

The complaint

Mrs C complains that Casualty & General Insurance Company (Europe) Ltd (C&G) unfairly turned down her pet insurance claim.

My references to C&G include its claim and complaint handling agent.

What happened

In March 2023 Mrs C's dog was unfortunately injured in a road traffic accident and required surgery. Mrs C made a claim to C&G for the vet's treatment costs.

Mrs C explained that it had been a freak accident, where her dog had unexpectedly been able to get the front door open having seen a cat on the front wall as well as Mrs C's children outside. Mrs C's husband had been unable to get hold of the dog, who chased the cat by jumping over the garden wall and into the road, where she was sadly hit by a car that was exceeding the speed limit.

C&G turned down Mrs C's claim, on the basis that she had failed to comply with several conditions of its policy. In summary, it said Mrs C had failed to prevent her dog escaping her property, she had been unable to control the dog and had not kept the dog in a secure and appropriately fenced area to prevent escape.

Mrs C disagreed, saying that it had been a sudden and freak accident. She had called C&G before the surgery and had received a positive response about the treatment. She said C&G had also changed its reasons for turning down the claim and failed to respond to her until she contacted it via social media. She came to us.

Our Investigator looked into the complaint and upheld it. He thought Mrs C had given a clear and consistent account of the accident. He concluded that C&G had not shown that it could fairly turn down the claim under the policy terms. It had not shown that Mrs C had been reckless in failing to prevent her dog from escaping, as required when suggesting a lack of reasonable care. Our Investigator recommended that C&G pay the claim (with interest if applicable) and pay Mrs C £150 in compensation.

C&G did not agree with our Investigator's conclusions. I'll refer to its arguments below.

We asked Mrs C whether she had taken a loan to repay the vet's bill. Although she had been in process of doing so, she said that she had not taken the loan out yet. But this was only because her vet's practice had kindly agreed to put its fees for the accident on hold pending the outcome of this complaint.

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 uphold this complaint. I will explain my reasons.

In turning down the claim C&G has relied on several of its “General Conditions” which apply to all sections of its policy:

- *“You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage, as well as arranging and paying for Treatment for Your pet to reduce the likelihood of Illness or Accidental Injury.*
- *You must ensure that Your dog is under control at all times, and due care should be maintained to prevent Your dog from escaping and causing itself Accidental Injury or any other persons or animals.*
- *You must comply with all laws that relate specifically to Your pet, including but no limited to “Section 27 of the Road Traffic Act 1988”, which states that a dog that is on a designated road must be on a collar and lead and under control.*
- *You must ensure Your pet cannot escape or stray from Your property.*
- *You must ensure that any area in which Your Pet is kept is secure and appropriately fenced or otherwise secured and all reasonable steps must be taken to prevent escape.*
- *When loading Your pet into or out of Your vehicle or another person’s vehicle, You must ensure that the area is either secure or Your pet is on a lead and under Your control.”*

The policy says “Accident Injury Means a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of Your pet’s body.”

Although C&G has quoted all the above conditions to Mrs C, I will focus on the specific conditions on which it relied in its final response letter and its comments to this service.

C&G asked Mrs C to provide a statement about what had happened when her dog had escaped, to provide a video of her front door and photos of the front of the house. When she complained about its initial decision, C&G spoke to her and asked her to go through the series of events again. Mrs C also explained what had happened to her dog when she complained to this service. Her dog is large and weighs around 40kg.

C&G said that having reviewed the evidence it was unable to see how Mrs C’s dog could have opened the door. I’ve also reviewed all the evidence and Mrs C’s accounts of what happened. I think she has been clear and consistent in her evidence and I find it persuasive.

Mrs C explained the inner door (with a turn handle lock) was open and the outer double-glazed door with a lever handle was closed. The family was going out and her children were outside but the dog was not going with them. Her dog could see her children outside and a cat on the wall. Having reviewed the evidence, I think Mrs C’s consistent account of what happened was plausible in that the dog jumped on the door handle, pushing it down to release the door and nudge it open.

C&G said that when it spoke to Mrs C she said the dog had nudged the door open “with her nose”, which she hadn’t mentioned before. I don’t consider that in saying this Mrs C was being inconsistent or that this contradicted anything she’d previously said.

C&G said that Mrs C (and her husband) had not been able to control the dog, contrary to its conditions and there was an opportunity to prevent escape. But I don’t consider this to be a fair assessment of the situation. Mrs C says that she had lived in the house for two years and her dog had never attempted to open the front door by jumping up. I don’t think that failing to hold on to the dog unexpectedly running out of the door reasonably means that Mrs C had failed to keep the dog under control or to prevent escape.

C&G has commented on the height of the wall in the front garden, which the dog was able to jump over in pursuit of the cat. It refers to its policy terms stating that she must ensure the pet is kept in a secure and appropriately fenced area and take “*due care*” to prevent escape.

I've considered C&G's comments. C&G has not defined in its policy what it means by “*due care*”, “*proper care and attention*” or “*all reasonable steps*”. As our Investigator has explained, the test we use is set out in the leading legal case on ‘reasonable care’ – *Sofi v Prudential Assurance (1993) 2 Lloyd's rep. 559*. For C&G reasonably to be able to turn down the claim on the basis that Mrs C failed to take reasonable care, it needs to show she acted in a way which amounted to recklessness. That means that C&G needs to show that Mrs C recognised a risk but took it anyway by taking measures she knew to be inadequate or no measures at all.

C&G says that Mrs C would have been aware of the risk of her front garden not being adequately fenced and did not adequately secure her garden, especially given the direct access to a road. As such, the incident had been foreseeable. It said Mrs C had believed her garden to be secure, but her dog had been able to clear the front wall with ease.

But Mrs C had not “*kept*” her dog in the front garden, but rather the dog had unexpectedly been able to open the front door. The dog was running through the garden rather than escaping from the garden. I don't accept that C&G has shown that Mrs C acted in a way that amounted to recklessness.

I consider that what happened was a freak accident and one which Mrs C reasonably expected her policy would cover. In my view, C&G did not fairly decline the claim in circumstances where I think Mrs C showed that her dog's accidental injury was “*a sudden, unforeseen, unintended action or event, with a specific time and place which results in damage to one or more parts of Your pet's body.*”

It follows that I find that C&G should pay the claim, subject to the policy limit and any applicable excess. Mrs C has confirmed that she has not been required to pay her vet's fees, because the vet's practice has kindly put her account on hold. As the vet's fee's account is on hold, and she has not borrowed any money to pay the bill, I do not make any additional award for interest.

I consider C&G's handling of the claim and its unfair claims decision caused Mrs C some material inconvenience and distress at an already difficult time. I consider £150 compensation to be fair and reasonable in the circumstances of this complaint.

Putting things right

Within 28 days of the date on which we send it Mrs C's acceptance of this Final Decision, I require Casualty & General Insurance Company (Europe) Ltd to:

- Pay Mrs C's claim for her dog's accidental injury subject to the policy limit and any applicable excess; and
- Pay Mrs C £150 compensation for distress and inconvenience.

My final decision

My final decision is that I uphold this complaint. I require Casualty & General Insurance Company (Europe) Ltd to take the steps set out in the ‘*Putting things right*’ section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 23 October 2023.

Amanda Maycock
Ombudsman