

The complaint

Mr P complains that Casualty & General Insurance Company (Europe) Ltd (Casualty) declined to cover a claim he made for his dog, under his pet insurance policy.

What happened

Mr P says his dog was diagnosed with arthritis on 25 April 2023. He made a claim to Casualty under his policy, which it declined. It told him his dog had a pre-existing condition dating back to May 2018. This meant the claim for arthritis was excluded from cover.

Mr P says the leg stiffness his dog experienced five years ago wasn't due to arthritis. He says his vet supports this view. Mr P says he's had to pay for several treatments for his dog that should be covered by his policy with Casualty.

In its final complaint response Casualty says Mr P's dog was seen by a vet for lameness in his front right leg. It says the vet was concerned the dog was suffering from discomfort in both elbows and prescribed a course of the drug 'Rimadyl'. Casualty says Mr P's dogs responded positively to this drug which is commonly prescribed to alleviate the symptoms of osteoarthritis.

Casualty says osteoarthritis is a degenerative disease that worsens over time. It says its pre-existing condition exclusion applies in this case, based on the issue Mr P's dog was seen for in April 2018. It maintained its decision to decline his claim.

Mr P didn't think he'd been treated fairly and referred the matter to our service. Our investigator upheld his complaint. He didn't think the May 2023 diagnosis could reasonably be linked to the issue presented in April 2018. Because of this he said Casualty should reconsider Mr P's claim.

Mr P accepted our investigator's findings. Casualty didn't respond.

As an agreement wasn't reached the complaint has been passed to me to decide.

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.

Having done so I'm upholding Mr P's complaint. Let me explain.

Casualty is relying on the following policy exclusions to decline Mr P's claim:

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

And:

"Any claim where You have failed to disclose Your pet's 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."

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."

I've read the clinical records relating to Mr P's dog's visit to the vet on 25 April 2018. The records say:

"lame RF, Concern poos bilateral elbow discomfort, R>L. Discussed if no significant improvement or on and off lameness would advise CT scan. 0.00 RIMADYL PALT TABS 50MG"

Ten days later the clinical records say:

"History - much improved after ruimadyl and remains normal despite rimadyl...0.00 Plan - if repeated problem, consider elbow CT"

There are no further records showing issues with the dog's elbows or legs until 25 April 2023. On this date the records say:

"Examination - Will not tolerate flexion of the elbows and very stiff on all limbs when walking 0.00 Diagnosis - Suspect arthritis."

Casualty is relying an exclusion for a pre-existing condition, so the onus is on it to show this condition was present before the policy was taken out. Having considered the evidence, I don't think it has.

Mr P's policy was incepted in October 2022. There was no diagnosis of arthritis prior to this. I think our investigator made a valid point that signs of lameness can be exhibited for a variety of reasons. The clinical records don't show that Mr P's dog was suffering from arthritis in 2018. This is further supported by the lack of any further presentations to the vet for this reason, between June 2018 and April 2023. A period of around five years.

It's for Casualty to show that Mr P made a misrepresentation by not declaring a pre-existing condition. In the event that he has made a misrepresentation, the relevant law I have to consider is the Consumer Insurance Disclosure and Representations Act (CIDRA). Under CIDRA Casualty must show that Mr P made a misrepresentation in the information provided at the inception of his policy. He must take reasonable care not to make a misrepresentation. Casualty hasn't shown what it asked Mr P or what his responses were. So, it hasn't shown that he made a misrepresentation.

If it were the case that Mr P did make a misrepresentation, Casualty would need to show that without the misrepresentation it wouldn't have offered cover at all or would only have done so on different terms. It hasn't demonstrated through its established underwriting criteria that this is the case here.

If Casualty considers Mr P made a qualifying misrepresentation, it has to act in line with the CIDRA rules. But, based on what I've read it hasn't reasonably shown that the condition being claimed for was pre-existing, or that there was a misrepresentation that allowed it to decline Mr P's claim using the exclusion term it has.

Having considered all of this I don't think Casualty treated Mr P fairly when declining his claim for the reason it gave. It should now reconsider his claim without reliance on the pre-existing condition exclusion.

My final decision

My final decision is that I uphold this complaint. Casualty & General Insurance Company (Europe) Ltd should:

- reconsider Mr P's claim without relying on the pre-existing condition exclusion.

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

Mike Waldron
Ombudsman