

## The complaint

Mrs F complains that when her dog needed surgery and she made a claim on her policy, Casualty & General Insurance Company (Europe) Ltd (C&G) said she'd wrongly declared her dog's breed. So they amended her policy, increased her premium and made deductions from her claim, as they said she'd been under-insured.

Mrs F thinks this is unfair and she wants them to pay her claim in full.

## What happened

Mrs F has insurance for her dog with C&G with an annual limit of £4,000 for veterinary treatment, subject to a £90 policy excess and a co-payment of 15% for all vet fees. In June 2022 her dog ruptured her rear right cruciate ligament and required surgery. Mrs F submitted a claim to C&G in respect of the dog's treatment.

When assessing Mrs F's claim C&G requested her dog's clinical records. When Mrs F took out her policy online she described her dog as a 'medium mongrel', but the vet's records had recorded her breed as a 'whippet cross'.

C&G said that Mrs F had wrongly declared her dog's breed and amended this to whippet cross on her policy. This increased her annual premium from £538.92 to £829.80, or from £44.91 to £69.15 a month. And when they paid the claim they said Mrs F had been under insured by 40% so they deducted this amount from the payment she received.

Mrs F didn't accept that she'd wrongly described her dog's breed when taking out her policy. She's told us that her dog is a rescue, she has no idea of it's breed, and her vets were only guessing when they described her as a whippet cross.

She's provided an email from her vet confirming that her dog is a female neutered cross breed. The vet says the dog's appearance indicates that it's likely she has whippet, lurcher, greyhound or similar in her ancestry, but she's essentially a mongrel.

Mrs F has told us that when C&G first raised the issue about her dog's breed her husband called them as the online form she completed, when first taking out her policy, didn't give an option to describe her dog as a whippet cross. He asked them what a medium mongrel was and was told it was a dog of mixed breeds weighing up to 20kg, which Mrs F says accurately describes her dog.

During the call C&G accepted that there wasn't an option to describe the dog as a whippet cross, but they said she should have selected 'whippet' as this was the dog's predominant breed.

Mrs F raised a complaint which C&G didn't uphold. They sent her a final response letter in December 2022. In the letter they said she had a duty to accurately describe her dog's breed. She hadn't done this as the vet's records described the dog as a whippet cross, rather than a medium mongrel.

They said they regarded this as a careless misrepresentation under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). So they were entitled to amend her policy to reflect the dog's correct breed. They were prepared to continue to cover her dog at a higher premium, but they'd backdate the increased premium to when her policy started. And as she'd been under-insured, they said by 39.42%, they'd only pay 60.58% of her claim.

The vet's bill for the surgery was £4761.42. Mrs F's policy covered vet's fees up to £4000, so the amount she'd claimed was over her policy limit. And her policy excess and co-payment also needed to be deducted. But a week after sending the final response letter C&G wrote to Mrs F again giving her a different figure for the breed amendment deduction and the amount she'd receive. So Mrs F had no idea how much C&G intended to pay in respect of her claim.

Mrs F then complained to our service. Our investigator asked C&G to provide details of the questions Mrs F would have been asked when taking out her policy online. They told us that she'd have been asked if her dog was a crossbreed, and she should have answered no to this question. And she should then have said her dog was a whippet.

Their rationale for saying this was to provide a short article on the origins of the breed. This says that details of the origins of the whippet are vague, but it's believed that originally a greyhound, or Italian greyhound, may have been crossed with a small game terrier.

So they said Mrs F should have insured her dog as a whippet, as whippet is the dominant breed and the comparison website she used had an option for this. And they said if she had any concerns about the breed description she could have called them for advice.

Our investigator asked C&G to confirm the correct amount Mrs F should have received in settlement of her claim. They confirmed that the figures given in their final response letter weren't correct. They'd deducted her policy excess and co-payment from the £4000 policy limit and assessed her claim at £3323.50. They'd then applied a breed amendment deduction of £1752.46. So the payment due to Mrs F in settlement of her claim was £1517.04.

C&G also provided a breakdown of the difference in premiums between a medium mongrel and a whippet cross for the years Mrs F had held her policy.

Our investigator considered the case and upheld Mrs F's complaint. He said that despite the vet's records saying her dog was whippet cross, he thought Mrs F had acted reasonably in describing her as a medium mongrel, as her parentage is unknown. He felt when taking out her policy Mrs F had answered the questions she was asked with reasonable care.

Mrs F's vet has confirmed that that dog's appearance suggested she has whippet, lurcher, greyhound or similar in her ancestry, but she is essentially a mongrel. So our investigator said it wasn't fair to say there'd been a misrepresentation.

And he said C&G should pay Mrs F the £1896.46 they deducted from her claim due to misrepresentation together with 8% simple interest. And as Mrs F had experienced significant distress and inconvenience C&G should also pay £150 compensation for this.

Mrs F accepted our investigator's opinion, but C&G didn't. They say that a whippet is a recognised cross of other breeds, and while Mrs F isn't aware of the specific breeds included within her dog's parentage, she would still be classed as a whippet. This option was available to her when taking out her policy and she should have chosen it. So they maintain that there was a misrepresentation and they correctly applied a CIDRA deduction.

The case has now come to me for decision.

### **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.

C&G have said there's been a misrepresentation under CIDRA. So I need to consider what CIDRA says.

CIDRA section 2 (2) says

"It is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer."

Section 3(1) says

"Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances."

And section 4(1) says

"An insurer has a remedy against a consumer for a misrepresentation made by the consumer before a consumer insurance contract was entered into or varied only if –

- (a) The consumer made the misrepresentation in breach of the duty set out in section 2(2), and
- (b) The insurer shows that without the misrepresentation, that insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so on different terms."

So did Mrs F take reasonable care when she took out her policy and described her dog as a medium mongrel. As if she did there was no misrepresentation and C&G have no remedy against her under CIDRA.

She's told us, and I accept, that the dog was a rescue and she has no idea of her parentage. Her vets had described the dog on her clinical records as a 'Whippet cross'. Mrs F doesn't appear to have been aware of this and the vets have now confirmed that although the dog, from her appearance, is likely to have whippet, lurcher or greyhound in her ancestry, she's essentially a mongrel.

It's not in dispute that when Mrs F took out her policy online there was no option to select whippet cross. C&G say that Mrs F should have declared her dog was a whippet, as this is her dominant breed. There are a number of issues with this argument. Firstly neither Mrs F, or C&G, know what breed her dog is. And secondly she wasn't asked 'What is your dog's dominant breed?'

She was asked if her dog was a crossbreed? To which she correctly answered 'Yes'. But C&G say should she have answered no to this question, and then have selected whippet from the list of breed options.

CIDRA requires a consumer to take reasonable care in answering questions when taking out an insurance policy. So I don't think Mrs F did anything wrong in saying her dog was a cross breed. And if C&G expected her to declare her dog's dominant breed, this is the question

she should have been asked. But she wasn't. There was no option to say her dog was a 'whippet cross' so she selected 'medium mongrel.' Which I think was entirely reasonable in the circumstances.

And I'm not persuaded by what C&G have said about the origins of the whippet. What's relevant here is the questions Mrs F was asked and the answers she gave. And based on these I don't accept that there was any misrepresentation so the remedies available to C&G under CIDRA don't apply in this case.

So I require C&G to pay Mrs F the amount they deducted from her claim due to the breed amendment they made to her policy. And to pay her interest on the sum deducted from the date her claim was first assessed until payment is made to her. To make this clear the only deductions C&G should make from Mrs F's policy limit of £4,000 should be her £90 policy excess and the 15% co-payment.

Mrs F has told us that how C&G have dealt with her claim has had a financial impact on her and has caused her distress and inconvenience. I accept this and I require C&G to pay her £150 compensation for the impact this has had on her.

### **My final decision**

For the reasons set out above I uphold Mrs F's complaint about Casualty & General Insurance Company (Europe) Limited.

And to put things right I require them to: -

Pay her the sums deducted from her claim in respect of the breed amendment they made to her policy. Together with 8% simple interest from the date her claim was first assessed until payment is made.

Pay her £150 compensation for the distress and inconvenience she's suffered as a result of how her claim has been handled.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 7 August 2023.

Patricia O'Leary  
**Ombudsman**