

Before the Arbiter for Financial Services

Case Number 090/2020

LU

(The Complainant)

vs

Building Block Insurance PCC Ltd

(C 63128)

(The Service Provider/Insurer)

Sitting of 3 May 2021

The Arbiter,

Having seen the complaint whereby the complainant submits that her various claim forms were rejected by the insurer. She explains that her dog, Marley, needed urgent treatment on the 23 February 2020 due to him becoming distressed that same evening. As a result of that *'incident'*, he was diagnosed as having congestive heart disease.

The complainant states that she submitted to the insurer four forms claiming different amounts of payment but were all rejected.

Claim form number 1 was dated 26.02.20 and the complainant asked for the payment of £790.95. This amount was paid in full by herself to Vets Now Emergency.

Claim Form number 2 dated 02.03.20 was for the amount of £558.08. She also paid this amount to the Vet (Rhyd Broughton Vets).

Claim Form number 3 dated 14.03.20 for £192.88 was also paid by herself to the same Vets.

For the above-mentioned claim forms, the Insurer sent a letter of refusal dated 27.04.20 stating that the heart murmur recorded in August 2019 was related to the congestive heart disease and there was a pre-existing medical condition.

The Vets emailed the service provider on the 05.05.20 to confirm that the heart failure encountered was not a pre-existing medical condition.

The complainant also presented to the service provider claim form number 4, dated 20.05.20 for £250.56. This was paid by the complainant in full to the Vets and to Petdrugs Online.

The complainant, *'complained on 04.06.20 and received a final decline from the company on 03.08.20.'*¹

The complainant is asking the Arbiter to award her the following amounts relating to the four claim forms as follows:

$£790.95 + £558.08 + £192.88 + £250.56 = £1792.47$ less £90 excess = £1702.47.
Since Marley is over 8 years old, this amount is to be reduced by a further 15% co-payment of £255.37 leaving a total net balance of £1447.10.

Having seen the reply of the service provider whereby it was submitted that:
The claim handler was correct in refuting the claims.

On the 01 September 2017, a policy was incepted for Marley by LU under policy number PERFPET9580. In August 2019, a renewal invitation, including renewal terms, was issued by Perfect Pet to LU. The renewal premium quoted was £55.61 per month.

Perfect Pet received no correspondence from LU in August 2019 to discuss the renewal and the policy was subsequently cancelled by the customer on 30 August 2019.

On 1 September 2019, LU incepted a completely new Perfect Pet policy for Marley via Compare the Market who are an independent online broker, the new

¹ Pg. 4

policy number was PERFPET50297. As this was a new policy, the new policy premium was less than the renewal policy premium because new policies don't cover existing medical conditions. The renewal premium offered however would have covered existing medical conditions that arose after the 1 September 2017 and this was reflected by a higher premium.

On 13 August 2019, a heart murmur was first detected by the treating vet but no treatment was required at this stage and no claim made. Marley subsequently required treatment for heart disease on 24 February 2020 which fell under the new policy number PERFPET50297. Marley presented clinical signs and symptoms for heart disease before the policy inception date of 1 September 2019 and therefore excluded under the cover.

Having heard the parties,

Having seen all the acts of the case

Considers

The service provider is rejecting the claim because it states that under the new cover bought by the complainant via Compare the Market on the 1 September 2019, the complainant's dog, Marley, was not covered for existing medical conditions. On the 13 August 2019, a heart murmur was first detected but no treatment was given.

Marley subsequently required treatment for heart disease and since there were signs and symptoms for heart disease before the policy inception date of 1 September 2019, the treatment being claimed for was excluded under the policy cover.

The Arbiter has to decide the case by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case.²

The main issue that has to be decided by the Arbiter is whether the medical condition for which treatment was sought was a pre-existing medical condition.

² CAP. 555, Art. 19(3)(b)

The other issue relating to the renewal of the policy does not create any controversy from a factual point of view because both parties agree that:

- The complainant did not renew the policy on its expiration date in August 2019 and in fact was cancelled by the customer on 30 August 2019.
- The complainant was within her rights to seek a cheaper premium through another company (Compare the Market) and through this company bought a new policy with the same service provider **commencing** on the 01 September 2019.
- This new policy did not cover pre-existing medical conditions.

However, the parties disagree on whether the medical condition, the subject of this complaint, can be tied to a pre-existing medical condition.

The Complainant's Version

The complainant explained³ that she was insured from September 2019 until the end of August 2020. When she received the renewal notice she realised that the premium on renewal had soared from £11 to over £30 and later to £55.

She emailed Perfect Pet asking for an explanation about the hike in price, but she received no reply. She then went on a comparison site and found that the same company was offering an insurance cover for just under £30.

In February 2020 her dog Marley was feeling distressed and the vet put him in an oxygen tent and was kept at the vet's for the night. Marley was then diagnosed with congested heart failure and she was told that he has to be kept on medication for the rest of his life.

Earlier in August 2019 the vet discovered that Marley had a heart murmur and the vet explained to her that it could have been present since birth.

When Marley was taken to the vet for congested heart failure, the vet had told her that this was a separate issue from that of the murmur.

The complainant further states that she had submitted four claim forms.

³ Pg. 54 *et seq.*

She found it extremely difficult to contact Perfect Pet and was not provided with an adequate explanation why the claims had been rejected. After a lot of phone calls Perfect Pet informed her that Marley had a pre-existing medical condition which led to congested heart failure and, therefore, they were not going to pay her bills.

The complainant's vet wrote to them and explained that the murmur and the congested heart failure were two different things.

The complainant submitted that the heart murmur and the congested heart failure were not the same thing and, therefore, she should have been paid by the insurer.

The Service Provider's Version

The service provider did not present any evidence further to the position taken in its reply⁴ and rested its case on the facts as submitted in the reply.

Basically, the service provider states⁵ that under the new cover commencing on the 01 September 2019, Marley was not covered for existing medical conditions because the premium paid by the complainant was lesser than that of a renewal of the existing policy. Had the complainant chosen to renew the policy rather than buying a new one, existing conditions would have been covered.

On the 13 August 2019, a heart murmur was first detected by the treating vet, but no treatment was required at this stage and no claim was made. Marley subsequently required treatment for heart disease on February 2020 which fell under the new policy.

Marley presented clinical signs and symptoms for heart disease before the policy inception date of 01 September 2019 and, therefore, excluded under the cover.

Heart murmurs and Congestive Heart Disease

⁴ Pg. 52

⁵ *Ibid.*

The Arbiter was not presented with any concrete and specific proof that the murmur detected in August 2019 and the heart disease diagnosed on the 20 February 2020 were related.

The Arbiter carried a quick search to have a better understanding of the case.

It resulted that a **heart murmur** does not automatically and necessarily indicate that there is a heart disease:

*'Heart murmurs can be present at birth (congenital) or develop later in life. Heart murmurs can be harmless (innocent) or abnormal. An innocent heart murmur is not a sign of heart disease and doesn't need treatment. Abnormal heart murmurs require follow-up testing to determine the cause.'*⁶

Moreover, **congestive heart failure (CHF)** is described as:

'a term that refers to the heart's inability to pump adequate blood to the body. There are many causes of CHF in dogs. The two most common causes are:

- *mitral valve insufficiency (MVI). MVI is a leaky mitral valve, which is the valve between the left atrium and the left ventricle.*
- *dilated cardiomyopathy (DCM).'*⁷

The Arbiter also wanted to have a quick look at the clinical symptoms which are generally associated with congestive heart failure:

*'The most common clinical sign of congestive heart failure (CHF) is persistent coughing accompanied by difficulty breathing. This is due mainly to pulmonary oedema or the accumulation of fluid in the lungs. The enlarged heart will also push against the trachea, causing irritation that can induce a cough.'*⁸

From the above, it results that a heart murmur does not necessarily prove a congestive heart disease, depending on the seriousness and degree of the heart murmur. In the case under examination, even the service provider itself declares

⁶ www.asPCA.org .

⁷ <https://vcahospitals.com/know-your-pet/congestive-heart-failure-in-dogs>

⁸ *Ibid.*

that when the hurt murmur was detected in August 2019 *'no treatment was required at this stage and no claim was made.'*⁹

This is corroborated by the complainant who stated before the Arbiter¹⁰ that:

*'Previously to this, in August last year, when I was still with the previous policy, we had seen a vet with another issue. She checked his heart and asked, "Oh, did you know that he has a heart murmur?" I said no, and she said that that's not an issue and he probably had it since birth.'*¹¹

She emphasized that the Vet told her that:

*'...this was a separate issue; he did not need treatment for his heart murmur, but he now needed treatment for his congested heart failure. And he explained that as if you have cancer in your arm and you broke your arm the previous year, they are two separate things.'*¹²

Moreover, the complainant also stated that the Vets had communicated with the service provider assuring it that the heart murmur detected in August 2019 was not related to the congestive heart failure found in February 2020.

Even from the brief analysis made by the Arbiter, the service provider did not prove that Marley had *'coughing accompanied by difficulty breathing'* (which are the typical symptoms of heart disease as explained above) when Marley was first diagnosed with a murmur. On this occasion, the Vet did not give Marley any treatment, a sign that the murmur was *'an innocent'* murmur that was most probably congenital.

Honouring an insurance claim

It has been a long established principle in insurance law and practice that the contract of insurance is a bilateral contract whereby the insured is obliged to pay the premium without fail and to give all the necessary details to the insurance to evaluate the risk and fix an appropriate premium.

⁹ Pg. 52

¹⁰ Pg. 55

¹¹ *Ibid.*

¹² *Ibid.*

However, as has been authoritatively stated,¹³ the insurance company has a duty not only to see that the proposal form has been carefully drawn up by the insured but also to execute the contract in utmost good faith especially when it is evaluating a claim.

When a claim is being evaluated, the service provider is obliged to consider the claim in a fair manner and in cases of doubt it should honour the claim.

In this case, the service provider automatically equated the murmur diagnosed in August 2019 to a congestive heart failure discovered six months later without providing the Arbiter with a vet's analysis of its conclusions. The simple deduction that a heart murmur is surely an indication of a heart disease is not adequate proof and such conclusions ought to have been backed by scientific data to remove any doubt that the heart murmur was surely a sign or symptom of the heart disease discovered later.

Therefore, the Arbiter cannot conclude that there was a pre-existing medical condition to justify the repudiation of the claim.

For the above stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case and is accepting it provided it is compatible with this decision.

Compensation

The service provider does not contest the quantum of compensation. The compensation indicated by the complainant is that of £1447.10.¹⁴

Since there is no contestation on the amount, the Arbiter is accepting this amount of compensation.

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 £1447.10.

¹³ See decision of the Court of Appeal (Malta) in the names of *Carmel u Bernardette konjugi Bajada vs Middle Sea Insurance Company Limited*, decided on the 5/10/2001

¹⁴ Pg. 4

With legal interest from the date of this decision till the date of effective payment.

The expenses of this procedure are to be borne by the service provider.

**Dr Reno Borg
Arbiter for Financial Services**