Before the Arbiter for Financial Services

Case No. 055/2019

OP (the complainant/the insured)

vs

Building Block Insurance PCC Ltd

(C63128)

(the service provider/the insurance)

Sitting of the 27 December 2019

The Arbiter,

Having seen the complaint which essentially states that:

The complainant took her dog Sully to the vet on the 31 December 2018 because it was very ill and had to stay at the vet overnight for observation and medication.

She was given a quote of £850 and given the opportunity to pay the insurance excess or paying in full. She took the option of paying the excess and paid £105 and gave the vet contact details of Pet Insurance to make contact with them and pay the balance.

On the 25 March 2019 she received an email stating that the balance would not be paid by the insurance because from the clinical notes it resulted that Sully was an aggressive dog.

The vet informed her to contact the insurance and they were ready to supply her with a letter stating that Sully was not an aggressive dog.

She had a reply from the insurance company on the 9 April 2019 informing her that to reconsider their decision all references to aggression in the clinical notes had to be removed by the vet.

The vets informed her that it was unethical to do so and, according to regulations that bound them, they could not correct the clinical history.

The vet's letter to the insurance stated that under circumstances of being in pain and in the surgery does not constitute a dog being classed as aggressive.

The complainant finally submits that her dog was not aggressive and only once did it wear a muzzle at the vet's surgery as a precautionary measure.

She is therefore asking the insurance to pay her the outstanding balance of £681.28.

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

I have reviewed the claim and can confirm that our position is that the decision to void the policy on the basis that the dog (Sully) is aggressive was correct. As the policy was voided the claim was declined.

Please note that Building Block does not insure dogs who are or have been aggressive. It does not matter if any aggressive behaviour is a permanent state or merely a temporary state.

<u>The claim</u>

Perfect Pet (the claims handler) received the claim on the 31 January 2019. OP claimed veterinary fees as a result of treatment which took place in December 2018.

In light of information contained in the clinical notes the policy was voided, the claim declined, and premiums paid by OP were returned. OP was informed of the decision to decline the claim and void the policy in an email dated the 25 March 2019.

A copy of the email in question has been provided by OP in her complaint form to the Arbiter. The email went on the basis that OP answered the proposal questions incorrectly and made reference that Sully had showed signs of aggressive behaviour as evidenced in the clinical history and went on to state the policy had been voided, the claimed declined and the premiums refunded.

Following the email declining the claim there followed an exchange of emails between OP and Perfect Pet. In an email Perfect Pet noted receipt of a letter from Kingston Veterinary Group which sought to explain certain entries in the clinical notes. Perfect Pet also informed OP that if the clinical notes were

inaccurate and the vet made corrections to the clinical notes the claim would be re-assessed in light of the corrections.

The email exchange ended with an email from OP to Perfect Pet dated the 15 April 2019 stating that the vet had informed her it is not possible to amend clinical notes and that she would be taking the matter further.

On examining OP's email dated the 15 April 2019 it is clear that the email amounted to a complaint and should have been dealt with as accordingly. However, the individual claims assessor failed to identify that it amounted to a complaint and therefore it was not handled as a complaint.

Our position now

Having conducted a review of the claim Building Block is of the view that there is not sufficient evidence in the clinical notes dated prior to the policy start date of the 27 October 2018 to evidence that OP answered the proposal questions incorrectly. As such OP did not breach her duty to take reasonable care not to make a misrepresentation to the insurer, which is the duty as per section 2(2) of the Consumer Insurance (Disclosure and Representations) Act 2012.

Our position is that OP was in breach of contract once the pet insurance was in existence. In addition, the clinical notes we seek to rely on which concern aggressive behaviour are dated from December 2018 which is after the policy start date.

The policy terms contain a number of general conditions; however, the general condition that OP was in breach of was general condition 1 which states:

You must tell us immediately of any changes in your circumstances that may affect your pet insurance and the cover provided; this includes but not limited to: change of address, change of ownership or complaints made about your pet. This may result in a premium change.

OP did not adhere to general condition 1 as she failed to notify the administrator (who is also Perfect Pet) of the incident that took place at the veterinary practice in December 2018 which occurred during the period of insurance. As OP failed to adhere to general condition 1 she was in breach of contract. As Building Block does not insure aggressive dogs the policy was voided, the claim declined, and the premiums refunded.

The entries in the clinical notes which evidence that Sully is aggressive and which Building Block place reliance on to evidence that Sully is aggressive are as follows:

Date of entry 31/12/2018:

… *can't explore as growls and will try bite* …

Date of entry 31/12/2018:

… *when trying to put the muzzle he bites* …

<u>The amount being claimed by OP</u>

The amount being claimed by OP is £681.28, this amount is incorrect. If the policy had been in existence the claim settlement would be £579.09.

Vet's invoice	£786.28
Less vets insurance claim administration charge*	£ 15.00
	£771.28
Less excess	£ 90.00
Less co-payment (15% of £681.28)**	£102.19
	£579.09

*Under the veterinary fees section of the policy under the heading '*What is not insured*?' point 22 states*: If the costs relate to charges made by your vet to provide or fill out a prescription, completing the claim form, referring your pet to another veterinary practice and for post packaging and courier fees.* Therefore, the vets' administration charge of £15.00 cannot be claimed for.

**Under the veterinary fees section of the policy under the heading '*What is not insured*?' point 3 states: *The co-payment*. The co-payment is defined in the policy definitions as: *Your contribution of 15% of the remaining amount of a claim after deducting the standard excess. This is payable by you for each claim or continuation if your dog is aged 8 years and over at the time of your claim.* Scully's date of birth is the 8 January 2011 and the date of the claim was the 31 January 2019 which makes Scully aged 8 at the time of the claim, therefore, the 15% co-payment would apply if the policy was in existence.

<u>Corrections to clinical notes</u>

OP has stated that it is not possible for corrections to be made to clinical records and this opinion was formed after seeking advice from the vet. I would like to take this opportunity to point out that OP and the vet are incorrect. Clinical notes can be corrected and section 13 of the Code of Professional Conduct for Veterinary Surgeons permits this. I attach section 13 of the code. Specifically, section 3.10 permits corrections to take place due to errors or factual inaccuracies.

Having seen all the documents and that the parties declared during the oral hearing that they had nothing more to add to their original claims and reply.

Considers

The complaint is based on the fact that the insurance company voided the policy on the ground that Sully was an aggressive dog.

In its reply, the service provider stated that OP '*did not breach her duty to take reasonable care not to make a representation to the insurer which is the duty as per section 2(2) of the Consumer Insurance (Disclosure and Representation) Act 2012.'* However, the service provider maintains that the complainant *'was in breach of contract once the pet insurance was in existence'* basing its argument that Mrs Graham was in breach of general condition 1 which states:

'*You must tell us immediately of any changes in your circumstances that may affect your pet insurance and the cover provided; this includes but not limited to: change of address, change of ownership or complaints made against your pet. This may result in a premium change.'*[1]

The service provider maintains that the general condition was not observed because she did not reveal '*the incident that took place at the veterinary practice in December 2018'.*

Since the insurance company voided the policy, the onus of proof to justify such drastic action rests on it.

The Arbiter has to decide, on the basis of fairness, equity and reasonableness, whether the decision taken by the service provider to void the policy is justifiable and correct.

[1] *A Fol.* 24

The complainant submitted that Sully was not an aggressive dog and only wore a muzzle at the vet's as a precaution when being treated; and acted in that way at the vet because it was in pain.

This case is similar to case number 038/2019 decided by the Arbiter on the 11 November 2019 where the vet concerned in that case had stated that during treatment a dog is muzzled as a precaution because when treated, dogs could behave in an aggressive manner; but it did not mean that a dog that is being treated and behaves in that way makes the dog aggressive.

This is corroborated in this case by a different vet who certified the following:[2]

'There are some indications from clinical history that Sully has needed to be muzzled for certain procedures, for example, the intranasal kennel cough vaccine (where liquid has to be squirted up his nose). In particular during the examination on 31.12.18 he was reactive to examination of the neck. This was interpreted by the attending veterinary surgeon as indicating pain.

It is reasonable to expect some dogs to show signs of aggression when they are in pain or fearful, and these are situations we expect to encounter at a veterinary surgery. These instances should not be taken as any evidence that Sully would be aggressive at any other time.

We have a duty of care to our staff to record on the clinical record when a dog has reacted to a certain situation, however again I would stress that this does not mean that the dog is "aggressive".'

This is the only professional opinion that the Arbiter has in this case. The service provider is basing its conclusion that Sully is '*aggressive*' on a specific incident which the vet explains as being an expected behaviour by a dog which is in pain. Such occurrence is registered in a clinical note as part of their duty of care towards their staff but emphasizes that the behaviour of a dog in such a situation is expected when a painful procedure is taking place; or when a dog is in pain. This does not render the dog '*aggressive*' for the purposes of the insurance cover.

The service provider, after reviewing the claim, concluded that the complainant did not misrepresent the facts when she was buying the insurance cover but had

[2] *A Fol.* 15

the duty to report '*change in circumstances'* in accordance with general condition 1.

The Arbiter understands that such a provision in the insurance policy is justifiable in circumstances when the insured does not reveal grave material circumstances which would justifiably render the policy void, especially when the insured hides these change of circumstances to defraud the insurer.

However, this case does not present such a situation. It is the duty of the insured to report material changes in circumstances, but it is also the duty of the insurer not to invoke '*general conditions'* unreasonably in order to avoid the claim. In an insurance contract both parties are expected to act in utmost good faith and carry the burden of their respective obligations.

It is clear that in this case the insurer is trying to avoid the claim on a single and particular incident that took place at the vet's, when the dog was subjected to an abnormal situation of pain and fear. As the vet certified, in such situations it is expected that the dog would react in that manner. From the various cases that the Arbiter has had to decide so far, he has met these situations repeatedly and is morally and legally convinced that dogs behave the same as Sully did during the veterinary session, and their behaviour cannot be classified as that of an aggressive dog.

The general condition referred to by the insurer is intended not to expose the insurance to risks that it cannot foresee when accepting a contract of insurance. This is understandable, but the general condition should not serve the insurer as an easy way to avoid the claim. In the Arbiter's opinion, (fortified by the vet's assurance that Sully is not an aggressive dog), a single occurrence of antagonism by a dog under pain and fear in a veterinary surgery should not serve the insurer to classify a dog as '*aggressive*' in such a way as to void the policy and avoid the claim.

Furthermore, the Arbiter notes that in general condition 1, (as quoted by the service provider in its reply), any unreported change of circumstance during the duration of the policy can only result '*in a premium change'*[3] and not in the avoidance of the contract. However, the Arbiter cannot verify general condition 1 because the service provider did not file the policy document.

[3] *A Fol.* 24

This material lack of evidence militates against the service provider because once it decided to void the policy on this contractual condition, it is incumbent on it to prove it by producing the best evidence possible, namely, a copy of the policy document.

On the evidence produced during this case and for the reasons stated above, the Arbiter is morally and legally convinced that the service provider did not succeed to prove that it was justifiable to void the policy and avoid the claim.

The Arbiter therefore decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case and is upholding as long as it is compatible with this decision.

Compensation

The complainant submitted that she should be paid the amount of £681.28 as outstanding bills.

On the other hand, the service provider submits that the amount due to the complainant is £579.09 because from the total amount of £786.28, the following amounts have to be deducted as per policy:

Insurance claim administration charge:	£15.00
Excess	£ 90.00
Co-payment (15% of £681.28)	£102.19

The service provider explains these deductions in its reply.[4] The complainant did not object to these deductions during the oral hearing when the Arbiter gave the parties the opportunity to make further submissions to their complaint or reply.

The Arbiter, therefore, decides that it is fair and reasonable to accept these deductions as submitted by the service provider, and establish the compensation due to the complainant in the sum of £579.09.

Therefore, in accordance with 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 £579.09.

[4] *A Fol.* 25

With legal interest 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