

Before the Arbiter for Financial Services

Case No. 085/2020

PO

(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 submits that:

She held a redundancy, sickness and accident policy via DMS for over ten years or more. Recently, she received a letter from them informing her that due to the Covid-19 pandemic, the current provider would not be able to continue to provide her with insurance cover, and her broker could not find her anyone else who was prepared to cover her.

The complainant understands that although the insurer might not want to take on new customers for this type of policy type, she believes that existing customers should not be treated in this way.

The purpose for insuring herself was to cover her income in case of accident, redundancy or sickness. She also submitted that dropping this policy due to a virus as they deem it too risky, goes against everything her policy meant to cover.

She further states that the insurer '*suddenly snatch(ed) this security blanket from beneath me is absolutely reprehensible*',¹ leading her to doubt whether the service provider could have honoured any claim she might have made.

She asks the Arbiter that as a minimum the insurer should continue to underwrite her policy on its existing terms and, if they are unwilling or unable to do so, she should be compensated for losing '*this vitally important security blanket*'.

Having seen the reply by the service provider which states that:

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

The service provider commenced insuring 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 its action. This policy type is not long term and the result of the decision to stop underwriting this class of insurance 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 the service provider would have met the claim and as such it was 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.²

The Nature of the complaint

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

¹ A Fol. 4

² Cap. 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 Law³ 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'*.⁴

³ (Sweet and Maxwell) Tenth Edition, p. 104-105

⁴ *Ibid.*, p. 107.

Although under common law the insurer was not under any obligation to send a notice to the insured informing him of the intention not to renew, '*now under ICOBS 5.3*', it is required '*that insurers do take reasonable steps, not less than 21 days before expiry of the policy to send out notices inviting renewal or informing a consumer insured that it is not prepared to renew*'.⁵

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 she was an existing client, the decision of the service provider to discontinue underwriting this class of business should not affect her.

The Arbiter fully understands the position of the complainant and sympathises with her being a person living alone with limited income. 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 she has been buying this particular cover for ten years, as a matter of fact, she had been insured with the service provider from September 2019 and, as informed by her broker, '*your policy cover will end on 09/09/2020 which is the expiry date stated on your schedule*'.⁶

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 has no legal power to order the insurer to offer insurance cover to the insured especially when the service provider has decided not to

⁵ *Ibid.*

⁶ *A Fol. 12*

underwrite Accident, Sickness and Unemployment policies to all clients. Their decision was a commercial decision over which the Arbiter has no authority.

From the correspondence sent by the complainant's broker it seems that this decision was prompted by the Covid-19 situation because other insurers also took a similar position:

'We have made enquiries with other protection providers to provide a similar protection product but at this current time we are unable to source an alternative provider'.⁷

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.

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.

However, the Arbiter encourages the complainant to follow developments because from the broker's wording this appears to be a temporary situation provoked by Covid-19 and things might be different when the pandemic is over. Hopefully, the complainant would once again be in a position to insure herself and have peace of mind similarly to what she had before the pandemic.

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

Dr Reno Borg
Arbiter for Financial Services

⁷ A Fol. 12