



<u>Decision Ref:</u>	2018-0184
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants made a claim under their household insurance policy arising from an injury suffered to a neighbour of the Complainants following the escape of the Complainants' dog. The Insurer declined the claim relying on specific provisions of the policy.

The Complainants' Case

The Complainants held a household insurance policy with the Insurer. On or about the 1st of February 2016, on a date when the Complainants were out of the country, the Complainants state that there was a bad storm which caused damage to the fencing around their house thereby allowing the Complainants' dog (a Staffordshire Bull Terrier) to escape into a public area. Thereafter, the Complainants' dog got into an altercation with a neighbour's dog. The neighbour who owned this second dog sought to intervene and, in the course of striking the Complainants' dog, apparently suffered an injury to her wrist. This neighbour brought a legal claim for compensation against the Complainants.

The Complainants seek that the Insurer provide an indemnity under the household insurance policy in respect of "*all and any claims*" that might arise. The Complainants argue that this should be provided as the matters were beyond their control and "*did not happen from any negligence*" on their part.

The complaint is that the Complainants made a claim on their insurance policy which, they maintain, was improperly declined by the Insurer. The Complainants seek that the Insurer "*stand over the claim made against*" the Complainants.

The Provider's Case

The Insurer declined the claim on the basis that *"the policy is clear in its exclusion of cover in respect"* of the Complainants' dog which is a restricted breed under the Control of Dogs Acts Regulations. The Insurer maintains that the cover provided under the policy *"excludes cover where dogs of such restricted breeds are not muzzled and under effective control (i.e. on a leash) at all times"*. The Insurer relies on the fact that the incident occurred in a public area in circumstances where the Complainants' dog was *"not muzzled and not on a leash"*.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 19 October 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, my final determination is set out below.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

Policy Terms and Conditions

The Insurer has identified *"Section 1: liability to Others"* of the policy in support of its decision to decline the Complainants' claim.

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This section expressly provides for an exclusion of liability in respect of the following:

the ownership, possession or use of any animal, but this exclusion does not apply to ponies, saddle horses, domestic cats and dogs (other than dangerous dogs, as specified in Regulations made under the Control of Dogs Acts or amendments thereto, unless such dogs are, at all times, muzzled, under effective control, and capable of identification).

Legislation

The Regulations made under the Control of Dogs Acts refer to the Control of Dog Regulations as set out in Statutory Instrument 442 of 1998. Section 5(1) of these Regulations set out a list of certain breeds of dog and include, at letter (j) thereof, Staffordshire Bull Terriers.

Section (2) goes on to provide as follows:

(2) A person shall not permit a dog to which this article applies to be in a public place unless such dog is:—

- (i) securely muzzled; and*
- (ii) being led by a sufficiently strong chain or leash, not exceeding two metres in length, by a person over the age of sixteen years who is capable of controlling the said dog.*

Analysis

The terms and conditions of the policy clearly exclude liability, subject to certain exceptions, in respect of domestic dogs in the event that the dog in question is a dangerous dog as specified in Regulations made under the Control of Dogs Acts. I accept that the Complainant's breed of dog has been categorised in the Regulations as such a 'dangerous dog'. Accordingly, I accept that the Insurer was entitled to rely on the exclusion provided that one of the exceptions to the exclusion does not apply.

The relevant exceptions are that the exclusion will *not* apply, notwithstanding the dangerous nature of the dog, in the event that the dog was at all times muzzled and under effective control. There is a third requirement dealing with the ability to identify the dog which does not arise in the context of this complaint.

In this case, the Complainants' dog was not muzzled and was not under effective control, whether by way of leash or otherwise. Rather, the Complainants' dog was un-muzzled and at large in a public area. Accordingly, notwithstanding the circumstances in which this arose, I must accept that the Insurer was entitled to rely on the exclusion and was entitled to decline to provide cover to the Complainants.

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The Complainants argue that the Company should be in some way restricted or prevented from relying on the exclusion in circumstances where their dog escaped through no fault of their own and in the absence of any negligence on their part.

Given the wording of the contract between the Complainants and the Insurer, namely the policy, this is not the case. The relevant policy terms and conditions do not turn on the presence of absence of negligence on the part of policy holders. Rather, the policy sets out in absolute terms that which will attract cover and that which will not.

It is worthy of mention that Section 21 of the Control of Dogs Acts 1986 provides for the strict liability in damages of a dog owner in respect of damage caused in an attack on any person by the dog. This removes any mental element or any requirement to establish negligence on the part of the dog owner. The reasons for this are clear and include the fact that the Oireachtas saw fit to impose a higher responsibility on dog owners to ensure the wellbeing of members of the public who may come into contact with dogs.

Returning to the complaint before me, the Complainants' dog was un-muzzled and at large in a public area when the incident with the neighbour happened.

Whilst I accept that this may have happened as a result of an unusually strong storm and that it may have happened in the absence of negligence on the part of the Complainants, this is not relevant for the purposes of assessing the validity of the Insurer's reliance on the exclusion.

For the reasons set out above, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

13 November 2018

Pursuant to **Section 62** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,**
- (ii) a provider shall not be identified by name or address,**

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.