

## The complaint

Mr P complains that Casualty & General Insurance Company (Europe) Ltd ('Casualty') unfairly declined his pet insurance claim.

My references to Casualty include its agents.

## What happened

Mr P took out a lifetime pet insurance policy with Casualty in October 2022 for his pet dog. In April 2023 his dog became lame on her left hind leg after chasing a frisbee. The vet diagnosed a left leg cranial cruciate ligament rupture, which was repaired surgically. Mr P made a claim to Casualty for the cost of the treatment. The total fees were over £5,000 but the maximum that could be paid out under the policy was £4,000.

Casualty turned down the claim because it said the medical notes showed that the dog had symptoms of cruciate ligament disease before Mr P had taken out the policy. It said this meant the condition was a pre-existing one and so it was not covered under the policy.

Casualty also excluded any claims for the dog's stifles, cruciate ligament, and degenerative diseases, backdated to the policy's start date of 18 October 2022.

Mr P explained to Casualty why the symptoms it had mentioned were unrelated to the sudden cruciate rupture and provided evidence from his vet to support his position. But Casualty didn't agree. It said the dog's symptoms of lameness and stiffness before the policy was taken out were common signs of cruciate ligament disease.

Unhappy with Casualty's response, Mr P came to us. Our Investigator initially upheld his complaint. But Casualty sent us evidence from its in-house vet, who said the stiffness was likely a sign of osteoarthritis, which in turn was linked to cruciate ligament disease. That disease was degenerative and was likely linked to the stiffness shown before the policy's inception. The stiffness would alter the dog's gait which in turn could increase the load on the dog's ligaments. Based on this evidence, our Investigator changed his mind. He thought Casualty had reasonably linked the dog's earlier stiffness to the cruciate rupture and that Casualty had fairly turned down the claim as a pre-existing condition.

Mr P asked for an Ombudsman's review because he did not consider Casualty had shown the condition was a pre-existing one. In summary, he said:

- The vet who operated on his dog is the Head of Orthopaedics of the vet's practice, and he said that there was no previous evidence of cranial cruciate ligament disease – contradicting Casualty's vet's view.
- We have upheld similar cases to his, and he quoted two cases he'd found from searching our decisions database.
- The "*stiffness in morning walks*" was recorded in March 2022 in the dog's medical notes, but there is no mention of osteoarthritis, no reference to a change in gait and no treatment was ever prescribed. His dog's fore legs had been x-rayed and scanned in 2021 (in relation to a separate issue) and did not show any signs of osteoarthritis.

- Casualty has earlier incorrectly referred to his dog being prescribed medication for stiffness, when this was for an injury (to her paw) in May 2021 and for which she was scanned.
- Casualty has said cruciate ligament disease is a degenerative process and not a traumatic rupture. His dog's injury was sustained during a frisbee throw, giving weight to this being a traumatic injury.
- He does not agree stiffness means osteoarthritis, where: the medical notes don't say this; his dog's vet said there was no previous evidence of cranial cruciate ligament disease; his dog's stiffness did not continue and there are no further medical notes for diagnosis or treatment for any lameness, stiffness, or any type of joint issue. His dog was an active and healthy dog, including playing frisbee regularly.

I reviewed the complaint and issued a provisional decision saying that I intended to uphold the complaint. I said:

*"I have read the decisions Mr P has mentioned. But I should say that we decide each case on its own individual facts and merits.*

*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 reasonably turned down Mr P's claim or that it was entitled to place retrospective exclusions on the policy. I'll explain why.*

*The claim*

*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 health state, conduct or appearance."*

*Casualty has referred to the following entries in the dog's medical notes, which say:*

*29 January 2021: the dog received her booster vaccination. The vet noted the dog looked healthy and that according to the owner she occasionally started limping with her right hind leg just after long walks "no signs of limping today, no(t) lame." The vet noted they had recommended joint supplements, and if no better to start non-steroidal anti-inflammatory drugs (NSAIDs) but at the moment "it is just 3ccasionally (sic)".*

*1 March 2022: the dog received her booster vaccination. The vet noted that she was "all fine, no concerns" and that the owner "reports a bit stiff after walks – adv joint*

supplement”.

2 April 2023: “the o [owner] reports the dog was chasing the frisbee yday and came up acutely lame, seemed to walk it off but after rest hasn’t put any weight on it today and not eating breakfast...Grade 10/10 NWB lame on LG, normal withdrawal/deep pain swollen L stifle with slight cranial drawer at 45 degree flexion, reticent to extend L hip, no crepitus or external injuries. Discuss possible CCL or other ST injury, adv strict rest and NSAIDs for 7 days with recheck with ortho vet”.

11 April 2023: “left hind still lame 9/10, eating/drinking normal...left hind cranial draw and clunk so suspect meniscle involvement”.

Following referral to the vets who carried out the surgery:

9 May 2023: Exercise 8 – 12 mile walks max, garden only some days. Generally v active. Goes upstairs and onto furniture.

Previous problem: cut front paw a couple of years ago. MRI and CT FL 12-24 months ago – nothing found – resolved spontaneously. Fine since.

Current problem: 4-5 weeks ago – acute onset – ran after frisbee – no vocalisation – non wt bearing. Gradual wt bearing after 48 hours, still lame. Tends to be stiff on HLs after long walks over last couple of years, still able to run hard until recently. Gradual improvement over last few weeks. No vocalisation, not particularly bothered if limb touched. V ball/frisbee motivated.

Findings:... 7-8/10 lame LH. Mod thigh muscle atrophy. Stifle effused and unstable, discomfort on extension. Gluteal muscle mass good. FLs fine. SI heavy. R stifle fine.

Diagnosis: L CCL [cranial cruciate ligament].

10 May 2023: Rads TPA 31°, effusion, mild OA [osteoarthritis]Medial approach L stifle. Subpatella arthrotomy. Complete rupture CCL, radial and circumferential tears medial meniscus – debrided...”

In support of his position, Mr P provided an email sent by the vet practice which had treated his dog to Casualty, asking it to reconsider its position. In that email, the vet who had operated on his dog said:

“[The dog] was presented on 9 May with a one-month history of acute onset right\* hindlimb lameness attributable to cranial cruciate ligament disease and for which she underwent TPLO surgery on 10 May. Signs of hind limb stiffness had been noticed by the owners following long walks for some time prior to this episode of more pronounced lameness, though [the dog] had remained able to exercise vigorously and there had been no previous evidence of cranial cruciate ligament disease.”

\*the vet’s medical notes are clear that the left hind limb was lame.

Casualty’s in-house vet says:

“...this dog presented with prior ‘stiffness’ (in veterinary clinical notes this is osteoarthritis for all intents and purposes), osteoarthritis has a definitive link between cruciate disease both causal and resulting. Firstly a very recent paper into the aetiopathogenesis of cruciate disease states primary osteoarthritis was one of the underlying key features of cruciate disease (Niebauer et al 2023). Cruciate disease is a degenerative process NOT a traumatic rupture and it is clear from the notes this dog was showing signs prior to the policy inception. Additionally any dog showing stiffness would alter its gait and subsequently the loading of its joints thus potentially putting strain on the ligament.”

Having considered all the evidence, I’m not currently persuaded that Casualty has shown the dog’s condition was a pre-existing one.

*In January 2021 Mr P had mentioned that his dog had limped on her right hind leg after long walks. But he said that this resolved a few days later. I think the medical notes support this. I can see that Mr P's vet suggested a joint supplement and said that if the problem didn't resolve the dog should be treated with NSAIDs. There is nothing in the notes to suggest that Mr P returned to the vet, and I accept it's likely the issue did resolve. I think it's likely he would have returned to the vet had the limping not resolved.*

*Also, it's important to note that Mr P had mentioned this issue to his vet as part of a booster visit; in other words, he'd not taken his dog to be treated for limping. And the issue affected her right hind leg – not the left hind leg which was the subject of the claim. The vet said the dog seemed healthy and there is nothing in the medical notes to suggest the dog had osteoarthritis or cruciate ligament disease at this time.*

*Mr P makes the point that the 2021 scans and x-rays of the dog's fore limbs (following a paw injury) did not reveal any concerns. That's correct and is mentioned in the May 2023 medical notes. I also accept there is nothing to suggest that Mr P's dog was given medication for osteoarthritis.*

*At the March 2022 booster appointment Mr P mentioned to the vet the dog's stiffness after long walks. The vet suggested a joint supplement again, but otherwise noted the dog seemed fine with no concerns.*

*I haven't seen anything in the medical notes to support that Mr P's dog had either been diagnosed with osteoarthritis or that the vet had mentioned this to Mr P as a specific concern before he took out the policy with Casualty in October 2022.*

*I can't see that there is any mention of osteoarthritis in the dog's medical notes until May 2023, seven months after the policy was taken out. At that time mild osteoarthritis was noted in the x-rays taken for the surgery to the dog's left cruciate ligament.*

*I've noted and considered Casualty's vet's evidence about the link between osteoarthritis and cruciate ligament disease. It's possible that the dog's stiffness was caused by the mild osteoarthritis noted in the May 2023 x-rays but there's no evidence in the medical notes to support this. Importantly I don't consider there's any evidence before the policy was taken out that Mr P had been told by his vet that the stiffness might be a sign of osteoarthritis, such that he might reasonably believe he would need to make a claim on his policy with Casualty.*

*In any event, there's no evidence in the dog's medical notes or in the evidence given by Mr P's vet that the dog's mild osteoarthritis was linked to the cruciate ligament disease. Mr P's vet specifically said there was no prior evidence of cruciate ligament disease. He also noted that Mr P's dog had remained able to exercise vigorously until the acute onset of the cruciate rupture after chasing a frisbee.*

*I've considered Casualty's vet's comments about stiffness in joints altering the dog's gait. But there's no evidence of this in the dog's medical notes. Mr P's vet noted that the dog's fore limbs and right stifle were "fine".*

*Mr P's vet examined and operated on the dog. He is a specialist, being Head of Orthopaedics for his vet's practice. Overall, I find the evidence of Mr P's vet to be more persuasive than that of Casualty's vet who did not treat Mr P's dog and conducted a paper-based review.*

*It follows that I don't currently consider it was reasonable for Casualty to turn down Mr P's claim. I think it's fair for Casualty to pay the claim, subject to the policy limit together with 8% simple interest as set out below.*

### *The retrospective policy exclusions*

*After reviewing Mr P's claim, Casualty placed exclusions on the policy for claims in respect to the dog's stifles, cruciate ligament disease and degenerative diseases backdated to the policy's start date.*

*I don't consider Casualty was fairly entitled to place these retrospective exclusions 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 Mr P a clear relevant question that would have enabled him to tell it about his dog's previous medical history. Instead, Casualty says during the policy application it asked Mr P to read and tick a box to confirm that he had read the "assumptions" and policy terms.*

*I don't usually consider that an assumption is a clear question that would enable Mr P to tell Casualty about his dog's health. So I don't think Casualty has shown that Mr P 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 Casualty would have offered the policy on different terms.*

*It follows that I don't consider Casualty was entitled to backdate the policy exclusions with respect to both stifles, cruciate ligament and associated conditions and degenerative diseases to the policy's start date. Casualty must remove the exclusions, with effect from the policy's start date."*

I concluded that Casualty should pay Mr P's claim with interest at the simple rate of 8% per year from the date he paid his vet's fees until the date of settlement, and that Casualty should remove the exclusion in respect to both stifles, cruciate ligament and associated conditions and degenerative diseases with effect from the policy's start date.

### **Responses to my provisional decision**

Mr P responded to say he had no further information to add.

Casualty responded to say it did not accept my provisional decision. In support, it provided me with further comments from its in-house vet. In summary, Casualty's vet said:

- He considered I had been incorrect to say that the dog's injury being sustained during a frisbee throw gives weight to it being a traumatic injury, as the wearing of the ligament from the frisbee throw caused "*an already severely damaged cruciate ligament to finally go.*" A dog would not snap healthy ligaments from jumping for frisbees, and the mildness of the event prompting the sudden onset of clinical signs suggests an underlying issue.
- He disagreed that previous stiffness does not equal arthritis and Mr P's vet should provide a differential diagnosis for stiffness for an eight year old dog.
- Referring to the medical history, Mr P's vet suggested joint supplements, which is unlikely had there not been a hint of orthopaedic disease. Also the occasional limping suggests a chronic orthopaedic condition as opposed to a short term soft tissue injury which would settle. And muscle atrophy was present suggesting a chronic issue.

- I had suggested that the limping on the right hind leg had resolved given Mr P did not return to the vet. But the evidence set out above suggests osteoarthritis, which would only deteriorate over time. He refers to a study suggesting that osteoarthritis is commonly accepted by dog owners who don't take their dogs to the vets. From experience, he said arthritic dogs are brought in with a clinical history of stiffness and muscle wastage that spans years.
- In summary, the dog had a history of osteoarthritis and lameness on its hind limb, which has a direct link to cruciate disease as noted in his (the in-house vet's) previous report.

### **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.

I've carefully considered the evidence from Casualty's in-house vet. But I still consider that it is fair for Casualty to pay Mr P's claim and remove the policy exclusions for the reasons given in my provisional decision and below.

As I understand it, Casualty's vet argues that the dog had osteoarthritis before Mr P took out the policy with Casualty, with the clinical signs and symptoms being right leg limping and stiffness on her hind legs after walks. Casualty's vet has referred to a study that shows that owners accept osteoarthritis and do not take their dogs to the vets.

Here, Mr P *had* mentioned one occasion of right hind leg limping and stiffness to his vet during his dog's booster visits. And importantly there is nothing in the dog's medical notes to suggest that the vet told Mr P that they thought his dog might have osteoarthritis.

Casualty has referred to Mr P's dog having muscle atrophy suggesting a chronic issue. But the dog's thigh muscle atrophy is not mentioned in the clinical notes until May 2023, which was seven months after Mr P took out his policy with Casualty.

It follows that I don't consider Mr P reasonably believed that his dog's 2021 right hind limb limping and occasional stiffness would mean he would need to make a claim under the policy he took out with Casualty in October 2022.

Casualty's vet's evidence is that there is a direct link between osteoarthritis and cruciate disease. I have explained why I don't consider Mr P was aware that his dog might have osteoarthritis. And in any event not all dogs with osteoarthritis go on to develop cruciate ligament disease. I don't consider Casualty has shown a link between the symptoms it says were likely caused by osteoarthritis and cruciate ligament rupture in Mr P's dog.

Casualty's vet says the evidence suggests that the dog's injury was not a traumatic one, given it occurred after chasing a frisbee. He makes the point that dog's do not snap healthy ligaments in this way and the sudden onset suggests an underlying issue. In his opinion, the frisbee chase caused *"an already severely damaged cruciate ligament to finally go."*

Mr P's vet, Head of Orthopaedics for his practice, noted that Mr P's dog had been able to exercise vigorously before the cruciate ligament rupture. Mr P's vet noted that there had been no previous signs of cranial cruciate ligament disease.

While I understand the point that Casualty's vet has made, I consider the evidence of Mr P's vet to be more persuasive here. He said there were no previous signs of cruciate disease and so I don't consider Mr P could reasonably have known his dog might have an underlying disease which could cause the acute rupture of the cruciate ligament.

I remain of the view that the fair outcome is for Casualty to pay Mr P's claim for the cruciate ligament rupture, subject to the policy limit and with interest as set out below.

Casualty has not provided me with any further evidence about the retrospective policy exclusions, so I see no reason to depart from my provisional findings that Casualty should remove the exclusions as set out below.

### **Putting things right**

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

- pay Mr P's claim for his dog's left cruciate ligament rupture, subject to the policy limit, together with interest\* at the simple rate of 8% per year from the date Mr P paid his vet's fees to the date that Casualty makes the settlement payment to him; and
- remove the exclusions that Casualty added to Mr P's policy with effect from 18 October 2022 for claims with respect to: both stifles; cruciate ligament and any associated conditions; and degenerative disease.

\*If Casualty considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold this complaint and 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 Mr P to accept or reject my decision before 21 March 2024.

Amanda Maycock  
**Ombudsman**