

Before the Arbiter for Financial Services

Case No. 155/2018

UF & IF

(the complainants/the insured)

vs

Building Block Insurance PCC Ltd.

(C63128)

(the service provider/the insurance)

Hearing of the 9 July 2019

The Arbiter,

Having seen the complaint which basically states:

That the complainants had adopted a dog named Millie from rescue in Wales. They took out an insurance policy from Perfect Pet Insurance commencing on 4/09/17 with a maximum benefit of £4,000 in Vet fees per year which had an exclusion period of 14 days for illness and and five days for accident.

On the 13 September 2017, whilst preparing Millie for a walk she managed to slip her harness/lead while standing on their front step and escaped from the front door of their house.

The dog managed to run down the road onto a main road where she was '*clipped by a car as she was returning to her owner who was calling her*'. The accident caused severe damage to her left hind leg which had to be amputated by their Vet.

The Vet completed the claim form for the procedure and treatment amounting to £2,351.31.

After a long lapse of time, the insurance refused the claim on General Conditions 4 and 6 of the policy which state:

- '4. You must also provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent accidents, injury or damage, as well as arranging and paying for Treatment for your pet as recommended by Your Vet to reduce the likelihood of illness or Accidental Injury.*

- 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 complainants protested with the insurance because they insisted that this was an accident which could not be foreseen or prevented, and it is for this kind of sad possibility that they had the insurance in the first place.

Their position was fully supported by their Vet who looked after their animals for 15 years. A copy of this supporting letter was attached to the complaint.¹

The complainants also raised the issue that the insurance took a very long time to process and assess their claim.

They are basing their complaint on the facts that:

1. The claim was not assessed properly;
2. The claim was refused because the policy had been a brand new policy (although passed the exclusion period);
3. The complaint was not properly investigated;
4. That the claim was not assessed in a timely manner taking over five months and it was only processed because the complainants chased them.

¹ Pg. 17

They ask the Arbiter to order the insurance to pay for the Vet expenses as claimed in the complaint form.

The service provider responded that it was refusing the claim on the following grounds:

It confirms that the claim was originally rejected on General Conditions 4 and 6 as quoted above;

Following a review, Perfect Pet Insurance changed its position and based the rejection of the claim on General Condition 6 only because the circumstances of the accident meant that Mrs UF did not keep Millie under control at all times and due care was not maintained in order to prevent Millie escaping from the harness/lead.

The service provider admits that the case was not properly assessed by the insurance because the insurance had stated that *'Millie was being walked on a public highway'*, when in reality it resulted that it was NOT being walked on a public highway.

The claim was not rejected because the insurance was a new policy.

With regards to time-frames for processing the claim, the service provider accepts this claim and declares that Perfect Pet Insurance fell short of what is required. Perfect Pet Insurance did acknowledge and apologise for the length of time taken to deal with the claim.

Further Considerations

The Arbiter notes that the parties do not dispute the facts of the incident as stated by the complainants in their complaint form. The insurance clarifies that it had made a mistake when it refused the claim on General Conditions 4 and 6 and declared that it was only refusing the claim on Condition 6 namely 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 only reason that the service provider brings forward for rejecting the claim is that *'the circumstances of the accident mean that Mrs UF did not keep Millie under control at all times and due care was not maintained in order to prevent Millie escaping from the harness/lead'*.

However, the Arbiter notes that the service provider did not explain **why** the complainant did not keep Millie under control at all times.

The complainant explains that: *'whilst preparing Millie for a walk she managed to slip her harness/lead while standing on their front step and escaped from the front door of our house'*.

This is a clear accident. The facts as ascertained by the complainants were in no way contradicted by any solid evidence of the service provider. As a matter of fact, the service provider accepted the facts as stated in the complaint, so much so, that the insurance dropped the refusal of the claim on General Condition 4.

The Arbiter notes that the claim was not professionally processed. Firstly, the insurance raised General Conditions 4 and 6 and when they realised that they had interpreted the facts wrongly (because Millie was not walked along the road), they retracted General Condition 4 and retained General Condition 6 without substantiating it with solid facts and reasoning.

The complainants clearly explained what happened and, in the opinion of the Arbiter, the dog managed to escape not because the complainants did not keep it under control, but because the dog was not accustomed to the noise of an urban area, (since it was raised in a rural area) and it panicked and forced its way out of the harness/lead. This was purely accidental and, as stated by the complainants, the scope for insuring their pet was purely to cover these types of accidents.

The complainants could not foresee or prevent the accident.

As has already been stated in previous decisions by the Arbiter,² and as stated on numerous occasions by our Courts,³ 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.
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 made wrong assumptions when it first refused the claim because it misinterpreted the facts of the accident. The incident did not occur because the complainants did not take proper care of their dog '*when walking the dog on the road*' but because the dog managed to slip her harness/lead and was accidentally '*clipped*' by a car.

² For example, OAFS, Case 039/2017

³ For example, *Patricia Agius vs GasanMamo Insurance Ltd*, PA, 5/06/2015 (JPG)

In considering the claim, the service provider did not appreciate correctly the facts of the incident and was prompt to refuse the claim instead of considering the claim as if it were considering its own interests.

Instead of looking for reasons to find coverage, the insurer looked for reasons to refute it. The insurer did not justify why the complainants did not take proper care of their dog to prevent the accident.

The insurer admits that it did not '*promptly investigate the claim*'. However, it made an apology which the Arbiter accepts.

In dealing with the claim, the insurer did not act fairly and reasonably. The complainants could not do anything to prevent the accident. They had taken all the necessary steps to buy a harness/lead for their dog and it was during the preparation for the walk that Millie managed to escape. This was a fortuitous event over which the complainants could have no control. It is for these incidents that the insured cover themselves; and the insurer is expected to honour claims regarding accidents that occur through no fault of the insured.

The Arbiter is convinced that this was a pure accident covered by the policy. The insurer does not dispute that Millie was covered for such contingencies but refutes the claim by attributing fault to the complainants where fault there was not.

The complainants further prove that they always looked carefully after their animals and as confirmed by the Vet,⁴ they were responsible persons having at heart the wellbeing of their pets. It was for this reason that they always insured them to be in a position to give them all the necessary care when needed.

Furthermore, the insurer did not meet '*the legitimate and reasonable expectations of the complainants according to law.*'⁵

For the above-stated reasons, the Arbiter considers the complaint to be fair, equitable and reasonable in the particular circumstances of the case.⁶

⁴ Pg 17

⁵ Cap. 555 of the Laws of Malta, Art. 19(3)(c)

⁶ Cap. 555 of the Laws of Malta, Art. 19(3)(b)

The complainants have proven through the receipts attached⁷ that the amount paid to cure Millie was £2,353.31.

In terms of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Building Block Insurance PCC Ltd to pay the complainants the sum of GBP 2,351.31 immediately.

With legal interest at the rate 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**

⁷ Pgs. 13-15