which had happened before the policy had started.

C&G also said that Mrs B should have told it about her dog's pre-existing conditions when she took out the policy. As it said this was a misrepresentation C&G added several specific medical exclusions to the policy, backdated to the May 2021 start date.

Mrs B said she'd not been asked specific questions about her dog's medical conditions and so could not have given inaccurate information. She provided C&G with evidence from her vet disputing that the dog's condition was pre-existing. C&G maintained its position.

Because of the claim decision and the exclusions Mrs B decided to cancel the policy in April 2023. She asked us to investigate her complaint.

Our Investigator upheld Mrs B's complaint. He thought Mrs B's vet's evidence was persuasive and supported that the dog's condition was not pre-existing under the policy's terms. He said that C&G should pay the claim, subject to the policy limit and excess together with 8% simple interest and pay Mrs B £200 for her distress and inconvenience. He didn't think that C&G had shown that Mrs B had made a misrepresentation. As such, he concluded that C&G should remove the exclusions if Mrs B reinstated her policy.

Mrs B accepted our Investigator's conclusions but C&G did not. It provided evidence from its in-house vet in support of its position. Mrs B's vet commented on that evidence and explained why he considered that the dog's condition had not been pre-existing or associated to any earlier treatment or entries in the medical records.

Our Investigator said the new evidence did not change his view that the complaint should be upheld. As C&G did not agree the complaint has been referred to me for review.

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 claim

Industry rules require insurers to deal with claims promptly and fairly, and not unreasonably reject a claim. I've taken this into account when considering how C&G has applied the policy terms in this case.

Mrs B's policy does not provide cover for pre-existing conditions. This is very common in pet insurance; insurers don't want to cover something that's already happened, since the aim of insurance is generally to protect against the risk of something happening in the future.

C&G's policy terms exclude cover for *"Any claim for Illness or Accidental Injury that relates to a Pre-Existing Condition."* The policy defines the relevant terms as follows:

"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."

"Condition Means an Illness or Accidental Injury or any Symptoms or Clinical Signs of an Illness or Accidental Injury affecting your pet."

"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 or Lump."

So the key issue is whether the treatment costs Mrs B claimed for related to something that had already started before she took out her policy. I will summarise what I consider to be the key points from the evidence given by C&G's vet and by Mrs B's vet.

C&G has referred to entries in the dog's medical records from 2018 referring to hip dysplasia in both hips. C&G's vet says that the dog was likely to develop osteoarthritis as a result. The vet also referred to a note in March 2021 saying the dog was *"slowing up - start of OA (osteoarthritis)"*. So C&G's vet considered osteoarthritis to be a pre-existing condition.

Mrs B's vet disputed C&G's vet's opinion and said the osteoarthritis is almost always secondary to another problem. In any event, he said there is no evidence that osteoarthritis in one joint initiates its development in another joint. He said there was also no evidence to link a hindlimb issue, such as hip dysplasia to osteoarthritis or other orthopaedic problems in the forelimbs. He said that C&G's vet's link between the hindlimb and forelimb issues was speculative and went further to say there was a *"zero link"* between hindlimb orthopaedic problems and the development of humeral intercondylar fissures ('HIF') in the canine elbows – and it was HIL for which he had treated Mrs B's dog. The entry about the dog slowing up and possible osteoarthritis was purely speculative and did not reference his forelimbs.

C&G's vet has also referred to an entry in July 2022 when Mrs B took her dog to be assessed for the forelimb lameness that is the subject of the claim. The entry mentions that the dog had ongoing lameness and stiffness elsewhere, having gained weight (which the vet said can worsen joint disease). The vet referred to a possible injury which occurred between June 2020 and June 2021, when the dog had fallen in a ravine (before the policy had been taken out). The vet said previous trauma to the forelimbs and hip dysplasia could cause osteoarthritis.

Mrs B's vet disagreed saying the reference to the fall in the ravine was vague, without specific timing. He had earlier said that the dog's treated condition of a stress fracture of the humerus would have produced pain and lameness had it been present previously. He repeated that hip dysplasia does not lead to arthritis or any other joint disease in the forelimbs.

C&G's vet went on to say that osteophytosis shown on the radiographs taken in 2022 show new bone formation which is usually in response to arthritis. The radiographs also showed a potential weakening or fissure at the humeral condyle, and a potential osteochondritis dissecans (OCD) lesion of the shoulder, with a CT scan required to investigate further.

C&G's vet said the hip dysplasia, slowing down and stiffness together with joint supplements prescribed to Mrs B's dog suggested he had osteoarthritis. The ravine fall trauma could have caused damage which predisposed arthritis development and osteoarthritis in Mrs B's dog was a pre-existing condition.

In response Mrs B's vet said the radiographs showed osteophytosis of the elbow and the presence of fissures. There had been no elbow arthritis or chronic lameness noted before the May 2021 policy start date. The HIF is a chronic stress fracture and can cause persistent lameness, but this had not been noted in the dog's medical records before the policy started. In Mrs B's vet's opinion, it was likely the fissures occurred after that date.

Mrs B's vet added that the mild hip issues reported in 2018 had not required treatment and had no bearing on the claim. There was no hard evidence the dog had injured his elbows when falling down or had osteoarthritis in his elbows. Even if the dog had had osteoarthritis in the elbows this is separate to the development of HIF.

Although I have summarised the vets' remarks, I have considered and weighed all the evidence I have received. Having done so, I find Mrs B's vet's evidence to be more persuasive having been made after seeing and treating the dog. In addition, I find Mrs B's vet to have provided persuasive evidence to explain why the rear hip dysplasia would not have caused problems with the forelimbs. Even if the dog had osteoarthritis (which was speculative) Mrs B's vet has clearly explained why this would not be linked to the HIF, being the condition for which Mrs B's dog had been treated and was the subject of the claim.

The reference to a fall in the ravine seems to me to have been an incidental remark made by Mrs B when her dog was being assessed for forelimb lameness. I think it is likely, on balance, that Mrs B would have taken her dog to the vet had she been concerned by the fall or any lasting injury to her dog, not least as she regularly took her dog to the vet for any noted issues. Mrs B's vet said that the dog would have had pain and lameness had the stress fracture been present previously, but there is not any record of this in the clinical notes after May 2021.

As such, I don't find that C&G has shown that the dog's HIF was a pre-existing condition or an associated pre-existing condition. It follows that the fair outcome is for C&G to pay the claim, subject to the policy limit and any excess. As Mrs B has paid the vet's bill, C&G must add simple interest to the settlement at the rate of 8% per year as set out below.

The exclusions

C&G said that it had put several exclusions on the policy backdated to the policy's start date of 1 May 2021. The exclusions were, in summary, for claims in respect of left fore trauma and associated conditions; all claims with respect to the hips and pelvis and all associated conditions; and all claims with respect to degenerative disease.

The relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). In line with CIDRA, I would usually consider it fair for an insurer to apply a retrospective exclusion if its policyholder didn't take reasonable care in answering its clear questions when they bought the policy and the insurer can show it would have added the exclusion had it been given the information.

In this case I don't consider C&G has shown that it asked Mrs B a clear relevant question that would have enabled her to tell it about her dog's previous medical history. Instead it says during the policy application it asked Mrs B to read and tick a box to confirm that she had read the "*assumptions*" and policy terms.

I don't consider that an assumption is a clear question that would enable Mrs B to tell C&G about her dog's health. So I don't think C&G has shown that Mrs B failed to take reasonable care not to make a misrepresentation. As a clear question was not asked it is not necessary for me to consider whether C&G would have offered the policy on different terms.

It follows that I don't consider C&G was entitled to backdate the policy exclusion for claims with respect to the left fore trauma, hips and pelvis and degenerative disease, with the respective associated conditions to the policy's start date. Mrs B cancelled the policy because of C&G's response to the claim and the addition of the exclusions. If she decides to reinstate the policy then C&G must remove the exclusions with effect from the policy's original start date of 1 May 2021. I think it is fair for C&G to reinstate the policy from the date it was cancelled, provided Mrs B requests the reinstatement within two months of the date of this final decision and pays the backdated premium that is due.

Compensation

I agree with the Investigator that Mrs B suffered distress and inconvenience when C&G decided not to pay her claim for her sizeable vet's bill. I think £200 compensation is fair and reasonable.

Putting things right

I require Casualty & General Insurance Company (Europe) Ltd to:

- Pay Mrs B's claim for her dog's forelimb lameness (HIF) subject to the policy limit and any excess; and
- Pay interest on the resulting claim payment at the simple rate of 8% per year from the date Mrs B paid the vet's fees until the date of settlement (subject to Mrs B providing evidence to C&G of the date she paid the fees); and
- Agree to reinstate the policy with effect from the date it was cancelled and to remove any retrospective policy exclusion that it applied following the HIF claim, subject to Mrs B requesting reinstatement within two months of the date of this final decision and her paying the backdated premiums; and
- Pay Mrs B £200 compensation for distress and inconvenience.

If C&G considers it is required by HM Revenue & Customs to deduct income tax from the interest payment, it should let Mrs B know how much it's taken off. If requested, it should also provide her with a certificate showing the amount deducted, so she can reclaim it from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I require Casualty & General Insurance Company (Europe) Ltd to take the steps set out in the *"Putting things right"* section above.

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

Amanda Maycock
Ombudsman