

## Before the Arbiter for Financial Services

**Case No. 169/2018**

**HD (the complainant/the insured)**

**vs**

**Building Block Insurance PCC Ltd (C63128)**

**(the service provider/the insurer)**

### Hearing of the 9 July 2019

**The Arbiter,**

**Having seen the complaint** whereby the complainant states that:

Her dog broke his '*crusia ligament*' in January 2018. The dog was operated and the complainant filed a claim in February.

The insurer told her that it was '*an existing condition*'. The complainant was not aware of this condition as confirmed by her vet. Her vet wrote to the insurer to state that it was not a pre-existing condition. The insurer refused to pay the claim for £3,023.56.<sup>1</sup>

The service provider did not file a formal reply with the Office of the Arbiter for Financial Services (OAFS) despite the fact that it was notified to do so.

However, for justice's sake, the Arbiter will consider the email sent to the Office of the Arbiter for Financial Services by the service provider<sup>2</sup> in which he states

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<sup>1</sup> P. 4

<sup>2</sup> P. 46

that the insurer did not honour the claim because the dog had a pre-existing condition not covered by the policy.

Moreover, the complainant failed to diagnose this condition prior to the purchase of the policy. The dog exhibited a symptom of the condition prior to the policy start date. The clinical history notes are included in the document bundle sent to the Arbiter by the complainant.

A symptom of cruciate ligament injury is limping/lameness. The clinical history notes dated 6 February 2017, state *'investigate lameness'*. As per policy definition, this statement would constitute a symptom.

Also, on the 30 January 2017, the clinical history notes state *'can't definitively rule out ligament injury'*. This would also amount to an undiagnosed condition.

The complainant's vet disagrees that the condition was pre-existing. The vet states that in January 2017 there was no damage to the cruciate ligament.

However, as per policy definition, Nelson only needed to exhibit a symptom. That symptom was lameness.

### **Further Considerations**

The Arbiter has to decide the complaint ***'by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantial merits of the case'***.<sup>3</sup>

The pertinent issue in this case is whether Nelson (the pet) had a pre-existing medical condition which could have been diagnosed prior to the issue of the policy.

The service provider reiterates the fact that there was a reference to lameness in the clinical history of Nelson and this was *'a symptom'* which was not properly diagnosed and the insurer could avoid the claim.

However, in order to avoid a claim, the insurer has to prove at least on a balance of probability that the *'symptom'* it mentions could prove that Nelson had a pre-existing condition amounting to cruciate ligament.

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<sup>3</sup> Cap. 555 of the Laws of Malta, Art. 19(3)(b)

**The Arbiter has to reach his decision on the basis of the proofs submitted before him.**

The contract of insurance is one based on utmost good faith and whilst the insured had to disclose any material fact, in this case a pre-existing condition, the insurer should as much as possible honour the claim and not avoid it; it may avoid the claim only if it proves on sound evidence that there was misrepresentation by the insured.

The service provider states that, according to clinical notes, Nelson could show symptoms leading to the conclusion that the ligament issue existed prior to the policy starting date. However, the service provider did not produce any sound or expert evidence to sustain its objections to the claim.

On the other hand, the complainants produced the vet's declaration that:

*'As you can read in those clinical notes*

*On the 17/01/17 the notes refer to 'SLIGHT CLICKING IN THE HIPS' which is not related to the stifle.*

*On 30/10/17 the notes refer to 'NO OBVIOUS INSTABILITY/NO CRANIAL DRAWER' which as your veterinary advisers will be very aware is a specific test for cruciate stability. At this stage there was no damage to the cruciate ligament.*

*Once again, I will state that in my professional opinion the injury on Jan 18<sup>th</sup> 2018 represents a new claim which I hope you will now be able to honour.<sup>4</sup>*

In the undated letter sent by Perfect Pet Insurance<sup>5</sup> to the complainant, the insurer states that:

*'From the clinical notes on the 30<sup>th</sup> January 2017 the lameness that Nelson was suffering from was investigated. However, it is clear from the notes that the vet was unable to rule out ligament injury from the x-rays', and that 'Therefore, it*

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<sup>4</sup> P. 8

<sup>5</sup> P. 9

*appears this condition has been ongoing and is our belief Nelson has been suffering from cruciate disease from January 2017'.*

The insurer's refusal to honour the claim is one based on opinion rather than on sound professional advice. At least, the Arbiter was not presented with this professional advice if ever taken by the insurer.

On the other hand, the complainant filed a specific professional opinion by her vet which clearly excludes that there was a pre-existing medical condition. The fact that on examination on the 30 January 2017, the vet did not exclude ligament injury, on the other hand, it did not conclude that there was ligament injury.

The insurer could only '*doubt*' a ligament injury but has no specific proof that before January 2018 Nelson had this condition.

The Arbiter can only decide on specific proofs rather than on doubts or suppositions. The insurer did not prove on a balance of probability that Nelson had ligament injury prior to January to 2018 and, consequently, could not prove that there was a pre-existing medical condition.

The clinical history notes do not prove that the insured failed to '*diagnose*' symptoms or not disclose them to the insurer. They clearly prove that the complainants looked carefully after Nelson and the vet never confirmed that there were symptoms of ligament injury.

When the insured saw symptoms, they took professional advice and were never specifically told that those symptoms were directly related to cruciate ligament injury. The only medical proof that the Arbiter has is the declaration by the complainants' vet that there were no symptoms directly related to the cruciate ligament injury of January 2018 and, therefore, the insurer could not avoid the claim.

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

The amount claimed by the complainant has not been disputed by the service provider. It only rejected the claim but did not question the amount claimed.

**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 £3,023.56.**

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**