

The complaint

Mrs and Mr B complain that Casualty & General Insurance Company (Europe) Ltd ('Casualty') unfairly declined their pet insurance claim and about its service. My references to Casualty include its agents.

What happened

Mrs and Mr B took out pet insurance for their dog on 17 August 2023, to start 25 August 2023. They say on 8 September 2023 they noticed their dog had an abscess on his rear end and they took him to the vet that day.

Mrs and Mr B's vet submitted a claim for treatment of an anal gland abscess. When Mrs and Mr B phoned Casualty on 21 September 2023 it told them the claim been assessed and passed to its finance department for payment. As no payment was received they called Casualty on 28 September 2023 who said it would chase its finance department but it didn't call back.

Casualty then declined the claim, initially saying the claim was made for treatment within the 14 day waiting period from the start of the policy, so the claim wasn't covered under the policy terms. Mrs and Mr B disputed Casualty's calculation of the 14 day period. But Casualty ultimately declined the claim on the basis that Mrs and Mr B's dog's vet's notes showed their dog had clinical signs of the abscess within the 14 day waiting period. Casualty also added an exclusion to the policy for all claims with respect to the anal and perineal region, with effect from the start of the policy. Casualty accepted it gave Mrs and Mr B wrong information around the claim being paid and offered £25 compensation for their distress and inconvenience.

Mrs and Mr B complained to us as they wanted their claim paid. Mrs B says she'd groomed their dog on the evening of 7 September 2023 and there was no sign of an abscess, and their vet said abscesses can happen very suddenly. Their dog had been a little unsettled that night but he still had his normal walk and brush and him being unsettled could have been due to anything. They also said Casualty's offer of £25 compensation wasn't enough for its very poor service; telling them the claim was to be paid then refusing the claim, wrongly telling them they claimed for treatment within the first 14 days, then changing its mind to another reason to decline the claim.

Our Investigator said Casualty unreasonably declined the claim and it should pay the claim plus interest. She also recommended Casualty pay Mrs and Mr B £100 compensation for their distress and inconvenience due to its poor service.

Casualty disagrees so the complaint has been passed to me to make a decision.

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 regulator's rules say that insurers must handle claims promptly and fairly and they mustn't turn down claims unreasonably.

I don't think Casualty acted reasonably in declining Mrs and Mr B's claim or that it was entitled to place the retrospective exclusion on the policy. I also think Casualty's compensation offer wasn't enough. I'll explain why.

The claim

For the avoidance of doubt I don't think Mrs and Mr B made a claim for vet treatment that was in the first 14 days of the policy, as Casualty suggested. The policy schedule shows the policy start date as 25 August 2023, so that was the first day of cover. Which means the first 14 days of the policy ended at midnight 7 September 2023. Mrs and Mr B's dog was treated by their vet on 8 September 2023, which wasn't within the first 14 days of the policy.

As to the second reason Casualty declined the claim, it isn't saying that Mrs and Mr B's dog had the abscess before they took out the policy or before the policy start date. The issue I have to decide is whether Casualty reasonably considered that Mrs and Mr B's dog showed clinical signs or symptoms of the abscess before 8 September 2023.

The policy says Casualty will not pay:

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

The policy defines a 'pre-existing condition' as:

'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'.

The policy defines 'clinical signs' and 'symptoms' as:

'Clinical Signs means any observable changes in Your pet's normal healthy state; condition; appearance; bodily functions and observed by You or Your Vet either visually; diagnostically; or otherwise'.

'Symptoms means any change in Your pet's normal healthy state, conduct or appearance'.

The policy defines 'waiting period' as:

'a period of 14 days from the Policy Start Date for an Illness that occurs or shows Clinical Signs or Symptoms; or 5 days from the Policy Start Date for Accidental Injury; or 14 days from the Policy Start Date for all other sections of covers'.

The policy definitions mean that if Mrs and Mr B's dog did show any clinical signs or symptoms relating to the abscess within the first 14 days of the policy, the abscess would be a pre-existing condition and excluded from the policy.

Casualty has referred to the following entry in the dog's vet's notes for the 8 September 2023 appointment:

*'Consultation : uncomfortable yesterday, now has swelling on back end.
general - history : anal sac abscess about to pop left side. swollen on rectal exam.
sl d+ also bujt may be dt straining. mm crt fine is eating fine.
no hx of anal gland issues. rt side full*

admit to sedate and express rt side and lance abscess left side express what we can. start abs and poss nsoids or paracetamol'.

Casualty considers that as the vet's notes say Mrs and Mr B's dog was 'uncomfortable yesterday' the dog showed clinical signs or symptoms of the abscess on 7 September 2023, which was day 14 of the waiting period.

During our investigation Casualty provided its in-house vet's opinion that:

'Anal gland abscesses are an illness where an infection sets in an anal gland usually due to an underlying cause such as a blockage of the duct, signs and symptoms would include a swelling around the perineum, paying attention to the back and discomfort of that region, in this case the dog was showing signs of discomfort on the back end the day prior which would almost definitely be due to the abscess given that there were no comorbidities here. Additionally given the abscess was 'about to pop' on the left side the onset would fall within the waiting period as abscesses normally take a few days to 'mature'. I therefore feel this condition would fall within the waiting period'.

And

'The statement on the 8/09/23 'uncomfortable yesterday' in the absence of any other condition suggests that discomfort was related to the anal gland issue, additionally as I said previously Anal gland abscess take time to mature and swell so I feel the onset would have been at least one day prior to the 8/09/23'.

Mrs and Mr B have repeatedly said from the start of the claim that there was no sign of an abscess when Mrs B brushed their dog on the evening of 7 September. They also say that their vet, who is the senior partner at the practice with over 30 years' experience, told them the abscess could come on suddenly but I've not seen any evidence from their vet to confirm.

It's for Casualty to show that an exclusion applies and there is no evidence to show that the dog being uncomfortable on 7 September 2023 was definitely related to the abscess. Casualty's vet's evidence is that in the absence of any other condition it's likely that the dog's discomfort was related to the anal gland issue. And that an anal gland abscess takes time to mature and swell so, as the abscess was 'about to pop', the onset would likely have been at least one day before the 8 September 2023.

But even if I accept Casualty's vet's opinion that it's likely the dog's uncomfortableness on 7 September was a clinical sign of the abscess, I would only consider it reasonable for Casualty to rely on the exclusion if Mrs and Mr B knew during the 14 days waiting period that there was something wrong with their pet, which was likely to lead to a claim on the policy. Mrs and Mr B have consistently and persuasively said they didn't see an abscess on their dog until 8 September, the day they took their dog to see the vet, and I accept what they say about that. Although their dog was uncomfortable/unsettled on the night of 7 September 2023 I don't think Mrs and Mr B would reasonably think that meant there was something wrong which would lead to a claim. Their vet's notes of 8 September 2023 clearly say the dog had no history of anal gland issues. I note that on the day they took out the policy, 17 August 2023, their dog went to the vet for a booster injection and annual check. The dog is noted to be well and the vet's notes make no mention of any signs of a problem with the dog's anal glands.

I don't think there's any evidence that Mrs and Mr B knew during the 14 days waiting period that there was something wrong with their dog which was likely to lead to a claim on the policy.

Having considered all the evidence, I'm not persuaded that Casualty has shown it can fairly and reasonably decline Mrs and Mr B's claim on the basis that their dog's condition was pre-existing.

The retrospective policy exclusion

After reviewing Mrs and Mr B's claim Casualty placed an exclusion on the policy for all claims with respect to the anal and perineal region backdated to the policy's start date. Casualty told Mrs and Mr B about the retrospective policy exclusion in its letter of 28 September 2023. It didn't mention the retrospective policy exclusion in its final response letter of 17 November 2023 to Mrs and Mr B. But I want to address that matter in case Casualty has kept the retrospective exclusion on the policy.

I don't consider Casualty was fairly entitled to place the retrospective exclusion on the policy.

The relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). In line with CIDRA, I would usually consider it is 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 an exclusion had it been given the information.

In this case, I don't consider Casualty has shown that it asked Mrs and Mr B a clear relevant question that would have enabled them to tell it about their dog's previous medical history. The evidence I've seen is that during the policy application it asked Mrs and Mr B to read and tick a box to confirm that they had read the '*assumptions*'.

I don't usually consider that an assumption is a clear question that would enable Mrs and Mr B to tell Casualty about their dog's health. So I don't think Casualty has shown that Mrs and Mr B failed to take reasonable care not to make a misrepresentation.

Anyway, at the time Mrs and Mr B took out the policy their vet's evidence is that their dog had no anal gland issues so there's no basis at all for Casualty to have retrospectively added the exclusion for all claims with respect to the anal and perineal region with effect from the start of the policy.

Casualty must remove the exclusion with effect from the policy's start date.

Service

I think Casualty gave Mrs and Mr B poor service. In particular it gave Mrs B the impression that the claim had been approved and was about to be paid, it then declined the claim by wrongly calculating the 14 waiting period and I think it could have given Mrs and Mr B a clearer explanation as to why it ultimately declined the claim.

Casualty accepted it gave poor service but I don't think its offer of £25 compensation is enough to acknowledge Mrs and Mr B's distress and inconvenience due to its poor service. I think the £100 compensation our Investigator recommended is a reasonable amount to recognise their distress and inconvenience and Casualty hasn't given any reason why it shouldn't pay that amount.

I think Casualty hasn't already paid the £25 compensation to Mrs and Mr B, but for the avoidance of doubt I think it should pay them £100 compensation in total which includes the £25 if already paid to Mrs and Mr B.

Putting things right

Casualty must pay Mrs and Mr B's claim, less any excess, plus interest as I've detailed below. It must pay them £100 compensation in total for their distress and inconvenience due to its poor service. And Casualty must remove the retrospective exclusion as I've detailed below.

My final decision

I uphold this complaint and require Casualty & General Insurance Company (Europe) Ltd to:

- pay Mrs and Mr B's claim less any excess, together with interest* at the simple rate of 8% per year from the date Mrs and Mr B paid their vet's fees to the date that Casualty makes the settlement payment to them, and
- pay Mrs and Mr B £100 compensation in total for their distress and inconvenience caused by its poor service, and
- remove the exclusion that Casualty added to Mrs and Mr B's policy with effect from 25 August 2023 for claims with respect to the anal and perineal region.

*If Casualty & General Insurance Company (Europe) Ltd considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs and Mr B how much it's taken off. It should also give Mrs and Mr B a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 15 March 2024.

Nicola Sisk
Ombudsman