

The complaint

Mr H's complaint is about a claim he made under his Casualty & General Insurance Company (Europe) Ltd ('C&G') pet insurance policy and the actions C&G took thereafter.

Mr H says C&G treated him unfairly.

What happened

Mr H took out pet insurance with C&G through a comparison website. During the course of the sale, he was asked if his pet was a crossbreed. He answered 'yes' to that question. Later in the policy year he made a claim on the insurance for treatment to his pet. When the claim was reviewed, it was noted that the pet- a cockapoo- was specified as a medium mongrel on C&G's records and that this was incorrect.

C&G said that Mr H had misrepresented the position to them when he took out insurance and that he should have specified 'no' to the question asked about whether his dog was a crossbreed. They said the questions asked had an information box explaining that he should only select 'yes' if the breed of his dog wasn't listed in the drop-down box below. They said that as cockerpoo was listed in this case so he should have selected 'no' because his dog would be considered a pedigree.

C&G said that if Mr H had provided them with the correct information, the policy premium would've been higher to recognise the breed of the dog. As such they felt that Mr H had made a qualifying misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 and that they were entitled to pay only a proportion of his claim. They also increased Mr H's policy premiums to reflect what they said should have been payable by him had he provided them with the correct information. Unhappy, Mr H referred his complaint to the Financial Ombudsman Service.

Our investigator considered Mr H's complaint and concluded that C&G had not shown that he'd not taken reasonable care when answering the questions asked of him at the point of sale. She said the question wasn't clear and there was no requirement for Mr H to have reviewed the tool setting out what he should do if he wanted more clarity on the question or gone on to search the box below. As such the investigator directed C&G to pay Mr H's claim in full in line with the policy limits, together with interest at 8% per year simple until the claim is settled. She also said that C&G needed to reinstate the policy to the original premiums applied and refund Mr H the increased amounts charged together with interest at 8% per year simple. C&G doesn't agree, so the matter has been passed to me to determine.

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.

Having done so, I uphold Mr H's complaint against C&G for broadly the same reasons reached by the investigator. This is why.

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.

And 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 H failed to take reasonable care not to make a misrepresentation when he took out the policy by selecting 'yes' to the question "*Is (pet's name) a crossbreed?*" and this wasn't correct. They say the screen also said:

"Sometimes when crossbreeds are bred together for a long time they are eventually considered a new pedigree breed so if you're unsure, select 'No' and check if your dog's breed is listed. If your dog's breed isn't listed as a pedigree or if you don't know the breed of your dog, select 'Yes'.

The screen also goes on to say:

"Important: you may be asked by the provider to confirm the primary or both breeds of your pets parents if known, This can impact the process you have seen on our website."

C&G say that Mr H has confirmed to them he was aware of the prompt and chose not to check whether his pet was listed in the box below. Had he done so, his dog's breed would have been identified as a pedigree, so he would've known to answer 'no' to the earlier question asked of him. As such they say that he made a qualifying misrepresentation which was careless and had he not done so the policy would not have been offered to him on the premium he was paying.

I've looked at the question C&G asked when Mr H took out the insurance and the submissions he's made. Mr H says he didn't answer 'no' to the question asked or search for his dog's breed in the box below because he was clear that his dog was a cross breed- it was a cross between a cocker spaniel and a poodle. As such he says he answered the question honestly and correctly. I've thought about what he's said and looked at the screen carefully and I don't think he answered the question asked incorrectly. The guidance in the box next to the questions says "*so if you're unsure*" in relation to whether Mr H's dog is now considered a pedigree, the customer should check if the dog's breed is listed. But Mr H wasn't unsure. He thought it was clear his dog was a cross breed and I think that's a reasonable assumption. The fact that C&G and or other insurers might consider the breed to now amount to a new pedigree isn't something he should have reasonably known. And there was no additional box for him to specify his dog's mixed breed, so I don't think it was reasonable for him to do anything other than answer the question in the way that he did. As such I don't think C&G's actions are fair or in line with CIDRA because I think Mr H took reasonable care and answered the question asked of him correctly based on his knowledge.

C&G have argued that Mr H was aware of the information in the guidance box but chose not to search for his dog and had he done so, he would've seen that his dog was listed as a pedigree. For the reasons I've mentioned above, I think it was reasonable for Mr H to conclude he didn't need to do this, because he wasn't unsure about his dog being a mixed

breed. If C&G wanted to avoid this sort of situation, they needed to make their questions clearer or at least supply a box for customers to set out what the breed or mixed breeding of their pet was. The fact that they didn't do so isn't something I think Mr H is responsible for.

Mr H has pointed out that C&G have now changed their sales process on the same comparison website to prompt customers to input the details of any crossbreed. I think that if that had been the case when he took out the policy, Mr H would have supplied these details and been offered insurance on the correct terms. The fact that he wasn't isn't something he should be prejudiced for. And I've set out below what I think C&G should do to put things right.

Putting things right

C&G should:

- Pay Mr H's claim in line with the original policy terms and limits.
- Reimburse Mr H for any increase in policy premiums charged and reinstate the original premiums until the end of the policy year.
- Pay Mr H interest of 8% per year simple on any settlement sum paid out in respect of the claim from one month after it was made, until it's settled.
- Pay Mr H interest of 8% per year simple on any policy premium refunds due to him from the time those payments were taken, until they're reimbursed.

My final decision

For the reasons set out above, I uphold Mr H's complaint and direct C&G to put things right as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 January 2024.

Lale Hussein-Venn
Ombudsman