

The complaint

Ms B complains that Building Block Insurance PCC Ltd declined her pet insurance claim. My references to Building Block includes its agents.

What happened

Ms B has pet insurance for her dog, the insurer is Building Block.

In April 2021 Ms B's dog was struck by a vehicle. At the time Ms B had been grooming a horse at stables of a private house where she worked. Her dog wasn't on a lead and he had access to the garden. He was struck by a car driven by the owner of the house on the driveway through the garden. Ms B claimed £4,000 for her dog's vet treatment, the policy limit for vet fees. The total vet fees were much more.

Building Block declined the claim. It said Ms B's dog wasn't under control as he wasn't on a lead and was out of her sight at the time of the accident so there was no cover under the policy terms.

Ms B complained to us. She said:

- Building Block had refused to confirm whether her dog had to be on a lead at all times so she queried how she could decide when he should be on a lead.
- The policy doesn't define 'out of control' and Building Block had been unfair to say her dog was out of control. She'd reasonably thought the environment of the private house and garden was safe for her dog. It was a private estate with restricted access, there were many dogs and cats around running free and everyone looked out for them. There had never been a similar accident on the estate.

Our investigator said Building Block had unfairly declined the claim and should pay the full claim plus interest.

Building Block disagreed and wanted an ombudsman's decision.

I made a provisional decision to explain what I thought was a fair and reasonable outcome to the complaint. I said:

'Building Block referred to the following policy terms:

'General conditions

The following conditions apply to the whole of this Policy. Any other claims conditions and procedures are shown in the section to which they apply...

4. 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.

6. 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'.

There's no requirement in the two policy terms Building Block referred to for a dog to be on its lead. Policy term 5 under the General Conditions says '*You must comply with all laws that relate specifically to Your 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*'. But I've seen no evidence that the driveway was a 'designated road' and as the driveway was in private grounds I think that's highly unlikely. Building Block hasn't relied on this policy term to decline the claim and I don't consider this term applies to the circumstances of this case.

In the policy terms Building Block has relied on, policy term 4 says Ms B must provide 'proper care and attention' and 'reasonable precautions' must be taken to prevent accidents.

Policy term 6 says Ms B must ensure that her dog's always under control and due care must be taken to prevent escape and causing an accidental injury.

'Proper care and attention', 'reasonable precautions' and 'under control' aren't defined by the policy. In effect these terms require Ms B to take reasonable care of her dog to prevent accidents, Building Block doesn't think she did so.

If an insurer turns down 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. The test of recklessness we use is the one set out in the leading legal case on 'reasonable care' – *Sofi v Prudential Assurance* (1993) 2 Lloyd's Rep.559. In summary, a consumer failed to take reasonable care if they recognised a risk but took it anyway by taking measures which they knew were inadequate or taking no measures at all.

Ms B says she used her reasonable judgement to decide her dog was in a safe environment and she didn't consider there was risk of accident.

I think that was fair conclusion for Ms B to make. She was at her place of work in the stables of a private house, somewhere she knew very well and where she had taken her dog many times so he also knew the location. She says there was restricted access to the estate, which I've no reason to doubt, so it wasn't a busy location with unrestricted public vehicle access. There were many animals not tethered in the grounds, Ms B says 'everyone looked out for them' and there had been no similar accidents.

I've listened to the call Building Block made to the owner of the house who was driving the car who struck Ms B's dog. He said he was driving his car a short distance a little faster than usual due to being late. From what the owner said I don't think that was a usual occurrence.

Unfortunately there was an accident with Ms B's dog. But in the circumstances of this case I don't think Building Block reasonably said the accident occurred because Ms B hadn't taken reasonable precautions for her dog or that he wasn't under control. The dog being off his lead doesn't mean he was out of control.

For the above reasons I think the fair and reasonable outcome is for Building Block to pay the claim, and if Ms B's already paid the vet it should add interest as I've detailed below.

Building Block told us if it had paid the claim it would have deducted the £90 excess from the £4,000 claim, so it would have paid £3,910. Our investigator said Building Block needed to pay the full value of the claim. The vet invoice shows the full vet costs were about £15,000 so Ms B limited her claim to the £4,000 policy limit.

For the avoidance of doubt, Building Block needs to pay Ms B £4,000 for her claim without deducting the £90 excess. The policy says the excess isn't insured but I don't think that's clear enough that Ms B would never be able to actually receive the maximum policy limit of £4,000 under the policy because of how the excess would be applied. And we generally don't think it's fair and reasonable when the claim is for more than the policy limit (as is really the case here) for an insurer to deduct the excess from the policy limit otherwise the consumer will never be able to claim up to the limit'.

Both Ms B and Building Block responded to my provisional decision saying they had no further information to add.

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.

As Ms B and Building Block have no further information for me to consider I've no reason to change my mind as to what I think is a fair outcome to this complaint. For the reasons I've given in my provisional decision and this decision I uphold this complaint. I don't think Building Block fairly declined the claim and it must pay Ms B £4,000, which is the policy limit for her vet fees claim, without deducting the £90 excess, plus interest as detailed below.

Putting things right

Building Block must pay Ms B £4,000 which is the policy limit for her vet fees claim. If Ms B's already paid the vet fees interest must be added as detailed below.

My final decision

I uphold this complaint.

I require Building Block Insurance PCC Ltd to pay Ms B £4,000 which is the policy limit for her vet fees claim. If Ms B's already paid the vet fees interest* must be added at 8% a year from the date she 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 Ms B how much it's taken off. It should also give Ms B a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 16 March 2022.

Nicola Sisk
Ombudsman