

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

**Case No. 002/2020**

**ZI (the complainant)**

**vs**

**Building Block Insurance PCC Ltd**

**(C63128) (the service provider)**

**Sitting of 22 June 2020**

**The Arbiter,**

**Having seen the complaint** whereby the complainant states that, unfortunately, his dog was involved in a car accident on the 28 May 2019 which meant that he had to raise a claim for vets' fees with the insurance company.

The claim was rejected by the insurance company on the basis that the complainant's wife did not show proper care and attention at the time of the incident.

The complainant further states that his wife could not do anything to prevent the accident.

His wife had parked the car safely at the side of the footpath and opened the car door onto the footpath side of the road to connect the dog's leads to their harnesses. Both dogs were very well trained but unexpectedly jumped out of the car and ran across the road into an oncoming car.

The complainant feels that the insurance company is being unreasonable in refuting the claim. He submits that the policy should cover road traffic accident medical expenses.

Furthermore, Perfect Pet Insurance have been procrastinating in answering the complainant's claims and took a long time to respond to them. He states that a final response from Perfect Pet was not forthcoming and had gone unanswered. They also requested the same information from him multiple times with long delays in dealing with the claim.

The complainant asks the Arbitrator to order the service provider to pay him the total amount of £1213.64.

**The service provider basically replied that:**

The claim had been declined due to a breach of general conditions 4 and 6.

General condition 4 stipulates that:

*4. You must also provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent accidents, injury or damage as well as arranging and paying for treatment for your pet as recommended by Your vet to reduce the likelihood of Illness or Accidental Injury.*

*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.*

The service provider refers especially to the first part of general condition 4 namely:

*'You must also provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent accidents, injury or damage'*

and that part of general condition 6, that is:

*'due care should be maintained to prevent your dog from escaping and causing Accidental Injury to your dog.'*

The service provider further states that when the complainant's wife opened the door of the vehicle this enabled Oscar (the dog) to escape; as a result, proper care and attention was not maintained. Reasonable precautions to prevent an accident were not taken. Although Oscar was wearing a harness, no lead was attached to it. In addition, due care was not maintained to prevent Oscar from escaping from the vehicle and causing an accidental injury.

The amount being claimed is £1213.64 and the service provider agrees that the fees paid by the complainant are correct but states that if the claim had been accepted the service provider could have only paid £1123.64 due to the deduction of £90 excess.

**The Arbiter has to decide the case on what in his opinion is fair, equitable and reasonable in the particular circumstances of the case.<sup>1</sup>**

The Arbiter must, first of all, try to establish how the accident took place.

In the complainant's words, the accident happened as follows:

*'My wife parked her car safely at the side of the footpath and opened the car door onto the footpath side of the road to connect the dogs' leads to their harnesses ... but unexpectedly jumped out of the car and ran across the road onto an oncoming car'.<sup>2</sup>*

The service provider does not dispute these facts but insists that the accident could have been avoided had the lead been attached to the harness.

The Arbiter notes that the complainant's wife had parked the car on the safe side of the road and the accident happened as soon as she opened the car door and was in the act of attaching the lead to the harness. This means that she had taken the precaution of harnessing the dog, and the Arbiter does not think that had the harness been attached to the lead the accident would have been avoided. With the lead or without it, the dog left the car **suddenly and unexpectedly** and, even if the lead had been attached to the harness, it would have been highly difficult for the complainant's wife to stop him. The escape was rapid, sudden, and unexpected and, considering the fact that the dog was trained, the question of surprise further highlights itself.

The service provider's only reservation was that the lead was not attached to the harness and on that premise came to the conclusion that *'due care was not maintained'*.

The policy defines accidental injury as follows:

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<sup>1</sup> Cap. 555 of the Laws of Malta, Art. 19(3)(b)

<sup>2</sup> Pg. 4

*'A sudden and unforeseen event causing immediate physical damage to one or more parts of Your pet's body.'*<sup>3</sup>

So, the crucial part of the definition is the suddenness and unpredictability of the event. There is no doubt that in this case the accident occurred unexpectedly and quickly, in such a way that the complainant's wife was surprised and helpless. In the Arbiter's opinion all the elements of *'accidental injury'* are satisfied by the complainant.

The service provider submits that the complainant's wife did not maintain *'due care'*.

*'Due care'* has been defined as *'the care that an ordinarily reasonable and prudent person would use under the same or similar circumstances'*.<sup>4</sup>

Also, the *'Degree of care that an ordinary and reasonable person would normally exercise, over his or her own property or under circumstances like those at issue. The concept of due care is used as a test of liability for negligence. Also called ordinary care or reasonable care.'*<sup>5</sup>

Therefore, the test to be applied to determine whether the complainant's wife had exercised due care rests on what an *'ordinarily reasonable and prudent person would have done in the same or similar circumstances.'*

The fact that the complainant's wife parked the car at the side of the footpath, had harnessed the dog, and was in the act of attaching the lead to the harness, shows that she was doing what an ordinary and reasonable person would have done in her position. Consequently, she can be considered to have acted with due care.

This leads the Arbiter to decide that the incident falls within the definition of *'accidental injury'* and general conditions 4 and 6 were not breached by the complainant's wife.

The Arbiter observes that the expectations of the insured to be indemnified in case of an accident is one of the principal pillars in insurance law. Moreover, the

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<sup>3</sup> Pg. 41

<sup>4</sup> <https://www.merriam-webster.com/legal/due%20care>

<sup>5</sup> <http://www.businessdictionary.com/definition/due-care.html>

contract of insurance is based on the utmost good faith of both parties to honour their respective obligations.

The Arbiter cannot accept the service provider's plea that the complainant's wife exhibited lack of due care because she did all in her power to protect her dog as already explained above. Unfortunately, these accidents do happen irrespective of the degree of care that animal lovers observe to safeguard their pets' welfare. They insure their pets to cover occurrences like the one under consideration.

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

### **Compensation**

The complainant submits that he had paid two vets' bills amounting to £1,213.64.

The service provider explains that under the veterinary fees section of the policy, under the heading *'What is not insured?'*

Point 2 states:

*'Any amount shown as the Excess on the Schedule'.*

The Schedule states that the excess is £90.

Therefore, the correct amount of compensation is £1,123.64

The Arbiter agrees with the service provider's calculation.

**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 amount of £1,123.64.**

**With legal interest from the date of this decision until the date of payment.**

**Each party is to bear its own costs of these proceedings.**

**Dr Reno Borg**  
**Arbiter for Financial Services**