

Before the Arbiter for Financial Services

Case No. 064/2019

MO (the complainant)

vs

Building Block Insurance PCC Ltd. (C63128)

(the service provider/insurance)

Sitting of 15 September 2020

The Arbiter,

Having seen the complaint whereby the complainant states that she had renewed the pet insurance of her dog Roxy on the 26/07/2018 with the service provider.

On the 24 January 2019, her dog developed eye problems which caused Roxy a lot of pain and required her to have emergency surgery which was then followed up by daily visits to vets for the administration of medicine. The total cost of the claim was £783.48.

The insurance declined the claim on the pretext that the complainant did not declare on renewal that Roxy was an aggressive dog. They also cancelled the insurance policy and therefore Roxy became uninsured.

At the time of the renewal, the complainant did not have any reason to classify Roxy as an aggressive dog because it never showed any sign of aggression. Clinical history since 2005 did not show any evidence of aggression as could also be confirmed by her groomer who was always happy with Roxy's behaviour.

On 29 January 2019, during her treatment, it was suggested that Roxy should be handled carefully because since she was in pain, it 'MAY' bite. The clinical notes never suggested that it 'DID' bite and the warning was simply a precaution, since Roxy had severe pain and could become aggressive. This was simply a precautionary note.

The complainant further stated that the vet had verified that Roxy was not an aggressive dog but since it was in pain it could act defensively.

The complainant feels that the insurance was acting dishonestly when it considered a 'Dog in distress' as aggressive in order to avoid the claim.

The complainant declares that her dog is now vulnerable because it is not insured. The complainant also assures the Arbiter that she gave the right information to the insurer at the time of renewal of the policy because Roxy was never aggressive.

Her claim is for £783.48 and is asking the Arbiter to order the removal of any reference in the clinical notes that Roxy is an aggressive dog.

Having seen the reply of the service provider which, in essence, states that the claim was rejected because the complainant was in breach of contract as a general provision in the policy stated that:

'You must tell us immediately of any changes in Your circumstances that may affect Your pet insurance and the cover provided; This includes but not limited to: change of address, change of ownership or complaints made against Your pet. This may result in a premium change.'

The service provider further submits that the decision not to accept the claim was based on two clinical notes which were the following:

'29 January 2019 - Owner will bring in 3 times daily for lebrithal to be applied, aware that we are not open Saturday afternoon or Sunday. Has bitten owner when she has tried to wipe eyes in the past so please be careful.'

30 January 2019 - Need to take buster collar off and put muzzle on. Dog WILL bite otherwise.'

The service provider states that it did not insure dogs which are or have been aggressive. The insurer further states that it makes no distinction whether a dog was aggressive during treatment or otherwise. It is the act of aggressiveness that is relevant. The circumstance leading to the aggressiveness is irrelevant.

The service provider also contests the quantum of the claim. It submits that had the claim been considered, the correct amount to be paid would have been £468.39 because out of the veterinary's invoices one has to deduct: £90 excess and £82.66 by way of co-payment for dogs aged 8 years or over. Roxy was 13 years old at the time of the claim and, therefore, the co-payment provision applies.

Having seen all the documents and considered carefully the submissions made by the parties:

Further Considers:

'The Arbiter must decide and adjudge the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case'.¹

The complaint is based on the fact that the insurance company voided the policy on the ground that Roxy was an aggressive dog.

In its reply, the service provider stated that the complainant:

'did not breach her duty to take reasonable care not to make a representation to the insurer which is the duty as per section 2(2) of the Consumer Insurance (Disclosure and Representation) Act 2012.'

However, the service provider maintains that the complainant *'was in breach of contract once the pet insurance was in existence'* stating that the complainant was in breach of general condition 1 which states:

'You must tell us immediately of any changes in Your circumstances that may affect Your pet insurance and the cover provided; this includes but not limited to:

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

change of address, change of ownership or complaints made against your pet. This may result in a premium change.²

The service provider maintains that the general condition was not observed because two clinical notes indicated that the dog had acted aggressively.

The Arbiter notes that since the insurance company voided the policy, the onus of proof to justify such drastic action rests on it.

The Arbiter has to decide, on the basis of fairness, equity and reasonableness whether the decision taken by the service provider to void the policy, is justifiable and correct.

The complainant submitted that Roxy was not an aggressive dog and the clinical notes referring to Roxy of potentially behaving aggressively were only precautionary. Roxy never had any history of aggressiveness and since she was in great pain, it was only logical that by way of precaution, carers should be advised of any possibility that the dog might bite during treatment.

The service provider produced two clinical notes, one dated 29 January 2019 stating that the dog: *'Has bitten owner when she has tried to wipe eyes in the past so please be careful'*; and the other note dated the following day stated: *'Need to take buster collar off and put muzzle on. Dog WILL bite otherwise.'*

This case is similar to case number 038/2019 decided by the Arbiter on the 11 November 2019, where the vet concerned in that case had stated that during treatment a dog is muzzled as a precaution because, when treated, dogs could behave in an aggressive manner. It did not mean that a dog that is being treated and behaves in that way makes the dog aggressive.

The complainant filed a certificate sent by Acorn Veterinary Centre and signed by Dr Christine Haseler which *inter alia* states:

'We have been caring for Roxy at Acorn Veterinary Centre since August 2005. During that period she has not been aggressive or shown aggressive behaviour towards her owner or any members of the staff.'

² A Fol. 24; A Fol. 78

*The mention of biting or trying to bite, attached to the notes on 29 January and 30 January 2019 are a pain response as Roxy was in extreme discomfort with her eyes. This is in no way a reflection of character or normal behaviour of Roxy. I strongly disagree with describing Roxy as an aggressive dog or displaying aggressive behaviour.*³

This is the only expert opinion provided to the Arbiter in this case, which basically confirms other expert opinions given in previous similar cases.

The service provider, after reviewing the claim, concluded that the complainant did not misrepresent the facts when she was buying the insurance cover but had the duty to report '*change in circumstances*' in accordance with general condition 1.

The Arbiter understands that such a provision in the insurance policy is justifiable in circumstances when the insured does not reveal grave material circumstances which would justifiably render the policy void, especially when the insured fail to reveal change in circumstances to defraud the insurer.

However, this case does not present such a situation. It is the duty of the insured to report material changes in circumstances, but it is also the duty of the insurer not to invoke 'general conditions' unreasonably in order to avoid the claim. In an insurance contract both parties are expected to act with utmost good faith and honour their respective obligations.

It is clear that in this case the insurer is trying to avoid the claim on a single and particular incident that allegedly took place when the owner was trying to wipe the dog's eye when it was in great pain due to her eye condition. As different vets have confirmed to the Arbiter, in situations where pets are suffering from great pain it is expected that they would overreact through fear of being hurt.

In various cases that the Arbiter has had to decide so far, he has met these situations repeatedly and is morally and legally convinced that dogs behaving the same way Roxy did on a particular occasion and, in abnormal circumstances, cannot be classified as having acted aggressively.

³ A Fol. 58

The general condition referred to by the insurer is intended not to expose the insurance to risks that it cannot foresee when accepting a contract of insurance. This is understandable, but the general condition should not serve the insurer as an easy way to avoid the claim.

In the Arbiter's opinion, Roxy cannot be classified as an aggressive dog. A single occurrence of antagonism by a dog under pain and fear should not serve the insurer to classify a dog as '*aggressive*' in such a way as to void the policy and avoid the claim.

Furthermore, the Arbiter notes that general condition 1, (as quoted by the service provider in its reply), is to the effect that any unreported change of circumstance during the duration of the policy can only result '*in a premium change*⁴ and not in the avoidance of the contract.

On the evidence produced during this case, and for the reasons stated above, the Arbiter is morally and legally convinced that the service provider did not succeed to prove that it was justifiable to void the policy and avoid the claim.

The Arbiter, therefore, decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case and is upholding it as long as it is compatible with this decision.

Compensation

The complainant submitted a claim for £783.48.

However, the service provider contested the quantum of the claim stating that had the claim been considered, the correct amount to be paid would have been £468.39, because out of the veterinary's invoices one has to deduct: £90 excess and £82.66 by way of co-payment for dogs aged 8 years or over. Roxy was 13 years old at the time of the claim and, therefore, the co-payment provision applies.

The Arbiter accepts the service provider's reasoning in this respect.

⁴ A Fol. 78

The Arbiter therefore decides that it is fair and reasonable to accept these deductions as submitted by the service provider.

Therefore, 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 £468.39.

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**