Before the Arbiter for Financial Services

Case No. 038/2019

WD ('the complainant'/'the insured')

vs

Building Block Insurance PCC Ltd

(C63128)

('the service provider'/'the insurance')

Hearing of the 11 November 2019

The Arbiter,

Having seen the complaint which essentially states that:

The complainant had her dog diagnosed in December 2018 with diabetes and was sick and had to be taken to the Vet for 3 days' treatment. The bill for treatment was £2,500.

She contacted Perfect Pet (Building Block) prior to the treatment and asked whether the dog was covered and told her that it was covered, and she should keep the receipts and send them to them.

After sending the receipts and a few weeks passed, she was told by the insurer that the policy was cancelled, and the company would not pay the bill because her dog was aggressive.

The complainant states that the dog is not aggressive but gets nervous in strange places such as at the vet.

When the complainant complained she was told to produce evidence from the vet that the dog was not aggressive which she did. They also told her that the

vets should change their medical notes to reflect this which is something unethical.

Two vets sent letters stating that Jess, the dog, is not aggressive and also her dog sitter who is a senior dog trainer stated how well she behaved. These letters are attached to the complaint.

After she sent emails and other correspondence to the service provider, she was informed that the underwriters, Building Block Insurance Ltd, kept firm in saying that they will not pay the claim. There was no explanation for this.

The complainant believes that she was unfairly treated when also considering the fact that in the 9 years the dog had been insured, she did not make a single claim.

She is now in a situation that no insurance wants to insure her dog because she suffers from diabetes as it is an ongoing condition and cannot be cured.

She is seeking compensation of £1,911 for treatment for two overnight stays in hospital for diabetes cure.

The service provider replied that:

The decision to void the pet insurance policy for misrepresentation was correct. As the policy has been voided, the policy is treated as it had never existed and therefore the claim is not honoured because the policy does not exist.

The reason the policy has been voided is because Jess, (complainant's dog) had previously had episodes of being aggressive. Aggressive behaviour could be temporary or permanent.

Prior to the policy renewal date on the 23 July 2018, a renewal email notice was sent to the complainant. She was referred to the Terms and Conditions.

Together with the schedule, two questions were asked.

The two questions which are relevant to the misrepresentation are:

Q: Has Jess ever shown any vicious tendencies towards a person or animal?

A: No

Q: Has Jess ever been involved in an accident involving a third party, attacked, bitten or been aggressive to a person or another animal.

A: No

The policy in question was for the period 23 July 2018 to 22 July 2019. It is this policy that has been voided. The complainant did not amend the answers to the questions that she had provided when she bought the first policy for the previous year and, therefore, she was misrepresenting the insurer pursuant to section 2(3) of the Consumers Insurance (Disclosure and Representations) Act 2012 which states that:

'*A failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation for the purposes of this Act.'*

The service provider is basing its claims of misrepresentation on the clinical notes from Roebuck Veterinary Centre which are as follows:

27 April 2013

Attempted to place fresh chip but unable to do so as dog v aggressive and managed to make myself and the dog bleed. Needs multiple people to hold down so can be done quickly.

4 May 2013

again in for replace m/c but again great difficulties this time, dog very upset and difficult to handle, unable to get muzzle on and great concerns regarding health and safety of staff and dog;

10 May 2013

Re ex for chip, had acp tablets 1.5 hours ago

much calmer, possible to get muzzle on and held by nurse and new m/c placed middle of shoulder blades

7 July 2015

In for booster. O reports got very worked up and upset during thunderstorm the other night. Groomer also reports only able to get to a certain point and then will become snappy. Otherwise seems well in self.'

The above four entries are all dated prior to inception of the year 2 policy that has been voided. Based on the content of the entries, Building Block is of the opinion that they are sufficient to demonstrate that Mrs Spence did not take reasonable care not to make a misrepresentation as per the duty at section 2(2) of the Consumer Insurance (Disclosure and Representations) Act 2012, which states that:

'It is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer.'

Pursuant to section 2(1) of the Act, the duty applies before a *consumer insurance contract is entered into.*

Building Block asserts that the misrepresentation was careless. The remedies available to an insurer for careless misrepresentation are located in Schedule 1 of the Consumer Insurance (Disclosure and Representations) Act 2012.

Point 5 states:

'If the insurer would not have entered into the contract on any terms, the insurer may void the contract and refuse all claims but must return the premiums paid.'

As stated previously, Building Block does not insure dogs that are aggressive or have been aggressive. Building Block would not have entered the insurance contract under any terms, therefore, the policy has been voided. The monthly premiums paid by Mrs Spence have been refunded.

Building Block states that Mrs Spence's complaint response is dated the 14 May 2019, which is dated after Mrs Spence referred her case to the Arbiter. Enclosed is a copy of the complaint response. The complaint response from Perfect Pet Insurance, who is the claims handler, went on the basis that the misrepresentation occurred at inception of the year 1 policy.

However, on review of the complaint, the misrepresentation occurred on policy renewal in July 2018 which originated from answers Mrs Spence provided in the

year 1 proposal. As pointed out above, particulars previously given are capable of being a misrepresentation.

Building Block has also reviewed the contents of the letters from Roebuck Veterinary Group, Walton Veterinary Group and North Herts Dog Training Club. The contents of the letters seek to persuade the reader that Jess is not an aggressive dog. Building Block states that, as explained previously, a temporary state of aggressive behaviour is sufficient for the policy to be voided and it is the clinical notes referred to above that evidence episodes of aggressive behaviour.

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.

The primary issue in this case is whether the service provider had valid reasons to void the second policy, namely, that covering the period 23 July 2018 to 22 July 2019. The onus of proof to justify the annulment of the policy rests on the service provider.

The service provider argues that Jess behaved aggressively prior to the purchase of the policy and mentions incidents of Jess's '*aggressiveness*' dating back to 27 April 2013 and 4 May 2013 in particular.

The insurer argues that, according to law, namely the Consumers Insurance (Disclosures and Representations) Act 2012, the complainant committed a misrepresentation when she did not disclose the fact that Jess acted '*aggressively*' prior to the purchase of the policy and being asked specifically whether the dog had ever acted aggressively, she responded twice in the negative.

Further Considerations

Although the service provider quotes the proposal form and quotes two specific questions and answers upon which it rests its case for the voidance of the policy, the proposal form in question was never exhibited and the Arbiter does not have the best evidence which could have easily been produced by the service provider.

The absence of the proposal form does not give enough comfort to the Arbiter to see the whole context in which these questions were asked.

The complainant produced three letters to justify her insistence that Jess was not an aggressive dog:

The first letter dated 11 March 2019, is signed by Julia Corsini, a veterinary surgeon at Walton Lodge Veterinary Group which *inter alia* states that:

'*It is a common occurrence in veterinary practices for animals to be scared and nervous. We use muzzles to protect members of the staff. It does not in any way affect the way we treat our patients in terms of treatment plans. Jess's condition had nothing to do with being aggressive nor did it change how we treated the condition. Jess is not an aggressive dog, just scared of unusual surroundings in a veterinary setting.*

Jess has (was) initially apprehensive with ear pinna puncture as this was very new to her. The following day we could do a glucose curve as she had before more used to her surroundings … The last glucose curve done was without a muzzle showing that she had come to accept the practice and staff. Diabetes is not correlated with aggression.'[1]

The second letter dated 22 March 2019 was sent by Roebuck Veterinary Group which *inter alia* reads as follows:

'… The historical record in question is from several years ago in which a single member of staff commented on the dog being aggressive.

On all subsequent visits to the hospital the dog has been examined fully without any signs of aggression; on 06/07/17 and 03/08/18 the attending veterinarians performed full oral exams, something that would certainly not be possible in an aggressive dog. Furthermore, at the most recent vaccination the vet commented that "(Jess was) very well behaved".

It is therefore my professional opinion that this dog is not aggressive but was simply scared and not handled correctly when attempting to place a microchip …'.[2]

[1] *A fol.* 8
[2] *A fol.* 9

The third letter by Jan Corr who is a Kennel Club Qualified Obedience Judge stated that having known Jess for approximately four years could certify that Jess was not an aggressive dog.[3]

The whole issue is whether the complainant misrepresented the insurer when the cover was renewed for the period 23 July 2018 to 22 July 2019.

The insurer is basing the misrepresentation on four clinical notes, three of them dated 2013 and the other 2015. The service provider submits that the alleged '*aggression*' took place when procedures were being carried out at Roebuck Veterinary Centre.

However, these notes were not produced during the case and the Arbiter had no access to them. The service provider quotes parts of these notes and the Arbiter cannot verify them or confirm that they are quoted in the context that they were written or intended to be written. As such they are not the best evidence.

The Arbiter also notes that the policy does not define '*aggressio*n' or '*aggressive behaviour*' nor does it explain that '*a temporary aggressive behaviour is sufficient for the policy to be voided*' as the service provider contends.

All the particular facts and circumstances of the case have to be taken into consideration.

According to the service provider, the acts committed by Jess to which they found objection took place in 2013 when Jess was taken to Roebuck Veterinary Centre to be chipped. Two years later, in 2015, there were no reports of aggressiveness, but the groomer reported that he could only '*get to a certain point and then will become snappy*. *Otherwise seems well in self*'.[4]

The service provider seems to look at these clinical notes out of context and uses them as the sole pretext to void the policy. As already stated in this decision, the Arbiter cannot rest his decision on these notes because they were not exhibited in full and, therefore, cannot have the full picture.

[3] *A fol.* 10
[4] *A fol.* 53A

Moreover, Roebuck Veterinary Centre explains the context of these incidents as follows:

'*The historical record in question is from several years ago in which a single member of staff commented on the dog being aggressive.*

On all subsequent visits to the hospital the dog has been examined fully without any signs of aggression; on 06/07/17 and0 3/08/18 the attending veterinarians performed full oral exams, something that would certainly not be possible in an aggressive dog. Furthermore, at the most recent vaccination the vet commented that "(Jess was) very well behaved".

It is therefore my professional opinion that this dog is not aggressive but was simply scared and not handled correctly when attempting to place a microchip …'[5]

This is corroborated by Walton Lodge Veterinary Group which, as quoted above, state:

'*It is common occurrence in veterinary practices for animals to be scared and nervous. We use muzzles to protect members of the staff. It does not in any way affect the way we treat our patients in terms of treatment plans. Jess's condition had nothing to do with being aggressive nor did it change how we treated the condition. Jess is not an aggressive dog, just scared of unusual surroundings in a veterinary setting'.*

The Arbiter cannot ignore these professional evaluations and their conclusions that Jess was not an aggressive dog, but that it was '*scared of unusual surroundings in a veterinary setting'.*

The Arbiter is bound by Chapter 555 of the Laws of Malta to decide the case on '*what in his opinion is fair, equitable and reasonable* ***in the particular circumstances of the case'.***[6]

The Arbiter notes that:

[5] Emphasis by the Arbiter
[6] Art. 19(3)(b)

The clinical notes of April and May 2013 were not filed in full during the case and were professionally explained by qualified vets as being the result of Jess being scared of the procedure and was not handled carefully. Moreover, the policy was renewed in 2018, that is, five years after the alleged aggressive behaviour of Jess and in those years, there is no evidence that Jess had ever acted aggressively.

Furthermore, in 9 years of coverage, the complainant never made a claim to the insurance, meaning that the dog behaved well and was not involved in any incident or any act of aggressiveness.

The complainant also explains that she did not have a copy of the clinical notes and, therefore, she had no information about the incidents upon which the service provider voided the policy.

The Arbiter also makes reference to general condition 7 of the policy which states that the service provider could cancel the policy if the insured '*deliberately or recklessly'* conceal information.

Considering the whole context, how the facts and circumstances of this case unfolded, the Arbiter cannot morally conclude that the insured concealed information in a '*deliberate and reckless'* manner.

The Arbiter has certain reservations on how certain questions in the proposal form are framed by service providers in this sector and has serious doubts that the manner in which certain questions are drafted can be an easy-way out for the insurer to avoid the claim. Apart from a simple '*yes*' or '*no*' answer, the insured should be offered the space to qualify the answer because the Arbiter is morally convinced that any reasonable insurer would reckon such a consideration as a fairer way in treating clients.

It would also place it in a better situation to decide whether to accept or refuse a request for insurance cover. The simple '*yes*' or '*no'* answer can lead to abuse and used as a pretext to avoid the claim.

The Arbiter is also of the opinion that fairness dictates that **full** clinical notes are requested prior to the acceptance to insure, rather than when a service provider is faced with a claim.

For the above-stated reasons, the Arbiter is morally convinced that the insured was not '*deliberately*' or '*recklessly*' hiding material information from the insurer; and that a reasonable insurer, having the comfort of professional vets, would have insured Jess just the same and honoured the claim.

To void a policy is a very serious matter and should be resorted to in extreme cases where the insurer has solid proof that the insured was trying to cheat, or to defraud it. This case does not fall in that category and the insured answered the questions asked on the information she had at the time which was based on the general good behaviour of Jess over the years.

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

Compensation

The complainant is requesting a compensation of £1,911. This amount is proven by the document filed on page 18 of the file of the proceedings.

Therefore, in accordance with 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 £1,911, less any excess which might be applicable, if any.

With legal interest at the rate of 8% per annum from the date of this decision until the date of payment.

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

Dr Reno Borg
Arbiter for Financial Services