

The complaint

Miss B 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.

Miss B holds a pet insurance policy, underwritten by C&G, effective from 30 January 2024.

In June 2024, Miss B’s dog ate a plastic ball which had to be surgically removed. She made a claim to C&G for the cost of the treatment.

C&G declined the claim because Miss B’s dog has a history of digesting foreign objects and requiring surgery to remove them which started before the policy was taken out. It considers this to be a behavioural issue and a pre-existing condition, which is excluded from cover.

On reviewing the claim, C&G noted that there were recorded incidents where Miss B’s dog had demonstrated behaviours such as growling. Because of this, it added an exclusion for all claims with respect to aggression and it removed third-party liability cover from inception.

Miss B didn’t think this was fair because she’d told C&G about the accidents whereby her dog had eaten foreign objects before she took out the policy and it said this wouldn’t affect cover for future claims. Based on this advice, she cancelled her existing pet lifetime insurance and took out cover with C&G. She also denies her dog being aggressive. She raised a complaint, which she brought to our Service.

Our Investigator was satisfied Miss B’s dog had demonstrated a behavioural issue prior to the start of the policy and whilst he acknowledged that C&G told Miss B this wouldn’t affect future claims, he was persuaded she would’ve still opted to take out the policy regardless. So he didn’t uphold the complaint about the claim being declined.

But our Investigator didn’t think C&G had acted fairly when applying an exclusion for aggression and removing third-party liability cover as Miss B’s dog had only growled at the vets which indicated defensive / anxious behaviour which isn’t unusual, rather than aggression. So he upheld this part of the complaint, and recommended the exclusion be removed and third-party liability cover reinstated.

As neither Miss B nor C&G accepted our Investigator’s findings, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

Claim decline

The Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires businesses to handle claims promptly and fairly, provide information on the claim's progress, and to not unreasonably reject a claim. I've kept this in mind when considering Miss B's complaint.

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.

In this case, Miss B has shown that her dog required treatment for the removal of a foreign body which is something the policy will cover. So, on the face of it, she's demonstrated that she has a valid claim.

As C&G seek to rely on a policy exclusion, the onus is on it to show the exclusion applies. The relevant policy terms say:

"When purchasing your [C&G] insurance, please note that pre-existing conditions won't be covered. This includes any subsequent / future treatment for the same event."

The policy provides the following definition:

"Pre-existing condition means any injury, illness or behavioural disorder that your pet had symptoms of, received treatment, medication or advice for in the last 24 months before your policy start date with [C&G]."

It's not in dispute that, prior to the start of this insurance policy, Miss B's dog ingested a squashy ball in 2022 and a tennis ball in 2023. Both required surgery to remove them. These are similar incidents to the one claimed for in June 2024. As such, C&G says this claim relates to a pre-existing behavioural disorder.

The policy doesn't define behavioural disorder. So, I've thought about what the everyday meaning of that term would be. I think it's fair to say this could be behaviours which are considered abnormal / unusual and out of character or they could be typical behaviours but taken to the extreme (for example, excessive tail chasing).

Miss B has a fairly young labrador retriever who was only a year-old puppy when he first ate the squashy ball in 2022. It's not uncommon for puppies to chew on non-edible items and this can result in the ingestion of foreign bodies. It's unfortunate this has happened several times now, but I'm not particularly persuaded that three incidents over the course of three years amounts to a behavioural disorder. I say this because it's not abnormal / unusual and out of character behaviour for a labrador puppy. And it's not typical behaviour taken to the extreme given that it's not something which happens regularly.

In any event, if C&G want to rely on a policy exclusion on the basis that the three incidents are linked by a behavioural disorder, it's for C&G to show that's the case. I haven't been provided with any professional opinion to satisfy me that these incidents aren't only similar in nature but are specifically linked by a behavioural or medical condition. So I'm not persuaded C&G can fairly decline the claim on this basis.

But even if I was persuaded that this was a pre-existing behavioural disorder – which, to be clear, I'm not – I still wouldn't be satisfied that C&G could fairly decline the claim. This is because I can see Miss B contacted C&G via its web chat facility on 2 January 2024, prior to

taking out her policy. She disclosed that her dog had twice eaten foreign objects which had to be surgically removed and she specifically asked whether she'd be covered for another incident of this nature.

C&G said it would look to cover Miss B for any new accidents on the policy. It made no mention that these incidents might be considered a behavioural disorder which would impact cover for future claims.

I'm persuaded that if C&G had made this clear to Miss B, she wouldn't have opted to take out the policy. I say this because she already had a pet lifetime insurance policy in place which she'd had since purchasing her dog and before the 2022 and 2023 incidents. So she was already covered if this happened again. There is no logical reason to persuade me that Miss B would've changed her policy to one which was likely to exclude something she was already covered for and clearly wanted to remain covered for, hence why she asked C&G the question in the first place.

I'm also aware that C&G say Miss B failed to follow veterinary advice and take reasonable precautions to prevent further recurrence of these incidents. It says Miss B was told to muzzle her dog but this isn't reflected in the vet notes.

The only mention of muzzling in relation to the ingestion of foreign bodies was in June 2023 where the recorded notes say, "*general advice about muzzle training*". It doesn't state what the advice was and whether or not the vet considered a muzzle to be appropriate in these circumstances. If Miss B didn't go on to muzzle her dog, I'm not persuaded this would amount to not following veterinary advice as I can't see the vet specifically recommended a muzzle.

Furthermore, I'm not persuaded C&G has shown that Miss B failed to take reasonable precautions to prevent ingestion of the plastic ball. She's told us that she puts her dog on a dragline rather than letting him off lead on walks and she's taken steps to keep him away from other dogs – particularly ones playing with balls. I haven't seen anything to satisfy me that Miss B has acted recklessly which resulted in the incident claimed for.

Policy exclusion and removal of cover

After declining Miss B's claim, C&G added an exclusion to Miss B's policy and removed third-party liability cover dating back to the start. The exclusion says:

"Excludes cover on all claims with respect to the aggression that occurred since 1 September 2022 and Public Liability with effect from 30 January 2024."

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 puts 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 Miss B failed to answer a clear question about her dog with reasonable care. It would also need to show that if Miss B 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 hasn't provided details of the questions it asked Miss B at the point of sale, so I can't satisfy myself that she failed to answer a question correctly. I've followed its current sales process online to see what questions were likely to have been asked and I can see that,

before accepting a quote, Miss B would've had to agree to a list of assumptions about her dog, one of which says:

"Your dog has never shown signs of aggression, such as snapping or growling, and has never attacked or bitten a person or animal."

Miss B must have agreed to these assumptions being correct in order to accept the quote. So, I've thought about whether it was reasonable for her to confirm this statement to be true.

C&G rely on the following entries in the vet notes in order to conclude that Miss B's dog showed aggressive behaviour prior to the start of the policy:

- 01/09/2022 *very stressed when attempted to clip his dew claws and started growling. Abort procedure, as this could have a negative impact on his behaviour and demeanour when is in the hospital environment. Advised to file the dew claws at home with a file.*
- 21/10/2022 *3mls emedog inj s/c (NB he did growl for this). Tried to vomit and was retching but did not produce any balls.*
- 03/01/2023 *Very worried in consult and growling when touched. OR worried since had GI surgery. Tried muzzle but got very frantic so stopped as will just make behaviours worse.*
- 07/03/2023 *OR he has been attacked by other dogs a few times (neutered male dogs). [Miss B's dog] was well socialised as a puppy and is very good with other dogs - but last Saturday he was on lead and a dog that was off lead came up to him and bit his neck – [Miss B's dog] growled and showed his teeth.*
- 14/03/2023 *Routine closed castration. Ausc thorax prior to pre med - no murmur ausc, growling a little. Sedated in garden with 05 present, good effect.*

Based on these entries, I'm not persuaded Miss B misrepresented her dog when she agreed to the assumption that he has *"never shown signs of aggression, such as snapping or growling, and has never attacked or bitten a person or animal"*. I'll explain why.

The entries quoted above build a picture of a dog who reacts by growling when he is anxious, nervous, or in pain. The records of growling are at times where Miss B's dog had his dew claws clipped, was given an injection, and was bitten by another dog. This isn't an unusual reaction, and I don't think it would be reasonable for Miss B to describe her dog as aggressive because of it.

This is supported by a statement by the treating vet who's said:

"[Miss B's dog] has been examined and treated on many occasions at [vet practice] with no evidence of aggression. The behaviour described in the clinical record, in my professional opinion, should be characterised as defensive, anxious behaviour, not aggression. It is not unusual for a patient to act in a defensive or anxious manner in this way in a clinical or stressful environment. I do not believe this behaviour in any way indicates an increased risk of [Miss B's dog] exhibiting aggressive behaviour in an everyday, non-clinical environment, and do not believe he poses an increased risk to third parties than an average dog. Nor has [Miss B's dog] even bitten a staff member or patient at our practice."

As C&G hasn't satisfactorily shown that Miss B made a misrepresentation, I can't fairly say it can add an exclusion or alter the cover during the policy period and apply it retrospectively.

Responses to my provisional decision

C&G dispute my finding that there is a lack of evidence to show Miss B failed to follow veterinary advice about muzzling her dog. It says the post-operative checkup in July 2023, following surgery to remove the tennis ball, discusses muzzling.

Whilst it acknowledges the notes don't give a clear recommendation, it believes this advice should reasonably be interpreted as a warning and a precautionary measure following the second ingestion of a foreign body. It says:

"From a clinical standpoint, there is a well-established duty of care on the part of the veterinary professionals to provide the pet owner with practical measures to prevent recurrence, especially when a dog has already undergone an enterotomy. The risks associated with repeated abdominal surgeries, such as the development of adhesions and other life-threatening complications, are significant. In such context, the advice to begin muzzle training cannot be viewed as incidental or optional.

Moreover, given that the consult took place in the immediate post-operative consult, and [Miss B's dog] was noted to be otherwise well behaved at the time, the rationale for recommending muzzle training must have been specifically to prevent further ingestion incidents. Muzzles are typically recommended for one of two reasons: behavioural issues (e.g. aggression) or prevention of FB ingestion. In this case, the behavioural context does not support the former.

Accordingly, we feel that the advice recorded should be viewed as a clear recommendation, and Miss B's failure to act on it may constitute a failure to take reasonable precautions as outlined in the policy."

C&G advise that it reached out to the treating vet for some more context about what was discussed at the post-operative checkup in July 2023, but they've been too busy to respond.

Miss B 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.

Whilst I've thought about the arguments put forward by C&G, these don't change my opinion as set out in my provisional decision. I'll explain why.

The vet notes which C&G seek to rely on from July 2023 say:

"General advice about muzzle training."

C&G has put forward what they believe was discussed, but this is solely based on speculation and is not supported by the vet notes or any other evidence. It's asking me to make some big assumptions, which I'm not prepared to do.

Whilst it may be that the treating vet recommended muzzling Miss B's dog on future walks, the notes don't say this. And I'd expect that this would be recorded, had a recommendation been made. It could just as likely be that Miss B asked some questions about muzzling. The

fact the notes say “general advice” indicates that this was a conversation in general terms rather than anything specific to Miss B’s dog or any recommendation about the specific situation.

I’m also concerned that C&G has reached out to the treating vet for clarification of these notes so far down the line. I would’ve expected it to do so when it first considered the claim and declined it on this basis, not ten months later during the final stage of our complaint process.

My final decision

For the reasons I’ve explained, I 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 Miss B paid the vet until the date she is reimbursed,
- remove the policy exclusion for aggression and public liability claims from Miss B’s policy which have been added retrospectively as a result of this claim and reinstate third-party liability cover,
- pay compensation of £150 for the distress and inconvenience Miss B has no doubt suffered as a result of having her claim declined and her cover amended incorrectly and unfairly.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B to accept or reject my decision before 20 May 2025.

Sheryl Sibley
Ombudsman