



<u>Decision Ref:</u>	2018-0020
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Farm & Livestock
<u>Conduct(s) complained of:</u>	Rejection of claim Claim handling delays or issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant submitted a claim under his Farm Multiperil Policy for the cost of replacing an electric fence which had been damaged by lightning in June 2016.

The Provider informed the Complainant that, due to the submission of documentation containing an incorrect model number for the damaged unit, the damaged unit not being available for inspection by the Loss Adjuster, and the absence of any proof of purchase of the electric fence claimed, it was unable to reimburse the Complainant the full sum of the replacement model claimed.

The Provider made a settlement offer of €500.00 to the Complainant, to enable him to buy a mid-range replacement electric fence, of lesser value than the model claimed. The Complainant has declined to accept this settlement, and the Provider has subsequently withdrawn the offer.

The Complainant's complaint is that the Provider has incorrectly handled and assessed his claim. He seeks payment of the full cost of replacing his damaged electric fence with a new fence of equivalent make and strength.

The Complainant's Case

The Complainant holds a Farm Multiperil policy, underwritten by the Provider.

The Complainant states that he had a Gallagher electric fence (40 joules) in use on his farm, and that he had owned this fence for some two to three years when it was damaged by lightning strike in June 2016.

The Complainant notified the Provider on 17 June 2016, by telephone, of the damage to his electric fence. A claim for the cost of replacing the electric fence was registered against the Complainant's policy, and the Provider appointed a Loss Adjuster to communicate with the Complainant in relation to the details of his claim.

The Complainant states that, at that stage, he had already sent the damaged sensor unit to a local engineer for repair, but that it had been the engineer's opinion that the estimated cost of repairs would exceed the cost of a replacement unit. The Complainant states that, when the Provider requested photographs of the damaged unit for inspection, it came to light that the engineer had disposed of the fence sensor without the Complainant's knowledge.

The Complainant states that the Loss Adjuster, with whom he spoke on the telephone on 17 June 2016, had failed to advise him during the initial claims call that he should retain the damaged fence unit for inspection. The Complainant states that, if he been advised of this during his initial claims call, and not in a letter received 5 days later, his claim "*would not have been delayed by 3 months and not be in the mess it is today*".

The Complainant submitted a quotation for repairs from the engineer, to the Provider. He acknowledges that the engineer wrote an incorrect model number on his inspection report, but states that this was because he could not see the model number as it had been obscured by paint. The Complainant states that he himself provided the engineer with the model number, albeit an incorrect one. The Complainant states that this was because the Provider "*hounded*" him for a make and model number, when the unit had been deemed uneconomical to repair. The Complainant submits that, as a farmer, he was concerned with the strength of the electric fence and not the model number. He states that he knew it was a Gallagher 40 Joule fence, but that he could not remember the model number and had to ring his local Co-Op to get this information. The Complainant states that he ended up advising the repair engineer of an incorrect model number by mistake.

The Complainant acknowledges that he has been unable to provide proof of purchase of the electric fence, but states that he is a farmer, and not an accountant or book-keeper. He states that he is not perfect in his record keeping but that he is not seeking to obtain monies to which he is not entitled under the policy, and objects to any suggestion by the Provider that this might be the case.

The Complainant submits that, if he had been told to retain the damaged fence, he would have ensured that it was available for inspection by the Loss Adjuster and the subsequent

/Cont'd...

difficulties identifying the correct model number, and establishing his ownership of a Gallagher fence, would not have arisen.

The Complainant states that the Provider has refused to reimburse him the cost of a replacement Gallagher fence, and has offered him only the replacement value of a lower cost Cheetah 40 Joule electric fence, which the Complainant states would have left him out of pocket.

The Provider's Case

The Provider states that the Complainant notified it of a claim for lightning damage to his electric fence on 17 June 2016. The Provider states that the claim details were taken from the Complainant by a Loss Adjuster on the same date and that, on that date also, the Loss Adjuster issued a letter to the Complainant outlining what was requested of him. The Provider states that in this letter, the Complainant was advised not to dispose of any damaged materials.

The Provider states that the Complainant submitted a report and quotation for the replacement of a Gallagher fence, model number M58001, costing €2,100.00. The Provider states that this specific model is one of the most expensive and top of the range Gallagher fences on the market. The Provider states that, on 6 July 2016, its Loss Adjuster requested a photograph of the Complainant's damaged fence to confirm the make and model number, but was advised by the Complainant, on 8 July 2016, that the damaged unit had been disposed of by the repair engineer. The Provider states that this was despite the fact that, two days earlier, the repair engineer had informed the Loss Adjuster during a telephone conversation that he still had the fence unit in his possession.

The Provider submits that, during the course of assessing the claim, it became clear that the Complainant did not own the Gallagher model number claimed. The Provider states that the Complainant then "*changed his version of events and claimed that he had an older model*", and stated that he had told the repair engineer the make and model number to write down as the model number on the unit had been obscured by paint.

The Provider submits that it requested proof of the Complainant's ownership of the fence claimed but that, to date, the Complainant has been unable to submit any documentation to support his claim for a Gallagher fencer. The Provider submits that a representative of Gallagher Ireland has informed it that it has no record of the Complainant purchasing any of its high powered fences, of either model claimed, which it submits would have required, by law, certification by Gallagher Ireland.

The Provider indicates that, despite the discrepancies in the Complainant's claim, it was willing to offer the Complainant a €500.00 settlement sum. The Provider submits that an average Cheetah electric fence is valued at €400.00.

The Provider states that it has now changed its position with regard to the settlement sum offered, and has withdrawn this offer. The Provider states that it has listened to the original claim call, between its Loss Adjuster and the Complainant, which took place on 17

/Cont'd...

June 2016, and notes that during this call the Complainant informed the Loss Adjuster on two occasions that the damaged electric fence, which had been damaged by lightning and required replacement, was of the less expensive Cheetah brand.

The Provider states that, in light of this, it is clear that the reason the Complainant could not submit documentation to support his claim for a damaged Gallagher electric fence, was that he did not own that make or model of fence. The Provider states that, in these circumstances, it is withdrawing its previous offer of €500.00.

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 Complainant was 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 on 27 February 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, the final determination of this office is set out below.

The Complainant holds a Farm Multiperil policy, underwritten by the Provider. The Complainant notified the Provider by telephone, on 17 June 2016, of a claim under his policy for the cost of replacing an electric fence which had been damaged by lightning.

The Complainant's complaint is that the Provider has incorrectly handled and assessed his claim. The Complainant submits that he was not told by the Provider's Loss Adjuster, during the initial claims telephone call, to retain the damaged fence unit for inspection. The Complainant submits that, if he had been told this, he would have ensured that the damaged fence unit was available for inspection by the Loss Adjuster. The Complainant

/Cont'd...

submits that the subsequent difficulties he experienced identifying the correct model number, and submitting the documentation required by the Provider to establish his ownership of the fence, would not then have arisen.

The Complainant seeks payment of the full cost of replacing his damaged electric fence with a new fence of equivalent make and strength.

It is the Provider's response that it followed its normal procedures in investigating and validating the Complainant's claim, that the Complainant was advised of the steps to be followed, and that he was given every opportunity to submit the required documentation to support his claim. The Provider states that the Complainant has failed to establish his entitlement to the monies claimed.

The Provider has accepted that the Complainant had cover in place for lightning damage to his electric fence. Thereafter, there was an onus on the Complainant to submit the required documentation necessary to substantiate his claim.

Upon request by this office, the Provider has submitted recordings of the telephone calls which took place between the Complainant and the Provider's representatives relevant to the Complainant's claim, from the date of the initial claims calls which took place on 17 June 2016, up to the Loss Adjuster's call to the Complainant on 18 August 2016 advising that, without further documentary proof of his claim, it was standing over its settlement offer of €500.00.

These recordings include a telephone call which took place on 6 July 2016 between the Provider's Loss Adjuster and the Complainant's repair technician, and the telephone call which took place on the 6 July 2016 between the Loss Adjuster and a representative of the Irish distributor of the electric fence model claimed by the Complainant.

These recordings have been made available to the Complainant. The contents have been considered as part of the adjudication of this complaint.

It is evident from these recordings, and not in dispute, that the Complainant first notified the Provider of his claim for lightning damage to his electric fence by telephone on 17 June 2016. During the first claims notification call from the Complainant on 17 June 2016, the Provider representative advised the Complainant in relation to the policy excess, and confirmed that he would set up the claim under the policy. He also advised that a Loss Adjuster, appointed to act on behalf of the Provider, would be in contact with the Complainant to explain the policy cover.

A recording of a telephone call placed to the Complainant by the Loss Adjuster later that same day, 17 June 2016, records that the Loss Adjuster sought further details in relation to the circumstances of the claim, and advised the Complainant that he would require a report confirming the model of fence in question, the cause and extent of the damage sustained, and an estimate for the replacement or repair costs.

/Cont'd...

It is not evident from these recordings that the Complainant was told during either of the claims calls on 17 June 2016, that he should **not** dispose of the damaged fence. I accept that neither the Provider representative who responded to the Complainant's initial claims notification call, nor the Loss Adjuster who telephoned the Complainant later in the day to obtain further details in relation to his claim, advised the Complainant that he should preserve the damaged fence for inspection and confirmation of damage or loss.

However, the Provider has submitted a copy of a letter which issued to the Complainant from the Loss Adjuster later that same day, 17 June 2016, setting out the requirements of the claims process, in the following terms:

"As advised, we do need certain information in order to progress your claim. Please therefore submit claim details for consideration as follows:

- *Technicians report confirming make and model of the damaged fencer as well as outlining cause and extent of damage, including a detailed estimate for repairs/replacement.*

As per our telephone conversation, please be aware that:

...

- ***You should not dispose of any damaged material, but keep it safe so we can inspect and confirm damage or loss, wherever necessary.*** [my emphasis]

Accordingly, although the Complainant did not receive any specific instructions over the telephone in relation to the disposal, or otherwise, of the damaged fence, it is clear that he was informed in writing, by a letter issued that very same day, of the necessity to keep the damaged fence safe for possible inspection as necessary. Once this letter, setting out the claims requirements, issued to the Complainant on 17 June 2016 (which was a Friday), it is reasonable to assume that it was received by the Complainant within a matter of days. The Complainant himself has submitted that he received the letter some 5 days later, ie. the following Tuesday or Wednesday (21 or 22 June 2016).

I note that the Complainant submitted a quotation from the repairs technician for replacement/repairs to the damaged electric fence dated 24 June 2016. I note also that the telephone call recordings indicate that the Loss Adjuster spoke to the repairs technician about the damaged fence unit on 6 July 2016 and that, when asked whether he still had the damaged fence unit, the repairs technician advised the Loss Adjuster that *"yeah, I have it at home, yeah"*.

It is reasonable to assume that, as of 21 or 22 June 2016, the Complainant had been in receipt of the Loss Adjuster's letter setting out the claims requirements, and that the Complainant had been made aware that the damaged unit should be retained and kept safely for inspection as part of the Provider's claims confirmation process. It is my view that there was an onus on the Complainant, once in receipt of that information, to ensure that the repair technician did not dispose of the damaged unit. It is my view, indeed, that

/Cont'd...

he had a reasonable amount of time within which to ensure the preservation of the damaged fence unit.

In these circumstances, I consider that any difficulties which the Complainant may have experienced subsequently, as a result of the disposal of the damaged unit, in identifying the correct model number and establishing the validity of his claim, although unfortunate, were not due to any wrongdoing or failure to advise on the part of the Provider or its appointed Loss Adjuster. Accordingly, this aspect of the complaint is not upheld.

In terms of proving his claim for the replacement of the damaged electric fence, there was an onus on the Complainant to submit the requisite documentation necessary to support the details of his claim.

The Complainant submitted a claim for a Gallagher electric fence, model number M58001, with a quoted replacement cost of €2,100.00. The submissions show that the Complainant submitted a damage report from his repairs technician, dated 24 June 2016, which stated as follows:

*"Gallagher Fencer
M58001*

Tested fence unit and found 1st transformer and control unit blown due to lightning.

Estimated cost of repairs exceeds cost of new unit."

In addition, the Complainant submitted a Quotation from his local Co-Operative, dated 1 July 2016, for a "Gallagher M58001 58 Joule Mains Unit" in the sum €2,100.00.

The submissions show that, on 6 July 2016, the Loss Adjuster spoke to the repairs technician, and was advised that he still had possession of the damaged unit. On the same date, the Loss Adjuster telephoned the Complainant to request photographs of the damaged unit for inspection, in order to confirm the make and model of the fence that had sustained damage. On 8 July 2016 the Complainant informed the Loss Adjuster that the damaged unit had been disposed of by the repairs engineer, without his knowledge. Consequently, the Loss Adjuster was unable to inspect the damaged fence.

The submissions show that the Loss Adjuster advised the Complainant by telephone on 8 July 2016 that, without being able to clarify the details of the fence make and model, it would be difficult for the Complainant's claim to proceed. In response, the Complainant stated that he would inquire with the local Co-Operative where he had purchased the electric fence to see if it had retained any record of the model number he had purchased.

The submissions show that, upon further inquiry by the Loss Adjuster, the Complainant acknowledged during a telephone conversation with the Loss Adjuster on 13 July 2016 that the model number quoted in his claim had been incorrect, and that he had in fact purchased an older model of Gallagher fence from the Co-Operative, about three years previously, which had cost him about €1,200.00. The Complainant explained that he had

/Cont'd...

made a mistake in providing an incorrect model number to the repairs technician, which had then been entered in the repair technician's damage report.

I note that, in these circumstances, the Provider requested that the Complainant obtain and submit additional proof of purchase of the Gallagher fencer claimed, in order to support his claim, either from the Co-Operative which sold him the fence in question, or in the form of bank statements detailing the payment transaction, or receipts for his farm tax returns. The Complainant rang the Provider on 21 July 2016 to advise that the Co-Operative had no record of selling him the electric fence, and that he had been unable to obtain any proof of purchase of the electric fence in question.

The Complainant acknowledges that his record keeping is not good, but asserts that he is a farmer, more interested in the power of the electric fence than the make or model. He states that he is not a bookkeeper or accountant. I accept that this may well be the case. However, in circumstances where the Complainant sought to be reimbursed the replacement cost of a particular make and model of high powered electric fence, and in circumstances where there were discrepancies in the fence details submitted in the claim, and the damaged unit had been disposed of before the Loss Adjuster could inspect and confirm the make and model number, it was, in my view, reasonable of the Provider to request the submission of additional proof of purchase to support the Complainant's claim.

Given that the Complainant has claimed to replace a damaged Gallagher fence which he submits that he had purchased for approximately €1,200.00 no more than 3 years before the damage occurred, it is most unfortunate that he has been unable to provide any evidence that he had purchased such an electric fence, or that he was in fact in possession of it.

I note that, during a telephone conversation which took place on 16 August 2016, the Provider advised the Complainant that, while it could not allow for the cost of a high end electric fence without proof of purchase, it was prepared to offer a figure of €500.00 towards what the Provider considered to be an average alternative middle of the range electric fence.

The Provider submits that it has subsequently listened to the recording of the claims call on 17 June 2016, which has also been submitted for consideration by this office, in which the Complainant advised the Loss Adjuster that the damaged electric fence which required replacement was "*a Cheetah fencer*" and not a Gallagher fence. The Provider states that, in these circumstances, it has withdrawn its previous offer of €500.00.

Taking into account all the circumstances of this complaint, I take the view that the Provider has not acted unreasonably in its dealings with the Complainant in relation to his claim. The evidence would indicate that the Provider fully advised the Complainant in relation to the requirements for the assessment of his claim, and gave him reasonable opportunity to submit the documentation required to support his claim.

/Cont'd...

Bearing in mind the discrepancies in the make and model number of the damaged electric fence quoted in the claim, and the disposal of the damaged unit before it could be inspected, and in light of the Complainant's inability to make available any documentation supporting the purchase or possession of the particular electric fence which is the subject of his claim, I accept that the Complainant has been unable to support his claim.

For these reasons, it is my Legally Binding Decision that this complaint is not upheld.



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**

23 March 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) in accordance with the Data Protection Acts 1988 and 2003.