

## The complaint

Mrs O's complaint is about the refusal of a claim under her pet insurance policy with Casualty & General Insurance Company (Europe) Ltd ("C&G").

## What happened

In July 2023, Mrs O contacted C & G to enquire about cover, as her dog had run off during a walk, having been startled by a loud noise, and was injured by a car. Mrs O's daughter had been walking the dog at the time but for ease I will refer to Mrs O throughout.

C & G refused the claim as it said the accident happened because the dog was not on a lead at the time. C & G relied on a number of policy terms in its refusal of the claim, including that a dog should be on a lead while being walked on or near to a designated road, in accordance with the Road Traffic Act 1988; and that due care should be taken to prevent the insured dog escaping and causing accidental injury to itself to others.

C & G also said that the dog had a clinically recorded history of nervousness, so suggests extra care should have been taken while walking the dog.

Mrs O is very unhappy with this and said her dog was being walked in a field away from any designated roads and was startled by a loud noise and ran home; the route home included crossing a main road, which is where the dog was hit by a car. Mrs O has made a number of submissions in support of her complaint. I have considered everything she has said but have summarised the main points below:

- The policy does not say the dog cannot be off lead at all and her dog is well-trained off lead.
- The field was enclosed by a fence on three sides and a steep railway embankment, which is almost impassable on the other. The embankment is also covered in vegetation and there is a stream in front of it. The road where the accident happened was the other side of the embankment. The dog did not cross the embankment, or escape through the fenced sides but back out of the field and down the path, under a tunnel, around a staggered pedestrian barrier at the traffic lights and then onto the road.
- The road on which the accident happened was not near where it was off lead and policy does not define what C & G would consider to be "*near*".
- References to the dog being anxious and nervous in the vets are out of context. It was a rescue dog and took a while to settle and was nervous when initially being treated after the accident. It is unfair to judge the dog's behaviour in those circumstances. The dog has never been nervous out on a walk.
- It was never suggested during the initial call with C & G that there may be no cover.
- The policy limit was £4,000 and the total treatment costs £11,000. So while she knew she'd have to pay anything over the policy limit herself, if she had known C & G would not pay the claim amount, she would not have gone ahead with the treatment. She was in financial difficulty and the treatment was extensive and difficult for the

dog as well. She had to borrow money and rearrange her mortgage to pay for the treatment, which means she is paying more each month for the next 15 years.

One of our Investigators looked into the matter. He did not think that C & G had established that Mrs O had failed to take reasonable care of the dog or that the area the dog was being walked was so near the designated road on which the accident happened that it was reasonable to foresee it happening. The Investigator therefore concluded that C & G should reconsider the claim, in line with the remaining terms of the policy and pay Mrs O £200 compensation for the distress and inconvenience caused to her by the unfair refusal of her claim.

Mrs O accepts the Investigator's assessment but has also stressed the financial impact on her and her family and the stress caused to them by C & G's refusal of the claim, in particular with regard to the mortgage arrangements.

C & G does not accept the Investigator's assessment. It has made a number of submissions in support of its position. I have considered everything C & G has said but have summarised the main points below:

- Any pet that displays nervous behaviour in the semi-familiar setting of a vet's, is likely to also show nervous and anxious behaviour while on walk. And noise is to be expected on a busy road
- The field that the dog was being walked in was surrounded by three designated roads, not just the one on which the accident happened, all of which were accessible to the dog.
- The Investigator said the dog was not being walked on the road, so Section 27 of The Road Traffic Act 1988 ("The Act") doesn't apply but this would mean it would not apply to any dog walked on the pavement, as it is not on the road itself, which cannot be correct.
- Rule 56 of the Highway Code also says that a dog should not be on the road on its own and should be kept on a short lead when on a pavement, road or path shared by other uses.
- The field was not securely fenced.

As the Investigator was unable to resolve the complaint, it has been passed 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.

In turning down the claim C&G has relied on several of its "*General Conditions*" which apply to all sections of its policy:

- *"You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage, as well as arranging and paying for Treatment for Your pet to reduce the likelihood of Illness or Accidental Injury.*
- *You must ensure that Your dog is under control at all times, and due care should be maintained to prevent Your dog from escaping and causing itself Accidental Injury or any other persons or animals.*
- *When walking near or in an area where Your pet could escape onto a designated road You must ensure Your dog is on a collar and lead.*
- *You must comply with all laws that relate specifically to Your pet, including but not limited to "Section 27 of the Road Traffic Act 1988", which states that a dog that is on*

- *a designated road must be on a collar and lead and under control.*
- *You must ensure that any area in which Your Pet is kept is secure and appropriately fenced or otherwise secured and all reasonable steps must be taken to prevent escape. “*

The policy says “*Accident Injury Means a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of Your pet’s body.*”

C&G asked Mrs O several questions about what had happened and where the dog was being walked before the accident happened. Mrs O has provided several photographs and map extracts showing the route taken on the route and by her dog when it ran off.

I have considered Mrs O’s evidence about the area the dog was in and the maps and photographs provided. I can see that the dog was being walked in a field that is situated at the end of a residential road. The field seems to be accessible from the residential road by a pathway and the pathway that leads through alongside the field to the main road on which the accident happened.

Mrs O has also said the field is at the start of a trail that then runs parallel with the main road and the back of houses. In the complaint form she says the dog ran the length of the trailway but in the initial claim said the dog was in the field. I think it is likely it was in the field but ran part of the trailway back home.

The photographs show that the field is surrounded by a low fence on three sides and the other side – parallel with the main road on which the accident happened – is a “*huge*” steep railway embankment. So to all intents and purposes, Mrs O says it was a contained area used often by dog walkers with dogs off the lead. Mrs O therefore does not accept that there was any lack of care.

I will consider each policy condition and whether it is reasonably applied to the circumstances of this claim.

You must comply with all laws that relate specifically to Your pet, including but not limited to “Section 27 of the Road Traffic Act 1988”, which states that a dog that is on a designated road must be on a collar and lead and under control.

S27 of the Road Traffic Act 1988 says:

*“Control of dogs on roads.*

*(1) A person who causes or permits a dog to be on a designated road without the dog being held on a lead is guilty of an offence.*

*(2) In this section “designated road” means a length of road specified by an order in that behalf of the local authority in whose area the length of road is situated.”*

There’s no dispute that the road on which the dog was injured is a designated road for the purposes of The Act. C & G says The Act applies, otherwise it is like saying that just because a dog is being walked on a pavement it is not on the road.

Mrs O says that she did not allow the dog on the road without a lead, and was not walking the dog along the road, so did not breach The Act or the Highway Code.

The dog was in a field and I cannot see that being walked in a field parallel to a road but separated from it by a pavement and a steep embankment covered in bushes and trees,

which would create a natural barrier, would be reasonably considered to be walking on a designated road.

The field was also separated from the residential road by a pavement, fence and planting. Although this road was nearer than the one on which the accident happened, it was still not being walked on the road in my opinion.

However, C & G can only rely on a breach of condition that is material to the claim event. The relevant rules, which reflect our long-standing approach, say that the rejection of claim is unreasonable if the breach of a term or condition relied on by the business did not increase the risk of the loss that actually occurred in the circumstance in which it occurred.

This means that, as the accident happened on the main road, I do not think it is relevant what other roads were nearer while the dog was being walked off lead.

In my opinion, the dog was not being walked on a designated road, and it was not being walked on a path, pavement or road being shared by others, when it ran off. I do not therefore think this condition can be reasonably relied on to refuse the claim.

You must ensure that any area in which Your Pet is kept is secure and appropriately fenced or otherwise secured and all reasonable steps must be taken to prevent escape.

C & G says the fence around the field was so low it would not prevent a dog from escaping and the dog could have accessed any road facing this fence.

I can see from the photographs that the fence is low with some hedge planting. It would not be difficult for animals to get through or over such a fence but it would in my opinion form a barrier. However, the dog was not being “kept” in the field, so I do not think it needed to be in a “secure and appropriately fenced” area.

You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage, as well as arranging and paying for Treatment for Your pet to reduce the likelihood of Illness or Accidental Injury.

And

You must ensure that Your dog is under control at all times, and due care should be maintained to prevent Your dog from escaping and causing itself Accidental Injury or any other persons or animals.

These two conditions are similar, so I will consider them together.

C & G says roads were easily accessible from the field on all sides, including the main road on which the accident happened, so says Mrs O breached these conditions, failing to take due care, reasonable precautions and proper care and attention to her dog to reduce or prevent injury. C & G also suggests that some additional care was required, as Mrs O’s dog had recorded to be a nervous dog.

C&G has not defined in its policy what it means by “due care”, “proper care and attention” or “reasonable precautions”.

As our Investigator has explained, the test we use is set out in the leading legal case on ‘reasonable care’ – *Sofi v Prudential Assurance (1993) 2 Lloyd’s rep. 559*. For C&G reasonably to be able to turn down the claim on the basis that Mrs O failed to take

reasonable care, it needs to show she acted in a way which amounted to recklessness. That means that C & G needs to show that Mrs O recognised a risk but took it anyway by taking measures she knew to be inadequate or no measures at all.

Mrs O says the field was fenced on three sides and on the other there was a stream and then a steep embankment, covered in planting. However, this is not the route that the dog took in any event; he ran back the route taken from home, *i.e.* back through the field, along part of the railway, through a tunnel and then across the road. He had to travel some distance before reaching the road at which Mrs O had crossed to access the pathway to the field, and where the accident happened.

I don't accept that C&G has shown that Mrs O's daughter acted in a way that amounted to recklessness. It seems to me that she took what most people took to be due care and reasonable precautions by taking the dog to a field away from the main road and contained area and what happened was an unfortunate accident.

When walking near or in an area where Your pet could escape onto a designated road You must ensure Your dog is on a collar and lead.

C & G has not defined what it considers "*near*" would mean in this context.

Again, the field was nearer the residential road but as that is not the road on which the accident happened, I do not consider this to be relevant.

The field was parallel with the main road but there is a stream and a steep embankment that would be very difficult to climb, forming a natural barrier between the two.

Having considered the maps and the photographs, I do not consider the field to have been sufficiently near the main road on which the accident happened that it is reasonable for C & G to rely on this condition.

In my view, C&G did not fairly decline the claim in circumstances where I think Mrs O showed that her dog's accidental injury was "*a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of Your pet's body.*"

It follows that I find that C&G should pay the claim, subject to the policy limit and any applicable excess.

Mrs O has stressed the financial impact that having to pay the treatment costs has had. The policy limit is £4,000, so the majority of the costs were not going to be covered in any event. But I do recognise that having to pay all of the treatment costs was a substantial financial outlay that would have caused difficulty. It seems likely to me that Mrs O would have had to rearrange her other financial commitments anyway as she would still have been liable for the remaining £7,000 of the vet's costs. I do not therefore think C & G is responsible entirely for the new mortgage arrangement. Having considered everything, I think that interest at our usual rate should be added to the claim amount from the date Mrs O paid the first £4,000 of the vet's costs to the date of reimbursement by C & G. I think this is sufficient to reflect the fact Mrs O wrongly had to pay the £4,000 that should have been covered by the policy.

I also consider C&G's handling of the claim and its unfair claims decision caused Mrs O material inconvenience and distress at an already difficult time. I consider £200 compensation to be fair and reasonable in the circumstances of this complaint.

**Putting things right**

Within 28 days of the date on which we send it Mrs O's acceptance of this Final Decision, I require Casualty & General Insurance Company (Europe) Ltd to:

- pay Mrs O's claim for her dog's accidental injury subject to the policy limit and any applicable excess; and
- pay interest at 8% simple per annum on the amount to be paid from the date Mrs O paid for the first amount of treatment costs up to the policy limit, to the date of reimbursement.
- Pay Mrs O £200 compensation for distress and inconvenience.

### **My final decision**

I uphold this complaint against Casualty & General Insurance Company (Europe) Ltd and require it to put things right for Mrs O in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 7 May 2024.

Harriet McCarthy  
**Ombudsman**