

## The complaint

Mrs K complains about Casualty & General Insurance Company (Europe) Ltd (CG) declining claims under her pet insurance policy for treatment of her dog.

References to CG include their agents who administer the policy.

## What happened

In January 2022 Mrs K's dog was involved in an altercation with another dog, Mrs K's dog sustaining injury to its right eye. The dog was examined by a vet (M) who diagnosed a corneal perforation (perforated ulcer). M thought it was triggered by the altercation or the stress of the altercation and referred the dog to a specialist eye vet (V). V carried out surgery to repair the perforation and Mrs K submitted a claim for the cost of surgery (£3,945.31) which was accepted.

As well as the perforation, M diagnosed bilateral distichiasis<sup>1</sup> in the referral. The dog subsequently underwent surgery in May 2022 to remove most of the extra eyelashes. Some returned (which V said wasn't uncommon as some may not have emerged). Mrs K made claims for the treatment and surgery (£2,325.44 and £158.35). However, CG said they'd only pay £825.49 as they considered the distichiasis to be related to the perforated ulcer. Under the terms of the policy, cover was limited to £4,000 per condition, per year. As the claims (when added to the first claim exceeded the limit, CG reduced the value of the claims.

The dog then presented to M in October 2022, where a stromal ulceration was diagnosed in the left eye. Treatment failed to correct the problem and the dog was again referred to V, who examined the dog in November 2022 and diagnosed a perforated descemetocoele with iris prolapse and collapsed globe (the ulcer had deepened and perforated). V also observed some minor bilateral distichiasis still present. V performed surgery to repair the collapsed globe. Two claims were submitted for the surgery (£2,928.55 and £162.81). But CG rejected the claims, saying they considered the surgery was in respect of a bilateral condition. And as the £4,000 limit on cover for any one condition in a policy year had already been exceeded (the policy renewal date was December 2022) they declined the claims.

Mrs K challenged the decision to decline the claims, providing an opinion from V the incidence in November 2022 (in the left eye) was unrelated to the earlier incidence in January 2022 (in the right eye). But CG rejected the opinion, saying it didn't alter their view and they'd need clinical evidence from V the condition wasn't bilateral.

Mrs K then complained to this service. She said, based on V's opinion, the treatments and surgery carried out on her dog weren't related and were separate, unrelated conditions. So, CG acted unfairly in considering the claims to be related and bilateral conditions and declining to pay out more than the £4,000 annual limit on cover for any one condition. She

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<sup>1</sup> Distichiasis is a condition where an extra eyelash(es) is present in a dog's eye (or eyes) arising from the margin of the eyelid through the duct or opening of the meibornian gland or adjacent to it. The severity of the condition will vary and can be painful and lead to inflammation or redness of the eye. (Source: VCA animal hospitals)

also said she'd called CG and told the treatment and surgery for bilateral distichiasis would be covered. She wanted CG to pay her claims in full. As well as having to pay for the treatments and surgery herself, she'd also incurred interest charges on the sums she'd paid.

As Mrs K complained to this service first, our investigator asked CG to consider the complaint. They didn't uphold it. In their final response, they noted Mrs K's policy began in December 2020. They referred to the policy terms and conditions, including the benefit limits (the maximum amount that could be claimed under the policy). They also referred to the definition of 'bilateral condition' (any condition that could affect body parts of which a pet had two, including eyes) and 'condition' (an illness, injury or any symptoms or clinical signs of illness or injury). They referred to the dog's clinical history and claims history. CG noted the diagnoses for the three claims and the views of V the conditions weren't related (or bilateral). However, CG said there was no medical evidence in the views provided by V the conditions weren't related (it was just V's opinion). So, CG confirmed their decline of the claims.

Our investigator then considered the complaint but didn't uphold it. Due to the proximity of the claims for treatment on the dog's eyes after it was attacked and there being no history of issues with the dog's eyes, the investigator concluded CG had correctly declined the claims. While V said none of the conditions being claimed for were related, the investigator thought this didn't provide clinical evidence the conditions weren't linked. And in the absence of evidence to support Mrs K calling CG and being told the claim for ingrowing eyelashes would be covered, the investigator couldn't conclude on what might have been said.

Mrs K disagreed with the investigator's additional view and asked that an ombudsman review the complaint. In disagreeing, she provided a further view from V setting out their opinion the three surgeries carried out on the dog could be considered three separate conditions and the three issues weren't related. She also gave more information about her recollection of the call with CG at the time of the surgery in May 2022.

Our investigator asked CG to consider the additional evidence and points made by Mrs K. CG said it didn't change their view, as they considered the information from V was general and not proof of the specific condition of the dog. Because of the quick succession of each condition they couldn't dissociate between them. Also, the policy terms confirmed a bilateral condition as one which could impact a body part where a pet had two (including the eyes). As the dog experienced perforated ulcers in each eye, they considered this to be a bilateral condition and so subject to the same condition limit under the policy. On the distichiasis, CG noted V's opinion acknowledged the condition could cause ulcerations (although uncommon). And V hadn't provided clinical evidence the conditions (the distichiasis and the ulcers) weren't related – based on the clinical history, CG believed they were.

CG also provided a copy of a recording of a call with Mrs K (the call she recalled having, where she said she'd been told the surgery for distichiasis would be covered). Based on this, together with the opinion of V, Mrs K said this showed CG should have accepted her claims. So, she confirmed her request an ombudsman review her complaint.

In my findings I concluded that the policy terms and conditions made it clear if a pet has the same condition in both parts (eyes in this case) at different times, that would be classified as a bilateral condition. As Mrs K's dog had a perforated ulcer in January 2022 and November 2022 (in the right and left eye respectively) then I concluded these are a bilateral condition. And as both incidents occurred within the same policy year (the year to December 2022) I concluded CG applied the bilateral condition term to treat both incidences as one condition, in one period and therefore subject to the policy limit of £4,000 for any one period.

But I wasn't persuaded CG had shown enough to treat the claim for the treatment of the perforated ulcer (in January 2022) and the subsequent treatment and surgery for bilateral

distichiasis (in May 2022) as being for related conditions. So, I concluded they acted unfairly in adding them together when applying the policy limit of £4,000 for any one condition in any one year.

Given these conclusions, I thought about what CG needed to do to put things right. As I didn't think they could fairly treat the claims in January and May 2022 as being for a related condition, they should assess the claims in May 2022 as a separate condition under the terms of the policy, to which they should apply the policy limit for any one condition in any one year (including any applicable policy excess and other policy terms and conditions).

But as I concluded the claim for treatment and surgery on the perforated ulcer in November 2022 was for a bilateral condition, it should be assessed under the policy terms and conditions for a bilateral condition. That is, assessed as additional to the claim for the treatment and surgery on the right eye in January 2022.

If, having assessed the claims, this led to additional settlement of the claims, CG should also pay interest on the additional settlement (at a rate of 8% simple) from the dates Mrs K paid the relevant vet bills (assuming she had paid them) to the date they settle the claims.

Because I reached different conclusions to those of our investigator, I issued a provisional decision to provide both parties with the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

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

*My role here is to decide whether CG have acted fairly towards Mrs K.*

*Looking at what happened, and the claims submitted, while the key issue for Mrs K is CG declining part of the claims for the second treatment and surgery (May 2022) and declining the claims for the third treatment and surgery (November 2022) I think there are two aspects to be considered.*

*First, whether CG acted fairly in limiting the claims in May 2022 because of what they'd paid in respect of the claim in January 2022 (as the policy limit had been reached). In restricting the second claims, CG are saying the conditions for which the claims were made aren't separate, they are effectively one condition. Even though the diagnoses are different (perforated ulcer in the right eye for the January 2022 claim and bilateral distichiasis for the May 2022 claims). On the distichiasis, CG say V's opinion acknowledged the condition could cause ulcerations (although uncommon). And V hadn't provided clinical evidence the conditions (the distichiasis and the ulcers) weren't related – based on the clinical history, CG believe they were.*

*Second, whether the treatment and surgery in November 2022 (for a perforated ulcer in the left eye) was for a bilateral condition (given the treatment and surgery for a perforated ulcer in the right eye in January 2022). CG maintain it was a bilateral condition, based on the policy definition. It wasn't for a separate condition to those claimed for in the January and May 2022 treatments and surgery.*

*For her part, Mrs K (supported by the opinion of V) maintains the three incidents were for separate, unrelated conditions (and not bilateral). So, they should each be assessed against the £4,000 limit for treatment of a condition in any one year.*

*Taking the second issue first, I've first considered what the policy says in respect of bilateral conditions. In their final response, CG refer to the following policy definitions:*

***"Bilateral Condition***

*Means any medical Condition that can affect body parts of which your pet has two, on either side of its body, such as ears, eyes, knees, kneecaps, front and back legs and feet, cruciate ligaments, hips, mammary glands, lungs, kidneys, ovaries, testicles, shoulders and elbows and which can occur at different times."*

***"Condition***

*Means an Illness or Accidental Injury or any Symptoms or Clinical Signs of an illness or Accidental Injury affecting your pet."*

*Given CG's decline of (part of) the second claim and the third claim was due to their view the policy limit (£4,000) had been exceeded, I've also noted what CG said in their final response about the limit on cover in any one period of insurance:*

*"You can claim per Condition up to the Benefit Limit of £4,000 in each and every Policy Period of Insurance (less the applicable Excess). Every time we offer you a renewal and you accept to review your policy, and pay the renewal premium, the benefit limit for each condition renews, no matter how many times you have made a claim for a condition. Furthermore, there is no limit to the number of conditions you can claim for provided your policy remains in force."*

*These definitions and policy terms mean cover is limited to £4,000 in any one policy period (year) for each condition claimed for. And the definition of bilateral condition means that should a condition occur in both parts of which a pet has two, it will be treated as one condition – it won't be considered as two conditions. In practice – and what CG have done in the circumstances of this case – is to view the perforated ulcers in the right eye (in January 2022) and the left eye (in November 2022) as a bilateral condition. That is, it's the same condition (perforated ulcer) affecting both eyes.*

*I've considered this carefully, along with Mrs K's view (supported by V) the three surgeries were for unrelated conditions (and so should be treated as three separate conditions, to each of which the policy limit of £4,000 should apply). However, looking at the policy definition of 'bilateral condition' it doesn't say the condition has to be related. It refers to a condition that can (my emphasis) affect both parts of a pet's body of which they have two (and specifically includes eyes as one such part). The other part of the definition I think is relevant is the reference to "...and which can occur at different times."*

*Taken together, I think this makes it clear if a pet has the same condition in both parts (eyes in this case) at different times, that would be classified as a bilateral condition under the policy definition. As Mrs K's dog had a perforated ulcer in January 2022 and November 2022 (in the right and left eye respectively) then I've concluded these are a bilateral condition. And as both incidents occurred within the same policy year (the year to December 2022) then I've concluded CG applied the bilateral condition term to treat both incidences as one condition, in one period and therefore subject to the policy limit of £4,000 for any one period.*

*I've then considered the first issue, whether the treatment and surgery for the perforated ulcer in January 2022 and the bilateral distichiasis in May 2022 were for a related condition (as CG maintain) or whether they weren't related (as Mrs K maintains, supported by V).*

*In considering this issue, I've looked at the evidence and information provided by Mrs K (including the views of V) and by CG (including what they think is the clinical history – and publicly-available articles – supporting their view).*

*Looking at these sources, I think it is the case that bilateral distichiasis can cause ulcers in the eyes – though V says this is uncommon (CG haven't challenged this point). Looking at publicly available sources, one notes the most common cause of ulcer is trauma of some description<sup>2</sup>. Looking at the publicly-available source provided by CG, while it describes the condition (descemetocele) it doesn't mention [bilateral] distichiasis – or any other cause or causes. I've also considered the clinical notes referred to by CG in their final responses, which includes a reference to:*

*“...I also advised on the risk of the distichiasis being implicated (at least partly) in the development of the right eye keratitis and ulceration.”*

*While this reference refers to the 'risk' of distichiasis leading to the ulceration of the right eye, this isn't a definitive diagnosis of the cause of the ulcer (in the right eye). And in respect of the subsequent ulcer in the left eye, while mention is made of the distichiasis returning after the surgery for the condition in May 2022, the notes do not attribute this to be the cause of the ulcer. I've also noted V's observation that breeds of the kind of Mrs K's dog are more susceptible to ulcers (also mentioned in one of the publicly available sources I've seen).*

*CG say V has provided an opinion (that the conditions aren't related) but this isn't clinical evidence. However, V's opinion is based on their treating the dog over the course of the three treatments and surgery and being a specialist eye vet. As their opinion is based on examination of the dog over the period (even if by differing individuals) I don't accept CG's view it doesn't provide clinical evidence relevant to consideration of the case. Any more than the clinical notes wouldn't provide clinical evidence from the same vet's examination of the dog and views on its condition.*

*I've also considered the general principle, where an insurer relies on an exclusion, the onus is on them to show it's reasonable to apply it (and that the conditions are, on the balance of probabilities, related). It isn't – as CG maintain – for Mrs K to show the conditions aren't related.*

*I've also listened to the recording of the call Mrs K says she had with CG, in which they agree (before the surgery took place) the bilateral distichiasis would be considered a separate condition. The call handler does confirm this point, albeit somewhat conditionally.*

*Given the points noted above, I'm not persuaded CG have shown enough to treat the claim for the treatment of the perforated ulcer (in January 2022) and the subsequent treatment and surgery for bilateral distichiasis (in May 2022) as being for related conditions. It follows, they acted unfairly in adding them together when applying the policy limit of £4,000 for any one condition in any one year.*

*Given these conclusions, I've thought about what CG need to do to put things right. As I don't think they can fairly treat the claims in January and May 2022 as being for a related condition, they should assess the claims in May 2022 as a separate condition under the terms of the policy, to which they should apply the policy limit for any one condition in any one year (including any applicable policy excess and other policy terms and conditions – such as those relating to items within each claim that should be deducted).*

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<sup>2</sup> VCA animal hospitals *Corneal Ulcers in Dogs*. Other causes cited include bacterial and viral infections and other diseases (distichiasis isn't mentioned).

*But as I've concluded the claim for treatment and surgery on the perforated ulcer in November 2022 was for a bilateral condition, it should be assessed under the policy terms and conditions for a bilateral condition (including any applicable policy excess and other policy terms and conditions – such as those relating to items within each claim that should be deducted). That is, assessed as additional to the claim for the treatment and surgery on the right eye in January 2022.*

*If, having assessed the claims, this leads to additional settlement of the claims, CG should also pay interest on the additional settlement (at a rate of 8% simple) from the dates Mrs K paid the relevant vet bills (assuming she has paid them) to the date they settle the claims.*

*My provisional decision*

*For the reasons set out above, my provisional decision is that I uphold Mrs K's complaint in part. I intend to require Casualty & General Insurance Company (Europe) Ltd to:*

- Assess the claims in May 2022 as a separate condition under the terms of the policy, to which they should apply the policy limit for any one condition in any one year (including any applicable policy excess and other policy terms and conditions – such as those relating to items within each claim that should be deducted).*
- Assess the claims in November 2022 under the policy terms and conditions for a bilateral condition (including any applicable policy excess and other policy terms and conditions – such as those relating to items within each claim that should be deducted). That is, assessed as additional to the claim for the treatment and surgery on the right eye ulcer in January 2022.*

*If, having assessed the claims, this leads to additional settlement of the claims, CG should also pay interest on the additional settlement (at a rate of 8% simple) from the dates Mrs K paid the relevant vet bills (assuming she has paid them) to the date they settle the claims.*

Mrs K responded to accept the provisional decision.

CG didn't reply by the date requested for responses.

### **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.

My role here is to decide whether CG have acted fairly towards Mrs K.

As Mrs K accepted my provisional decision and CG didn't reply by the date requested for responses, then my final decision is unchanged from my provisional decision.

### **My final decision**

For the reasons set out above, my final decision is that I uphold Mrs K's complaint in part. I require Casualty & General Insurance Company (Europe) Ltd to:

- Assess the claims in May 2022 as a separate condition under the terms of the policy, to which they should apply the policy limit for any one condition in any one year (including any applicable policy excess and other policy terms and conditions – such as those relating to items within each claim that should be deducted).
- Assess the claims in November 2022 under the policy terms and conditions for a bilateral condition (including any applicable policy excess and other policy terms and conditions – such as those relating to items within each claim that should be

deducted). That is, assessed as additional to the claim for the treatment and surgery on the right eye ulcer in January 2022.

If, having assessed the claims, this leads to additional settlement of the claims, CG should also pay interest on the additional settlement (at a rate of 8% simple) from the dates Mrs K paid the relevant vet bills (assuming she has paid them) to the date they settle the claims.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 18 September 2023.

Paul King  
**Ombudsman**