

The complaint

Ms A complains that Casualty & General Insurance Company (Europe) Ltd ('CGIC') unfairly declined her pet insurance claim and added a specific exclusion to her policy. My references to CGIC include its agents.

What happened

Ms A had pet insurance for her dog, insured by CGIC. The policy started in September 2023. In January 2024 Ms A's dog started treatment for a corneal ulcer in his right eye. Ms A made a claim for the initial treatment for £287.94.

CGIC declined the claim. In summary it said:

- Ms A's dog's vet records showed he had vet treatment for eye problems before the policy started. As the policy didn't cover pre-existing conditions the claim wasn't covered.
- Ms A should have told it about her dog's previous eye problems when she took out the policy. If she'd done so it would have added an exclusion to the policy for all claims with respect to eyes, sight and eyelids with effect from the start of the policy. It added the exclusion to the policy, backdated to the start of the policy, and also used that exclusion to decline the claim.
- As a goodwill gesture it would pay the claim, less the excess and co-payment.

Ms A complained to us. In summary she said:

- The issues with her dog's eyes that CGIC referred to had been treated and had healed a long time before she took out the policy. So she had nothing to report to CGIC as pre-existing to insure when she took out the policy.
- Her vet had told CGIC that the corneal ulcer claimed for wasn't related to the eye conditions her dog had before this policy was taken out.
- Her dog continued to need treatment for the corneal ulcer which she hadn't claimed for because CGIC refused cover. She was struggling with the vet costs and had to rely on friends to help pay for the treatment.
- She wants CGIC to pay for all the treatment her dog had for the corneal ulcer.

Our Investigator said CGIC reasonably declined the claim for corneal ulcer as a pre-existing condition so its goodwill gesture to pay the claim was fair.

Ms A disagreed and wanted an Ombudsman's decision.

Before I made my provisional decision I asked CGIC for the letter from Ms A's vet it had referred to. I also asked CGIC for the screen shots when the policy was sold showing what questions it had asked Ms A, information she was given about the process and her answers. I also asked Ms A for some information. I'll provide the relevant details of their responses in my provisional findings below.

Sadly, Ms A has recently told us that her dog passed away suddenly.

What I provisionally decided – and why

I made a provisional decision that I was intending to uphold the complaint. I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

CGIC declined the claim for two reasons which I'll consider separately.

The first reason CGIC declined the claim was that it considered Ms A's dog's corneal ulcer to be a pre-existing condition.

The policy terms say CGIC doesn't cover:

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

'Any claim for Illness or Accidental Injury that showed Clinical Signs or Symptoms before Your policy Start Date or within the Waiting Period...'

The policy defines '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'.

There's no evidence from Ms A's dog's vet records that he had a corneal ulcer before Ms A took out the policy in September 2023. But the policy terms mean that if he had an undiagnosed condition or associated condition which showed clinical symptoms before the policy started there would be no cover for this claim.

Ms A's dog's vet records show he had previous eye problems before Ms A took out the policy in 2023. CGIC said those eye problems were associated with the corneal ulcer claimed for.

But the vet who treated Ms A's dog wrote to CGIC saying:

'I am writing to inform you that the conditions in 2020 and 2022 were both treated and resolved medically and that in my professional opinion the corneal ulcer that we are currently treating is unrelated to these previous conditions and should therefore not be considered a pre-existing condition'.

CGIC told us that although the vet said the corneal ulcer wasn't related to the previous eye problem *'there's no definitive diagnosis so we cannot dissociate and the earlier symptoms would mean the eyes are excluded'*. I don't find CGIC's comment persuasive that there was a link between the corneal ulcer, which was diagnosed, and Ms A's dog's previous eye problems.

It's for CGIC to show that the pre-existing condition exclusion applies. I think the treating vet has given clear expert evidence that the corneal ulcer isn't related to Ms A's dog's previous eye problems. CGIC hasn't shown it can fairly use the pre-existing condition exclusion to decline the claim.

The second reason CGIC declined the claim was because it added a retrospective exclusion to the policy for all claims with respect to eyes, sight and eyelids with effect from the start of the policy. It also used that exclusion to decline the claim.

The policy terms exclude:

'Any claim where You have failed to disclose Your pets full medical history; or where Your pet has suffered from a Condition, whether or not Treatment was received; and You failed to disclose this information to Us at inception of Your Policy, and if it had been disclosed to Us, We would have applied an endorsement to Your Policy in respect of that Condition'.

Also, the General Exclusions in the policy say CGIC won't pay claims:

'If We are made aware of any Pre-existing Conditions at the time of a claim, these Pre-Existing Conditions will not be covered and We reserve the right (to) add a relevant endorsement(s) to Your Policy in respect of these Pre-Existing Conditions'.

So the policy terms say CGIC can add a backdated exclusion to the policy if it would have done so if it had known Ms A's dog's full medical history, and she failed to tell it the history.

I haven't seen CGIC's underwriting guidance to show that it would have added the exclusion to the policy for all claims with respect to eyes, sight and eyelids with effect from the start of the policy if it had known about Ms A's dog's previous eye problems. But even if the underwriting guidance did show the relevant exclusion was correctly applied I still have to consider if it was fair and reasonable for CGIC to add and use the exclusion to decline the claim.

The relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). In line with CIDRA, I would usually consider it's fair for an insurer to add a retrospective exclusion if the consumer didn't take reasonable care in answering the insurer's clear questions when they bought the policy and the insurer can show it would have added an exclusion if it had been given the information.

I asked CGIC to provide screen shots showing what questions Ms A was asked, information she was given about the process and her answers when she bought the policy. CGIC said Ms A was asked:

'Are you looking for insurance cover for a pre-existing condition?'

Ms A answered 'No' which meant the following wording was shown:

'You accept that your pet will not be covered for any illness or injury that is pre-existing or has displayed symptoms (changes in your pet's normal healthy state, condition, appearance, bodily functions or behaviour)...'

CGIC applied the retrospective exclusion because Ms A didn't tell it about her dog's previous eye problems. But I think CGIC hasn't shown it asked Ms A a clear question that would have enabled her to tell it about her dog's previous medical history.

Ms A has said from the start of her complaint that she answered 'No' to the above question because she considered that at the time she took out the policy the eye conditions her dog had been treated for had been resolved. So she wasn't looking for insurance cover for those conditions.

I think Ms A took reasonable care, and answered correctly, in answering 'No' to the above question CGIC asked her when she bought the policy. Which means I think Ms A made no misrepresentation when she took out the policy so CGIC adding and applying the retrospective exclusion was unfair and not in line with CIDRA.

For completeness I should add that the policy says CGIC may add a relevant endorsement to the policy in respect of a pre-existing condition if it becomes aware of one at the time of a claim. As I said above, the treating vet's opinion is that the corneal ulcer isn't a pre-existing condition. So CGIC couldn't fairly add the exclusion on that basis.

Overall I don't think CGIC acted fairly and reasonably in declining the claim or in adding the exclusion for any claims with respect to eyes, sight and eyelids.

In the circumstances CGIC must pay the claim Ms A made in line with the policy terms, plus interest as I've detailed below.

As Ms A's dog has passed away the policy no longer exists so I can't tell CGIC to remove the exclusion from the policy. Ms A has told us that the treatment of her dog's corneal ulcer continued beyond this claim and the costs totalled about £1,055. So Ms A will want to claim for the remaining costs and CGIC should assess any further claims for the treatment of the corneal ulcer in line with the remaining policy terms but disregarding the exclusion for any claims with respect to eyes, sight and eyelids, which it unreasonably placed on the policy.

I think CGIC should have reasonably understood that in these circumstances it couldn't fairly decline the claim and add the exclusion. Ms A has told us she struggled to pay for her dog's treatment and had to rely on friends to help with the vet costs. She's also had to deal with this complaint at an already difficult time for her with her dog passing away, which shouldn't have been necessary. I think CGIC should pay Ms A £200 for her distress and inconvenience it unnecessarily caused'.

Responses to my provisional decision.

Ms A accepted my provisional decision. CGIC said it would respond but it didn't do so by the response date we gave.

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 Ms A accepted, and CGIC hasn't provided a substantive response to, my provisional decision I have no reason to change my mind. For the reasons I've given in my provisional findings and these findings I don't think CGIC acted fairly and reasonably in declining the claim or in adding the policy exclusion for any claims with respect to eyes, sight and eyelids. CGIC must pay the claim Ms A made in line with the policy terms, plus interest as I've detailed below.

As Ms A's dog has now passed away the policy no longer exists so I can't tell CGIC to remove the exclusion from the policy. Ms A has told us that the treatment of her dog's corneal ulcer continued beyond this claim so CGIC should assess any further claims Ms A

makes for the treatment of the corneal ulcer in line with the remaining policy terms but disregarding the exclusion for any claims with respect to eyes, sight and eyelids, which it unreasonably placed on the policy.

CGIC must also pay Ms A £200 for her distress and inconvenience it unnecessarily caused for the reasons I set out in my provisional findings.

My final decision

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

- Pay Ms A's claim less the excess and co-payment, together with interest* at the simple rate of 8% per year from the date Ms A paid the vet's fees to the date of settlement, and
- Assess any further claims Ms A makes for her dog's corneal ulcer in line with the remaining policy terms but disregarding the exclusion for any claims with respect to eyes, sight and eyelids that it unreasonably placed on the policy, and
- Pay Ms A £200 compensation for her distress and inconvenience it unnecessarily caused.

*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 Ms A how much it's taken off. It should also give Ms A a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 26 September 2024.

Nicola Sisk
Ombudsman