

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

**Case Number 104/2020**

**PF (The complainant)**

**vs**

**Building Block PCC Ltd (C-63128)**

**(The service provider/insurer)**

### **Sitting of the 12 January 2021**

The Arbiter,

Having seen the complaint whereby the complainant states that her claim for her dog's treatment and accidental death was refused by the service provider.

She further states that the insurer refused the complaint on the grounds that she did not take proper care and attention to her dog as per terms and conditions of the insurance policy.

She further states that her dog, Dougie, was involved in a traffic accident on the 1 December 2019, after escaping from her home and was taken immediately to Vets4Pets Bristall and she paid £150 as requested by the vets. Since the dog needed surgery to his back leg, it was decided that Dougie would be transferred to Vets4Pets Leeds being his regular vets. Vets4Pets Bristall were authorised by the complainant to send the bill of £735.05 to the insurers not including the £150 initially paid by the complainant.

She was told by Vets4Pets Bristall that the £150 would cover administration fees and the excess for her policy.

The pet was taken to Vets4Pets Leeds where he was operated but, unfortunately, did not wake up from the anaesthetic.

The complainant is seeking compensation for £735.05 paid to Vets4Pets Bristall for the care and treatment given to Dougie; £2596.01 directly to Vets4Pets Leeds for the surgery and a payment not exceeding £1000 as per policy for the death of her dog.

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

The claim was rejected because general conditions 4 and 6 of the policy were not met by the complainant:

*'4. You must also provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent accidents, injury or damage as well as arranging and paying for treatment for your pet as recommended by Your vet to reduce the likelihood of Illness or Accidental Injury.*

*6. You must ensure that Your dog is under control at all times, and due care should be maintained to prevent your dog from escaping and causing Accidental Injury to your dog or any other persons or animals.'*

**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 Arbiter must first of all try to establish how the accident took place.

In the complainant's words the accident happened as follows:

*'The way the house was set up, there was the kitchen, the door to the street and the living room on the other side, the opposite wall. There was a safety gate that was in place. That is where I always left the dog, especially, if I was cooking in the kitchen. The kitchen is quite small, and I have a little child as well, and I did not want to get them on the floor and cause an accident.*

*As far as I was aware, they were in the living room and the gate was shut. The door was slightly ajar as it was the 1st of December and the weather was terrible, and it would mean, cooking, condensation – so the door was slightly open.*

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

*I was cooking away and then I realised that the door was more open than when I left it, and when I went in the living room, there was just the boy in there and went looking for the dog, and by process of elimination, it seemed he got out. I went out to go and find him.'*<sup>2</sup>

The service provider argued that since the main door was open, the complainant should have been more careful in seeing that the safety gate was *'fitted in the doorway of the room that Dougie was in'* because the safety gate *'is only preventative when used correctly'*.

However, in these cases, one has to interpret the policy holistically and in a reasonable manner. Condition 4 of the policy states that the policyholder is expected to *'provide proper care and attention to Your pet at all times and take all **reasonable** precautions<sup>3</sup> to prevent accidents'* and, condition 6 *'due care'* must be taken and the policyholder is expected to have control at all times.

*'Due care'* has been defined as *'the care that an ordinarily reasonable and prudent person would use under the same or similar circumstances'*.<sup>4</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>5</sup>

There is agreement between the parties that the complainant had set up a safety gate at the kitchen door to prevent the dog from escaping. On this occasion, the complainant honestly stated that since it had a lot of condensation in the kitchen, the door was slightly ajar at a time when the dog was not in the same room but in another room where there was also her child. The insurer is insisting that the fact that the door was slightly open shows lack of proper care and attention. In the Arbitrator's opinion, the insurer is taking the literal meaning of this wording a little bit too far by rejecting the claim.

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<sup>2</sup> A Fol. 67

<sup>3</sup> Emphasis added by the Arbitrator

<sup>4</sup> <https://www.merriam-webster.com/legal/due%20care>

<sup>5</sup> <http://www.businessdictionary.com/definition/due-care.html>

The policy itself states that the policyholder should take all ‘reasonable’ precautions. The test of reasonableness is also the test that the Arbiter has to apply and coupled with fairness, the Arbiter must reach an equitable and just conclusion as sanctioned by Article 19(3)(b) of Chapter 555 of the Laws of Malta.

The fact that the complainant had placed a safety gate in the kitchen shows that she took the precaution to prevent accidents for her dog. The question is whether it was reasonable for the complainant to leave a door *slightly open* to remove condensation from her kitchen **when the dog was actually in another room**. The Arbiter thinks that a reasonable person would have acted similarly especially when the complainant had no history of her dog running away at the slightest opportunity.

*‘The safety gate was in place and, to this day, I still do not know how he managed to get through. It was little, but it was a decent sized safety gate and it kept him in place before.’<sup>6</sup>*

The complainant was in no way expecting her dog to run away.

Moreover, as confirmed by Dougie’s vet, the complainant had always taken good care of her pet.

He unequivocally stated that:

*‘As an aside and proof that PF is a very responsible owner, she has maintained that Dougie’s healthcare has always been gold standard since she took ownership of him. She had him neutered, microchipped, treated him for parasites, booked him in for his upcoming vaccinations and very responsibly had him insured.’<sup>7</sup>*

The policy defines accidental injury as follows:

*‘A sudden and unforeseen event causing physical damage to one or more parts of Your pet’s body ...’<sup>8</sup>*

The accident did in fact happen when the dog was unfortunately hit by a car:

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<sup>6</sup> A Fol. 68

<sup>7</sup> A Fol. 30

<sup>8</sup> A Fol. 40

*'I found him, he was further up the street where he was obviously distracted and tottered himself up. So, I went after him and there were quite a few people. There were cats about, and being a dog, he chased after them. I went after him and he went further up the street, quite far actually.*

*There was a small alleyway to which he went through because he saw a cat. I went after him, and when he came out of the alleyway, it was into quite a main road and I called him back. He must have heard my voice and he stopped dead in his tracks. I went to scoop him up but because it is quite a main road, with people not abiding by the speed limits, a car came zooming up and obviously went straight over him.'*<sup>9</sup>

It is clear that this incident is a 'sudden and unforeseen event' and, therefore, covered by the policy.

**The Arbiter has also stated in other similar cases that the wording of the policy, (especially when a clause is based totally on a subjective test), should be interpreted by the insurer in such a way as to honour the claim rather than to reject it on a strict and narrow interpretation of the text.**

Even the Arbiter, as sanctioned by law,<sup>10</sup> has to consider the case holistically and give proper attention to its particular circumstances in order to decide whether a complaint is fair, equitable and reasonable.

**Equity is an exercise based on what is morally right and fair and is distinct from the strict and rigid application of the law.**

In this case, apart from the fact that the Arbiter believes that the complainant did not infringe conditions 4 and 6 of the policy, he is morally convinced that considering all the facts and particular circumstances of the case, the complaint is fair, equitable and reasonable.

**Therefore, for the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of the case and is upholding it in so far as it is compatible with this decision.**

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<sup>9</sup> A Fol. 68

<sup>10</sup> CAP 555, Art. 19(3)(b)

## **Compensation**

The complainant stated in the complaint form<sup>11</sup> that the expenses incurred are £735.05 for care given at Vets4pets Birstall, and £2596.01 for care at Vets4pets Leeds, amounting to £3331.06, which amount was not contested by the service provider.

The parties have informed the Arbiter<sup>12</sup> that the purchase price of the dog has been established at £310.

Therefore, the total amount due to the complainant is £3641.06.

**In virtue of Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Building Block Insurance PCC Ltd to pay the complainant the sum of £3641.06.**

**With legal interest of 8% per annum 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**

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<sup>11</sup> A Fol. 4

<sup>12</sup> A Fol. 84, 93