

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

**Case Number 065/2020**

**WE**

**(the complainant)**

**vs**

**Building Block Insurance PCC Ltd**

**(C 63128)**

**(the service provider/the insurer)**

### **Sitting of 1 February 2021**

The Arbiter,

Having seen the complaint whereby the complainant states that the insurer had rejected his claim regarding his dog, Ossie, following an incident where his dog swallowed an object which was stuck in his small intestine and required emergency surgery.

The insurer had rejected his claim on the basis that proper care and attention had not been given to his dog as required by the General Conditions of the insurance policy.

The complainant stated that he did not know what Ossie had swallowed and the foreign body was likely to have been found on a walk. He puppy-proofed his property as much as possible but the outside environment is different. He took his responsibilities regarding his pet very seriously and he refers his dog immediately to his vet as soon as he suspects that Ossie is not feeling well.

The wording of '*proper care and attention had not been taken*' found in the insurance is deliberately vague.

The complainant further submitted that the insurer had a habit of refuting claims and a previous claim he had submitted was originally refused by the service provider but then backtracked on it and settled the claim.

The complainant is seeking the payment of £1056.31, less £90, being the excess payment. Therefore, the complainant is expecting the payment of £966.31

**The service provider replied that:**

After reviewing the claim, it was rejected because the owner of Ossie did not give proper care and attention to his pet as required by the General Conditions of the policy by taking all reasonable precautions to prevent accidents, injury or damage.

The vets' history for Ossie shows that he had been treated previously for ingesting foreign objects and, therefore, the complainant would have been aware that Ossie had a tendency to do this.

**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 complainant's version**

The complainant stated that he was not aware that Ossie had swallowed anything, and he only knew that his pet had swallowed a foreign object when he took his dog to the vet. The complainant believes that the foreign object was not swallowed from his house because he takes all the necessary care to avoid this. Since he did not see his dog swallowing anything, he was not in a position to prevent the incident from happening and the incident was out of his control.

Moreover, he took a lot of precautions to protect his puppy: he puppy-proofed his house, he installed gates, he changed diets and consulted the vets and the breeder. From his point of view this was an accident which endangered his pet's life.

Apparently, the foreign object was a hard piece of rubber which was not identified and was not presented to him.

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

## **The service provider's version**

The service provider submitted that the same dog had swallowed another object and, since there was a previous incident, the owner did not give proper care and attention to his dog since the pet was known to eat foreign objects.

## **Further Considerations**

This case presents some difficulties to the Arbiter because the insurance policy document has not been filed and, therefore, he cannot see the exact wording of the general conditions relied upon by the service provider.

However, it is the general principle, also mentioned by the Maltese Courts, that in insurance related cases, the insured has to prove the occurrence of the accident and, on its part, the insurer has to prove that the basis of the refusal of the claim is justified.

An insurance contract is defined by Chapter 403 of the Laws of Malta as:

*'an agreement in which an insurer agrees, for a consideration, to pay to or for the account of the insured a sum of money or other consideration, whether by way of indemnity against loss, damage or liability or otherwise, on the happening of a specified event with respect to which there is an element of uncertainty as to when or whether it will take place'.*

The three basic pillars of an insurance contract are therefore: the payment of the premium by the insured; the happening of a specified event which is uncertain as to when and whether it will take place; the payment of the claim by the service provider on the occurrence of the insured risk.

From the wording of the law, if a specified event happens and is uncertain, that constitutes an accident. However, one should not overlook the wording of an insurance policy because it has been standard commercial practice that the contract of insurance is subject to the wording of the policy document which is the best evidence of the insurance contract.

Although as has already been observed by the Arbiter, the policy document was not submitted, the parties seem to agree that there is a general condition which states that a pet's owner should take *'proper care and attention'* of his/her pet.

*'Due care' has been defined as 'the care that an ordinarily reasonable and prudent person would use under the same or similar circumstances'.<sup>2</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>3</sup>*

The parties differ on the interpretation of the wording: *'proper care and attention'*. The complainant argues that he took all the precautionary measures in order to avoid his pet being involved in any incident: by pet-proofing his house and by taking his pet to the vet as soon as he discovers that Ossie is in need of such attention. In this respect, the Arbiter is convinced of such care and attention because from the clinical history it appears that Ossie was vaccinated and taken care of whenever needed.

On its part, the service provider submits that since there had been a previous incident where Ossie had swallowed another object, the complainant could have avoided the second incident from happening because Ossie had shown a tendency of swallowing objects.

The Arbiter has a different opinion. The fact that Ossie was involved in another swallowing incident does not necessarily mean that the owner did not take proper care and attention of his pet. As the complainant has stated, he did not see the dog swallowing anything and assumes that the dog must have swallowed the foreign object when it was not under his watch.

**The policy wording has to be interpreted fairly and reasonably.**

It is not reasonably expected that a dog's owner should have his pet under his watch at all times. A dog could swallow an object when the owner is at work, while cooking or reading in a different room. There could be so many instances when an animal could swallow an object that it is humanely impossible to give a twenty-four- hour watch to your pet. The fact that Ossie had swallowed

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<sup>2</sup> <https://www.merriam-webster.com/legal/due%20care>

<sup>3</sup> <http://www.businessdictionary.com/definition/due-care.html>

something before does not mean that the owner had acted negligently or did not offer proper care and attention.

Very often a claim is rejected because the insurer fails to analyse and weigh **all the circumstances surrounding the dynamics of the incident**. The swallowing of an object by an animal is different from allowing your dog roaming about on a busy road without holding it on a leash. Certain incidents involving pets do happen on the spur of the moment and when the owner is not watching his/her pet. Pet owners insure their pets to cover these incidents which are not expected. The Arbiter is convinced that no pet owner would ever imagine that their pet would be involved in incidents that harm them.

This case is an unfortunate one and the Arbiter cannot attribute it to the negligence of the owner. The Arbiter is convinced that pet owners do their best to take proper care of their pets but, in spite of this, unfortunately, accidents are bound to happen. An insurance cover is intended to cover these types of incidents and pet owners insure their pets to cover these incidents.

The Arbiter is convinced that the complainant had given Ossie the care that an ordinarily reasonable and prudent person would have given under the same or similar circumstances and, therefore, he did not breach the general condition of the policy document of *'proper care and attention'*.

**For the above-stated reasons, the Arbiter considers the complaint to be fair, equitable and reasonable and is upholding it.**

### ***Compensation***

The complainant submitted that the total expenses incurred in connection with this incident amount to £1056.31, less the excess of £90. The service provider does not contest this amount.

**Therefore, in virtue of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter is ordering Building Block Insurance PCC Ltd to pay the complainant the sum of £966.31.**

**With legal interest 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**