

The complaint

Mrs N complains that Casualty & General Insurance Company (Europe) Ltd (Casualty) declined to cover a claim for her dog's illness, under her pet insurance policy.

Mrs N is represented by Mr N in her complaint. I'll refer to Mrs N for ease.

What happened

Mrs N says Casualty is refusing to cover the costs of treatment for a new diagnosis of kidney failure for her pet dog. This is because of infrequent mild instances of urinary leaking, which has previously been successfully treated. She says the urinary leaking is unrelated to the kidney failure.

Mrs N says she has had to pay for the treatment related to her dog's kidney disease. She says Casualty should cover these costs in full.

In its final complaint response Casualty says Mrs N's policy commenced in September 2021. It provided her policy terms that confirmed no cover for any condition that was pre-existing or had shown clinical signs of existence in any form prior to the policy inception. It says Mrs N's dog was treated for urinary incontinence in 2018, 2020 and 2021.

In July 2022 Casualty says a urine sample was taken to see if there were underlying problems connected to Mrs N's dog's 'bed wetting'. No abnormalities were found.

In January 2023 Casualty says a further urine test confirmed chronic kidney disease. It says Mrs N's vet advised this could be due to the concurrent use of medication her dog had been taking. Casualty says it declined the claim due to consistent signs and symptoms of urination prior to the policy start date. It acknowledges a known correlation between spaying and incontinence but says this hadn't been confirmed in Mrs N's dog's clinical records. It says spaying was performed in 2015 and urination issues weren't noted by the vet until 2018.

Casualty says it also applied an exclusion on the policy backdated to 27 September 2021 for growths, tumours and resulting conditions. This was because of a clinical note from March 2021 that detailed a wart on Mrs N's dog's spine.

Mrs N didn't think Casualty had treated her fairly and referred the matter to our service. Our investigator didn't uphold her complaint. She says incontinence had been recorded in the clinical notes prior to the policy starting, which is a sign of chronic kidney disease. She didn't think Casualty had behaved unfairly by considering the kidney disease to be pre-existing and decline Mrs N's claim under its policy terms.

Mrs N disagreed and asked for an ombudsman to consider the matter. It's been passed to me to decide.

I issued a provisional decision in November 2023 explaining that I was intending to uphold Mrs N's complaint. Here's what I said:

provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm very sorry to hear about Mrs N's dog's illness. I understand this must be very upsetting for her. Having carefully considered the matter, my intention is to uphold her complaint.

In its letter to Mrs N in January 2023 Casualty set out its reason for declining her claim. It says that on reviewing her dog's clinical history it found consultations with a vet that would've affected her cover, had it been made aware. It listed five occasions between July 2018 and December 2020 when a vet was consulted in relation to urination issues. It also highlights a consultation on 16 March 2021 when Mrs N's dog was examined and a "Warty type mass at lumbar spine" was reported.

Casualty says had it known about this clinical history, at the time Mrs N's policy inception, it would've imposed the following exclusions:

"Urinary system with effect from 27 September 2021.

Anything to do with the Growths, tumours and resulting conditions with effect from 27 September 2021"

The business says the kidney condition Mrs N had claimed for would've been excluded had it been aware of her dog's full clinical history.

I note Mrs N's comments that the occasional and minor urinary leaking her dog was treated for in 2018 was due to a routine hysterectomy. And that the symptoms were cured with medication. Mrs N says she has kept dogs for over 25 years so understood she wouldn't be covered for any further claims for urinary incontinence. However, previous treatment for urinary incontinence shouldn't exclude newly diagnosed renal failure from cover.

Mrs N says the occasional incontinence issue, although related to the urinary tract, is an unrelated entirely separate condition from that of renal failure. She also says the exclusion Casualty applied as a result of a small skin wart, is completely unacceptable. She says this was an incidental finding, requiring no treatment and has since, "almost completely disappeared".

I can see that Casualty emailed Mrs N in response to her disputing its decline decision. It told her incontinence is a commonly seen symptom of chronic kidney disease and that her dog had shown signs of this throughout its life. It says it's unable to disassociate between the symptoms and the diagnosis. It also says that Mrs N's dog was possibly suffering from an undiagnosed condition that can be cancerous, given the identification of the skin mass. This is why it couldn't provide cover for growths and tumours going forward.

I've read Mrs N's policy terms to understand what the policy covered. The terms say:

"Pre-Existing Condition Means 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."

And:

"What is not insured?"

- Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition;
- Any claim for Illness or Accidental Injury that showed Clinical Signs or Symptoms before Your Policy Start Date or within the Waiting Period”

Also, under, “Section 11 – General Exclusions” the terms say:

“If We are made aware of any Pre-existing Conditions at the time of a claim, these Pre-Existing Conditions will not be covered and We reserve the right add a relevant endorsement(s) to Your Policy in respect of these Pre-Existing Conditions.”

Casualty says its claim handler referred Mrs N’s dog’s condition to its in-house veterinary specialist whose medical opinion it relied on when declining her claim. However, Mrs N doesn’t think incontinence symptoms due to intermittent hormone issues, should mean that chronic kidney disease is excluded from her policy cover.

I’ve read the clinical notes for Mrs N’s dog. I can see the occasions between May 2018 and January 2021 when her dog was treated for incontinence. On these occasions there is no mention of kidney disease. A record from 1 July 2022 says Mrs N’s dog was taken to the vet having urinated in bed overnight. The notes say:

“..need urine sample to deterine [sic] if we are dealing with an underlying problems (DM, Cushings, Renal)”

And:

“urine result NAD, so if OK on [current medication] > just contue daily doseing for life”

Casualty acknowledges that the clinical notes show no abnormalities were found in the urine test. And it was advised that Mrs N’s dog should continue on the existing medication. The diagnosis of chronic kidney disease was made later in January 2023.

I’ve thought about whether it’s fair for Casualty to impose the exclusion it did relating to Mrs N’s dog’s kidney disease. I don’t think it was. Casualty has relied on an exclusion for pre-existing conditions. This means the onus is on it to show these conditions were present before Mrs N took out her policy. I’ve considered the information it provided, including the comments from its in-house vet. But I’m not persuaded it’s shown that the conditions excluded are the same conditions that had been seen in the past. As above, kidney disease was ruled out July 2022. And there is no mention of kidney problems prior to the diagnosis in January 2023.

Casualty has applied exclusions that include anything to do with the urinary system and all growths and tumours. It appears to rely on the following policy term when applying these exclusions:

“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.”

It’s for Casualty to show that this term applies. In the event that Mrs N 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 Mrs N made a misrepresentation in the information provided at the inception of her policy. Mrs N must take reasonable care not to make a misrepresentation. Casualty hasn’t shown what it asked Mrs N or what her responses were. So, it hasn’t shown that she made a misrepresentation.

If it were the case that Mrs N 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 Mrs N made a qualifying misrepresentation, it has to act in line with the CIDRA rules. However, 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 add the wide-ranging exclusions it has.

Having considered all of this, I don't think Casualty treated Mrs N fairly when declining her claim and adding the exclusions it did. It should now settle the claim and pay Mrs N the costs she paid for her dog's treatment as covered by her policy terms. Casualty should pay 8% simple interest from the date payment was made until it refunds this amount. It should also remove the exclusions it applied to Mrs N's policy.

I've thought about the impact this had on Mrs N. Her dog was very ill, which caused her distress. This was made worse when Casualty unfairly declined her claim. It should pay compensation to acknowledge the impact its actions had on Mrs N. I think £250 is fair.

I said I was intending to uphold Mrs N's complaint and Casualty should:

- settle Mrs N's claim and pay 8% simple interest from the date she paid the treatment costs until the payment is provided;
- remove the policy exclusions; and
- pay £250 compensation for the distress it caused.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Mrs N responded to say she had nothing further to add.

Casualty responded to say it had referred this case to its in-house vet. The response provided by the vet says that it's more than reasonable to link long term steroid usage with chronic kidney disease, as the treating vet in this case has suggested. The vet provided reference to a study in support of this point and says essentially steroids will significantly worsen or exacerbate proteinuria in dogs. The vet says the claim was correctly declined in line with the policy wording.

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 not persuaded that Casualty's further comments warrant a change to my provisional findings.

In my provisional decision I said that as Casualty had relied on an exclusion for pre-existing conditions it was up to it to show these conditions were present before Mrs N took out her policy. I said I'd considered Casualty's in-house vet's comments along with the clinical records. But I wasn't persuaded that it'd shown the conditions it had excluded were the same conditions that had been seen in the past. I highlighted that kidney disease was ruled out in July 2022. And there was no mention of kidney problems prior to the diagnosis in 2023.

I've thought carefully about Casualty's in-house vet's further comments. But I don't think this shows that the conditions Casualty excluded were present at the time Mrs N took out her policy, for the reasons I've already explained. I note no comment has been made in relation to the other exclusion Casualty applied.

In my provisional decision I said the relevant law here was CIDRA and Casualty must show that Mrs N made a misrepresentation in the information provided at the inception of her policy. I said Casualty hadn't shown what it asked Mrs N or what her responses were. This meant it hadn't shown that she'd made a misrepresentation. I also said it hadn't shown that it wouldn't have offered cover, or offered cover on different terms, if a misrepresentation had occurred.

In its further submissions Casualty hasn't commented on this point or shown that Mrs N made a misrepresentation. If it could show this was the case then it would need to act in line with the CIDRA rules. As I said in my provisional decision, I can't see that it has. Based on this I'm not persuaded that my findings need to change. So, my provisional decision will now become my final decision.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mrs N's complaint. Casualty & General Insurance Company (Europe) Ltd should:

- settle Mrs N's claim and pay 8% simple interest* from the date she paid the treatment costs until the payment is provided;
- remove the policy exclusions; and
- pay £250 compensation for the distress it caused.

*If Casualty considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs N how much it's taken off. It should also give Mrs N a certificate showing this 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 Mrs N to accept or reject my decision before 26 December 2023.

Mike Waldron
Ombudsman