

Before the Arbiter for Financial Services

Case No. 020/2019

YP (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 that:

The complainant made a claim for arthritis investigation as her dog became 'sore' on his front leg. The claim was declined because the insurer held that the condition was a pre-existing medical condition.

The complainant had been insured with another company but changed her pet insurance to Perfect Pet (Building Block) on 22 July 2017.

On the 31 October 2016 she took her dog for a routine visit and mentioned to her Vet that she noticed a slight limp. The Vet did not find any problem and advised that if there is no improvement, she could get some x-rays. She clipped the dog's toenails because they were long and shortly after, the dog became 'sound'. So, this lameness related to elongated toenails.

On the 16 September 2017, after she changed the insurance company, she took her dog Wesley to have his leg checked as she noticed that the dog was limping.

The Vet checked him and found resistance in the flexion tests and recommended an x-ray to see the problem; x-rays showed arthritic changes in his elbow.

The complainant was referred for CT scans on her dog because the x-rays were inconclusive.

The Vet who looked over Wesley has confirmed that the two visits, one prior to insuring with the service provider, and the second visit which took place after the complainant bought the policy from the service provider, were not linked and for this reason the complainant cannot understand how the insurer is stating that the dog had a pre-existing medical condition.

She claimed for vet bills, for the x-ray examination and CT scan as follows:

Vat fees: £133.10 and CT scan: £812.40. Total: £945.50

The service provider replied that:

The veterinary fees are not covered by the policy because the illness that Wesley has is a result of a pre-existing medical condition which existed prior to the policy start date of the 22 July 2017. That illness is lameness.

The policy, on page 11 states that, *'Any claim for illness or accidental injury that relates to a pre-existing medical condition'* is not insured.

The definitions of illness or accidental injury are defined on page 9 and 10 of the policy terms but the service provider is basing the defence on the definition of illness and pre-existing medical condition.

Clinical notes showed that the lameness was pre-existing because way back in 2016 Wesley had a problem with leg and limping for 6 weeks and the problem was with his front left leg.

The letter from the Vet at Terrington Veterinary Centre confirms that the visit in October 2016 (prior to the policy start date of 22 July 2017) and the visit in September 2017 were both in relation to lameness on the same limb.

Since lameness was present prior to the policy start date and as such constitutes pre-existing conditions as defined by the policy, they declined the claim.

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

The whole issue between the complainant and the service provider is whether Wesley had a pre-existing medical condition related to the claim prior to the date when the complainant bought the policy, that is, the 22 July 2017.

From the facts of the case it results that it was true that in October 2016 the complainant took Wesley to a Vet because it was limping. The service provider interprets this visit as a prelude to what happened in September 2017 and reiterates that since there was limpness in the same front leg, this constitutes a pre-existing medical condition which is one of the conditions in the policy that excludes cover.

The service provider thus concludes:

‘the lameness was present prior to the policy start date and as such constitutes a pre-existing medical condition’.

On the other hand, the complainant states that although the dog was taken to the Vet in 2016 because it was limping, the two visits were not linked because the first was related to toenails and the second was related to arthritis.

According to the policy, the pre-existing condition must be RELATED to the claim for illness or accidental injury.

The wording of the exclusion is as follows:²

“What is not insured

5. Any claim for illness or accidental injury that relates to a pre-existing condition”.

This means that if the claim is related to a pre-existing condition, the insurer can refute the claim.

However, if a claim is not related to a pre-existing condition, the insurer has to honour the claim.

¹ Chapter 555 of the Laws of Malta, Art. 19(3)(b)

² A fol. 12, Page 5 of the Policy

The Arbiter has to decide, on the basis of fairness, equity and reasonableness, whether the claim is related to any pre-existing condition and not merely that a pre-existing condition existed prior to the starting date of the policy.

The Arbiter has to base his decision on the best evidence brought by the parties.

The service provider concludes that since lameness was evident even in the 2016 visit to the Vet this was proof enough that it constitutes a pre-existing medical condition.

However, the complainant is not claiming just lameness but is basing her claim **on a specific condition, namely arthritis**, which was discovered in 2017.

The service provider did not prove that the lameness of 2016 was caused by arthritis but has come to this conclusion simply because, in its '*opinion*',³ there was a causal connection between them resulting from the clinical history of Wesley.

With her complaint, the complainant filed a letter from the Vet who cured Wesley in 2017 which *inter alia* states:

'On the 16th of September 2017, Wesley was presented for left forelimb lameness. On the examination significant amount of swelling and crepitus were identified in the joint and hence radiographs were taken. Following the radiographs, Wesley was referred for a CT scan to visualize the extent of his elbow problem.

Wesley was seen in the past for a similar problem. On the 31st of October 2016, he was presented with lameness on the same limb No radiographs were taken as Mrs Taylor declined initially. However, the vet who examined Taylor states that during the exam there was neither crepitus nor swelling in any of his joints. Hence why she decided to treat it as inflammation and Wesley responded really well and in fact did not show any signs of lameness for almost a year. Although the affected limb is the same in both cases, Wesley presented with completely different symptoms and responded differently on the medication as well.'

This letter makes it amply clear that the first visit to the Vet in 2016 was related to just a temporary inflammation, so much so, that after treatment '*Wesley*

³ A fol. 45

*responded really well and in fact did not show any signs of lameness for almost a year’.*⁴

Moreover, the Vet explains that during the second visit Wesley had *‘significant amount of swelling and crepitus were identified in the joint’*, whereas during the first visit *‘during the exam there were neither crepitus nor swelling in any of his joints’*.

The Vet unequivocally declares that:

*‘Although the affected limb is the same in both cases, Wesley presented with completely different symptoms and responded differently on the medication as well.’*⁵

The Arbiter has to rely on the best evidence produced and the best evidence is that of a professional person who explained that there was no pre-existing medical condition related to that of September 2017 and to the claim.

The definition of pre-existing medical condition in the policy has to be interpreted fairly, equitably and reasonably and not extended in a way as to refute the claim.

As explained in various decisions by the Arbiter, the parties to a contract of insurance are bound together by the principle of utmost good faith which binds both the insured and the insurer.

Good faith is also the basis of any contractual obligation.

The Arbiter has no doubt that on the basis of the evidence produced by the complainant, specifically the letter of Terrington Veterinary Centre, as signed by Dr Nikolaos Pallas, there was no pre-existing medical condition related to the claim, and, therefore, Exclusion 5 on page 11 of the policy and the definitions of illness and pre-existing medical conditions on page 9 and 10 of the same policy, do not apply to this case.

⁴ A fol. 42

⁵ Ibid.

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

Compensation

The sum of £945.50 indicated by the complainant is not being contested.

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter is ordering Building Block Insurance PCC Ltd to pay the sum of £945.50 to the complainant.

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

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

**Dr Reno Borg
Arbiter for Financial Services**