

The complaint

Mrs G complains that Casualty & General Insurance Company (Europe) Ltd (“C&G”) unfairly declined a claim under her pet insurance policy and added exclusions retrospectively.

Where I refer to C&G, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I’ll only summarise the key events here.

In December 2023, Mrs G took her dog to the vet as he was showing signs of lameness in his right hind leg. It was initially thought to be a soft tissue injury, but x-rays showed stifle effusion and a suspected partial to complete rupture of the cranial cruciate ligament. Mrs G’s dog was referred to a specialist for Tibial Plateau Levelling Osteotomy (TPLO) surgery.

Mrs G made a claim under her pet insurance policy, underwritten by C&G, but it was declined. C&G said Mrs G’s dog had suffered from lameness in 2020, prior to the start of the policy, so it considered this to be a pre-existing condition. It retrospectively added exclusions to Mrs G’s policy.

C&G received a letter from the treating vet. This confirmed that whilst Mrs G’s dog suffered a suspected soft tissue injury in 2020, he recovered uneventfully with no reoccurrence and that there was no evidence or suggestion of chronic stifle disease prior to the start of the policy. But C&G maintained its decision to decline the claim.

Mrs G raised a complaint, which she brought to our Service. But our Investigator didn’t uphold it. She was satisfied C&G had acted in line with the policy terms.

As Mrs G didn’t agree, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

Pre-existing condition

When making a claim under an insurance policy, the onus is on the policyholder to prove they have a valid claim. If they do, the insurer should cover the claim unless it can prove that a policy condition or exclusion applies.

Mrs G has shown that her dog has required surgery for a cranial cruciate ligament injury, which is something the policy provides for. So, on the face of it, she’s demonstrated that she has a valid claim.

As C&G seek to rely on the policy exclusion for pre-existing conditions, the onus is on it to show the exclusion applies.

The relevant policy term says:

“What is not insured...any claim for illness or accidental injury that relates to a pre-existing condition.”

The policy defines “pre-existing condition” as:

“Means 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.”

C&G rely on the following entries in the vet notes:

20/11/2020 *History - OR on/off hobbling RH, still will happily go for walks and runs around like mad but will lift RH slightly when resting/eating and occasionally limps on it. No other concerns Examination - BAR!! No lameness in cons. Equally weight bearing on both legs for most of cons but definitely slight reduced weight bearing on RH after full examination. RH - Nails and pads wnl, no discomfort on firm palpation, no fb/ swellings between digits/ pads. Comfortable on palpation up leg, no joint effusion in stifle, no luxating patella or obv cranial cruciate drawer. Good ROM in hip.*

01/04/2021 *History – no concerns except gets a little stiff in hips when getting up and after long walks. Slightly reduced ROM in both hips L>R, no discomfort.*

Having reviewed Mrs G’s dog’s medical history in full, I haven’t found any evidence that he suffered from lameness prior to the start of the policy. Rather, the vet has specifically recorded “no lameness” in the above notes and on other occasions.

According to the notes, in 2020, Mrs G’s dog was hobbling. The provisional diagnosis was a soft tissue injury, and the advice was to rest. No further treatment or medical intervention was required.

As such, it’s not clear why C&G has concluded that a cranial cruciate ligament injury occurring over three years later is the same or an associated condition. And it has provided no expert opinion to support its assertions.

C&G says that the condition claimed for “was also suspected to be a soft tissue injury”. But the fact that both conditions presented themselves in a similar way on initial examination doesn’t itself mean they’re the same or associated. And I’d expect C&G to be aware of that.

On the evidence available, I’m not persuaded that the suspected soft tissue injury in 2020 or a brief mention to stiff hips in 2021 has any relevance to the problems Mrs G’s dog suffered in December 2023. For these reasons, I don’t think it’s fair or reasonable for C&G to deem this a pre-existing condition.

Policy exclusions

After declining Mrs G’s claim, C&G added exclusions to the policy dating back to the start.

The remedy to turn back the clock and apply an exclusion retrospectively is set out in the Consumer Insurance (Disclosure and Representations) Act 2012 (or CIDRA). CIDRA sets a

duty on a consumer to take reasonable care not to make a misrepresentation when a contract is entered into or varied.

For a remedy to be available to C&G under CIDRA, it would need to establish that Mrs G failed to answer a clear question about her dog's health with reasonable care. It would also need to show that if Mrs G had taken reasonable care, it would only have offered her a policy on different terms or not at all, making the misrepresentation a qualifying one.

C&G has provided screenshots of the questions it asked Mrs G at the point of sale. This shows that Mrs G was asked:

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

C&G hasn't shown what answer Mrs G gave, but I'd assume she selected "no" to this question. And I don't see how this answer would be incorrect.

Mrs G wasn't asked whether her dog had any pre-existing condition, only whether she wanted cover for one. So this doesn't show me that Mrs G answered a question incorrectly.

C&G didn't ask Mrs G to disclose any signs or symptoms her dog had regardless of whether they needed treatment or not. That may be what the policy terms allude to, but C&G is required to ask a clear and specific question during the sales process if it wants the opportunity to add policy exclusions from the outset.

As C&G hasn't satisfactorily shown that Mrs G made a misrepresentation, I can't fairly say it can add an exclusion during the policy period and apply it retrospectively. So I intend to direct it to remove the exclusion from the policy.

Responses to my provisional decision

C&G has provided a professional opinion from a practicing veterinary surgeon based on an assessment of the claim and vet notes. I don't intend to set this out in full, but the key points are:

- Mrs G's dog had two visits to the vet prior to the start of the policy for musculoskeletal issues; a right hind lameness in November 2020 with occasional limping, and then another visit in April 2021 where it was noted that her dog was 'stiff getting up and after walks. This suggests a chronic degenerative issue as 'stiffness' reflects chronic joint pain rather than a simple soft tissue injury.
- Whilst the treating vet has recorded that Mrs G's dog wasn't lame on examination, he is a breed known to be highly energetic and the vet has noted he was *"difficult to keep still"* whilst being examined. So, the lack of lameness on examination should be taken with a pinch of salt and more weight should be placed on Mrs G's account of her dog at home.
- In vet notes of December 2023 relating to this claim, it's noted that Mrs G's dog has *"always been lame but okay on visits"*. Again, this suggests a large degree of chronicity. This progressed to worsening lameness in January 2024, where it became more suspicious of a cruciate ligament issue.
- Cruciate ligament disease is a degenerative issue of the hind limbs usually presenting as a sudden acute lameness or a more chronic, insidious onset. A medial buttress of the stifle was noted which is a sign of chronic, long term cruciate disease.

Mrs G accepted my provisional decision.

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 thought about the professional opinion provided by C&G, but I remain unpersuaded that the cranial cruciate ligament Mrs G's dog suffered in December 2023 is a pre-existing condition. I'll explain why.

The vet notes from November 2020 refer to Mrs G's dog hobbling and occasionally limping on the right hind leg. The diagnosis was a suspected soft tissue injury and was treated with Metacam. This appears to have resolved the issue at that time as there was no further related appointment.

In April 2021, the vet notes make no mention of the previous hobbling / limping. So I think it's fair to conclude that the issue was resolved with rest and the anti-inflammatory medication.

The notes from this visit say Mrs G was concerned that her dog *"gets a little stiff in [the] hips when getting up and after long walks"*. On the face of it, this would seem unusual for a four-year-old dog. But from the brief vet notes and lack of investigation at the time, there's nothing to satisfy me this meant Mrs G's dog was suffering from a degenerative condition at that time. It's only speculative. Given the stiffness occurred after long walks, suggests the length of the walk was a factor.

Despite visits to the vet after this date, there is no mention of any issues of stiffness or hobbling / limping until December 2023.

I appreciate C&G's vet says this is because Mrs G's dog was difficult to examination as he wouldn't keep still. But this comment was made by the treating vet in March 2022 when they attempted to take the dog's temperature for an unrelated condition. And in July 2021 there were comments made that the dog was "wriggly" when the vet was trying to examine his eyes. I don't think this means the lack of lameness witnessed by the vet for a period of three years should be taken with a pinch of salt. With all due respect, I think that's adding a narrative which just isn't supported by the vet notes.

It's for C&G to show that the condition claimed for in 2023 is the same as (or directly linked to) the condition which was present in 2020 and 2021. Whilst the cranial cruciate ligament issue of 2023 could be a degenerative condition dating back to the suspected soft tissue injury in 2020, there's certainly nothing to suggest this within the medical history and vet notes. Again, this is simply speculative, and I've seen no persuasive evidence of a link between the two conditions. Rather, the treating vet seems satisfied that there isn't one.

For this reason, on the balance of probabilities based on the evidence available to me, I'm not persuaded that it was fair or reasonable for C&G to conclude that Mrs G's claim relates to a pre-existing condition.

My final decision

For the reasons I've explained, I intend to uphold this complaint and direct Casualty & General Insurance Company (Europe) Ltd to:

- pay this claim, minus any policy excess and up to the policy limits, plus 8% simple

interest per annum from the date Mrs G paid the vet until the date she is reimbursed,

- remove all policy exclusions from Mrs G's policy which have been added retrospectively as a result of this claim,
- pay compensation of £150 for the distress and inconvenience Mrs G has no doubt suffered as a result of having her claim incorrectly and unfairly declined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 5 February 2025.

Sheryl Sibley
Ombudsman