DRN-3846319

The complaint

Mr L has complained that Casualty & General Insurance Company (Europe) Limited (C&G) has rejected his claim for damage caused by his dog to a third party's property.

I've previously issued a provisional decision in this case. In response to this I've received further submissions from C&G which I've taken into consideration and to which I refer below to the extent necessary.

What happened

Mr L's complaint arises from a claim he made under his insurance policy with C&G covering his dog who I'll refer to as "O". The policy covers liability to third parties for accidental damage. The benefit limit for such claims is £1,000. The relevant policy term says:

> "*Section 9 - Accidental Damage (Applicable to Elite Extra cover only) What is insured? This section covers You up to the Benefit Limit should Your pet cause damage to the personal property of someone who You are visiting with Your Pet*."

On 28 August 2021 Mr L's wife, Mrs L, went with O to visit some friends, who I'll refer to as Mr and Mrs D who also have a dog of the same breed as O. Mr and Mrs D's property has a swimming pool which is usually covered and the two dogs are accustomed to running over the cover of the pool when playing during regular "play-dates". On the occasion of Mrs L's visit, the pool was uncovered.

According to Mr L, on entering the garden O ran towards the swimming pool, and, unable to stop in time, fell in. He managed to swim to the edge of the pool at the shallow end but as there were no steps he struggled to get out. He put his front legs up on the side of the pool, and Mrs D and Mrs L tried to lift him out but as he scrambled to get out, the claws of his hind legs tore the swimming pool liner.

Mr and Mrs D contacted the company that maintains their pool and they were advised to drain it to prevent further damage. It has provided a quote of £6,804 for the replacement of the liner and necessary ancillary work.

Mr L considers that as his dog was responsible for this damage, it is his responsibility to cover the necessary repair costs. He therefore made a claim under the above quoted section of his policy.

After some considerable delay, C&G rejected Mr L's claim and referred him to the following section of his policy:

> "*You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage, as well as arranging and paying for Treatment for Your pet to reduce the likelihood of Illness or Accidental Injury.*"

C&G has also made reference to the fact that the quote for a replacement liner included “old felt removed” and takes this to suggest that the pool liner was in need of repair when the accident happened. It therefore expressed a doubt that O had caused the damage and believes that the pool liner was damaged on another occasion.

As Mr L was dissatisfied with C&G’s response to his claim, he complained to this service.

Our investigator initially expressed her view that Mrs L did provide proper care and attention and took all reasonable precautions it was possible for her to take. In her opinion it was not reasonably foreseeable that, having fallen into the pool, O would then cause damage to the pool liner, so Mrs L couldn’t be reasonably expected to guard against that risk. She didn’t consider that C&G has established that Mrs L didn’t take reasonable care to prevent O from damaging the pool liner, and that it was simply an unfortunate and unforeseeable accident. She considered that C&G had unfairly and unreasonably declined Mr L’s claim.

In response to our investigators initial view, C&G provided extensive further submissions. In the light of further information that Mr and Mrs D’s property was undergoing an extensive renovation at the time and wasn’t occupied, and it was an ongoing building site, it argued that Mrs L hadn’t taken appropriate care. It also said that it hadn’t seen any evidence that the damage actually occurred, that Mr L’s claim is covered by the policy, that the alleged damage was caused by O and not by the construction work underway, or evidence of any loss.

Mr L provided an equally detailed rebuttal of this, and provided extensive evidence that the majority of the garden, including the swimming pool area, was not affected by the ongoing works and the contractors had no right of access to this area, and Mr and Mrs D visited it regularly to maintain the garden. There were no contractors working on the day in question which was a Bank holiday. There were therefore no additional hazards for O which needed to be considered and protected against.

Our investigator issued a second view in which she changed her opinion. She considered that as the pool was uncovered, it was reckless behaviour to let the dogs run freely in an unfamiliar situation. She didn’t consider that Mr L had satisfied the burden of proof that he had suffered a loss which his policy covered, and she hadn’t seen any evidence to persuade her that the claim was covered by the policy and that the alleged damage was caused by O and not by the construction work being undertaken.

Mr L asked that his complaint be re-considered by an ombudsman. It was referred to me for a final decision from this service and I issued a provisional decision upholding Mr L’s claim. In response to this I’ve received further submissions from C&G which I’ve taken into consideration and to which I refer below.

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 maintaining my original decision, and I’ll explain why, and will comment on C&G’s further submissions.

I’m persuaded by the information provided by Mr L that the building work being undertaken at Mr and Mrs D’s property did not extend to the majority of the garden and the swimming pool area. There appears to be a clear demarcation between the area to which the contractors had access, and that to which they didn’t. The site safety notice referred to by

C&G would only have applied to the area to which the contractors had access. Mr and Mrs D and Mrs L were not unauthorised persons.

I don't consider there to be any connection between Mr and Mrs D's house being unoccupied and the presence of contractors in the house and a small part of the garden and the incident that led to the damage to the pool liner. Even if there were dangers present on the site as a consequence of the work being undertaken, the claim is unrelated to the presence of any such danger.

I'm also not persuaded by C&G's suggestion that the damage to the pool liner was caused on some other occasion, for example by Mr and Mrs D's contractors, or that it was in poor condition. The company who provided the quote for the liner's replacement has stated:

> *"We can confirm that we installed a new pool pump for you on the 18th August and can confirm that the engineer did a general check on the filter, pipework and the liner and confirm that the liner was still in good condition and had many years left before you would need to replace it."*
> *"In relation to the felt underlay, it is standard practice to replace the underlay when we replace liner as there is usually also damage to the felt through being water logged and stretched"*
> *"The use of the word old would be better described as existing just the same as the liner was existing.*
>
> *"It is our opinion that prior to the incident, the liner was functional and prior to the dog incident, the liner still had considerable life left."*

Given the above confirmation that the liner was in good condition on 18 August, the damage would have to have been caused by the construction work between 18 August and 28 August 2021 and there is no evidence supporting that.

However there is consistent evidence supporting an incident involving O on 28 August. There were three witnesses, date and time stamped photos and evidence of telephone calls Mr L made to C&G on Saturday 28 August and Tuesday 31 August to report the incident.

I'm not persuaded by the relevance of the discrepancies that C&G has referred to in its response to my provisional decision or as to the jeopardy that C&G says it has suffered because of the delay in submitting the claim. There is photographic evidence of the damage take on the day, but none that shows that this damage became greater over time and that as a consequence the cost of the repair has become greater. Given the quote for the repair, I don't consider it likely that C&G could argue that its liability should be less than the benefit limit of £1,000.

I also don't consider it conceivable that Mr L would've accepted liability for the pool liner being damaged by O and attempted to contact his insurers straight away if he hadn't genuinely believed this to be the case on the basis of information received from his wife and from Mr and Mrs D.

As to there being no financial loss to Mr L, there is clearly a liability that he has very fairly assumed to reimburse to Mr and Mrs D the cost of repairing the damage caused by his dog. I don't consider it a reasonable argument for C&G to say that it has no liability because Mr L hasn't so far paid anything for the repair. I understand that that the repair hasn't yet been made, but the liability to reimburse Mr and Mrs D for the cost of that repair remains.

I also don't accept C&G's argument that because there was other insurance that might've been claimed upon, C&G can avoid liability. I've seen no evidence of any other insurance

that Mr L might have had which would've covered this damage. I also don't consider that Mr and Mrs D's insurance should've been called upon even if their cover hadn't been restricted due to their property being unoccupied.

I maintain my opinion that the principal point at issue is quite limited, that being whether C&G can reject Mr L's claim in reliance on the policy term "*You must provide proper care and attention to Your pet at all times and take all reasonable precautions to prevent Accidental Injury or damage..*"

Injury or damage has to be reasonably foreseeable. The question is would a reasonable person in the position of Mrs L contemplate that the type of damage suffered - damage to Mr and Mrs D's swimming pool liner - was likely to follow if there was a failure to take reasonable precautions when O was playing with Mr and Mrs D's dog?

I consider that the risk of damage of the type caused wouldn't have been in the contemplation of Mrs L. From their witness statements, it appears that Mr and Mrs D's dog wasn't under any restraint either, so the possibility of damage to their pool by O or by their own dog wouldn't have been in their contemplation either.

A remote possibility of damage of the type that occurred is not enough. There has to be a sufficient probability to lead a reasonable person (in the position of Mrs L) to anticipate it (Atkins LJ in Jones v Whippy [2009] EWCA Civ.452, approving Lord Porter in Bolton v Stone [1951] AC).

C&G in its response has referred to the aforementioned need for sufficient probability. I don't consider that sufficient probability of a pool liner being ripped exists in this case. I consider it to be no more than a remote possibility. It could be argued that there was a possibility that one of the dogs might have fallen into the pool, but that is a different risk. At the time, the two dogs were under the supervision of three adults, none of whom, as presumably reasonable people, anticipated a sufficient probability that one of the dogs would fall into the pool. The risk of the pool liner being ripped is an even more remote probability. I don't agree with C&G that such a risk is "extremely high".

My conclusion is therefore that the damage caused by O was too remote a possibility. It wasn't damage that was reasonably foreseeable to occur if proper care and attention weren't taken. I consider that it is unfair and unreasonable for C&G to rely on the exclusion it relies upon to reject Mr L's claim.

C&G should therefore meet Mr L's claim subject to the other terms and conditions of his policy, which will include the benefit limit.

C&G has also acknowledged that the service it provided to Mr L wasn't up to the standard it aims to provide and has upheld his complaint in this regard. I consider that the trouble and inconvenience that this has caused Mr L, including the lack of clarity as to what it required from him by way of evidence, and the consequential delays in addressing his claim, merit compensation of £250.

My final decision

For the reasons I've given above, I'm upholding Mr L's complaint.

I require that Casualty & General Insurance Company (Europe) Limited:

1. meet Mr L's claim subject to the other terms and conditions of his policy.

2. pay Mr L interest on the amount so paid at the simple rate of 8% from the date he made his claim.
3. If it considers that it's required by HM Revenue & Customs to deduct income tax from that interest, to tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if Mr L asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.
4. pay Mr L £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 January 2023.

Nigel Bremner
Ombudsman