

Before the Arbiter for Financial Services

Case Number 086/2020

EL and FO (The complainant/s)

vs

Building Block Insurance PCC Ltd (C 63128)

(The service provider/insurer)

Sitting of 12 January 2021

The Arbiter,

Having seen the complaint whereby the complainants submit¹ that the claims they made to the insurer were rejected because the service provider contended that their dog, Gunner, had pre-existing conditions which were excluded by the policy.

They stated that their policy commenced on the 25 May 2019. On the same date, Gunner was due at Buttercross Veterinary Surgery to have his glands emptied and as laymen believed that this was related to discomfort in his back end. As it results from the clinical history, on that date Gunner was diagnosed with a swollen prostate and the advice given was that Gunner had to be castrated. They were advised by the vet to have an insurance cover for their pet, something they did on the same day.

On the 23 May 2019 Gunner was castrated. As this was within the 14-day waiting period they did not submit a claim for those costs. Gunner had two post-surgery check-ups on the 24 and 25 May 2019.

¹ A Fol. 4 and 5

On the 1 July 2019 (43 days after they took cover), they noticed that Gunner had some further discomfort on his back end and so they took him to the vet to get him checked. Gunner was X-rayed and it transpired that he had a bilateral crucial rupture.

On getting a second opinion, they were advised that there was another procedure which was less invasive than cruciate ligament surgery and they agreed to have Gunner operated with the follow-up laser treatments which supported Gunner's recovery. This is the basis of the second claim.

On 12 September 2019 they were advised by their vet that that treatment had not been successful as Gunner was still showing some lameness and, after X-ray examination, the vets recommended cruciate ligament surgery. This is the basis of the third claim.

The insurer rejected all three claims. The complainants submit that the insurer had no conclusive evidence that Gunner had a pre-existing condition when they took the policy.

They ask the Arbitrator to order the insurer to pay them the sum of £4850.03. However, this sum was revised and reduced to £3910.²

The service provider in essence replied that:

They rejected the claims because under the policy terms and conditions, the policy states that no cover would be provided for any conditions or the signs and symptoms of a condition that commenced prior to the policy inception or within the first 14 days of the policy. The policy for Gunner commenced on the 20 May 2019.

On the same day of the policy inception Gunner visited the veterinary practice for his anal glands to be checked by the veterinary nurse. During that visit one of the complainants reported to the nurse that Gunner was not walking properly. The clinical history of Gunner continues to reveal that Gunner was very reactive when lifting the tail to express the anal glands and the nurse was worried that there was some sort of spinal or leg pain. Moreover, the complainant explained to the nurse that Gunner was not jumping properly on

² A Fol. 53 and 55

his back and was slightly hunched in his back. The vet examined Gunner and noted that there was a good range of motion in his hips and that the stifles felt stable. It was also noted that Gunner's prostate was very large and Gunner had castration performed on the 23 May 2019.

When Gunner was seen for post-surgery check-up on the 5 June 2019, the vet noted that Gunner was still struggling on his hind legs:

'still struggling bit on legs which was initially what came in for, hips feel ok may still be prostate ...'

On 1 July 2019 the vet noted that Gunner was lame on his left hind leg and advised for X-rays to take place. X-rays were taken on the 3 July and it was established that there were suspicions of bilateral partial cruciate rupture with the left hind being more chronic in nature. The orthopaedic specialist described the lesions seen on the radiographs as chronic.

The service provider submits that since the lesions were chronic, they were long-standing and the fact that on the 25 May 2019 one of the complainants stated to the vet that Gunner was not walking properly, these were signs and symptoms that the confirmed diagnoses were present during the policy's waiting period and, as a result, they are not covered under the terms and conditions of the policy. The service provider provides various definitions which the Arbiter has considered carefully.

The service provider finally submits that the amount being claimed by the complainants of £4850.03 is incorrect and gives a detailed explanation how the amount that could be awarded by the Arbiter in terms of the policy cannot exceed the sum of £3910.

The Arbiter has to decide this complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of this case.³

The Arbiter must base his conclusions on the evidence submitted by both parties during the proceedings of this case.

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

The service provider is declining the claims on the grounds that during the first visit to the vet on the 25 May 2019, Gunner already had signs and symptoms of the cruciate ligament, the subject of the claim. The insurer is basing its conclusion on what one of the complainants reported to the vet, namely, that Gunner was not walking properly, and these were signs and symptoms that the confirmed diagnoses were present during the policy's waiting period and, as a result, they are not covered under the terms and conditions of the policy.

In this case, the only solid professional proof that the Arbiter has was submitted by the complainant in the form of a medical opinion issued by Buttercross Veterinary Centre which *inter alia* states that:

'On the 20 May 2019 Gunner had been booked in for his anal glands to be emptied ... The dog seemed painful when the tail was lifted to express the anal glands, so Gunner was transferred for an appointment with a vet.

At this point I examined Gunner, the owner reported that he had not been jumping properly and hunched through his back. Following a full clinical examination, no pain on hip or stifle manipulation/palpation was noted, no lameness was noted, however he was reluctant to allow me to empty his anal glands and his prostate was enlarged. We discussed the implications of an enlarged prostate ... and how an enlarged prostate could cause the symptoms on his hind limbs and a hunched back ... I can confirm that on the 20 May no true lameness issues were present ... On the 1st July he was presented with a left hind limb lameness and was booked for x-rays on the 3rd July.

The x-rays taken on the 3rd of July were sent to specialists at Dovecote who reported that they were suspicious of bilateral partial cruciate rupture with the left hind being more chronic in nature ...

I can confirm that on the 20 May no true lameness that could be graded was evident on examination. However, the orthopaedic specialist has described the lesions seen on the radiographs as chronic.⁴

From the evidence submitted by both parties, it results that:

⁴ A Fol. 16 and 17

1. It is true that the visit to the vet on the 20 May 2019 - the same date that the policyholder took the insurance cover - the complainants' main concern was the question relating to the anal glands. However, during the same visit, one of the complainants reported to the nurse that Gunner was not walking properly.

The clinical history of Gunner continues to reveal that Gunner was very reactive when lifting the tail to express the anal glands and the nurse was worried that there was some sort of spinal or leg pain. Moreover, the complainant explained to the nurse that Gunner was not jumping properly on his back and was slightly hunched in his back.

2. It is also true that in the medical report of Buttercross Veterinary Centre it was stated that: *'I can confirm that on the 20 May no true lameness that could be graded was evident on examination'*.

However, Buttercross made a very relevant qualification when it concluded the report by stating that ***'However, the orthopaedic specialist has described the lesions seen on the radiographs as chronic.'***⁵

3. This declaration was based on a scientific analysis - namely x-ray examination - and for the Arbiter this is the best evidence brought forward in this case. X-ray examination revealed what was hidden to the naked eye. This declaration of a chronic condition, coupled with the other declaration that *'they were suspicious of bilateral partial cruciate rupture with the left hind being more chronic in nature'*, basically confirms that the discovery of this condition was related to what was reported by one of the complainants to the vet on the 20 May 2019, namely, that Gunner was not jumping properly and was hunched at the back. What was not discovered on that date by the naked eye was later revealed and diagnosed by an x-ray examination on the 3 July 2019.
4. Buttercross declared that the specialists concluded that, unfortunately, Gunner had a chronic condition especially in his left hind leg and this chronic condition could not have developed overnight. Gunner was insured on the 20 May 2019 and, apart from the fact that there had

⁵ A Fol. 16 and 17

already been symptoms of the condition since that date, the discovery of the cruciate ligament problem took place in July, less than two months since Gunner had been insured.

5. The Arbiter is therefore morally convinced that, unfortunately, the cruciate ligament condition had shown symptoms during the waiting period and these symptoms were confirmed on the 3 July 2019 through a thorough x-ray examination by specialists in the field. It follows that the cruciate ligament condition was a pre-existing medical condition.
6. According to the policy, *'Any claim for illness or accidental injury that relates to a pre-existing condition'* was not covered.

The term pre-existing condition was defined as:

'Any diagnosed or undiagnosed Condition which has occurred or existed or has shown signs or symptoms existing in any form before the Policy Start Date or within the Waiting Period in the first period of insurance ...'

Therefore, for the above-stated reasons, the Arbiter cannot uphold the complaint.

Due to the nature of this case, each party is to bear its own costs of these proceedings.

**Dr Reno Borg
Arbiter for Financial Services**