DRN-4713369

The complaint

Mr H's complaint is about the settlement of a claim under his pet insurance policy with Casualty & General Insurance Company (Europe) Ltd ("C & G").

What happened

In April 2023, Mr H's dog was attacked by another dog. Mr H's dog was badly injured. Mr H made a claim for treatment for his dog, which cost just under £7,000.

C & G accepted the claim but reduced the payment it made in settlement of the claim, as it said that Mr H had misrepresented his dog's breed when he took out the policy. C & G said if it had known the correct breed, it would have charged a higher premium and it is therefore entitled to make a proportionate reduction to the settlement to reflect this. Having deducted an amount for the misrepresentation and the policy excess from the policy claim limit of £4,000, it paid Mr H £3,185.39 for the claim.

Mr H is very unhappy about this. He says he applied for the policy on a price comparison site and correctly identified his dog as a mixed breed and somewhere between that form and the policy being issued, it translated to "small mongrel". Mr H says he assumed that was how C & G viewed mixed breeds such as his and so had no reason to question it. In addition, he says his dog is not a straightforward mixed breed, as it had a mixed breed mother and a pure breed father. In any event, Mr H says there was no deception on his part and it is unfair to reduce the settlement because of this.

Mr H also says he kept having to ask for information and C & G was reluctant to explain why it had reduced the settlement. He complained to C & G about this and also that he was told the claim would not affect future premiums but when the policy renewed, the premium had more than doubled (from £28.75 pm to £60.99).

C & G said that Mr H's dog is now considered to be a new breed, and the price comparison site Mr H used provides guidance which meant that Mr H should have answered 'no' when asked if it was a cross breed, and the breed of his dog would then have been in the drop down menu to select. C & G did however offer £50 compensation for delays in assessing the claim. It also offered to discount the premium to £42.74pm.

One of our Investigators looked into the matter. He agreed that Mr H had been asked, when

he applied for the policy, a clear question that should have elicited the correct information about the dog's breeding and that he had therefore misrepresented the breed of his dog.

However, the Investigator also said the deductions made by C & G were not fair. The Investigator said that the excess and deduction for the misrepresentation should be made before applying the policy limit. If C & G had done so, the remaining claim was still more than £4,000, therefore he said C & G should pay the difference between the amount it had paid and the policy limit of £4,000.

The Investigator also said that if Mr H had already paid the vet, then interest should be added to the outstanding amount and that C & G should also pay Mr H a total of £150 compensation for delays and other issues. (This includes the £50 already offered.).

Mr H accepted the Investigator's assessment. He also provided evidence he had paid the outstanding vet's fees at the end of July 2023.

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

- The policy terms set out that the excess and any co-payment is taken from the policy limit first: "*You can claim per Condition up to the Benefit Limit of £4,000 in each and every Policy Period of Insurance (less the applicable Excess).*"
- The proportionate deduction it made for underinsurance as a result of the misrepresentation was made in line with the Consumer Insurance (Disclosure and Representations) Act 2012 ("*CIDRA*") and The Insurance Act 2015. CIDRA states, that in the event of a careless misrepresentation of information, it is required to settle the claim proportionately. Therefore it has deducted the percentage by which Mr H's dog was underinsured from the last renewal before the claim.
- This deduction was correctly made from the claimable amount after the not claimable amount (*i.e*. the amount above the policy limit), excess and co-payment resulting in a total payment of £3,185.39.
- The proportionate settlement is in place to ensure an insurer can recover any losses due to the misrepresentation. The Investigator's proposal means that it has no remedy for the misrepresentation and the fact Mr H has been underpaying for the policy since inception.
- It would be treating its customers unfairly if it were to apply the excess to the invoiced amount rather than the claimable amount. For example, a customer who is claiming £1,500 on a policy with a benefit limit of £1,000 with a £100 excess would receive significantly more than a person who is claiming for the same with the same benefit limit but an excess of £250. So one policyholder is paying a lower premium (to reflect the higher excess) but gets more cover. This isn't fair and this is not taken into account by this service.
- A lifetime policy also has a limitless number of conditions which can be claimed for, therefore, a pet with 50 conditions could claim the entirety of the benefit limit for each condition, which would result in a payment of £200,000 minus their excess.
- The price comparison site used by Mr H clearly said the policyholder would pay the excess and co-payment but the Investigator's proposal means Mr H is not paying those.

As the Investigator was not able to resolve the complaint, it was referred to me

I issued a provisional decision on the matter in March 2024, in which I said the following:

"Was there a misrepresentation?

C & G is correct that the relevant law here is CIDRA. This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (*i.e*. a policy). The standard of care is that of a reasonable consumer. If a consumer fails to take reasonable care, 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 made a misrepresentation when he entered that his dog was a 'mongrel' when taking out this policy.

When Mr H bought this policy online, he was taken through various questions. One was about the breed of dog. He says that early in the price comparison process he put down that his dog is a crossbreed but this later transposed to small mongrel.

C & G provided screenshots of the questions asked of Mr H on the price comparison site. It shows that he was asked if his dog was a crossbreed – yes / no. The question has the following information *"sometimes crossbreeds are bred together for a long time that are eventually considered a new pedigree breed. If you are unsure select no and check if your dog's breed is listed.*"

Mr H's dog is one that would now be considered to be a new breed, according to the list.

I do not think it is likely that Mr H entered the breed or that it was a crossbreed and this was changed by the online process to mongrel. Having considered the evidence of the online application process provided to me, I think it is more likely that this is what Mr H entered.

I think the question and information is sufficiently clear and it was reasonable to expect Mr H to have been able to correctly record the breed of his dog.

I consider this to have been a careless misrepresentation - rather than deliberate or reckless. I say this because I believe it to have been a mistake by Mr T rather than an attempt to deliberately misrepresent the type of the dog he wanted to insure.

I've then looked at the actions C&G can take in accordance with CIDRA. As a claim has been made, under CIDRA C&G was entitled to settle the claim proportionately. C&G did that and deducted a percentage of the underinsurance amount from the claim limit.

Schedule 1 of CIDRA sets out the remedies available to insurers for qualifying misrepresentations:

"Part 1 …

4. The insurer's remedies are based on what it would have done if the consumer had complied with the duty set out in section 2(2), and paragraphs 5 to 8 are to be read accordingly…

7. In addition, if the insurer would have entered into the consumer insurance contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

8. "Reduce proportionately" means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 6), where—

$$X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$ "

C & G has provided evidence that it would have charged a higher premium if it had known the breed of Mr H's dog. I am satisfied that it is therefore entitled to apply the remedy set out above in accordance with CIDRA and that it has calculated the underinsurance percentage correctly.

Deduction for underinsurance

C & G also deducted the underinsurance from the policy limit. It says this is the only fair way otherwise it has no remedy for the misrepresentation. The Investigator said this was unfair.

I have considered the provisions under CIDRA. As set out above it states that the *"insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract".*

If Mr H had paid the premium that C & G was entitled to charge from the outset, then the amount it would have been obliged to pay under the policy is the £4,000 claim limit. It would never have paid the gross claim amount over that limit.

I think the provisions of CIDRA are clear that C & G is therefore entitled to pay only the percentage of the £4,000 limit that it would otherwise have been obliged to pay, if there had been no misrepresentation.

In my judgement, C & G is therefore entitled to deduct the underinsurance percentage from the £4,000 limit. I do not therefore agree with the Investigator that it needs to pay this difference to Mr H now.

Deduction of policy excess

The policy clearly sets out that there is a claim limit of £4,000 for vet's fees, with a £90 excess per claim. This is not disputed.

C & G says the policy makes clear that the excess is deducted from the claim limit. I agree that the policy wording states this. However, doing this means that a policyholder will never receive the full £4,000 policy limit. I do not consider this fair or

reasonable.

The policy states clearly that it covers £4,000 per condition per policy year. Mr H therefore had a reasonable expectation that this is what he would receive if the need arose. While there is mention in the policy that C & G would carry out the calculation this way, it is not prominent enough in my opinion and given the key documents say it will cover up to £4,000, a policyholder should not be required to read further to confirm whether this was accurate or not. I think it's misleading to say the limit is £4,000 in the circumstances where an excess deduction applies so that amount would never be paid.

C & G says that it is unfair to other policyholders with higher excesses if the excess is taken before application of the policy limit. C & G says that it would mean potentially policyholders would both receive the same settlement but one has paid a lower premium for the same cover, which contradicts general insurance principles and will always give the policyholder with the higher selected excess a clear benefit over the policyholder with the lower excess.

I am only required to consider the circumstances of Mr H's complaint. However, I do not consider this a breach of insurance principles. There would be many occasions when the claim is worth less than the policy limit and the excess would be deductible so the policyholder paying the higher excess would get less in settlement than the policyholder paying the lower excess. This is the nature of insurance, which is about risk.

C & G also says the policy comparison site says that the policyholder will pay £90 excess per condition per year but the proposal made by the Investigator means it would not be paid by the policyholder. I disagree. The excess is generally understood to be the first uninsured part of the loss (it is not a fee to be paid to the insurer) and Mr H has paid this – as the full claim value is more than the policy limit.

I therefore think the policy excess should be applied to the gross amount of the claim. C & G should therefore pay a further £90 in settlement of the claim.

Compensation

This was clearly a shocking incident for Mr H and his young grandchild who was with him at the time and was also injured. Given this, I can see that any unnecessary delays and issues with the insurance claim would have added to an already difficult time. However, I can only award compensation for something that C & G has done wrong. There were some delays but in large part it has settled the claim in line with the policy terms (save for the excess). I think that the £50 already offered is reasonable overall. I do not therefore intend to ask C & G to pay any further compensation."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or evidence they want considered.

C & G has confirmed it accepts my provisional decision.

Mr H has confirmed he has nothing further to add, except that he feels my findings do not reflect the obstructive nature of C & G's the customer service agents and the number of times he was promised details of the payment and then not sent it.

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.

As neither party has added anything further with regard to the misrepresentation and the way the percentage for underinsurance and excess were deducted, I see no reason to change my provisional findings about these matters. I therefore remain of the opinion that C & G was entitled to make a deduction for underinsurance from the policy claim limit but it was not entitled to deduct the excess from the claim limit. I therefore also remain of the opinion that C & G should pay Mr H a further £90 in settlement of the claim.

Mr H has said that he doesn't think my findings reflect the difficulty he had getting an explanation of the reduced settlement and details of it. I acknowledged this in my provisional decision and I can see from the file that he had to repeat his request for a copy of the remittance advice. However, he was sent it and while I can understand this would have been frustrating, it did not affect the outcome of the claim. I remain of the opinion that the £50 already offered by C & G for issues with the handling of the claim is reasonable.

My final decision

I uphold this complaint against Casualty & General Insurance Company (Europe) Ltd in part and require it to pay Mr H the sum of £90 representing the excess it deducted from his claim; and £50 compensation for distress and inconvenience caused by its handling of the matter, if it has not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2024.

Harriet McCarthy
Ombudsman