

Before the Arbiter for Financial Services

Case No. 071/2020

LP

(the complainant)

vs

Building Block Insurance PCC Ltd.

(C 63128)

(the service provider/the insurer)

Sitting of the 23 March 2021

The Arbiter,

Having seen the complaint, whereby the complainant submits that he had the Sickness and Involuntary Redundancy policy since the 1 September 2011, and he took the policy to cover himself *'in the event of anything unfortunate'*.

He states that at the time he took out the policy, he was informed that the policy will run till 29 January 2033, which is the date of his retirement at the age of 65. On the 22 May 2020, he was informed that the insurers, Building Block Insurance PCC Ltd., will end his policy on the 31 August 2020 due to the adverse conditions as a result of the Covid-19 virus situation.

As a long-standing holder of this policy, he feels that the service provider has made the wrong decision and has failed to meet the service expected from an existing policyholder.

He reiterates that this cover was a vital safety net in place to safeguard him in the event of losing his job or falling sick. At this time, it is not possible for him to obtain cover from another insurer. He feels that the service provider should not have pulled out of the market when policyholders needed it the most.

The complainant asks the Arbiter that if the service provider does not offer him cover, he will be refunded his premiums paid from 1 September 2011 up to 31 August 2020 which amount to £4,133.42.

Having seen the reply, whereby the service provider submits that:

The broker of the complainant's policy is DMS Insurance Services who, over the years, used various insurers to cover his clients.

The service provider started to insure the complainant in September 2019.

The service provider took the decision earlier this year to discontinue to underwrite this class of business and advised the MFSA of this action. This policy type is not long term and the result of the decision to stop underwriting has meant that renewal is not being offered to any existing customers including the complainant.

Had the complainant needed to make a claim during the period of insurance, then they would have met the claim and as such they were unable to provide a premium refund.

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

The Nature of the Complaint

The complainant is basically asking the Arbiter to order the service provider to renew his policy so that he will have cover in the eventuality of sickness, accident or unemployment.

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

On its part, the service provider submits that it has taken a business strategic decision not to continue underwriting this class of business and has informed the MFSA of its action.

Therefore, the whole issue is whether the Arbiter should order the service provider to grant new cover to the complainant notwithstanding the fact that the service provider has decided to pull out of this kind of insurance business.

Further Considerations

The Arbiter makes a clear distinction between non-renewal of a policy and a policy cancellation. Cancellation takes place when the insurer cancels the policy before its expiration date, for instance, terminating the policy mid-term.

On the other hand, a policy is not renewed when the insurer allows the policy to lapse and decides not to offer a new policy. In either case, the insurer should give adequate notice to the insured to be able to find alternative cover. Unless stated in the policy, the insurer is not obliged to find alternative cover to the insured.

John Birds in Birds' Modern Insurance Law² explains the question of renewal very clearly:

'The question of the length of an insurance contract is a matter for the policy itself to provide. There are no rules of law. However, it is safe to state as a general rule the life contract is quite different from other insurance policies. There must be at least a presumption that a life contract is entire, is one contract, existing until the death of the life assured or a specified fixed date in the case of an endowment or term policy ... In contrast most other policies are of limited duration, normally of one year, though of course, there is no bar to the agreement of a policy for a shorter or longer term. But upon expiry of such policy, if the parties choose to renew the contract, the renewal is clearly in law a fresh contract ...'

Moreover, *'Apart from life policies there is no right to renew an insurance contract in the absence of a term of the contract to that effect'*.³

² (Sweet and Maxwell) Tenth Edition, p. 104-105

³ *Ibid*, p.107.

The insurance contract is basically regulated by the terms and conditions of the policy and, unless the consumer is claiming mis-selling of the policy, or alleging any other misconduct by the service provider during the sale of the policy, the parties are bound by those terms and conditions.

In this case, the complainant is not arguing that the service provider was compelled by the terms of the policy to renew the policy but is claiming that since he was an existing client, he expected that the insurer would renew his policy at the time that policyholders needed most protection.

The Arbiter fully understands the position of the complainant and sympathises with him. However, as has been explained above, with the exception of life insurance cover, other insurance contracts are normally signed for one year or for a shorter or longer period if agreed beforehand by the insured and the insurer. This does not seem to be the position in this case.

Although the complainant is stating that he has been buying this particular cover since 2011, as a matter of fact, he had been insured with the service provider from August 2019 and, according to the Schedule of Insurance,⁴ the policy covered the period between the 1 September 2019 till the 30 August 2020.

This means that the insurance cover was a one-year contract. As such, the insurer and the insured had their obligations on this agreement limited for the duration of one year and neither of the parties could oblige the other party to renew the contract.

Therefore, the Arbiter cannot order the insurer to offer insurance cover to the insured especially when the service provider has decided not to underwrite Accident, Sickness and Unemployment policies to all clients. Their decision was a commercial decision over which the Arbiter has no authority.

The Arbiter and the regulator are two different and independent entities, and a decision regarding the whole industry can only be taken by regulators if they deem necessary. The Arbiter's role is to decide a dispute regarding a particular case based on the merits of that case.

⁴ A Fol. 29

In this case, the Arbiter cannot uphold the complaint because he has no legal power to order a service provider to offer insurance to a particular person when the business has taken the decision to withdraw from underwriting a particular class of insurance.

As to the submission by the complainant to be reimbursed the premium from the 1 September 2011 till the end of August 2020, the Arbiter does not see any justification to uphold the request because during that period the complainant was duly covered for the risks subject of the policy and, if any of these risks would have resulted, he would have been entitled to claim under the policy. During that period, the element of risk was transferred to the insurer and as such it was entitled to receive the premiums. Therefore, the Arbiter cannot order the repayment of the premiums as requested by the complainant.

For the above stated reasons, the Arbiter cannot uphold the complaint.

Hopefully, in the near future, the complainant would once again be in a position to insure himself against Accident, Sickness and Unemployment, and would have the same peace of mind he had prior to the outbreak of the Covid-19 pandemic.

Because of the peculiar facts and the special circumstances of this case, each party is to bear its own costs of these proceedings.

**Dr Reno Borg
Arbiter for Financial Services**