

Before the Arbiter for Financial Services

Case No. 015/2019

HH (the complainant/the insured)

vs

Building Block Insurance PCC Ltd

(C63128)

(the service provider/the insurance)

Hearing of the 21 October 2019

The Arbiter,

Having seen the complaint which basically is as follows:

The complainant states that she was shocked when the service provider did not accept her claim following an accident suffered by her dog Velvet.

She states that she had taken all reasonable steps to have control of her dog which was a puppy nearly 5 months old. She chose an extendable lead to allow some freedom of movement to her dog in an environment that was safe being a field near her friend's house.

She explains that she was staying at her friend's apartment and Velvet was fidgeting and wide awake and complainant decided to take him for a short walk. There was a small field opposite her friend's apartment across the road and the dog was on its retractable lead. As she started to return towards the road to cross over, Velvet became excited and chased after a taxi and it *'yakked really*

hard on the lead' and the lead suddenly loosened up; and since the lead was long, it jumped in front of a taxi which was going fast and the dog was hit by the car.

The complainant insists that she should be reimbursed for the Vet's expenses because she did not infringe the conditions of the policy and had taken proper care of her dog and what happened was a pure accident for which she was covered.

The Service Provider basically replied that:

The policy does not cover the veterinary administration fee for completing the claim which was £15.43. The value of the claim should be: Treatment fees: £839.67 less excess of £90, that is, £749.67.

After reviewing their position due to added information, the Service Provider is basing its reply on General Conditions 4 and 6 of the policy which state:

General Condition 4:

'You must provide proper care and attention to your pet at all times and take reasonable precautions to avoid accidents, injury or damage.'

The insurer argues that when a dog is on a retractable lead this means it could be extended and cause an accident; and because Velvet lengthened the lead to such an extent as to cause an accident, the complainant did not provide proper care and attention to prevent the accident.

General Condition 6 states that:

'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 accidental injury to your dog or any other persons or animals.'

The service provider submits that when a dog is held on a retractable lead at a distance from a person, they consider that is not sufficient to demonstrate that a dog is under control at all times and due care has not been maintained to prevent accidental injury.

The Arbiter has to decide this case with reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case.¹

The complainant argues that she used reasonable care and diligence when she took her dog for a short walk in a nearby field and it was reasonable to allow her dog to roam about for some time on a retractable lead in a safe place. She pointed out that when she started to go back, she shortened the lead to normal length suitable for walking the dog near her. There was virtually no traffic as it was late in the day.

Suddenly a taxi was fast approaching. Velvet became uncontrollably excited and chased after the taxi and although complainant tried to keep it back, unfortunately the dog dislodged the button on the retractable lead that released its full length which allowed it to reach the taxi that caused the accident.

The complainant emphasises the fact that she took reasonable steps to buy a retractable lead which was expensive, of great quality and bought from a reputable firm which is a large nationwide chain.

Initially the service provider had argued with the complainant that the lead was faulty but in its reply before the Arbiter it retracted that claim.

The service provider also retracted the claim that the complainant was in breach of Section 27 of the Road Traffic Act 1988 because *'Velvet was held on a lead, therefore Miss HH would not have contravened section 27 of the Road Traffic Act 1998'*.²

The service provider finds fault with the complainant because she used a retractable lead; however, it overlooks the dynamism of the accident.

The accident did not happen purely because the complainant made use of a retractable lead. She explains that although she was using this lead, she shortened it as soon as she was approaching the road. The accident happened because a taxi passed at an excessive speed that excited the dog which overstretched the lead that loosened up upon the pull.

¹ Chapter 555, Art .19(3)(b)

² A fol. 45

This is clearly a pure accident which the complainant could not avoid. She had taken the proper care to take the dog for a walk in a field and not on a busy road; she had bought an expensive and proper lead; she shortened the lead as she was approaching the road.

The situation would have been different if the complainant had not kept the dog on a lead or if she did not shorten the lead. It is reasonably expected that a dog owner takes his/her dog on a lead which could allow the dog to roam about provided that the place is adequate and is not likely to precipitate the accident.

The complainant could not foresee or prevent the accident.

As has already been stated in previous decisions by the Arbitrator,³ and as stated on numerous occasions by our Courts,⁴ the contract of insurance is one of utmost good faith between the parties. This simply means that both the insurer and the insured should act towards each other in absolute good faith by honouring their respective obligations.

While the insured is *inter alia* obliged to pay the premium and disclose all material facts that could impinge on the risks of the policy, the insurer has the primary obligation to honour the claim in an honest, fast and fair way.

In dealing with a claim the insurer must:

1. Consider the insured's interests with the same consideration it gives its own interests. This means that the insurer must give the policy holder the benefit of the doubt.
2. Look for reasons to find coverage, not for reasons to deny coverage. The insurer should be looking for reasons to pay the claim, not reasons to deny it.
3. Not view the process as insurance company versus policy holder but as honest partners to the same contract.
4. Promptly and fairly investigate every claim.

³ For example, OAFS, Case 039/2017

⁴ For example, *Patricia Agius vs GasanMamo Insurance Ltd*, PA, 5/06/2015 (JPG)

5. Promptly pay the claim if payment is owed.
6. Give an adequate explanation to the policy holder if the claim is denied.

In the case under consideration, the service provider was prompt to refuse the claim so much so that in its reply to the claim before the Arbiter, the insurer retracted two main reasons originally raised to the complainant for refusing the claim.

Moreover, the facts of the case, as amply explained in this decision, do not justify the refusal of the claim on General Conditions 4 & 6, because the complainant provided proper attention to her dog at all times and took reasonable steps to avoid the accident. Her dog was under her control at all times and she took due care to prevent her dog from escaping or from causing accidental injury.

This is a case of pure accident which was in no way precipitated by any negligence or lack of due diligence by the complainant. The insurer was not justified to apply General Conditions 4 & 6 and refute the claim.

For the above stated reasons, the Arbiter concludes that the complaint is fair, equitable and reasonable and is upholding it in so far as it is consistent with this decision.

Compensation

The complainant states that the amount she wants to recover from the insurer is £855.10.

But as submitted by the service provider treatment fees amounted to £839.67⁵ from which the excess of £90 has to be deducted.

Therefore, the amount due by the insurer is £749.67

⁵ A fol. 31

In accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta the Arbiter orders Building Block Insurance PCC Ltd to pay the complainant the sum of £749.67.

With legal interest of 8% per annum from the date of this decision.

The costs of these proceedings are to be borne by the service provider.

**Dr Reno Borg
Arbiter for Financial Services**