

## **The complaint**

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

## **What happened**

In September 2023, Mr S's dog was diagnosed with pancreatitis. Mr S made a claim under his policy with C & G for the costs of treatment.

C & G refused the claim on the basis that it related to a pre-existing condition. C & G says the vet's notes record that the dog had an episode of diarrhoea in 2020 and the symptoms of the pancreatitis include vomiting and diarrhoea, so this condition started before the policy was taken out.

C & G says that if it had known of the previous episodes of diarrhoea and vomiting in 2020, it would have applied an exclusion to the policy for digestive illnesses. As it now knows this history, C & G says it is entitled to apply the endorsement retrospectively, which means Mr S's policy excludes all claims for digestive issues.

Mr S is very unhappy with this. He says his dog had an episode of diarrhoea in 2020 which was completely unconnected with the pancreatitis diagnosed three years later. Mr S's vet also provided a report to say the diarrhoea in 2020 was not a symptom of the pancreatitis that was later diagnosed. Mr S says that most dogs will have had diarrhoea in their lives. This has been a very difficult time for him and C & G has added to the stress of the situation. The cover is only for £1,000 and he has spent around £7,000 on vet's bills.

C & G maintained its position and said there had also been episodes of diarrhoea recorded in 2013, 2015, 2017 and twice in 2020. C & G said that as the dog had suffered from multiple episodes of diarrhoea and gastroenteritis, it is unable to provide cover for any conditions relating to the digestive system. It therefore maintained its refusal to the claim.

Mr S brought his complaint to us.

One of our Investigators looked into the matter. He did not recommend that it be upheld, as he thought that C & G was entitled to refuse cover on the basis of the dog's previous clinical history and was entitled to impose a retrospective exclusion for any digestive issues.

Mr S did not accept the Investigator's assessment. He made a number of points in support of his complaint. I have considered everything Mr S has said but have summarised his main points below:

- The first incident in 2013 was when the dog was a puppy and this is not uncommon.
- In 2015, the dog had enteritis caused by a virus, so this was unrelated to pancreatitis.
- In 2020 he already had the policy with C & G, so this was not before the policy started. The dog had two episodes of diarrhoea but he did not make a claim for the vet's costs in relation to this, as it was minor.
- The Investigator said his dog had suffered chronically from an associated condition

- before the policy started but this is not true. The dog did not have a chronic condition.
- His policy does not have an exclusion for stomach related issues.
- C & G did not ask about vomiting or diarrhoea when he took out the policy.
- While most dogs may have vomiting and diarrhoea in their lives, very few will have pancreatitis.
- The vet was clear that vomiting and diarrhoea in a dog does not indicate a chronic condition and does not indicate pancreatitis.
- He does not believe C & G would apply the exclusion it claims in every circumstance of sickness and asks for evidence that it does this. If it really does apply exclusions as a result of a few bouts of sickness in 10 years, then it should highlight this fact in its customer information clearly and at the outset.
- There is no mention in any of his policy documents of diarrhoea and vomiting needing to be reported.

As the Investigator has not been able to resolve the complaint it has been passed to me.

I issued a provisional decision on the matter in July 2024. I have copied my provisional findings below:

“Is the claim excluded on the basis it is a pre-existing condition?”

C & G’s letter to Mr S refusing the claim said it was doing so on the basis that the policy does not cover pre-existing conditions.

Mr S’s policy, like most other pet policies, does not cover pre-existing conditions. It says:

*“You accept that no cover will be provided for any illness or injury that is pre-existing or if it were to arise within the first 14 days from the policy start date or 5 days in the event of an accident.”*

And [it] also contains the following exclusion:

*“Section 1 - Veterinary Fees*

*What is not insured?*

- *Any claim for Illness or Accidental Injury that relates to a Pre-existing*
- *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 a pre-existing condition as being:

*“Any diagnosed or undiagnosed Condition which has occurred or existed, or has shown signs or symptoms of existing in any form before the Policy Start Date or within the Waiting Period in the first Period of Insurance. This also includes any diagnosis or any clinical signs caused by or resulting from an Accidental Injury or illness Your pet had on an Associated Condition before the Policy Start Date or within the Waiting Period in the first Period of Insurance.”*

An “associated condition” is defined in the policy as:

*“a Condition that is either a recurring Illness and/or Accidental Injury or Lump; or related to a previous Illness and/or Accidental Injury or Lump; or caused by a previous Illness and/or Accidental Injury or Lump.”*

And *“Illness Means any disease, sickness, infection or any change to Your pet’s normal healthy state, which is not caused by an Accidental Injury.”*

So it is not necessary for any condition to have been diagnosed for it to fall within this definition and exclusion of a pre-existing condition but the symptoms which occur before the start of the policy must be a clinical sign or symptom of the condition later claimed for. So in this case, this means that in order to rely on this exclusion, C & G must establish that the episodes of diarrhoea referred to in 2020 and before, were clinical signs of the pancreatitis that was later diagnosed.

Mr S’s dog was seen by the vets in July 2013 just after collecting the dog as a puppy as he had diarrhoea; and in August 2013 as he had vomited. There are no further notes or attendances in relation to vomiting or diarrhoea until February 2015, when the dog had diarrhoea and was diagnosed with *“enteritis, not sure of cause”*.

The next relevant vet attendance was in July 2017 when the dog was diagnosed with *“mild gastroenteritis”*.

The vet then saw the dog in April 2020 as a result of *“watery diarrhoea over past 3 days ... abdomen increased gut sounds. Diagnosis: Dietary intolerance. Enteritis?”*

And the dog was seen again in June 2020 with a *“recurrence of diarrhoea”*.

I note the dog was also seen at the vets in November and December 2020, April 2021, November 2021, April 2022 and May 2022 for other matters and there was no mention of any digestive issues in the notes of those appointments. So the last appointment for any digestive issue was more than three years before the onset of symptoms that led to the diagnosis of pancreatitis.

The treating vet did not think the episodes of diarrhoea were related to the pancreatitis. The vet said: *“If he had pancreatitis in 2020, as he has more recently, he would certainly not have had three clear years of no clinical signs, he would not have responded to treatment and he would not have been a well dog, as he has been when seen on his many exams in between 2020 and now.”*

The vet also said that the symptoms that led to the diagnosis of pancreatitis did not include diarrhoea. They said the dog later had diarrhoea, around a month after diagnosis, but this was not part of the pancreatitis but a result of the medication it was on.

Given this, I do not think there is sufficient evidence to establish it was likely the diarrhoea experienced in 2013, 2015, 2017 or 2020 was a symptom of the pancreatitis that was later diagnosed.

I also do not think they were an *“associated condition”*. Given the gaps in time between each episode and the significant gap in time between the last episode and the onset of symptoms that led to the diagnosis of pancreatitis (around three years) and the vet’s notes at each relevant appointment, it seems to me likely that each episode was a one-off and unrelated to each other or the later diagnosis. The diarrhoea may have been a recurring symptom but there is no convincing evidence that it was part of a recurring illness. And I don’t think that just because they involved the digestive system means they are sufficiently associated that it is fair and reasonable to consider the pancreatitis to be a pre-existing condition under policy.

Having considered everything carefully, I do not consider that C & G has established that the dog was suffering from pancreatitis or any associated illness or condition before Mr S took out the policy in 2018, or when it renewed in 2022. I do not therefore think it is entitled to refuse the claim on the basis that it was for a pre-existing condition.

Can C & G apply retrospective exclusion that means the claim is not met?

After this claim was submitted, C & G applied the following retrospective exclusion to Mr S's policy:

*"Excluded Conditions: Excludes cover on all claims with respect to The Digestive System with effect from 10.10.2022."*

Mr S first took out this policy with C & G in 2018 and it renewed in October each year since. Mr S therefore says that most of the episodes of illness C & G refer to happened after the cover started with C & G and so can't be said to have pre-existed the cover which started in 2018.

The policy period relevant to this claim started on 10 October 2022. There is a general duty to disclose material information at renewal as well as at the outset of cover. C & G has suggested that the episodes of diarrhoea should have been disclosed when the policy renewed in 2022 and if they had been it would have applied the exclusion then. And the exclusion would then have been in place at the time of the claim in 2023. I do not think I need to make a finding about whether something that happened during the period Mr S was insured with C & G would reasonably be considered to be pre-existing at the next renewal or not, in order to fairly determine the outcome of this complaint. I therefore make no comment on whether I think that is fair in principle or not. I say this because I do not consider it was fair for C & G to apply the exclusion anyway. I will explain why.

Our approach is in line with the relevant law on this issue: The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (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.

I've considered the circumstances of this case to consider whether C & G fairly added the exclusions given our approach, in line with CIDRA.

As stated, Mr S bought this policy online in 2018 and it renewed each year since. The renewal documents sent in October 2022 say:

*"Declaration ...Are you looking for cover for a pre-existing condition? No."*

In my opinion, the declaration set out above is not clearly asking an applicant about any symptoms or issues the dog has had but rather asks if cover is wanted for pre-existing conditions. As I do not think the pancreatitis was a pre-existing condition at that time, I do not think that Mr S could reasonably have been expected to do anything in response to this declaration.

C & G has not provided evidence that any other questions were asked of Mr S that would have elicited disclosure of the episodes of diarrhoea. I don't therefore think Mr S failed to take reasonable care when renewing this policy in October 2022. Therefore I don't think C & G can alter the contract it entered into on the basis it's now found out about episodes of diarrhoea, which have not been linked to the later condition.

C & G might have applied the exclusion for claims related to the digestive system, if it had known about the previous episodes of diarrhoea but as Mr S didn't fail to take reasonable care, it's not though any fault on his part that it didn't let C & G know.

CIDRA only allows C & G to alter the terms of the policy if a qualifying misrepresentation has been made. And as explained, Mr S didn't fail to take reasonable care, so, there is no qualifying misrepresentation.

So, to put things right I think C & G should meet the cost of the claim (subject to the remaining terms of the policy). As Mr S has paid the vet already, interest should be added on any amount reimbursed to him, at our usual rate. In line with our approach, the excess and any co-payment should not be taken from the claim limit. I also consider that some additional compensation is warranted for the unnecessary and avoidable distress the refusal of the claim would have caused. I think that £250 is reasonable."

### **Responses to my provisional decision**

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

Mr S has confirmed he accepts my provisional decision and has not added anything further.

C & G has also confirmed it accepts my provisional decision. It has calculated the claim value and says that there are some elements that are not covered (e.g. hospitalisation over £100 per night, food and consumables while in hospital and the theatre fee, totalling approximately £130). There is also an excess of £90 and co-payment of £360.03. It says the total amount paid would be £2,629.92 plus interest.

### **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 and they both accept my provisional findings, I see no reason to change my findings. Having considered everything again, I remain of the opinion that C & G was not entitled to refuse the claim on the basis the pancreatitis was a pre-existing condition and was not entitled to apply a retrospective exclusion for claims relating to the digestive system. I therefore also remain of the opinion that C & G should meet the cost of the claim (subject to the remaining terms of the policy), together with interest at our usual rate. And that, in line with our approach, the excess and any co-payment should not be taken from the policy claim limit. I also remain of the opinion that C & G should pay Mr S £250 compensation.

C & G has calculated the payment due. I am not able to consider if this calculation is correct in this decision but if the parties are not in agreement about the settlement Mr S can refer back to us.

### **My final decision**

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

1. meet the cost of the claim (subject to the remaining terms of the policy), together with interest at 8% simple per annum from the date he paid the vet's fees to be met under the policy to the date of reimbursement; and
2. pay Mr S the sum of £250 compensation for the distress and inconvenience caused by the incorrect refusal of his claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 September 2024.

Harriet McCarthy  
**Ombudsman**