

The complaint

Miss H complains about Great Lakes Insurance SE's decision to decline a claim for veterinary treatment costs.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Miss H has a "lifetime" pet insurance policy underwritten by Great Lakes to cover her dog, who I'll refer to as H. She took out the policy in May 2022.

In August 2021, H had been diagnosed with disc herniation and had an operation and subsequent post-operative assessment and treatment.

When Miss H purchased her policy with Great Lakes, in May 2022, she was understandably keen that cover would extend to any future problems with disc herniation.

She fully declared the previous issues. And, as I understand it, Great Lakes agreed to provide cover which would not exclude future instances of disc herniation. And for that, Miss H paid an addition to her premium.

In February and March 2023, it became apparent that H had a further issue with her spine. Miss H paid just over £10,000 for treatment and made a claim to Great Lakes to recover those costs.

Great Lakes declined the claim. Miss H wasn't happy with that and made a complaint. Great Lakes' response to Miss H's complaint isn't entirely clear. Mainly because they're at pains to explain mistakes in the information provided to Miss H - and sought from Miss H - when she bought the policy.

However, in essence, it appears they declined the claim because the latest disc herniation was the result of a pre-existing condition *and* because Miss H had provided inaccurate information when she renewed the policy.

Great Lakes pointed to the information Miss H had provided about the previous disc herniation. She'd been asked whether H had had an operation for disc herniation and she'd correctly answered "yes".

The next question was "Has your pet made a complete recovery with no ongoing treatment or follow-up required?". Miss H answered "yes".

Great Lakes said that although they accepted Miss H had acted in good faith, this was in fact not true. They said H's veterinary notes showed that treatment and follow-up for the disc herniation in August 2021 was on-going in May 2022 when the policy was purchased.

Great Lakes said that if Miss H had answered that question "no", as she should have done, they wouldn't have offered cover for disc herniation. And they refunded a part of Miss H's

premium on that basis (the additional amount which had been to cover future disc herniation).

Miss H wasn't happy with this and brought her complaint to us. Our investigator looked into it and didn't think Great Lakes had acted fairly and reasonably when they declined the claim.

They thought H *had* recovered from the original August 2021 disc herniation by May 2022 – and so Miss H had answered Great Lakes questions at renewal accurately.

And they proposed that Great Lakes should re-consider the claim on the basis that the latest treatment was *not* for a pre-existing condition and Miss H had *not* misrepresented the facts when she renewed the policy.

They also thought that if Great Lakes then reimbursed Miss H for her payments for treatment in 2023, they should add interest to those payments at 8% simple, calculated from the date Miss H made the payments to the date Great Lakes reimbursed her.

Our investigator also told Great Lakes that they thought it was unfair that the “lifetime” policy now had an exclusion for all disc-related injuries. They said Great Lakes should remove that exclusion and restore the policy to version extant after purchase in May 2022.

They also said Great Lakes should pay Miss H £150 in compensation for the trouble and upset she'd experienced as a result of their error in declining the claim.

Great Lakes disagreed and asked for a final decision from an ombudsman.

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 think it's fair to say that Great Lakes' final response to Miss H's complaint to them is somewhat confusing. There's a rather convoluted attempt to set out who told Miss H what when she bought the policy - and whether they ought to have done so or not.

But to cut to what I think is the point, it appears they're saying the agent who engaged with Miss H about the previous disc herniation should have concluded that they wouldn't cover that pre-existing condition. And so, Miss H ought not to have been offered cover relating to disc herniation at all. Hence the part-refund of the premium Miss H paid.

That seems to me to amount to retrospective justification of decisions made *after* it became apparent that Miss H was making a claim for costs of treatment in early 2023.

To be fair, in their most recent communications with us, Great Lakes appear to have dropped the argument that the 2023 treatment was for a pre-existing condition that wouldn't be covered by the policy.

I'm pleased they *have* dropped that argument because it appears not to hold any water.

There's an expert vet's report on H's condition and medial history which states very clearly and cogently that the issues treated in 2023 were not a continuation of the condition treated in 2021.

And in the absence of any contrary expert opinion, I'm satisfied that the latest episode requiring treatment was very likely *not* a pre-existing condition.

On the face of it, Miss H has bought a policy specifically to cover future instances of disc herniation issues – and has told Great Lakes’ agent that there was a previous instance of disc herniation.

Great Lakes agreed to that – and charged a higher premium because disc herniation was covered. And they told Miss H she was covered. And when H then suffered another disc herniation, Great Lakes refused to pay out.

I don’t think that makes any sense at all. And I’m satisfied that, on the face of it, it would be palpably unfair for Great Lakes to decline the claim based on the idea that H’s latest problems were the result of a pre-existing condition.

That leaves us with the question of whether Miss H misrepresented the facts when she bought the policy and said that H had made a “complete recovery” from the previous disc herniation.

Great Lakes say there are two main reasons for saying that treatment and follow-up for the original disc herniation in August 2021 were on-going in May 2022 when Miss H bought the policy.

One – H had hydrotherapy after the operation in August 2021, and that continued *after* May 2022.

And two – H had a problem with her gait (limping and occasional hopping) after the operation in August 2021. And that issue was still under review by H’s vet *after* May 2022.

There’s no doubt H was prescribed hydrotherapy after the operation in August 2021. There was a further referral for hydrotherapy from Miss H’s vet in April 2022. And the hydrotherapy did, as Great Lakes say, continue after May 2022.

Miss H says she continued with the hydrotherapy after the first bout because H enjoyed it – and it helped with her general fitness.

The hydrotherapist has very helpfully provided us with a report on this. They say that they can’t accept pets for treatment *without* a vet’s referral. So, a further referral from a vet would have been necessary in April 2022 if H were to continue with her sessions – whether they were clinically necessary as part of H’s recovery or not.

The hydrotherapist also says it’s not unusual for pets to continue to attend for reasons of general fitness and/or strengthening and/or pain relief for life-long conditions.

In all cases with H, the vet’s referrals to hydrotherapy say the treatment is recommended rather than necessary.

And it’s reasonably clear to me that the second referral (in April 2022) in particular – which led to the hydrotherapy being provided up to and beyond the point in May 2022 when Miss H bought her policy – was likely at Miss H’s request. And that it reflected Miss H’s desire to keep the sessions going because H enjoyed them and they were generally good for her.

I’m not convinced then by Great lakes argument that the continuing hydrotherapy meant that H hadn’t made a “complete recovery” from the disc herniation in 2021.

In cases like this, it’s apparent that a dog may have a lasting, life-long, impact from the disc herniation and/or the operation to treat it. The dog may limp or have relatively minor issues with its gait.

This seems to have happened in H's case. The hydrotherapy appears to have potentially helped with that – as well as being enjoyable for H.

The on-going review of the limp / gait issues *is* clear in the vet's notes up to and beyond May 2022 (when the policy was purchased). But again, it appears this was due to the likely life-long affect of the earlier disc herniation and operation on H's gait.

I think it's arguable whether that – the continuing hydrotherapy and the on-going check-ins about the limp - means H had or had not made a "complete recovery". And we could have a very interesting and lengthy – if rather semantic – discussion about that.

Would a person who suffered a bout of gangrene – and lost a foot as a result – for example, be said to have made a "complete recovery" once the gangrene was gone? Or would they be said to have never recovered because they had on-going issues with their gait?

I suspect there are reasonable arguments to be made for both sides of that debate. However, what I have to consider is the rather more prosaic question of whether Miss H made a misrepresentation when she answered "yes" to the question Great Lakes asked her – "Has your pet made a complete recovery with no ongoing treatment or follow-up required?".

The relevant legislation here is the Consumer Insurance (Disclosure and Representations) Act (CIDRA). This applies to disclosures made by potential customers when purchasing insurance.

And it says that if a consumer makes a "qualifying" misrepresentation, then the insurer can apply certain remedies such as voiding the policy, declining claims, or settling claims on the terms that would have been offered had the truth been known.

In this case, Great Lakes say they wouldn't have offered cover for future disc herniation had they known the facts at the point of purchase, so they are entitled to decline Miss H's 2023 claims.

In order for a misrepresentation to be a "qualifying" misrepresentation under the terms of CIDRA, it must be either careless or knowing / reckless.

Great Lakes have said they believe Miss H acted in good faith when she bought the policy – and told them about the previous disc herniation. So, I have to assume they think she misrepresented the facts to them carelessly, rather than knowingly or recklessly.

One of the questions we have to ask when we consider "careless" misrepresentation is whether the question the consumer was asked was clear and unambiguous. If it was, and it was answered incorrectly, then – all other things being equal - the misrepresentation may have been careless.

But if the question wasn't clear and unambiguous, it would be difficult to justify saying that the consumer had acted carelessly.

As I've said above, I think it's very debatable whether a dog with an on-going and likely life-long limp or occasional gait issues has "completely recovered" from a disc herniation.

But if I put myself in Miss H's shoes, when she bought the policy – and was trying to make it clear to Great Lakes that there had been a previous issue – it wouldn't be unreasonable to think that H had made a "complete recovery" from the disc herniation itself. And it wouldn't be unreasonable – much less careless – to answer the relevant question "yes".

So, in summary, I don't think it would be fair for Great Lakes to decline Miss H's claims on the basis that she'd made a misrepresentation to them when she said H had made a complete recovery from the disc herniation in 2021.

It follows that I don't think Great Lakes acted reasonably in declining Miss H's claims on the basis that either: (a) H had suffered from a pre-existing condition; and/or (b) that Miss H had carelessly answered the relevant question inaccurately when she bought her policy.

Putting things right

On that basis, I agree with our investigator that Great Lakes should re-consider the claims from Miss H that they declined in 2023. And they should not decline those claims for the reasons they've so far given – that the condition was pre-existing and/or because Miss H misrepresented the facts when she bought the policy.

I also agree that, because Miss H has been out of pocket since she paid for the treatment, if they do settle the claims now, Great Lakes should add 8% simple interest, calculated from the date Miss H paid out (Miss H will need to provide proof of the date of these payments to Great Lakes if she hasn't already done so) to the date Great Lakes reimburse her.

Given the stress, worry and inconvenience Miss H has been caused by Great Lakes' errors in the handling of her claim, I agree that £150 is fair and reasonable compensation for her trouble and upset.

And I also agree that Great Lakes should remove the exclusion or endorsement they added to Miss H's policy to remove cover for all disc-related injuries. This is a lifetime policy. Cover for on-going conditions (which were not pre-existing at the point of purchase) should therefore be continuous for as long as the policy is renewed.

Given that I'm now effectively asking Great Lakes to restore cover for disc-related issues, it goes without saying that Great Lakes will be entitled to expect Miss H to return the part-refund they gave her when they told her the 2023 claims wouldn't be covered.

If it's convenient for both parties, I assume that amount might be deducted from any payment Great Lakes now make to Miss H.

My final decision

For the reasons set out above, I uphold Miss H's complaint.

Great Lakes Insurance SE must:

- re-consider the claims Miss H made in 2023 (as set out above);
- if they then settle any or all of those claims, pay interest at 8% simple calculated from the date Miss H paid out to the date Great Lakes reimburse her;
- remove from her policy any exclusions or endorsements relating to disc-related injuries; and
- pay Miss H £150 in compensation for her trouble and upset.

If Great Lakes Insurance SE considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss H how much it's taken off. It should also give Miss H a tax deduction certificate 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 Miss H to accept or reject my decision before 10 January 2024.

Neil Marshall
Ombudsman