

## **Before the Arbiter for Financial Services**

**Case ASF 111/2021**

**DP (The Complainant)**

**vs**

**Building Block Insurance PCC Ltd**

**(C 63128)**

**(The Service Provider/The Insurer)**

### **Sitting of the 8 February 2022**

**The Arbiter,**

**Having seen the complaint** whereby the Complainant, in summary and in essence, submitted that:

He was unfairly treated when his claim for unemployment benefit was rejected through a lengthy and unfair process.

He further stated in a letter dated 22 March 2021<sup>1</sup> that his complaint was both against Building Block and Direct Group. His insurance claim was rejected under General Condition 10 of the policy document and despite several requests he made, nobody could give him a clear reason why that General Condition has been breached.

However, it seems that it is based around part of the claim form signed by his ex-employer.

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<sup>1</sup> A fol. 51:(which the complainant attached to the Complaint Form and specified that it should form part of his complaint)

He refers to the interview carried out by Direct Group, the evidence of which was '*recorded objectively and not to my bias and I can accept that there is a small amount of confusion, however the answers provided are still correct*',<sup>2</sup> and no attempt was made by the Insurer to clarify or justify his answers.

The claim form asks what payment he was entitled to under the terms of his contract, and to the best of his knowledge, it is correct. This was confirmed on the claim form and verbally by the director (his former employer) who signed the document. However, another director had said that he was entitled to two weeks' notice. The Complainant argues that it does not make sense to make a fraudulent claim for 7 days' payment, i.e., £300.

The other point of contention relates to the declaration made by the Complainant that he did not receive any wages in lieu of notice but in fact was retained on the payroll till March. The Complainant reiterates that this is a correct statement as he was entitled to one week's salary and the rest was made up of an *ex gratia* payment. An *ex gratia* payment is not in lieu of notice but it is a payment made voluntarily by the employer without any obligation to do so.

The Complainant further states that he was informed by the loss adjuster, Gareth Lerner, that XXXXX, the owner of the company, had confirmed this via email but despite making '*subject access requests*' to Direct Group and Building Block to have access to it, they omitted the information provided to him. The *ex gratia* payment is not provided for in the claim form but he had informed the interviewers verbally about the amount received. He also provided the P45 payslips, etc. He could not do any more than that.

The Complainant also stated that although he had made a total of 10 phone calls to Direct Group to discuss the claim, on these ten occasions, they refused to discuss the claim with him.

Another point of contention was the date of termination of employment. One of the employers and himself confirmed the 31 January as the date of termination of employment, but XXX stated that it was the 14 February. He does not know who caused this confusion but, surely, he was not going to make a fraudulent claim for 14 days or for £750.

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<sup>2</sup> A fol. 51

Another issue is that Building Block refused the claim because he did not provide them with his contract of employment. He made the claim on the 13 March 2020 and, as can be verified from the claim handler's notes, the contract of employment was never asked for by the claim handlers. However, he had provided them with his payslips, P45 and correspondence from both directors of his former employers confirming his employment, employment dates and salary. This information was found worthy enough to decline his claim. In the Complainant's opinion, this is nothing more than clutching at straws.

The Complainant also contests the Service Provider's declaration that he refused a second interview. This is not correct as can be verified from the email trail. The Service Provider had cancelled the interview because he was not in a position to provide them with a copy of his contract of employment.

The Complainant notes that in spite of the fact that the Service Provider took one year to consider his claim, the onus to provide information was imputed to him in spite of the fact that the Insurer, or its appointees, had the means to procure information themselves. He also alleged that the Service Provider was also lying.

Regarding the minutes of the interview, the Complainant submits that although the contents of the minutes were not exactly what he had stated, he had signed them because he was pressurised by the loss adjuster due to his persistent phone calls, voicemails and several missed calls.

The Complainant attached the policy schedule and an extract from the policy wording relating to unemployment cover. This states that he had 90 days to wait before claiming on the policy and a further 30 days until first payment. There are no clauses or caveats attached to the wording saying that the insurer would look at it whenever they think fit because they are busy and the insured has to wait. The reason an unemployment policy is taken out is to provide prompt payment.

If the Service Provider is unable to reach these criteria, they should not sell the policy. Considering that he remained on the payroll till the 30 March, all the investigations and decision should have been made by the 23 June. The first payment should have been made on the 21 July. The Service Provider did not honour these timeframes found in the policy document.

The procrastination made by the Service Provider was done on purpose because with the passage of time, the harder it becomes to provide evidence to the detriment of the insured.

The Complainant questions the competence and fair play of Direct Group as is evidenced through reviews on it.

He concludes by declaring that he did not breach any conditions of the policy and if Building Block does not pay him, he should be paid by Direct Group for mishandling the matter.

The Complainant asks the Arbiter to order the Service Provider to pay him the sum of £1,500 due to him from April 2020 till the '*present day*'.

**Having seen the reply submitted by the Service Provider whereby it was stated that:**

**1. Claim outcome – Claim decline**

DP held one policy where Building Block was the insurer. The period of insurance was between 01 October 2019 and 30 September 2020. DP has included a copy of the policy schedule and the policy terms in his documentation to the Arbiter.

The claim submitted by DP was for unemployment.

We have included to the Arbiter a clearer copy of the claim form submitted which was signed by DP dated 03 April 2020.

The policy exclusions Building Block are relying on are:

Page 18 of the policy terms

*General Conditions of Your Policy*

*(Applying to all section of Your Policy)*

*Point 10:*

*If You or anyone acting for You:*

- *makes a statement to Us or anyone acting on Our behalf, knowing the statement to be false;*
- *sends Us or anyone acting on Our behalf a document, knowing the document to be forged or false;*
- *makes a claim under the Policy, knowing the claim to be false or fraudulent in any way;*

*If Your claim is in any way dishonest or exaggerated, We will not pay any benefit under this Policy or return any Premium to You and We may cancel Your Policy immediately and backdate the cancellation to the date of the fraudulent claim. We may also take legal action against You and inform the appropriate authorities.*

Building Block have addressed the claim decision concerns raised by DP on a complaint outcome issued 19 January 2021. DP has attached a copy of this letter in his supporting documentation to the Arbiter.

Based on the information provided at the time of DP's claim, the claim was declined. We have attached a copy of the letter notifying DP of the claim outcome dated 08 September 2020 issued by Direct Group. This letter outlines the discrepancies with the claim.

DP has been unable to provide a copy of his employment contract with XXX (XXXXXXX) to support the claim presented. A contract of employment is essential evidence in all XXX claims and would, amongst other things, clarify the Payment in Lieu of Notice dispute. The employment contract is requested at the point the claim form is completed by the insured. The wording states the following:

*Section 4C Additional Information:*

*In order to progress your claim as quickly as possible, please could you supply any relevant additional documentation to us. Example of this:*

*Contract of employment and all termination correspondence.*

1. **Independent interview carried out by Gareth Lerner (Direct Group Investigation Services)**

When an interview is carried out, this forms part of the claim presented for review. It is the content of the interview, not the non-signature of the witness statement that Building Block takes into consideration when a claim assessment is taking place.

The interview with DP and Mr Lerner was recorded. A copy of this can be provided to the Arbiter upon request.

Building Block have offered DP the option of a second interview to be carried out. This would be carried out by another company. This has been declined by DP.

2. **90 days before claiming for Unemployment and timescales**

On page 2 of DP's policy schedule, the schedule states the following:

**'Days before claiming on Unemployment: 90 days'**

Building Block have addressed DP's concerns regarding the delays in claim assessment. DP has included a copy of Building Block's complaint outcome dated 19 January 2021.

**Claim settlement**

If the Arbiter upholds DP's complaint, and agrees that based on the claim information Building Block have received to date that the claim assessment should continue, DP will be required to provide some additional information for the claim to be payable.

The claim is only payable if DP is without work as evidenced by him by being registered as unemployed with the Department of Work and Pensions (DWP). If DP was in receipt of Job Seekers Allowance or Universal Credit, Building Block would require documents to evidence the entire benefit period. Building Block would also require proof in the way of bank statements for the entire period that DP was not in receipt of any income from any other source.

If the complaint is upheld by the Arbiter, and all the above documentation is received from DP, DP would be entitled to the policy benefit of £1,500 per calendar month during his claim for unemployment.

Documents we have enclosed to the Arbiter:

- Claim Form submitted by DP
- Claim decision letter issued by Direct Group

Please let us know if you require the interview recordings between DP and Mr Larner or any further documents.

**Having heard the Complainant and seen the submissions made by the parties.**

**Further Considers**

**The Arbiter will 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 Service Provider has declined the claim on the basis of the exclusion found on Page 18 of the policy terms, point 10 which is to the effect that:

*‘if you or anyone acting for you:*

- *makes a statement to us or anyone acting on our behalf, knowing that the statement to be false;*
- *sends us or anyone acting on our behalf a document, knowing the document to be forged or false;*
- *makes a claim under the policy, knowing the claim to be false or fraudulent in any way;*

*If your claim is in any way dishonest or exaggerated, We will not pay any benefit under this policy or return any premium to you and we may cancel your policy immediately and backdate the cancellation to the date of the fraudulent claim.*

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

*We may also take legal action against you and inform the appropriate authorities.*

The second reason for refuting the claim rests on Section 4C, Additional Information;

*'In order to progress your claim as quickly as possible, please could you supply any relevant additional documentation to us. Examples of this:*

*\*Contract of employment and all termination correspondence.'*

### **Fraudulent Claim**

It is a no-brainer that insurance companies are entitled to reject fraudulent claims. The Arbiter refers to the well-established principle that *fraus omnia corrumpit*, meaning that fraud corrupts everything. However, the party alleging fraud has to prove it.<sup>4</sup>

In another Court Judgement,<sup>5</sup> the Court held that the onus of proof of an allegation of fraud to refute the claim, rests on the insurer.

On the basis of the above established principles, the Arbiter will consider whether the Complainant made a fraudulent claim as stated by the Insurer.

The Arbiter notes that the proofs of the Insurer are a little bit scarce. No oral evidence was produced during the hearing and the Insured's evidence during the same hearing was in no way contradicted. However, the Service Provider makes reference to the letter sent by the Service Provider to the Complainant on the 19 January 2021, and another letter sent by Direct Group on the 8 September 2020.

#### *The Letter of 19 January 2021 sent by the Service Provider*

In its letter of the 19 January 2021,<sup>6</sup> the Service Provider informed the Complainant that as per claim notification of the 8 September 2020, General

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<sup>4</sup> *Raymond Xerri vs Joseph Grech noe*, First Hall Civil Court, (FH), 05/07/2005

<sup>5</sup> *GasamMamo Insurance Limited vs Alexander Jan Edward Van Reeve et*, FH, 8/05/2017

<sup>6</sup> A Fol. 7-8



Condition 10 of the policy terms was breached by the Complainant. General Condition 10 relates to false statements/claims. The reasons given were:

- *'The documentation and information supplied by you does not support the claim'*
- *'No contract of employment has been supplied to confirm the claim presented.'*<sup>7</sup>

The Service Provider adds that the offer of a second interview by the claims' handlers was rejected by the Complainant.

*The letter of the 8 September 2020 sent by Direct Group*

In its letter, Direct Group informed the Complainant that:

1. In Part 1 of the Claim Form the Complainant stated that his Unemployment Commenced on the 31 January 2020. However, the wage payslips and P 45 show that he was on the payroll of his employer until the 31 March 2020.
2. The information given in the Employers section of the Claim Form Part 2 A show that his unemployment had commenced on the 31 January 2020. Moreover, one of the Directors had confirmed that he was given notice on the 14 February 2020 and that he was paid until the 31 March 2020.
3. The information given in the Employers Section of the Claim Form part 2A stated that he was entitled to one week's notice under his contract, but a Director of his former Employer had confirmed that he was entitled to two weeks' notice, i.e., till the end of February 2020 which he chose not to work.
4. The information given in the Employers Section of the Claim Form Part 2A stated that he did not receive any wages in lieu of notice. As stated in 3 above, a Director stated that the Complainant was paid two weeks for February and paid for the month of March.
5. The undated letter the Complainant supplied from his previous employer that the Company was terminating his employment with the effective

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<sup>7</sup> A Fol. 8

date being Friday 31 January 2020, was not accepted for the reasons stated in 1,2,3,4 above.

The Complainant responded to this letter on the 13 September 2020<sup>8</sup> and rebutted the above-mentioned allegations as follows:

1. The 31 January 2020 was his last day of employment as is corroborated by a signed letter from his employer and the relevant section of the Complaint Form says the same. He also sent his pay slips with his email of the 7 June and since he did not have access to the March payslip, he asked direction on what to do. He did not receive any response.
2. As stated in 1 above, his last day of employment was 31 January 2020. This is corroborated by a letter sent by XXXXXX (Director) scanned to him on the 18 February and forwarded to Direct Group. Again, the payslips and P45 were sent on the 7 June and 12 July respectively.

At this point Direct Group did not raise any issue. The Complainant argues that he had sent all the information honestly and refutes the allegation that the information was false. In addition, XXXX (Director) has confirmed that the Complainant was entitled to work two weeks' notice on the 14 February 2020, and the Complainant was paid until 31 March 2020. He had passed all this information to Direct Group and, therefore, no false information was made by the Complainant.

3. Regarding allegation 3 made by Direct Group, the Complainant responded that it is not true that he stated in the Claim Form that he was entitled to one week's notice money whereas XXXXXXXX had confirmed that he was entitled to work notice till the end of February 2020. The Complainant contradicts this statement of XXXXXXXX by the fact that his Claim Form and its contents were signed by XXXXXX (another Director). Moreover, Direct Group are basing their allegation on a conversation with XXXXXXXX almost 9 months after the conversation took place, and 6 months after the Claim Form was signed by a different person (XXXXXX).
4. Regarding the claim made by Direct Group that the Complainant stated in the Claim Form that he did not receive any wages in lieu of notice but, in

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<sup>8</sup> A Fol. 57

fact, he was paid for two weeks in February and the whole month of March, the Complainant stated that in August he had discussed this point with Direct Group and, although he offered to discuss further this point, he was not given the opportunity to do so.

5. Regarding the undated letter supplied by the Complainant where it was stated that the Complainant's last day of work was the 31 January 2020, the Complainant argues that, although this letter was indeed undated, it has a scan date attached to it. Moreover, Direct Group fail to mention that Gareth Lerner (from Direct Group) had spoken to XXXXXX who had confirmed the legitimacy of the letter. It is concerning that a written letter at the time of the redundancy was dismissed in favour of a conversation 9 months on.

#### Further Considerations

It is amply clear that the Service Provider is refuting the claim on the pretext that the contents of the Claim Form do not tally with the facts concerning the date relating to the termination of employment and, also, because the Complainant did not disclose that he had been given '*notice money*'.

Regarding the **real** unemployment date, the Complainant had stated in the Claim Form that his effective date of unemployment commenced on the 31 January 2020<sup>9</sup> and this is corroborated by an undated letter signed by John Fleming for the employer.<sup>10</sup>

In this letter the employer clearly stated:

***'Therefore, it is with great regret that I inform you that we are eliminating your position and terminating your employment, effective Friday 31 January 2020.'***<sup>11</sup>

The Service Provider contrasts this evidence with a different date stated by one of the Directors '*in a conversation*' much after the Complainant was dismissed from employment.

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<sup>9</sup> A fol. 101

<sup>10</sup> A fol. 108

<sup>11</sup> *Ibid.*

**The Arbiter concludes that the most credible evidence is the letter signed by the employer, specifically stating that employment was being terminated with effect from the 31 January 2020. The legitimacy of this letter was confirmed by XXXXXX himself.**

Therefore, the Arbiter does not consider the first reason given by Direct Group and endorsed by the Service Provider to be justified. It follows that reason number two regarding the termination date cannot be justified either.

Regarding the fact that the Complainant was paid till the end of March, the Arbiter concludes that such information was given by the Complainant during the first interview.

In fact, in the *'witness statement'*<sup>12</sup> the Complainant had stated that:

*'I was advised by XXXXX that I would receive one week's pay in lieu of notice'.<sup>13</sup>*

Furthermore, he stated:

*'There was an issue over some potential commission from a matter I dealt with, however, the client had not paid their invoice as they went bankrupt. I discussed this with XXXXX and he agreed that he would pay me an additional two months' salary'. I was happy with this and was expecting to receive this as a lump sum. This did not however turn out to be the case. I honestly thought after being made redundant, that I would walk straight to another job. Knowing I was going to receive two months of pay, in what I thought would be a lump sum, I was not overly concerned. I did not end up receiving my two months' salary as a lump sum and instead this was paid monthly as a normal salary. I was paid as normal for February and March 2020'.*

He also explained the fact that the employer continued to keep him on its payroll affected him negatively because his application for Universal Credit was rejected.

The Arbiter concludes that the Complainant was correct in stating that his unemployment was effective from the 31 January 2020. He explained that he was owed a commission which he expected to be paid by the employer as a lump

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<sup>12</sup> A fol. 206 et seq.

<sup>13</sup> A fol. 209

sum. Instead, the employer delayed this commission and paid it in February and March in the form of a salary.

Had the Complainant wanted to hide the fact that he was paid till the end of March, he would have just presented the letter stating that his unemployment effective date was the end of January and would stop at that. But during the interview, he honestly stated that he was paid till March 2020 and, therefore, he did not make a false statement as being alleged by the Insurer.

The employer's failure to pay the Complainant the lump sum and instead paying it under the nomenclature of '*salary*'; and delaying the payment of the lump sum till March 2020, should not militate against the Complainant. Instead of rejecting the conversation made with XXXXXX, Direct Group based its conclusions on it.

The Arbiter is of the opinion that the scope of having an interview in this kind of circumstances is to discover the truth and not to abusively use the interview to reject the claim. Once Direct Group were informed by the Complainant himself that he was paid two months' salary after the effective date of termination of employment, they were in a position to work out any redundancy benefit due to the Insured. Direct Group promptly accepted what was said in a telephone conversation/email with/from one of the Directors (who contradicted the letter issued by another Director) and refuted the assurance given in writing by the Complainant who was consistent throughout.

**The Arbiter concludes that the letter of termination of employment issued by the employer is the best evidence produced in this case and is accepting it as the true date when the Complainant was made redundant.**

The Service Provider also rejected the claim because it stated that the Complainant failed to provide the contract of employment.

The Arbiter understands the Service Provider's position that the employment contract could be valuable in determining unemployment benefit and/or payment of notice money. However, in the particular instance where the employee is not in possession of such contract, the insurer should try to obtain it from the employer or ask for other information which may lead to the same result. It is not fair to procrastinate the claim on the pretext that the Insured was

not in a position to provide the employment contract. The Insurer has not proven that it attempted to obtain the contract of employment from the employer; and, furthermore, the Insurer was supplied with the salary of the Insured and was also aware that the Complainant had been paid for two weeks' salary in February and the whole month of March.

The Arbiter is also aware that in its reply, the Insurer stated that if the Arbiter had to uphold the complaint, the Complainant would be entitled to the benefit of £1,500 per calendar month. This also reveals that the Insurer was in a position to work out the benefit.

The Arbiter is of the opinion that with the documentation supplied by the Insured and his employer, and the information given by the Complainant during the first interview, the Insurer was in a position to honour the claim.

Regarding the allegation that the Complainant refused to attend a second interview, the email trail submitted in this case clearly shows that the Complainant accepted to attend a second interview. However, it was the Insurer, or its appointees, that cancelled the second interview on the pretext that the Complainant did not produce the employment contract.

This is quite absurd considering the fact that the first interview was held in spite of the fact that the Complainant did not produce the employment contract. So why was it necessary for the second interview? Moreover, in the Arbiter's opinion, the first interview was adequate and there was no need for a second interview.

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

### **Compensation**

**In virtue 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 Complainant the sum of £1,500 per calendar month for the months he was unemployed, in accordance with the policy terms.**

**With regard to the procrastination in processing the claim, as admitted by the Insurer and proven by the Complainant, the Arbiter orders the Service Provider to pay the Complainant the sum of £100, as already offered by the Insurer.**

**With legal interest of eight per cent per annum on the sum awarded in this decision, from the date of this decision till the date of effective payment.**

**The costs of these proceedings are to be borne by the Service Provider.**

**Dr Reno Borg  
Arbiter for Financial Services**