

Before the Arbiter for Financial Services

Case ASF 039/2021

PM (the complainant/insured)

vs

Building Block Insurance PCC Ltd

(C 63128)

(the service provider/insurer)

Sitting of the 13 September 2021

The Arbiter,

Having seen the complaint whereby the complainant stated that he was complaining because the service provider failed to pay his claim in respect of involuntary unemployment/redundancy.

A policy was sold to him more than ten years ago by DMS Agency Services Ltd (DMS) to cover redundancy/unemployment. DMS has transferred the policy to Building Block Insurance PCC Ltd and the current contract covered the period 6 April 2020 to 5 April 2021.

He submits that since English law applied to the policy, the English Consumer Rights Act 2015 would negate any unfair contractual terms.

The reason for the rejection of the claim was that the insured failed to send the claims handler '*all the necessary information*' as per 'General Policy Conditions and Exclusions' Section of the policy.

'Necessary information' is not defined in the policy, and the complainant states that he had provided more than sufficient information to substantiate that his claim is a legitimate one.

The complainant states that the Exclusion referred to above is about *'necessary information'* and not all information that the Insurer *'may choose to request or arbitrarily deems necessary'*.

He submits that he had passed all the necessary information including:

1. The claim form endorsed by him and his former employer;
2. His salary over the year prior to his redundancy;
3. Copies of four payslips (3 for the last 3 months of employment and 1 encompassing money due in respect of the Settlement Agreement);
4. The Settlement Agreement; and
5. Letter confirming eligibility for Jobseekers Allowance.

The request for further information is unnecessary and unwarranted. The insurer has no right to see his bank statements because this intrudes upon his privacy.

The information sent to the insurer is enough to prove that his claim is legitimate.

Remedy

The complainant submits that the insurer should pay him the total amount of £19,400 and an additional £1,940 by way of interest since the payment should have been made on a monthly basis.

Having seen the reply by the service provider which *inter alia* states:

On 01 December 2020, Building Block Insurance PCC Limited issued a complaint outcome after review and investigation of Mr PM's complaint regarding documentation required to progress his income replacement claim. The same concerns have been raised to the Arbiter by Mr PM.

Mr PM has supplied the relevant policy terms and schedule of insurance in his Arbiter complaint submission, and we agree that they are the correct documents. We also agree with Mr PM that English law governs the contractual relationship between Building Block and Mr PM which is consistent with what is stated on page 1 of the policy terms under the 'Governing Law' section.

The Unemployment Claim

The claim submitted by Mr PM was for involuntary redundancy which is contained on page 9 of the policy terms under section four.

Mr PM's unemployment arose due to him and his then employer, ARRIS Solutions UK Ltd, signing a settlement agreement. I enclose a copy of the settlement agreement. A settlement agreement being where the employer and employee mutually agree to terminate the employment contract. A settlement agreement should be distinguished from redundancy. Redundancy is where the employer terminates the contract of employment.

When a claim is submitted it is important to establish if the unemployment arose due to voluntary redundancy, compulsory redundancy, or by way of a settlement agreement.

We note from the claim form that the employer was the party that initiated the settlement agreement rather than Mr PM. We also note from the claim form that if Mr PM had not agreed to the settlement agreement, the employer would have ultimately terminated his employment by making him redundant.

Building Block appreciate Mr PM has provided some supporting documentation. It is for Building Block as the insurer, to determine if further information is required to ensure the claim is valid and meets policy terms. Additional documents have been requested to confirm validity of the claim. These were first requested by the claim handlers, Trent Services, on 29 July 2020. The evidence that has been requested is a standard request to any policyholder who submits an unemployment claim.

- *'A copy of any at risk letters, consultations, and termination letters you have received'.*

This has been requested to evidence that there were no reasons other than involuntary redundancy that led to Mr PM's job loss. Settlement agreements are often used by employers and agreed to by employees when there are other issues in the workplace. If the job loss was a result of other issues, the claim would be excluded. On the claim form submitted, ARRIS Solutions UK Limited have stated that written notice was given to Mr PM on 26 March 2020.

- *'A copy of your bank statements from the time of redundancy to date'*.

Bank statements are required to evidence that Mr PM is not in receipt of any other income from employment.

It has been made clear to Mr PM that under the policy terms if the necessary information is not received, a claim will not be accepted.

The policy exclusion Building Block rely on is on page 11 of the policy terms, which states:

GENERAL POLICY CONDITIONS & EXCLUSIONS

*Claims where **You** are unwilling or unable to provide **Us** with all necessary information that **We** may require in order validate **Your** claim and throughout the duration of **Your** claim, will not be accepted and no **Monthly Benefit** will be paid.*

Unfair contract terms and the Consumer Rights Act 2015

In Mr PM's Arbiter complaint form he refers to unfair contract terms and references the Consumer Rights Act 2015. Mr PM has not been explicit in pointing out which policy term he considers unfair. We assume the policy term Mr PM considers unfair is the policy exclusion quoted above which Building Block seek to rely on.

Part 2 of the Consumer Rights Act 2015 concerns unfair terms. Section 64 of the Act states that a contract term is excluded from the assessment of fairness under Section 62 provided it specifies the main subject matter of the contract and the contract term is transparent and prominent. Building Block assert that the policy exclusion we seek to rely on would be excluded from the assessment of fairness by the application of Section 64 of the Act.

Allowable expenses/Basic Cover/Top-Up Cover

Building Block note that the claims handler, Trent Services referred to allowable expenses and referenced the section 'Cover Options' on page 4 of the policy terms. The 'Cover Options' section states that '**Your Monthly Benefit will comprise of Basic Cover, Top-Up Cover, or a combination of both, as shown on Your Schedule**'.

Mr PM was correct when he pointed out to the claims handler, Trent Services, that such terms did not appear on the schedule of insurance. Given the discrepancy, we agree with Mr PM that allowable expenses/basic cover/top-up cover should be disregarded. As per the schedule of insurance the monthly income benefit is £2000.

Claim settlement:

Mr PM is yet to notify Trent Services of any return to employment. If Mr PM found employment before the policy end date of 05 April 2021, the figures below would need to be recalculated.

Building Block would like to make the Arbiter aware of the claim settlement figure under the policy if the Arbiter upholds the complaint. Please note the figure is on the assumption that Mr PM's unemployment subsisted for the duration of the dates stated below.

Termination date of employment, 17 April 2020. Mr PM had payment in lieu of notice until 16 May 2020. The 61-day excess period would not start until 17 May 2020. The potential start date of the claim would be 17 July 2020. The first payment would be due on 16 August 2020 following the waiting period. There are 263 days between acceptance and end date of the policy of 05 April 2021.

Total due to Mr PM: £17,533.33.

You will note that the excess period and waiting period are stated on the schedule of insurance. The definition of Payment in Lieu of Notice is defined on page 6 of the policy terms. As Mr PM's settlement agreement included Payment in Lieu of Notice as stated at section 3.1.2 the claim would not be commenced until expiry of the Payment in Lieu of Notice, something which Mr PM did not factor in with his calculations on the Arbiter complaint form.

Having heard the parties

Having seen all the documents of the case

Considers

The real bone of contention between the parties is that the service provider states that, according to the policy, the complainant has not submitted enough information whilst the complainant states that he had submitted all the necessary information to prove that his claim is legitimate and genuine. The additional information asked by the service provider is of a personal confidential nature and should not have been requested by the insurer.

The Contract of Insurance

As has already been stated in previous decisions by the Arbiter,¹ and as stated on numerous occasions by the Maltese Courts,² the contract of insurance is based on the 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.

Processing a claim

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.

¹ For example, OAFS, Case 039/2017

² For example, *Patricia Agius vs GasanMamo Insurance Ltd.*, PA, 5/06/2015 (JPG)

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 one between 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.

The object of insurance regarding this case

As stated by the complainant, the object of his insurance was to cover him in case of unemployment and redundancy. This is also reflected in the policy and there is no controversy about the object of the insurance contract.

The controversy between the insurance and the insured

The controversy between the insured and the insurance seems to have arisen on two particular issues.

Firstly, the service provider is stating that the complainant did not supply all the information requested including the complainant's bank statements.

Secondly, the service provider raised the issue that the complainant had signed a settlement agreement with his employer and therefore he was not made redundant but left the employment on the basis of that agreement.

Whether the information supplied is sufficient to prove the claim

The complainant insists that he had supplied the insurance with enough information to prove that he had been made redundant:

'I claim that I have provided them with enough information that was reasonable in the circumstances to substantiate the claim. In the Claim Form itself I had to

fill in on my behalf, and I had to chase my previous employer again to confirm in a separate part of the form which they have signed and added the stamp of the company to attest to the truth of it, and that has been submitted to the insurance company and they are still claiming that they need more information.

They have received confirmation when I started, the last date of my employment, my salary. I really do not know what more information they need.’³

During the sitting of the 1 June 2021, Mr Wayne Kettle, for the service provider, stated that if the complainant sent further information relating to his unemployment, the Bank’s statements would no longer be required to see details of the expenditures made by the complainant:

‘In order for the claim to remain open, (it’s not actually closed down), and to complete the documentation, it is required, as we explained in our responses, the At Risk letters, any consultation letters and any termination letters to complete the picture. Then, the bank statements would not be required, in the sense that, we do not want to look at expenditure - that could be blocked out - it’s so that we could see if he is in receipt of any other income or employment’.⁴

However, he added that:

‘The documentation is 90% complete, so we need the bank statements in relation to income. Obviously, we are not interested in expenditure items. And there was our At Risk Letter and Consultation Letter.’⁵

The Arbiter notes that the At Risk letters and consultation letters were sent to the Office of the Arbiter and to the service provider as agreed during the sitting.⁶

The complainant also sent the Claim for Jobseekers Allowance.⁷ From the above documentation there should not be any doubt that the complainant was made redundant by his previous employer who also attested the Unemployment Claim Form.⁸

³ Pg. 59-60

⁴ Pg. 61

⁵ *Ibid.*

⁶ See pages 66-70

⁷ Pg. 71

⁸ Pg. 9

The settlement agreement between the employee and his employer was not a voluntary agreement provoked by the complainant, but the Arbiter considers it was a settlement where the employer settled what was due to the employee including notice money. Even if the complainant had declined the payments made by the employer, he would still have been declared redundant because the company wanted to streamline its work force.

Therefore, the complainant had no choice but to accept what was offered to him and chose the best scenario available to him. This settlement was also offered by the employer to seal a form of guarantee that the complainant would not have any recourse to any future action against him.

Therefore, in the Arbiter's opinion, the information supplied by the complainant was enough to prove the claim and the risk covered by the insurance policy.

Once redundancy had been proved, the request for the bank statements does not seem to be reasonable and fair.

The Arbiter agrees with the complainant that the wording in the 'General Policy Conditions & Exclusions', that claims would not be entertained if the insured does not supply the insurance with '*necessary information*', should not be interpreted by the insurer as a *carte blanche* to ask for **any information** it may imagine, to stall the claim.

The term '*necessary information*' draws a limit on what information the insurer is entitled to solicit from the insured.

The Arbiter considers that if the insured has supplied the insurer with enough information to establish redundancy, the insurer should not insist on other personal information which basically does not add more comfort to the insurer that the claim is genuine.

In this case, the complainant sent to the insurer the most relevant information, namely:

1. The claim form endorsed by him and his former employer;
2. His salary over the year prior to his redundancy;

3. Copies of four payslips (3 for the last 3 months of employment and 1 encompassing money due in respect of the Settlement Agreement);
4. The Settlement Agreement;
5. Letter confirming eligibility for Jobseekers Allowance and,
6. The At Risk and consultation letters.

The Arbiter considers that the complainant has provided the insurer with all the 'necessary information' and has satisfied the requisites of the General Conditions and Exclusions referred to both by the complainant and the service provider.

Decision

For the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case and is upholding it in so far as it is compatible with this decision.

Compensation

The complainant submitted that he should be paid the sum of £19,400 plus interest of £1,940. He explained that his last day of employment was on 17 April 2020.

The policy contains a contractual unemployment excess period of 61 days (period ends 18 June 2020). Benefit per day is paid at 1/30th of the monthly benefit of £2,000.

Therefore, for each day he should be paid £66.67.

From 19 June 2020 till the end of the policy on 5 April 2021 there are 291 days, so the net amount is £19,400. Interest is also due as the claim should have been paid on a monthly basis, so an additional £1,940 by way of interest is, in the complainant's opinion, a reasonable one.

On the other hand, the service provider submitted that the amount due should not exceed £17,533.33. The complainant had payment in lieu of notice until 16 May 2020. The 61-day excess period would therefore not start until 17 May

2020. The potential start of the claim would be 17 July 2020. There are 263 days between acceptance and end date of the policy on 5 April 2021.

The settlement agreement included Payment in Lieu of Notice as stated in section 3.1.2 and the claim would not commence until the expiry of the Payment in Lieu of Notice, something which the complainant did not factor in.

The Arbiter agrees with the service provider that the payment in lieu of notice should be factored in because it is included in the policy document.

Even the complainant admitted that:

'the settlement just confirms what they will pay me, like payment in lieu of notice'.⁹

The termination date was 17 April 2020, and the notice period was that of one month.¹⁰ Since the complainant was paid for the notice period, the service provider is correct in stating that the 61-day excess period would not start until the 17 May 2020, and the potential start of the claim would be 17 July 2020.

The Arbiter agrees with the service provider that the covered period was that of 263 days, amounting to £17,533.33.

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 £17,533.33.

Since the amount should have been paid on a monthly basis, and the amount should have been due by the 16 August 2020,¹¹ the Arbiter orders the service provider to pay legal interest at the rate of 8% per annum from the 16 August 2020 until the date of effective payment.

⁹ Pg. 60

¹⁰ Pg. 40

¹¹ *Ibid.*

The costs of these proceedings are to be borne by the service provider.

**Dr Reno Borg
Arbiter for Financial Services**