

Before the Arbiter for Financial Services

Case No. 086/2019

LO (the complainant)

vs

Building Block Insurance PCC Ltd. (C63128)

(the service provider/the insurance)

Sitting of 22 June 2020

The Arbiter,

Having seen the complaint whereby the complainant states that the service provider is refuting her claim for an accident suffered by her dog because they say that since the dog was on '*a designated road*' and was not '*under control at all times*', the complainant breached the Road Traffic Act 1988.

The complainant submits that for a dog to be under control at all times is to be on a lead. If that is the case, the insurer should expressly say so, but this is not reasonable.

Due care '*is reasonable care*' and not perfection. The insurance should not expect a dog to live its life on a lead all the time.

The insurance has not demonstrated that the road concerned is a '*designated*' road as required by the Act.

The complainant is claiming the total amount of £3,323.50

The service provider replied as follows:

LO is unhappy that her Perfect Pet insurance claim for veterinary fees was declined. The veterinary treatment was required as a result of LO's dog (Milly) being involved in a road traffic accident on the 9 December 2018. I enclose a copy of the statement LO provided as part of her claim regarding the accident.

The claim has been reviewed and Building Block considers that the decision to decline the veterinary fees 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 LO was in breach of general conditions 5 & 6 of the policy terms. The general conditions apply to the whole of the policy and are not limited to a specific section of the policy.

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.'

Perfect Pet (Building Block) has not made a 50% contribution to the indemnity provided by Aviva. The outcome of the third-party liability under the pet insurance policy remains pending and is dependent on the outcome of this complaint with the Arbiter. General conditions 5 & 6 apply to the entire policy and are not limited to specific sections of the policy. Therefore, if LO was in breach of general conditions 5 & 6, the policy will not provide coverage for the veterinary fees claim and the third-party liability claim.

The Arbiter having seen the complaint, the reply and having given the opportunity to the parties to elaborate during the oral hearing,

Having seen all the documents,

Considers:

The Complainant's Version

The most detailed account of the accident is contained in the statement made by the complainant to the service provider presumably a short time after the incident.¹

On Sunday 9 December 2018, the complainant was walking her dog Milly along the Eve Black Path through the sand dunes at Blyth South Beach. This is a walk which the complainant and her dog had been doing regularly for the last six years. Milly '*normally runs free of the lead without any problems*'. Her recall was excellent, and she stayed close to the complainant.

On this walk they were heading north back to the car when Milly suddenly took off over the sand dune because she might have seen a rabbit, fox or a bird and got spooked and decided to chase it. The complainant whistled and shouted but the dog kept going.

The complainant stated that this was out of character for Milly not to respond to her command. Milly kept running across the sand dune on to the road which was about 100 to 150 metres from the path and this resulted in her being hit by a car.

Then, the complainant received some help from a third party and finally gave her dog all the necessary medical care.

The complainant submits that the policy should expressly state that these incidents will not be covered because it is not reasonably possible to keep a dog all the time on a lead.

The Service Provider's Version

The service provider is refuting the claim by invoking general conditions 5 and 6 of the policy which state:

General condition 5:

¹ Pages 64A and 68

'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.'

And, General condition 6 states:

'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 service provider further states that from her statement the complainant explained that she was returning to her vehicle along Eve Black Coastal Walkway. Milly was not being held on a lead and she made her way over the dunes and onto Links Road which is a road that runs adjacent to Eve Black Coastal Walkway. The location of the road traffic accident was Links Road.

Links Road is considered to fall under Section 27 (1) of the Road Traffic Act which states that:

'A person who caused or permits a dog to be on a designated road without the dog being held on a lead is guilty of an offence.'

As Milly was not held on a lead while on a designated road, the complainant was in breach of General Condition 5.

The service provider further sustains that the first part of General condition 6 states that:

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

Had Milly been under control it would not have been possible for her to make her way onto the road.'

Furthermore, the second part of General condition 6 states that:

'... due care should be maintained to prevent your dog from escaping and causing accidental injury'.

The complainant failed to exercise due care as Milly was able to escape from Eve Black Coastal Walkway onto the road. As a result of Milly escaping to the road,

she was able to sustain accidental injury by being involved in a road traffic accident.

Further Considerations

The major point at issue is whether the complainant was in breach of General conditions 5 and 6 of the policy.

In order to establish exactly where the accident took place, the Arbiter searched the locality on google maps. The locality, especially the beach, appears to be quite extensive in area and amongst others it leads to Eve Black Coastal Walkway where the complainant had parked her car.

The Arbiter does not agree with the service provider that General condition 5 applies in this case because the area where Milly was roaming without her lead and the area where the car was parked do not form part of Links Road which is clearly a busy road. Links Road is a designated road for the purposes of the Road Traffic Act 1988, but the area near the sea, where Milly was roaming, does not.

It follows that General condition 5 does not apply because the complainant was not walking her dog along Links Road. It was only by accident that the dog found itself on Links Road.

However, General condition 6, specifically states 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.'

Therefore, the Arbiter has to establish whether the *'dog was under control at all times'*, and whether *'due care'* was maintained to prevent the dog from escaping and causing the accidental injury.

The Arbiter understands the complainant's submission that a dog cannot be held on a lead *'at all times'*, and this policy clause should be reasonably interpreted by the service provider because it is unreasonable to expect that a dog should be on a lead all the time. This would amount to cruelty.

However, if a dog is not held on a lead it should be *'under the control'* of its owner. That is why, the second arm of General condition 6 specifies that *'due*

care' must be maintained to avoid the occurrence of accidents leading to accidental injury. In this respect, it is highly imperative for dog owners to foresee the risks associated with dogs roaming about in public places without being on a lead. If the place is fenced or, in any other way, it prevents a pet from escaping the control of its owner, then there is nothing wrong with unleashing the dog, because even though the pet is not on the lead, it is protected just the same. In those situations, the lead loses much of its importance.

But the situation is completely different when the area is not enclosed because in that situation, especially when it is a vast place, the owner cannot have effective control over his/her dog.

It is true that in this case the complainant had been walking the dog in the same area for six years without any incident. It is also true that Milly normally behaved well even when she was not on the lead. However, owners should not be overconfident and believe that their dog is going to behave at all times and under all circumstances. In this case, the complainant states that the dog could have been disturbed by a rabbit, a fox or a bird but, nonetheless, it escaped the control of her owner and, unfortunately, was hit by a car on a very busy road.

The Arbiter also notes that Milly was not on the lead whilst the complainant and her dog were returning to her car. In the Arbiter's opinion, the complainant was overconfident on her dog's expected behaviour and it was expected that, at least, Milly should have been on the lead on their return to the car.

The Arbiter has no doubt about the complainant's good intentions and is impressed by the care and treatment Milly was given after the accident. The Arbiter also notes the anguish which the complainant had to suffer because of the accident and, in this respect, sympathises with the complainant.

However, the Arbiter is not convinced that Milly should have been left unleashed on its way back to the car and, also, being left uncontrolled in a vast area where a dog could do practically anything without its owner being in any form of control. Past behaviour is no guarantee at all because it is not expected that an animal can reason out things as we do. Even humans have huge behavioural problems, let alone animals who are greatly influenced by their instincts.

For the above stated reasons, the Arbiter decides that the complainant did not breach General condition 5 of the policy but General condition 6 was breached.

As a consequence, the Arbiter cannot uphold the complaint.

Due to the particular circumstances of the case, each party is to bear its own costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services