

Before the Arbiter for Financial Services

Case No. 050/2020

ON (the Complainant)

vs

Atlas Insurance PCC Ltd (C 5601)

(the Service Provider/the Insurer)

Sitting of 15 December 2020

The Arbiter,

Having seen the complaint whereby the complainant basically submits that:

He made a claim with the service provider for the payment of treatment in connection with allergies that his dog, Red, was suffering from.

The claim was rejected on the basis of information from veterinary appointments preceding the policy inception date that, in the service provider's opinion, suggest that the dog's allergies were 'pre-existing' and, therefore, avoided settling a legitimate claim.

They also refused another claim for an insect bite citing the earlier allergy issue as well as precluding him from ever claiming for allergies for Red in the future.

The claimant further submitted that by mistake the vet assistant at Cathcart and Winn Vets claimed for all Red's veterinary visits including also some visits prior to the policy start date.

However, the information gathered for this period was used by the insurer to state that Red had pre-existing conditions and, therefore, not covered by the policy.

The complainant's vets declared that the indicators that were referenced to by the service provider had nothing to do with Red's allergies as correspondence attached shows.

The complainant submits that he finds it unacceptable that a staff member at Vetsure, who is not a vet and has not examined Red, can conclude that the symptoms exhibited on the early appointments link to allergies especially when they were assured by the complainant's vets who are the qualified veterinary team that actually examined Red.

The complainant states that the scope of this complaint is:

1. To be reimbursed fairly;
2. To expunge from Red's record that allergies were pre-existing and, therefore, unclaimable.

The complainant concludes his complaint by stating that he did not make the complaint earlier due to personal health issues during 2019 when he was unable to address the merits of this complaint.

The Reply by the Service Provider which basically states that:

They confirm Vetsure's rejection of the claim and make particular reference to Vetsure's final communication of the 28 March 2019 (page 12) which perfectly outlines the reason behind their decision and makes reference especially to page 13, which reads as follows:

'In reaching our decision to decline we have also considered that there was a time period of roughly one month only between the original 'scooting /anal gland treatment at the first note of skin issues. Taking all of this into account is our view that Red displayed clinical signs of the claimed-for-condition prior to the policy starting, and as such, the decline is in line with the policy terms and conditions.

It was not unreasonable for your veterinary practice to consider the anal gland expression undertaken on 14 July 2017 as “routine” at the time that the consultation took place. However, when this consultation is taken in the broader context of the clinical signs (symptoms) that Red quickly went to display it is our view that Red was beginning to display clinical signs of his “allergy” condition on this date.’

The service provider also raised another two issues, namely, one relating to a claim for an insect bite and the other on the professional competence of its assessors.

As to the first issue, it was submitted that the service provider reviewed its rejection of the claim and accepted the claim because the cellulitis was considered that it could have resulted from an insect bite.

As to the second issue, the service provider admitted that its assessors did not examine Red but, nevertheless, its assessors were experienced, qualified veterinary nurses and the case notes were also shared with Dr Ashley Gray, Managing Director of Vetsure’s, who is also a veterinary surgeon, and he supported the view of the Claims Assessors.

Finally, the service provider raised the point that the claim also falls under the Veterinary Fees section exclusion 1.4.8 because the claim was not submitted within one calendar year but, as a sign of goodwill, the delay was not considered in the assessment of these claims.

The service provider asks the Arbiter to reject the complaint.

Having heard the parties

Having seen all the submitted documents

Considers

The Arbiter has to decide the complaint with reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹

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

Basically, the insurer is refuting the claim on the grounds that the condition claimed for is a pre-existing condition.

The Complainant's Version

The complainant stated that he had a policy with Vetsure for his dog, Red, and when he made a claim for veterinary work which was allergy related, the veterinary nurse mistakenly put everything on the claim running right back prior to the policy's inception date. So, understandably, Vetsure said that they do not cover allergies 'going forward' because, by their reckoning, what they have seen prior to the inception date constitutes allergies.

The complainant's vets wrote to Vetsure and told them that the symptoms that Vetsure put up as related to allergies were not related to allergies at all. They were just symptoms that they present themselves occasionally. They could be symptoms of allergy but, in this dog's case, they were not.

Vetsure kept insisting that they were allergy symptoms. Although the complainant is sure that Vetsure might have qualified nurses and a vet on hand, they did not physically examine Red and completely disregarded the vet who has seen the dog. They ignored the vet's opinion and they interpreted the 'symptoms to their own gain' and rejected the claim on this basis.

The complainant further stated that the service provider also tied the incident of an insect bite to these allergies, and it was only after they were alerted that the complainant could refer the case to the Arbiter, that they retracted their stand and paid for this insect bite incident.

The complainant considers it unreasonable that *'Vetsure have the option to just walk away from the claim because they have chosen to interpret symptoms that have been confirmed by a vet as non-allergic as allergic'.²*

He also submitted that, first, the insurer had mentioned that the blood vessel was an issue in rejecting the claim and was mentioned in the paperwork, and now they are saying that it was not relevant but it was one of the factors that they considered to reject the claim.

² A Fol. 70

He had not been aware of any specific allergy symptoms when he took the policy, and he still feels that the vet assessing the animal made a specific decision which had been overturned by the insurer and still cannot understand Vetsure's position. He finally stated that the insurer was also inconsistent on the insect bite claim which, finally, it overturned not because he asked for the decision to be overturned but because he filed the complaint with the Arbiter.³

The service provider's version

Ashley Gray, the Managing Director of Vetsure, stated⁴ that Vetsure administers the policies on behalf of the underwriter, Atlas. He was a veterinary surgeon by qualification and he is responsible for the operations of the administration of these policies in the UK.

There was a claim that was put forward by the complainant for treatment undertaken between 14 July 2017 and 14 November 2019. As the complainant himself had stated, there was some confusion on the part of the veterinary nurse on the date when the treatment commenced. The policy inceptioned on the 19 July 2017.

The consultation which started on the 14 July was presented as Red scooting on his bottom. He explained that dogs rub their anal region on the floor in response to irritation from their anal glands. And whilst they acknowledge fully that the discharge of the anal glands is a routine procedure for many animals, in others it is an indication that there is a degree of skin inflammation. This was followed up with further consultations with the vet with further signs of skin inflammation both of the ears, perianal area, stomach and also the feet. In April 2018, they noted in the history that the vet suggested that Red had been '*pink forever*' which is a vet's colloquial term for dogs which have a tendency to have itchy skin and, consequently, pink as a result.

During one of the consultations, on 25 May, the vet noticed that Red was, unfortunately, sore around the side of his anus, and the plan was for treating the dermatitis, the skin inflammation around the anal area. In reaching their decision, they considered the fact that he dog had been presenting with

³ A Fol. 74

⁴ A Fol. 70-73

problems around his anal glands prior to the inception of the policy and continued to display similar clinical signs after inception of the policy.

One of the exclusions of the policy suggests that:

'No benefit will be payable in respect of:

*1.4.2 costs resulting from and **Illness or Injury** that:*

*1.4.2.1 is the same or have the same diagnosis of **Clinical Signs** as an **Injury or Illness Your Pet** had prior to the initial **Cover Start Date**.'*

So, on the basis of the clinical signs that were apparent before the inception of the policy: the itchiness around the anal area - which continued afterwards – this, according to their policy wording, is a pre-existing condition.

They considered the response of the vet that problems of the anal glands can be routine in puppies. But the short time interval which Red presented with these problems and were continuing after the inception of the policy with the same clinical signs, led them to reach their conclusion of the exclusion.

The symptoms shown could be due to an allergic problem not due to localised problems. So, because of those signs, in particular, being present before and after and so quickly, led him to believe, and also led their assessors to believe, that the two were linked. If the problem had been a localised skin problem after the event, then, they may have regarded it very differently. But this is a general skin problem, and as the vet had said, Red, unfortunately, has been '*pink forever*'. Because of the close proximity of the timing of the allergic signs before and after, they viewed them as linked.

The witness also admitted that there had been another claim which firstly they rejected but later on reviewed their position and accepted the claim. They admitted their mistake and reversed their decision.

Under cross examination the witness admitted that '*pink forever*' is not a scientific term and the vet used it as an indicator that, unfortunately, Red suffered from allergic problems for a long time. He did not believe that the vet was referring to the normal colour of a dog's skin. Their interpretation of that was that it was a reference to the idea that Red had suffered from allergic

conditions for a prolonged period of time. That was the only assessment from that comment.

Being asked how does a blood vessel link to an allergic skin condition, he replied that it doesn't. It has no bearing whatsoever to this case.

Being asked on their interpretation of the reddening of the ear, he stated that it was completely unrelated, and they had no evidence that it was related in any way to this condition. It did not come into their assessment whatsoever.

However, he admitted that:

*'It is mentioned and of course, it can cause confusion. But we mention these things because we receive claims that say things like, "This is what the dog is suffering from," but this was not what the claim was assessed on.'*⁵

Being asked why then was it mentioned in the letter explaining the decision if this was not something that the assessment was based on, he replied that:

*'What we are receiving claims for, what clinical signs are reported at that particular time. I have to refer to all the correspondence to see whether there was any potential confusion there, but I can assure you now, and as we have done in our subsequent communication that it was not any part of this claim assessment.'*⁶

Further Considers

The service provider stated that the original claim form covered the period from 14 July 2017 till 4 November 2019,⁷ whilst the policy was inceptioned on the 19 July 2017.⁸

However, the complainant explained that the veterinary nurse had made a mistake when including the vet's expenses for the period prior to the inception

⁵ A Fol. 73

⁶ *Ibid.*

⁷ A Fol. 70

⁸ A Fol. 71

of the policy.⁹ Then, at a later stage of the proceedings, the complainant obliged himself to provide an exact quantification of the claim's amount.¹⁰

The complainant confirmed that his claim should cover the period 'between August 2017 and August 2018' for the amount of £1349.59.¹¹

The service provider declined the claim, firstly, because it covered a period prior to the inception of the policy and, secondly, because Red had a pre-existing condition. The Arbiter notes that the question regarding fees for the period before the inception of the policy is exhausted because the complainant confirmed that he was not claiming for the period preceding the inception date of the policy and the inclusion of 14 July 2017 was done by the vet nurse by mistake. The service provider seems to accept the complainant's version in this regard.

The only issue remaining is whether Red had a pre-existing condition.

The service provider was convinced that Red had a pre-existing condition because: there was a time period of roughly one-month only between the original 'scooting'/anal gland treatment and the first note of skin issues and did not agree with the complainant's vet's consideration that the anal gland expression undertaken on the 14 July 2017 as 'routine' and '*when this consultation is considered in the broader context of the clinical signs (symptoms) that Red quickly went on to display*', in the service provider's opinion, Red was '*beginning to display clinical signs of his 'allergy' condition on this date*'.¹²

Then, in his testimony, Ashley Gray, for the service provider, conceded that:

*'the discharge of the anal glands is a routine procedure for many animals, in others it is an indication that there is a degree of skin inflammation. He also mentions that the complainant's vet had mentioned in April 2018 that Red had been "pink forever".'*¹³

⁹ A Fol. 69

¹⁰ A Fol. 74

¹¹ A Fol. 75

¹² A Fol. 71

¹³ *Ibid.*

The Arbiter, however, notes that the clinical notes referred to by the witness were never filed in these proceedings and, therefore, the Arbiter is not in a position to discover in which context this declaration was made.

Moreover, in his cross-examination, the same witness also concedes that *'pink forever'* is not a scientific term and seems to contradict himself when he says that *'our decision was not based on this comment'*, and then again declares *'pink forever was just an indicator that unfortunately Red suffered from allergic problems for a long time'*.¹⁴

Another issue on which the service provider also showed inconsistency was the reference to the *'reddening of the ear'*. Firstly, the witness states that this was not taken into consideration in refuting the claim and then admits that *'it is mentioned, of course, it can cause some confusion'*.¹⁵

Being pressed on the issue and why then it was mentioned in the letter explaining the decision, the witness stated that he had to *'refer to the correspondence to see whether there was any potential confusion there'*,¹⁶ but asserts that this issue was not considered.

In the Arbiter's opinion, the service provider reached the decision that Red had a pre-existing condition not by examining the dog and gather first-hand information but merely on its opinion that certain *'symptoms'* shown by Red prior to the inception of the policy, like scooting, necessarily led to the belief that this was related to the allergy complained of.

The Arbiter made a quick search ¹⁷on *'scooting'* where he found that scooting can result from the following:

1. Anal gland issues
2. Allergies
3. Diarrhoea

¹⁴ A Fol. 72

¹⁵ A Fol. 73

¹⁶ *Ibid.*

¹⁷ <https://www.petful.com/pet-health/dog-scooting-butt-across-floor/>: **Top 7 Reasons Dogs Scoot Their Butts Across the Floor**, by [Dr. Pippa Elliott, BVMS, MRCVS](#)

4. Dingleberries
5. Parasites
6. Trouble “down below”
7. Behavioural issues

Therefore, although anal glands issues and allergy could be reasons for scooting, there are other conditions which lead to scooting. The service provider seems to have chosen only those which can militate in its favour to conclude that Red had a pre-existing condition. The Arbiter is of the opinion that the best way the service provider could have handled this case was by examining Red by its vets and not just reach conclusions by deduction.

The Arbiter also considers that the complainant’s vet was in a better position to form a professional opinion on Red because he had examined it and reached his decision on scientific evidence rather than on assumptions.

The complainant’s vet declared that *‘the claim for Allergies should have started with the consult on the 29th August 2017’* and that *‘the consultation that was carried out on the 14 July 2017 was due to a routine anal gland expression. The left ear thickening that was mentioned by Mr ON was identified as due to a blood vessel which was not related to any skin pathology’*¹⁸

These declarations by the vet who had examined Red and had first-hand information as to the dog’s conditions, taken into the context of this case, exclude the pre-existing condition on which the service provider based its refusal of the claim.

In the contract of insurance, it is up to the insurer to proof the reasons for the refusal of a claim and, as has amply been stated above, this proof was, to say the least, lacking.

Therefore, the Arbiter concludes 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.

¹⁸ A Fol. 5

Compensation

The complainant declared that the amount of compensation he is seeking amounts to £1349.59,¹⁹ an amount which was not contested by the service provider and supported by evidence.²⁰

Therefore, in virtue of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Atlas Insurance PCC Limited to pay the complainant the sum of £1349.59.

With legal interest of 8% per annum from the date of this decision until 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

¹⁹ A Fol. 75

²⁰ A Fol. 78-81