

Before the Arbiter for Financial Services

Case Number 144/2020

FP (The complainant)

vs

Building Block Insurance PCC Ltd

(The service provider/insurer)

Sitting of 6 April 2021

The Arbiter,

Having seen the complaint whereby the complainant submits that in November 2019, they noticed that their dog Zaba was suffering from some stiffness in his back left leg and took him to the vets. The vets recommended an X-ray and Zaba was anaesthetised in order to obtain diagnosis. This took place on the 28 November and, subsequently, a diagnosis of a partial tear of the cruciate ligament was established by the vet.

In December the complainant claimed on their pet insurance. The insurers requested further information from their vets which was given through an email dated 10 February 2020, confirming the position of the complainant.

A final decision was made by the insurers in their letter of 28 September 2020, refusing the complainant's claim. The basis for the refusal of the claim was that Zaba had previously been diagnosed with minor arthritis issues on his back legs, and as this was a pre-existing condition, the claim was not valid.

The complainant further submits that the only reason that Zaba needed treatment was because of the partial tear to his cruciate ligament. Had he not suffered this injury, there would have been no visits to the vets and no claims.

By letter dated 28 September 2020, the insurer gave its final decision that the claim cannot be accepted.

The complainant states that the insurer was not being reasonable in refuting the claim. Zaba was fit even after the cruciate ligament incident and is fit and healthy till this day.

The complainant is asking for the payment of £375 (being the sum of £465 less £90 excess).

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

Having reviewed the claims and complaint, the service provider believes the claim handler was correct in declining the claim received for Zaba submitted by FP for stiffness in back legs after lying down for any period of time. The claim was declined under the policy terms and conditions;

This Insurance Product Information Document, Policy document and the Schedule should be read together as one document. Please keep these documents together in a safe place.

It is important You read them carefully to make sure they meet Your needs. Please also check Your Schedule carefully to make sure the information You have given Us is correct.

Insurance Product Information Document

What is not insured?

Any claim for illness or accidental injury that relates to a pre-existing condition.

Policy definitions

ASSOCIATED CONDITION: An Associated Condition is one that falls into any of the below categories:

Bilateral Conditions are any Illness or Accidental Injury that affects bilateral body parts of which Your pet has two, such as but not limited to, ears, eyes, cruciate ligaments, hips and patellae.

Recurring Conditions that are related to or caused by a previous Illness or Accidental Injury that may return or Your pet may become prone to, regardless of the number of times the Illness returns.

Related Conditions that are related to or caused by a previous Illness or Accidental Injury shall be treated as the same Illness and will be subject to one Benefit Limit being applied to that Illness irrespective of where the clinical signs are noticed in or on Your pet's body and whether diagnosed or not unless Your Vet confirms these are unrelated. We may seek confirmation of this from a Vet appointed by Us.

CONDITION: an Illness or Accidental Injury suffered by Your pet.

ILLNESS: Any change to Your pet's normal health state, including disease, infection and sickness which is not caused by an Accidental Injury. This includes symptoms whether diagnosed or not.

PRE-EXISTING CONDITION: Any diagnosed or undiagnosed Condition which has occurred or existed, or has shown signs or symptoms of existing in any form before the Policy Start Date or within the Waiting Period in the first Period of Insurance. This also includes any diagnosis or any clinical signs caused by or resulting from an Accidental Injury or Illness. Your pet had on an Associated Condition before the Policy **Start Date** or within the Waiting Period in the first Period of Insurance.

START DATE: The date when Your Policy comes into effect, as stated in Your Policy Schedule.

Veterinary Fees

What is not insured?

5 Any claim for Illness or Accidental Injury that relates to a Pre-existing Condition or that showed signs of existence before Your Policy Start Date.

General Exclusions

The following exclusions apply to the whole of this Policy. Any other claims conditions and procedures are shown in the section to which they apply. We will not pay claims for any of the following reasons;

1 If We are made aware of any Pre-existing Conditions at the time of claim, We are likely to void the Policy.

The veterinary history for Zaba confirms there are signs and symptoms existing to the left hind lameness and the hip discomfort prior to the policy inception date of 12 August 2019. On the 01 August 2018, the vet's history states that the owner reports intermittent left hind lameness and that Zaba was stiff after lying down for 3-4 hours. This predated the policy inception date.

Building Block also obtained an independent veterinary report for their opinion based on the documentation provided by FP. We have attached a copy of this in our email to you. This letter also concludes that signs and symptoms were pre-existing.

In FP's complaint to the Arbiter, he has stated that as a resolution to his complaint, he would like to receive £375 as a settlement.

Building Block would like to make the Arbiter aware that one claim has been received for Zaba.

Under the policy terms, the settlement would be as follows:

Claim Value: £465

Deductions: Excess - £90

Pre op blood test - £57.84

Amount payable would be £317.16

Having heard the parties and seen all the documents

Considers

The Arbiter has to decide the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.¹

Basically, the insurer is rejecting the claim by insisting that Zaba was suffering from a pre-existing medical condition before the policy inception date of 12 August 2019.

The service provider makes reference to Zaba's medical history and states that:

'On the 01 August 2018, the vet's history states that the owner reports intermittent left hind lameness and that Zaba was stiff after lying down for 3-4 hours'.²

However, the service provider did not provide the Arbiter with the medical history of Zaba and, therefore, he is not in a position to verify this fact and, even more, to read this extract from the medical history in the whole context it was written.

Moreover, the service provider states that

'Building Block also obtained an independent veterinary report for their opinion based on the documentation provided by FP. I have attached a copy of this email to you. This letter also concludes that signs and symptoms were pre-existing.'³

In this respect, the Arbiter notes that the only medical opinion on file is the opinion of Phil Bareham⁴ dated 10 February 2020, which does not prove the pre-existing medical condition alleged by the service provider.

The complainant explains that Zaba did not have a pre-existing condition related to the claim:

'Zaba was perfectly well before sustaining the injury, with no mobility issues and remains free of any mobility issues today. The injury was clearly a "one off" and, as such, cannot possibly be described as being pre-existing.'⁵

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

² A fol. 26

³ Ibid.

⁴ A fol. 29 and a fol. 14

⁵ A fol. 8

As has already been decided by the Arbiter in various previous decisions,⁶ the contract of insurance is one based on utmost good faith and the parties owe to each other the observance of their mutual contractual obligations to a higher degree than in a normal contract. Whilst the insured has to give all the information prior and during the existence of the policy and pay the premium, the insurer has the obligation to reasonably honour a claim which falls within the terms and limitations of the policy.

The Arbiter has to decide the case through a careful analysis of the facts as they result from the file of these proceedings.

The service provider is basing its refusal on what it states is a pre-existing medical condition, namely, that Zaba had a mobility issue prior to the inception date. However, the only proof brought forward was the opinion by Vet Phil Bareham.⁷

In the Arbiter's opinion, what Phil Bareham said confirms the complainant's position, namely, that Zaba did not suffer from a pre-existing condition prior to the inception date of the policy, that is, prior to the 12 August 2019:

'On 1/18/18 Zaba was seen with gastroenteritis. On examination he was found to have discomfort on manipulation of his hips, he did not receive any treatment at this time for his condition. There is no mention of stifles/knees in the clinical history at this stage.

*On 6/11/19 Zaba was seen due to discomfort on his hind limbs. Radiographs and manipulation under general anaesthesia was advised. **During these investigations Zaba was found to have a cranial draw in his left stifle and a suspected partial cruciate tear. This is a new condition and I can confirm that we have not seen Zaba for any issue related to his stifle prior to this.**⁸ Arthritis medications were started for the stifle injury.*

⁶ For example, in Case No. 169/2018 decided on 9 July 2019

⁷ A fol. 29

⁸ Emphasis added by the Arbiter

During the same investigation Zaba was shown to have some osteoarthritis in his left hip. I do not believe this to be the primary cause of the recent lameness. The primary issue was the stifle.⁹

This is the best and objective evidence that the Arbiter has been supplied with by both parties. This evidence by the vet clearly states that the primary issue was stifle and partial cruciate tear; and these conditions did not present themselves prior to 12 August 2019. The first signs were discovered on the 6 November 2019 when Zaba was already covered by the policy.

Therefore, in the Arbiter's opinion, the service provider did not sufficiently prove that Zaba was suffering from a pre-existing medical condition prior to the inception date of the policy.

On the other hand, the complainant proved his case, namely, that Zaba was duly covered by the policy when the claim was submitted to the insurer.

Moreover, the statement made by the complainant that the claim was a 'one off' and Zaba recovered well and is in a state of good health till this day, has not in any way been contradicted by the service provider.

For the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable and is accepting it in so far it is compatible with this decision.

Compensation

The complainant submitted a claim for the sum of £375 (being the sum of £465 less £90 excess).

The service provider also wants to deduct the sum of £57.84 for pre-op blood test. However, it does not give any proof why this should be deducted. Unfortunately, the parties have not filed the policy document so that the Arbiter could verify the deductions claimed by the service provider.

⁹ *Ibid.*

Therefore, 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 £375.

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

The expenses of these proceedings are to be borne by the service provider.

**Dr Reno Borg
Arbiter for Financial Services**