

## **Before the Arbiter for Financial Services**

**Case No. 046/2019**

**SW (the complainant/the insured)**

**vs**

**Building Block Insurance PCC Ltd**

**(C63128)**

**(the service provider/the insurance)**

### **Sitting of the 27 December 2019**

#### **The Arbiter,**

Having seen the complaint whereby the complainant submits that the service provider declined payment of the vet bills after her dog Bagel had an accident on the 6 December 2018.

She also states that the company does not deal with its customers in an efficient manner. They referred to her dog with the wrong name and sex and the policy document refers customers to the UK Ombudsman where it is supposed to refer to the Arbiter in Malta.

She also declares that the incident that her dog had was an accident. She walked her dog on his collar through the streets to a local cycle track where no motorised vehicles are allowed. This is a place where many other dog owners exercise their dogs off the lead. After approximately 50 metres she let the dog off the lead where she believed it was safe. She had taken her dog to this place many other times without ever having an incident.

This cycle track is fenced off for its entire length to protect livestock from escaping beyond. Approximately half way down the track her dog was attracted by something in a wooded area and before she was able to recall him he managed to get through the fence and ran away. The dog was hit by a vehicle

that did not stop. The road runs parallel to the cycle track. At the point where the dog ran off, the road was half a mile away and she believed he was safe.

Another car passing by picked him up.

The insurance did not honour the claim because it said that in their general conditions - condition no. 5 - stated that while on a designated road the dog must be on a collar and lead and under control. General condition number 6 is to the effect that that the owner should prevent his/her dog from escaping and causing harm to itself and to others.

The complainant submits that the dog was in a safe area, and she was not near any of the exits at the point where the dog was distracted.

She had two previous dogs who lived their old age, one 17.5 years and the other 13.5 years. They were insured and she never made a claim and now she was being let down by the insurance.

**Having seen the reply of the service provider stating that:**

SW is unhappy that her pet insurance claim for veterinary fees was declined. The veterinary treatment was required as a result of SW's dog (Bagel) being involved in a road traffic accident on the 6 December 2018. Please note the policy limit in respect of veterinary fees is £4,000.00. The actual cost of veterinary treatment as a result of the road accident was £4,695.15.

After reviewing the claim, Building Block considers that the decision to decline the claim is correct and consequently the policy will not respond to the claim. The reason the policy will not respond to the claim is because SW was in breach of general conditions 5 & 6 of the policy terms.

Policy wording

General condition 5:

*'You must comply with all laws that relate specifically to your pet – such as – section 27 of the Road Traffic Act 1988, which states that a dog that is on a designated road must be on a collar and lead and under control'.*

General condition 6:

*'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 claim

Perfect Pet Insurance, the claims handler, received a completed claim from SW on the 14 January 2019. The claim was assessed, and, on the 5 February 2019, SW was informed that the claim had been declined as SW was in breach of general conditions 5 & 6.

The claim was for veterinary fees incurred as a result of Bagel being involved in a road traffic accident. The description of events leading up to the road traffic accident was included in the claim form. The description of events is also consistent with what SW has described in the complaint form.

SW was walking Bagel along a cycle track and after approximately 50 metres released Bagel from his lead. In the complaint form SW has supplied a picture of the wire fence that runs the length of the cycle track. Bagel was attracted to a wooded area beyond the cycle track and managed to escape past the wire fence and ultimately make his way to Salterton Road and was unfortunately involved in a road traffic accident that necessitated veterinary treatment.

In the complaint form, SW contends that she was not in breach of general condition 5. When Bagel reached Salterton Road, he was not on a collar and lead and therefore SW was in breach of general condition 5.

The first part of general condition 6 states that,

*'You must ensure that your dog is under control at all times.'*

The moment SW released Bagel from his lead he was not under control. Had Bagel been under control it would not have been possible for him to go beyond the wire fence and make his way to Salterton Road.

In addition, the second part of general condition 6 states: *'due care should be maintained to prevent your dog from escaping and causing accidental injury'*.

SW failed to exercise due care as a wire fence would not prevent Bagel from escaping the cycle track. As a result of Bagel escaping to the road, he was able to sustain accidental injury by being involved in a road traffic accident.

## Two further issues referenced on the complaint form by SW

From the complaint form it was noted that SW has also stated that the claims handler (Perfect Pet Insurance) incorrectly named SW's dog as Bailey when the correct name is Bagel. The offending email is dated the 18 March 2019 and was included in the document bundle sent by SW to the Arbiter. An apology was sent

to SW by Perfect Pet Insurance after SW identified the error in March 2019. Building Block also apologised for this error. Building Block can appreciate that from SW's perspective it did not inspire much confidence on how her claim was being dealt with by Perfect Pet. Despite the incorrect name, the decision to decline the claim was correct.

It is also noted in the complaint form SW states The Financial Ombudsman Service is referenced in the policy document. The reason that The Financial Ombudsman Service is stated in the policy terms is to make it clear that if the complaint is in respect of the sale of the policy, complaints should be directed to Perfect Pet Insurance who is the insurance intermediary that sold the pet insurance and that if a policyholder is not happy with the complaint outcome in respect of a complaint regarding the sale of the product, they can refer their complaint to The Financial Ombudsman Service.

The policy terms state that if the complaint is about the policy then a policyholder can contact Building Block directly. The contact details for Building Block are included in the policy terms together with an explanation a policyholder can refer their complaint outcome to the Office of the Arbiter for Financial Services if they remain dissatisfied with the complaint decision. Furthermore, the complaint decision sent to SW informed her that she could refer her complaint decision to the Arbiter which also included contact details for the Arbiter.

### **Having seen all the documents.**

### **Having heard the parties**

### **Considers:**

The main issue in this case is whether the complainant adhered to general conditions 5 and 6 of the policy.

The service provider submits that condition number 5 states:

*'You must comply with all laws that relate specifically to your pet - such as - section 27 of the Road Traffic Act 1998, which states that a dog that is in a designated road must be on a collar and lead under control.'*

General Condition number 6:

*'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.'*

Regarding general condition 5 the service provider took the view that once the accident in which Bagel was involved occurred on a designated road and at the time it was not on a collar and lead and not under the control of its owner, condition number 5 was breached.

The complainant submitted that when she was walking the dog along the designated road it was under her control and on the lead. It was after the dog was distracted and ran away that it finished on the designated road; it was by mere accident that it found itself on the road without a lead.

The Arbiter is of the opinion that condition number 5 is intended to protect animals from having serious incidents on roads which normally take a lot of traffic. It is intended to advise dog owners that when they are walking their pets on these busy roads, they must ensure that the dog is on a lead and under their full control.

From the facts of this case it results that when the complainant was walking Bagel along this busy road, the pet was on the lead and under her full control, meaning that at this juncture, the complainant was observing condition number 5. It was after Bagel escaped that it found itself on the designated road at a time when the owner could not do anything to stop him from entering the designated road. So, it was due to pure accident that Bagel was not on the lead on the busy road, and not because the owner, of her own free will, acted negligently by not holding the dog on the lead.

The Arbiter believes that general conditions have to be interpreted reasonably and fairly taking into account the particularities of the circumstances of each case. It would have been a different story had the complainant walked the dog along the designated road without a lead; in that case she would have acted negligently and would have had no excuse whatsoever to justify her negligence.

Therefore the Arbiter holds that the complainant did not breach general condition number 5.

General condition number 6 stipulates *inter alia* 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.'*

The service provider interprets this condition in an absolute way pretending that a dog must be kept on the lead at all times. Once again, the Arbiter is of the opinion that one needs to interpret a policy in a reasonable way: it is not reasonably expected that if a dog is taken to a safe place it should be kept on the lead at all times. If that was the case, a pet can never relax in a safe place and can only be off the lead at the owner's residence. This interpretation would lead to cruelty of animals which the Arbiter does not condone. The complainant did not breach condition number 6 simply because it let Bagel off the lead in an enclosed area.

However, one has to be sure that the place is safe enough not to allow the possibility that a dog could run away and involve itself in an accident as Bagel did. Once the owner lets off the lead of his or her dog, it must be certain that there is no way that the dog could escape. The words '*under control at all times*' should be interpreted in this way.

The complainant holds the view that because the area is fenced all along the track, it must be a safe place. She also stated that a good number of dog owners take their dogs off the lead in this area. The fact that other dog owners use this track to let their pets off the lead does not necessarily make the place safe enough to avoid accidents similar to the one under consideration.

The complainant submitted a photo of the track's fence.<sup>1</sup> When carefully examined by the Arbiter, it appears that in certain segments of the fence there are holes big enough through which a dog could easily escape.

The complainant herself describes the place as an area fenced not to allow livestock from running away. While the track is safe enough for big animals not to escape, it does not seem to be safe enough to prevent dogs and other small animals from leaving the place.

Consequently, the Arbiter is of the opinion that although the track is fenced through its entire length, it does not necessarily make it safe enough to remove the possibility of dogs escaping through its big holes. In fact, Bagel found a way out of this fence.

While the Arbiter is convinced that the complainant took all the necessary care when walking the dog along the designated road, and that while she is entitled to take her dog off the lead in a safe place, the Arbiter cannot conclude that the

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<sup>1</sup> A Fol. 7

track was safe enough to have the dog under her control when off the lead. The fence along the track needs much to be desired to make it safe for pets not to escape through its big holes. For this reason, the Arbiter holds that when Bagel was in that area off the lead it was not under the full control of the owner and, therefore, condition number 6 was breached.

The Arbiter recommends the complainant that, together with other pet owners, insist on the authorities concerned to remove the present wiring along the fence and substitute it with other wiring or other material that would render the track safer for their dogs and avoid future similar accidents.

For the above stated reasons, the Arbiter cannot uphold the complaint.

Due to the special particularities of this case, each party is to bear its own costs of these proceedings.

**Dr Reno Borg**  
**Arbiter for Financial Services**