DRN-4822563

The complaint

Miss F complains about Casualty & General Insurance Company (Europe) Ltd's ("C&G") decision to decline a pet insurance claim.

Any reference to C&G includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised events.

- Miss F has a pet insurance policy which is underwritten by C&G. The policy started in January 2021.
- In January 2023, she made a claim on the policy following her pet – who I'll refer to as "F" – having soft palate resection and stenotic nares surgery.
- C&G declined the claim saying the condition F was treated for was pre-existing as clinical notes from December 2020 showed F had signs of a respiratory condition. Miss F complained about C&G's decision.
- In its final response C&G maintained its position that F's condition was pre-existing. It added that in January 2023 a Vet had said F was suffering from a Grade 1 Brachycephalic obstructive airway syndrome (BOAS) - a grade of the condition which doesn't require surgery. So, it said F's surgery had therefore, been elective. And as elective treatment isn't covered, the claim had been correctly declined on this basis too.
- Unhappy, Miss F brought a complaint to this Service. An Investigator considered it but didn't uphold it. Whilst she wasn't persuaded the condition was pre-existing, she did consider it to be elective treatment – which isn't covered under the policy.
- Miss F disagreed and provided a letter from the Vet who reviewed F in January 2023. The Vet confirmed the surgery wasn't elective and had successfully resolved clinical signs that had been reducing F's quality of life.
- The Investigator reconsidered things but said the treatment wasn't covered because F's condition was in relation to the "palate", which isn't covered under the "dental and oral" section of the policy.
- Miss F disagreed, saying she'd been told BOAS surgery was covered by the policy and that she'd taken the policy out because it was meant to cover her specific breed of dog.
- Because Miss F remained unhappy, the complaint was passed to me for an Ombudsman's decision. I reviewed it and reached a different conclusion to the Investigator.

- I explained to both parties that part of the claim should be covered. Whilst I accepted the "soft palate resection" part of the surgery wouldn't be covered – as this was excluded under the *"dental and oral"* section of the policy - I was satisfied the stenotic nares surgery was covered.

- I explained C&G should cover all the surgery costs excluding the "soft palate resection" treatment cost. I said the other surgery costs couldn't reasonably be separated from the stenotic nares' surgery – for example, a general anaesthesia was necessary for both elements of the surgery – and so, should be covered.

- C&G accepted my provisional findings along with my recommendation it pay Miss F £100 compensation to recognise the distress its decision to decline the claim had caused her. In response, C&G provided a settlement figure which was shared with Miss F.

- Miss F didn't consider the settlement to be fair. She said the entire claim should be covered and that the compensation was too low. She said C&G's decision to decline the claim had had an overwhelming detrimental impact on her mental health. She said she'd spent a great deal of time trying to resolve the matter and £100 didn't recognise this.

- I explained to Miss F I remained satisfied the settlement was fair, but that I'd considered what she'd said about the impact C&G's decision had had on her, and in light of this increased the compensation to £400. This was explained to C&G too, but it said it didn't consider £400 to be reasonable in the circumstances.

- Because the matter wasn't resolved informally, I'm issuing a final decision reiterating the provisional findings I'd set out to both parties.

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 also kept in mind C&G's responsibilities as an insurer to handle claims promptly, fairly and to not unreasonably decline a claim – as set out in the Insurance Conduct of Business Sourcebook (ICOBS). Having done so, I'm upholding this complaint – and I'll explain why.

Pre-existing condition

C&G initially declined Miss F's claim saying F's condition was pre-existing because F had been seen for a respiratory check in December 2020, a month before the policy started.

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."*

I've looked at the clinical records from this time, and note the Vet reviewing F had said:

> *"Discussed chest, would need x-rays to properly diagnose but suspect case mild and unlikely to cause issues in the future – primary concerns with breed is BOAS and dog not currently symptomatic for respiratory issues."*

As the Vet clearly says F wasn't symptomatic, I'm not satisfied C&G can reasonably rely on the pre-existing exclusion to decline the claim – and so, I don't consider its decision to have

been fair.

Elective treatment

C&G also declined Miss F's claim saying F's treatment had been elective. It said "elective treatment" isn't covered under the policy as under *"what is not insured"* it says:

> *"Any claim for cosmetic, elective, or routine Treatment or any treatment which is preventative and not treating an Illness or Accidental Injury."*

In reaching its decision C&G referred to the "Respiratory Function Grading Protocol" which says a pet suffering from Grade 1 BOAS doesn't require surgical intervention and instead can be monitored through annual health checks. On its face, C&G's position didn't seem unreasonable, but notably, it didn't take account of the statement provided by the Vet who had seen F in January 2023 and made the BOAS diagnosis.

The Vet's statement says:

> *"Although [F] tested as Grade 1 on the RFG scheme, it was my opinion that the sleep disturbance and regurgitation were likely to have been caused by an overlong soft palate and stenotic nostrils. […] The surgery performed on F was not elective, but successfully resolved clinical signs that had been reducing her quality of life."*

So, having reviewed this information from the Vet – who notably, physically reviewed F's condition – I'm more persuaded than not the surgery wasn't elective. And so, I don't consider it fair and reasonable for C&G to rely on this exclusion to decline the claim.

Dental and oral treatment

C&G also said F's treatment wasn't covered because it was to treat a dental and oral condition which *wasn't* due to an accidental injury and was related to an illness. The policy defines "dental and oral" as meaning *"any claim or condition relating to the gums, mouth, inner cheek, cheek bone, lips, palate, teeth tongue and tonsils."* As F's surgery included a soft *palate* resection, C&G said it wasn't covered.

But here, F's surgery consisted of two parts - stenotic nares surgery and soft palate resection. Whilst I'm satisfied the soft palate resection isn't covered by the policy as it's both to do with F's palate and is to treat an illness, I'm not satisfied the stenotic nares surgery is excluded. I say this because it's to do with F's nostrils – and nostrils *aren't* included in the definition of *"dental and oral"* under the terms of the policy. So, I'm not persuaded C&G can rely on the exclusion to decline treatment costs relating to the stenotic nares' surgery. And it follows therefore, that it should cover these costs.

I explained to C&G in my provisional findings that I didn't consider other surgery costs, such as a general anaesthesia, could or should reasonably be separated from the cost of completing the soft palate resection surgery. So, I said it should pay the claim, but it could deduct the treatment fees specifically for the "soft palate resection" from the settlement figure. And I remain satisfied this is fair and reasonable in the circumstances and so, I won't be departing from this.

For completeness, Miss F has said she had a telephone call with C&G and was told surgery for BOAS would be covered – and so, she says it should cover the full cost of the claim. It's not clear if this was at or around the time the claim was made, or when the policy was sold to Miss F. But even if I accepted misinformation was given when the claim was made, this alone wouldn't lead me to reach a different outcome. I say this because ultimately, the policy

is clear that treatment regarding the palate isn't covered.

If Miss F considers she was given misinformation at the time of taking out the policy, she'd need to raise her concerns about this with the seller of the policy before this Service can investigate matters. I'll leave that decision with her.

Compensation

Initially I said C&G should pay Miss F £100 compensation to recognise the difficulties she's experienced. C&G considered this to be excessive, saying it provided a response to the claim in a timely manner.

Whilst that may be the case, ultimately, I'm satisfied its decision to decline the claim in full was unfair. Had it got it right at the outset, and applied its own policy terms fairly, Miss F wouldn't have experienced the level of stress, worry and inconvenience she has.

She's explained the outcome of the claim has had financial implications for her, and this together with the stress of the claim has, in turn, detrimentally affected her mental health. And so, I remain persuaded that C&G needs to pay Miss F £400 compensation to recognise the impact its decision to unfairly decline the claim had on her.

My final decision

My final decision is I uphold this complaint and direct Casualty & General Insurance Company (Europe) Ltd to:

- Pay the claim minus the soft palate resection treatment costs. C&G must pay simple interest at 8% a year from the date Miss F paid the treatment costs (subject to proof of payment) until the date it is refunded.

- Pay Miss F £400 compensation. C&G must pay the compensation within 28 days of the date on which we tell it Miss F accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 26 June 2024.

Nicola Beakhust
Ombudsman