

## The complaint

Mr M complains Building Block Insurance PCC Ltd unfairly declined his pet insurance claim when his dog was injured following an accident during a walk.

## What happened

- Mr M has a pet insurance for his dog W, which is underwritten by Building Block.
- The policy includes cover for accidental injury.
- In February 2021, W was hit by a car when he left the recreation ground where he was being walked off the lead by Mr M's wife and daughter.
- W sustained serious injuries which required months of treatment.
- Mr M made a claim on his policy for the veterinary fees, but Building Block declined it. It said Mr M hadn't complied with the general policy conditions which required him to:
  4. *"provide proper care and attention to [his] pet at all times and take all reasonable precautions to prevent accidents, injury or damage [...]".*
  5. *"comply with all laws that relate specifically to [his] pet – such as – Section 27 of the Road Traffic Act 1988, which states that a dog that is on a designated road must be on a collar and lead and under control.*
  6. *"ensure [his] dog is under control at all times, and due care should be maintained to prevent [his] dog from escaping and causing Accidental Injury to [his] dog or any other persons or animals."*
- Mr M disagreed. He said W was being walked in an area which is commonly used by dog walkers, and where W had been walked without a lead many times before.
- He explained the accident occurred approximately 200 meters away from his wife. So, he didn't think it was fair to say W was in the vicinity of a designated road and should therefore, have been on a lead.
- Building Block maintained its decision to decline the claim and so, Mr M brought his complaint to this service.
- An investigator considered the complaint and didn't uphold it, saying there wasn't enough evidence to show W was under control when the accident happened.
- Mr M disagreed, saying dogs are routinely let off leads and so, the policy should make it clear what "under control" means in these circumstances.
- The complaint was subsequently looked at by another investigator who upheld it. She was persuaded by Mr M's testimony in which he explained the recreation ground was largely enclosed and that W was familiar with the grounds and had never tried to escape before. She also considered W's veterinary notes which stated he was a well-behaved dog. So, she thought W was under control at the time of the accident, and that W's decision to pursue another dog out of the park was out of character and not something W's owners could have reasonably foreseen.

- Building Block disagreed and asked for the complaint to be passed to an ombudsman.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm upholding this complaint and I'll explain why.

Building Block has said W wasn't "under control" at the time of the incident, so Mr M hadn't therefore, complied with the policy terms and conditions.

Policy term 5 says a dog that is on a designated road must be on a collar and lead and under control. From what I've seen, I think it would be unreasonable to consider the recreation ground where W was being walked as a designated road because it's a large open green space. So, I'm not persuaded this policy term is applicable in the circumstances.

Turning to policy condition 4 – this requires Mr M to provide "proper care and attention" and "take all reasonable precautions" to prevent accidents or injury. And policy condition 6 requires that Mr M ensure his dog is "under control" and that "due care" should be maintained to prevent a dog from escaping. These aren't defined in the policy, but essentially, for Building Block to rely on these conditions, it needs to demonstrate that Mr M didn't show "reasonable care" on the day of W's accident.

If an insurer declines a claim because the consumer failed to take reasonable care, there needs to be evidence to show the consumer acted in a way that amounted to recklessness. In determining this, we use the test of recklessness set out in the leading legal case on "reasonable care" – *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559. Here, it was decided that in order for an insurer to show a policyholder was in breach of the policy condition that requires them to take "reasonable care", the insurer needs to show the policyholder was "reckless" – in other words, that they recognised the risk, but took either no or inadequate measures to avert the risk.

Mr M says he took reasonable care and used his reasonable judgment to decide W was in a safe environment to be walked without a lead and that he didn't consider there to be a risk of accident. From what I've seen, I'm not persuaded Building Block has demonstrated Mr M didn't exercise reasonable care, and I'll explain why.

### *W's age, behaviour, and temperament*

W was 7 years old at the time of the accident and according to Mr M, had never run off before whilst walking off the lead. Mr M has spoken about W's excellent recall and this is supported by the Vet who treated W, who said:

*"Whilst treating [W] for his injuries [...] W's behaviour has been such that I would trust him when off-lead (appropriate recall, behaviour with other people and behaviour with other animals)."*

I find the vet's testimony particularly persuasive given their experience and the amount of time they'd spent with W. This, coupled with the fact W was an older dog (who unlike a puppy wouldn't still be learning recall skills) who had been walked at the recreation ground for many years and had never run off before, persuades me that Mr M's judgment that he had no reason to believe W wasn't under control, was a reasonable one.

### *Location*

I've already explained why I don't think policy condition 5 applies in the circumstances, as I don't think it's reasonable to deem the recreation ground a "designated road".

I have however, looked at the recreation ground to determine whether it was reasonable for Mr M to judge it a safe environment for W to be walked off the lead. From looking at online images, I can see it's a large open space – of approximately 5.5 acres - which is partially enclosed. There are residential roads to the east, west and, north side. The south perimeter backs on to residential gardens – this boundary is closest to the road where W was injured by a car.

Mr M has explained that the condition of one of the residential roads is poor – stating that potholes prevent traffic from driving along it, unless very slowly. And his description tallies with what I've been able to see from online images.

Given the size of the recreation ground and that the roads nearest the grounds are residential with light traffic, I don't think it was reasonable to have expected Mr M to have foreseen that W might be injured by a car on a main road which is not adjacent to the grounds.

#### *Owners' proximity to W*

Mr M has explained that at the time W exited the recreation ground W was approximately 200 metres from his wife and daughter, but that W remained in their line of sight. But that when it became apparent W wasn't responding to his owners' commands, Mr M's daughter ran after W. I have no reason to doubt this version of events. The photographs I've seen show that there weren't any visual obstructions between where Mr M's wife and daughter were standing to where W exited the grounds. And Mr M's daughter running after W satisfies me that they did act with due care to try and prevent injury.

On balance, I'm not persuaded Building Blocks has demonstrated the accident occurred because W's owners hadn't taken reasonable precautions or care of him, or that W wasn't under control. W being off the lead, doesn't mean he wasn't under control. So, it should pay the treatment fees up to the policy limit.

#### *Distress and inconvenience*

Understandably, W's accident was a traumatic event for Mr M and his family to experience. When considering whether compensation is warranted, what I have to consider is whether Mr M experienced distress and inconvenience which went beyond what would be reasonably expected in a claim such as this *and* which was attributable to Building Block's actions.

Mr M has said that throughout treatment he was told by Building Blocks that it would be covered up to the policy maximum benefit. I understand that Mr M had this impression, however, claims handlers wouldn't be able to determine the outcome of the claim, and I'm not persuaded they gave mis-leading advice or certainty the claim would be paid.

Mr M has also said that Building Blocks took longer than eight weeks to reply to his complaint. Mr M told us he complained to the insurer on 8 April 2021 – so it had until 3 June 2021 to respond to him. I can see its final response letter is dated 1 June 2021, so I can't agree it took longer than the time it's afforded.

I don't doubt this has been a distressing experience for Mr M, I understand seeing a pet in such a condition must have been extremely concerning for him. While I acknowledge

Building Block declining the claim would have been disappointing, I'm not persuaded this exacerbated this difficult time to an extent that I would look to award compensation.

### **My final decision**

My final decision is that Building Block Insurance PCC Ltd must pay Mr M the vet fees up to the policy limit (subject to proof of costs). If Mr M has already paid the vet fees interest\* must be added at 8% a year from the date he paid the fees to the day of settlement.

\*If Building Block Insurance PCC Ltd considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr M how much it's taken off. It should give Mr M a certificate showing this if he asks for one, so he can reclaim the tax from the HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 March 2022.

Nicola Beakhust  
**Ombudsman**