

Before the Arbiter for Financial Services

Case No. 115/2020

LE

(the complainant)

vs

Building Block Insurance PCC Ltd

(C 63128)

(the service provider/the insurer)

Sitting of the 6 April 2021

The Arbiter,

Having seen the complaint whereby the complainant submits that he took an insurance policy in 2017 to cover his pet against accidents and to cover any medical treatments in case of emergency situations similar to the situation he found himself in, in this case.

The contract was a yearly contract and paid monthly by instalments. His pet was covered from the end of June 2018 till June 2019. After the accident occurred the emergency veterinarian filled in the claim form and sent it on his behalf to the insurance company. He also had to take his pet to local vets for follow up treatment and medication and this was also claimed for. He was contacted by the insurance company to provide details about how the accident occurred and the complainant passed to the insurance all the information in his possession.

The insurance company responded to the claim by rejecting it on the grounds that the accident happened due to the complainant's fault because he did not have control of his pet when the accident took place.

The cause of the accident was the pet slipping her harness and escaping into the road.

The complainant further submitted that this accident is covered by the policy. The decision taken by the service provider to reject his claim goes against the entire purpose of having an insurance policy at all. The policy covers accidents and medical treatment and therefore his claim should have been accepted.

By way of compensation the complainant asks the Arbiter to award him the sum of £709.47 covering both the emergency veterinary procedure and the local veterinary expenses for follow up treatment

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

Having reviewed the claims and complaint, the service provider believes the claims handler was correct in declining the claims received for Dusty submitted by LE. The claims were declined under the policy terms and conditions.

Condition 4 of the policy states: *'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.'*

Condition 6 of the policy states: *'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.'*

In LE's statement to Perfect Pet, he explains that he was walking Dusty in a park whilst she was wearing a CLIX Car safe harness. LE provided a link to the harness

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<https://www.companyofanimals.co.uk/products/clix-carsafe>.

The idea of this type of harness is that if it is the correct size of the breed of animal and it was fastened in the correct manner, the dog would not be able to

slip out of it, which is what Dusty did on her walk on 17 June 2018. Control was not maintained by LE and as a result Dusty was able to escape and cause injury.

A picture of the park gate was supplied by LE.

LE has highlighted how wide the individual bars are on the gate. Enough room for a dog of Dusty's size to pass through. Although the gate was closed at the time of the incident, consideration to this should have been made by LE when ensuring Dusty was secure on her walk around the park.

In the final response issued by Perfect Pet on 02 July 2019, condition 5 of the policy is also quoted as not being adhered to by LE. The service provider would like to advise the Arbiter that after review, this policy condition was not breached as Dusty was walking in a park and not on a designated road. To confirm, only condition 4 and 6 of the policy were breached by LE.

In LE's complaint to the Arbiter, he has stated that as a resolution to his complaint, he would like to receive £709.47 as a settlement.

Building Block would like to make the Arbiter aware that two claims have been received for Dusty. Under the policy terms, the settlement would be as follows:

Claim one:

Claim Value: £397.82

Deductions: Excess - £90

Blood sample over £12 - £12.43

Administration Fee - £15.43

Amount payable would be £279.96

Claim two:

Claim Value: £311.65

Deductions: £19.10 treatment. This falls under the second year of the policy and under excess.

Amount payable would be £292.55

Total amount payable would be £572.51.

Having seen all the documents and heard the parties.

Considers

The Arbiter has to decide the case on what, in his opinion, is fair, equitable and reasonable in the particular circumstances of the case.¹

The Complainant's Version

The complainant stated before the Arbiter² that two years ago he was walking his dog through a local park. The dog was in her harness and everything was secure. The dog started pulling and she got into a position where she was pulling on her harness and the lead, and she managed to escape despite being '*put on securely*'.

The local park was near a main road and the dog ran off to the middle of the road and was struck by a car. She was taken to the vet's emergency straightaway where they gave her treatment and medication.

The complainant states that he is claiming on the insurance because it was not his fault that the dog escaped from the harness. Therefore, he is not agreeing with the insurance's position that the incident was caused through his fault. Before she escaped, Dusty was securely in the harness. He was holding the dog from the lead and he did not allow Dusty to roam freely, but she pulled heavily and escaped.

With regards to the photo presented by the service provider regarding the park's gate, the complainant stated that he did not open the gate, but it was somebody else who might have opened it. When his dog escaped through the harness and got off the lead, the gate was already open and ran through it towards the road where she was unfortunately hit by a car.

The Service Provider's Version

The service provider did not submit any witness and rested its case on the reply to the complaint.

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

² Page 60-61

In its reply, the service provider basically states that it has refuted the claim under Condition 4 of the policy which states:

'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.'

Also, Condition 6 states that:

'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 service provider claims that the complainant had failed these two conditions because:

- 1) If the harness was of the correct size, the dog could not have slipped off it because the harness is a safe one;
- 2) Since the park's gate has wide individual bars *'consideration should have been made by the complainant when ensuring that Dusty was secure on her walk around the park'*.³

Further considerations

The first issue raised by the service provider is that if the harness was of the correct size, Dusty could not have slipped off it and ran away. However, the service provider did not provide the Arbiter with any solid proof that the harness put on Dusty was not of the correct size. The complainant explained that at one particular moment, Dusty started to pull on the lead very hard and, although he kept her all the time on the lead, Dusty managed to slip off the harness and ran away.

This is all the information submitted by both parties to the Arbiter.

From the scant evidence produced, the Arbiter can only reach the conclusion that Dusty could only run away because she managed to slip off the harness

³ Page 58

because the complainant's version of events, namely, that he kept his dog on the lead all the time, is not doubted, not even by the service provider.

The service provider doubts whether the harness was of the correct size. The Arbiter has no proof that the harness was not of the correct size and has every reason to assume that a dog's owner, once he is convinced of buying a harness to his dog, would buy a harness of the correct size because what is the point of buying a harness not suited to your pet? In some way, Dusty slipped off her harness and found herself on the road where, unfortunately, she was hit by a car.

The policy defines accidental injury as follows:

'A sudden and unforeseen event causing immediate physical damage to one or more parts of Your pet's body ...'.⁴

So, the crucial part of the definition is the suddenness and unpredictability of the event. There is no doubt that in this case the accident occurred unexpectedly and quickly, in such a way that Dusty *'started pulling and she got in a position where she was pulling on the harness and the lead and she managed to escape despite it being put on securely'.⁵*

The Arbiter notes that the complainant tried to continue holding his dog firmly, however, the dog managed to escape. This was a sudden and unpredictable event over which the complainant had no control.

Therefore, in the Arbiter's opinion, all the elements of *'accidental injury'* are satisfied by the complainant.

The service provider submits that the complainant did not *'provide proper care and attention at all times'.⁶*

'Due and proper care' has been defined as *'the taking care and being diligent to prevent an accident'.⁷*

⁴ Page 17

⁵ Page 60

⁶ Page 57

⁷ <https://thelawdictionary.org/due-and-proper-care/>

Moreover, '*Due care*' has been defined as '*the care that an ordinarily reasonable and prudent person would use under the same or similar circumstances*'.⁸

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.*'⁹

Therefore, the test to be applied to determine whether the complainant had exercised due care rests on what an '*ordinarily reasonable and prudent person, would have done in the same or similar circumstances.*'

The complainant acted diligently when: he kept his dog on the lead attached to the harness; when he was walking the dog in a park and not on a busy road; when he tried to keep his dog even when the dog suddenly started to pull hard. Therefore, the Arbiter cannot conclude that the complainant was not diligent and that he did not '*provide proper care and attention at all times.*'

The service provider also raised the plea that the complainant did not consider that the park's gate had individual wide bars through which a dog could escape.

The Arbiter would have agreed with the service provider had the complainant allowed his dog to roam about in the park without holding it on a lead. However, this was not the case since the complainant held Dusty on the lead attached to the harness. For this reason, the type of the park's gate is not relevant in the particular circumstances of this case.

This leads the Arbiter to conclude that the incident falls within the definition of '*accidental injury*' and general conditions 4 and 6 were not breached by the complainant.

The Arbiter observes that the expectations of the insured to be indemnified in case of an accident is one of the principal pillars in insurance law. Moreover, the contract of insurance is based on the utmost good faith of both parties to honour their respective obligations.

⁸ <https://www.merriam-webster.com/legal/due%20care>

⁹ <http://www.businessdictionary.com/definition/due-care.html>

The Arbiter cannot accept the service provider's plea that the complainant exhibited lack of due care because from the facts of the case it results that the complainant did all in his powers to safeguard his dog by holding her on the lead and, also, walked his dog in a park and not on a busy road. The complainant acted like another ordinary and prudent person would have acted in the same circumstances and he tried to be as diligent as possible. However, these accidents do happen and that is why pet owners insure their pets, to cater for such eventualities.

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 it is consistent with this decision.

Compensation

The complainant submits that he should be paid the vets' fees in full, namely, £709.47.

The service provider explains that claim one has a claim value of £397.82, from which should be deducted: £90 (excess), £12 (blood sample), and £15 (administration fee) leaving the amount due as £279.96.

As to claim two: The claim value is: £311.65, of which £19.10 (treatment) should be deducted leaving a balance of £292.55. Therefore, the total amount due is £572.51.

From the evidence produced by the complainant, namely, a copy of the policy and the policy schedule, the Arbiter can only find the amount of excess by way of the deductions from the sum being claimed. The service provider, who is claiming other '*deductions*', does not indicate under which part of the policy or Schedule do these deductions figure.

For this reason, the Arbiter can only consider the '*excess amount*' by way of deductions. Therefore, the Arbiter concludes that the amount due to the complainant is £709.47 less £90 excess, leaving the balance of £619.47.

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 £619.47.

With legal interests from the date of this decision till 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**