



<b><u>Decision Ref:</u></b>	2018-0041
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues Disagreement regarding Pre-accident value provided
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

##### **Background**

The Complainant's complaint is that the Provider has delayed in making payment pursuant to an insurance claim and that there was an under valuation of the insured's jeep by the Provider in this regard.

##### **The Complainant's Case**

The Complainant is represented by his father in relation to this Complaint.

On 04<sup>th</sup> May 2012 the Complainant's jeep was stolen and was subsequently recovered, vandalised.

A claim was submitted to the Provider, being the insurers with whom the vehicle was comprehensively insured. The Complainant's Representative submits that the value of the vehicle had been agreed with the Insurance Representative, a month previously, at €4,000.

The Complainant's Representative submits that, following the submission of his claim, an offer was made to his son, by the Provider, on 07<sup>th</sup> January 2014, of €1,500, in full and final settlement of the claim. This offer was rejected by the Complainant's Representative, by letter to the Provider, dated 14th January 2014.

During 2014, the Complainant's Representative says that he says he made enquiries about the scrap value of the damaged jeep, with a view to buying it from the Provider. He submits that he was eventually told that he could not purchase the jeep for salvage.

In January 2015, an offer of settlement of the claim was made, in the sum of €2,250, which the Complainant's representative submits that he reluctantly accepted. He submits that a payment was also to be made towards the cost of getting the vehicle home from the Garage premises where it was being stored.

The Complainant's Representative submits that, on 19<sup>th</sup> January 2015, he wrote a letter to the Provider's Claims Department, accepting the offer of €2,250, and that he attached the Registration Certificate of the vehicle and a bill toward towing from the Garage owner in question.

The Complainant's Representative submits that also within the letter, he gave instructions as to where the jeep could be collected from and included the Garage Owner's phone number. The Complainant's Representative says that the vehicle remains stored there.

The Complainant's Representative says that, to date, he has not received a response to his letter.

The Complainant's Representative submits that there was an under valuation of the Complainant's jeep by the Provider, for the purposes of settlement. By way of submissions dated 20<sup>th</sup> December 2015, the Complainant's Representative stated that the particular type of jeep in question had, prior to 1999, contained a 3.1 litre engine. He says that during 1999, the manufacturer changed the size of the engine, to 3.0 litre engine. He submits that the 3.0 litre engine gave a lot of trouble and resulted in the manufacturer recalling all of the jeeps sold and replacing parts in some. The Complainant's Representative submits that, as a result of the engine failure, the jeeps got a bad name and dropped in value. He submits that, however, jeeps sold prior to 1999 increased in value, as they had the 3.1 litre engine and were trouble free. The Complainant's Representative submits that a 1998 jeep was selling, in April 2012, for anything between €4,000 and €6,000, depending on condition, whereas a 1999 onwards jeep was not selling for as much.

The Complainant's Representative submits that he asked the Provider when the claim was being processed to replace the damaged 1998 jeep with another 1998 jeep with a similar mileage but says that this request was refused.

The Complainant's Representative submits that there was no way that a 1998 jeep of that make could be purchased for €1,500, in 2012. The Complainant submits that he and his son had tried to buy one and failed.

### **The Provider's Case**

The Provider notes that this complaint is in relation to the theft of a vehicle, belonging to the Complainant, which was recovered damaged but was deemed to be a category B write off. It says that the claim was investigated and an assessor inspected the vehicle and placed a pre-accident value on the vehicle of €1,500, as he had found same vehicle with higher mileage for sale at that time for €1,200.

The Provider says that its position is that the claim was handled fairly and correctly and that it reached an agreed settlement on the 19<sup>th</sup> January 2015, when the Complainant's Representative's accepted an increased offer of €2,250.

The Provider submits that after this, the Complainant's Representative indicated that he wanted to keep the engine of the vehicle in question, for use in another vehicle, which it says it allowed, deducting €250 from the monies offered, to account for this. The Provider says that the Complainant's Representative accepted the terms of the settlement but then, when it contacted him regarding the collection of the remaining salvage, which under the terms and conditions of the policy it says it is entitled to take, and also by law had to be disposed of, he said no, and never reverted to the Provider.

The Provider submits that whilst significant delays did occur throughout the lifetime of the claim, that these arose due to the actions of the Complainant and/or his Representative.

The Provider submits that numerous reminders were issued to the Complainant and/or his Representative, by the Claim Handler dealing with the claim, throughout the course of this claim. It submits that since all of the reminders which issued were ignored, it was left with no option but to close its file.

The Provider submits that at no stage did the Complainant, or his Representative, produce any evidence to support their claim for an increase in the pre-accident value of the vehicle; rather they simply requested one, and, as a goodwill gesture for their loyal custom, the Provider says the offer was increased to €2,250.

In relation to the restitution monies sought by the Complainant's Representative, as detailed in the complaint form, dated 20<sup>th</sup> December 2015, the Provider submits that the Complainant's Representative was advised at the beginning of this claim, that storage costs are not covered under the policy. In relation to a refund in premium, the Provider submits that the customer did not request to cancel the policy, and says that, in any event, there is no refund of premium if a claim has occurred during the period of insurance, as per the policy terms and conditions issued at inception of the policy. In relation to the Complainant's request for miscellaneous expenses, the Provider submits that these do not fall to be covered under the policy of insurance.

/Cont'd...

The Provider submits that if the customer now wishes to accept the agreed settlement of €2,250 (comprising settlement monies of €2,000, a towing fee of €250, and the engine) then this can be dealt with, but it submits that, legally, it still needs to collect and dispose of the vehicle, since it was classified as end of life, by its motor assessor.

### **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 20 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below. Whilst all submissions received since the Preliminary Decision was issued have been considered in detail, these submissions do not alter the outcome of my Decision.

The Policy of Insurance in question was incepted on 18<sup>th</sup> September 2007 and renewed annually, until its lapse, on 12<sup>th</sup> April 2013. The relevant Period of Insurance, during which time the Complainant's loss occurred, is 13<sup>th</sup> April 2012 to 12<sup>th</sup> April 2013, as set out in the "*Commercial Vehicle Insurance Schedule*", which issued to the Complainant on 26<sup>th</sup> April 2012.

Circumstances of the Complainant's Loss

On 04<sup>th</sup> May 2012 the Complainant's jeep was stolen and was subsequently recovered, vandalised.

The Accident and Claims Investigator, appointed by the Provider, furnished a Report to the Provider, dated 11<sup>th</sup> June 2012.

The "Narrative of Occurrence", as set out in the Investigator's Report, provides as follows:

*On the 04<sup>th</sup> May 2012, [Employee], the named driver, drove [the model of the jeep and registration number] from the main farm owned by the insured's father, [name], approximately one mile to an out-farm situated on the main ... Road, arriving at 7.00am.*

*He parked the jeep at the rear of the milking parlour out of sight of the entrance of the farm.*

*He states that he does not remember whether he locked the jeep or not but that he put the keys in his pocket.*

*He last saw the jeep at 10.00am when he left the out-farm on the tractor and returned to the main farm.*

*He returned to the farm at about 5.00pm and did some further work.*

*At about 6.00pm he went to where he had left the jeep and found that it was missing.*

*He states that he tried to contact [the Complainant's father] without success. He returned to the main farm on the tractor but there was nobody else there.*

*He waited until [the Complainant] came home and states that the insured did not want to ring the gardai until his father came home in case he had taken the jeep.*

*When [the Complainant's father] arrived home shortly after 10.00pm they realised that the jeep had been stolen.*

*[The Complainant's father] then reported the matter to the Gardai in [Xxxxxxxx].*

*On Sunday the 06<sup>th</sup> May 2012 the [Complainant/ his father] were contacted by the Gardai and informed that the jeep had been located in woods near Xxxxxxxx, Co. Xxxxxxxx. It had been extensively damaged.*

/Cont'd...

The Complainant's complaint is that the Provider has delayed in proceeding to make the settlement payment, under the Policy, and undervalued the settlement amount offered for the claim.

I believe it may be useful, taking into account the nature of the complaint, to set out a timeline of events in relation to the insurance claim.

### **Timeline of Events**

As noted above, the Complainant's loss occurred on **04<sup>th</sup> May 2012**, when the vehicle was stolen.

The vehicle was located on **06<sup>th</sup> May 2012**.

An inspection of the vehicle was carried out by the Provider's assessor on **22<sup>nd</sup> May 2012**.

By letter dated **23<sup>rd</sup> May 2012**, the Provider's Claims Department, wrote to the Complainant's Solicitor, advising that a Motor Assessor had inspected the vehicle. The letter advised that the Complainant could proceed to remove the vehicle from the yard where it was being stored. The letter noted that the writer had previously advised the Complainant that storage charges are not covered under the policy, and that the Complainant should collect his vehicle as a matter of urgency.

The Motor Assessor's Report was received by the Provider on **24<sup>th</sup> May 2012**.

By letter dated **21<sup>st</sup> June 2012**, the Claim Handler wrote to the Complainant's Solicitor, as follows:

*"We have received the motor assessor's report regarding the vehicle. The assessor has deemed your vehicle end of life due to the extent of damage relating to this accident. He placed a pre-accident value of 1500 (including VAT) on the vehicle. We are satisfied that this represents the current market value of the vehicle.*

*In order to proceed we will require the original vehicle licensing certificate and keys for the vehicle to enable us to deal with the claim. [The Provider] will be taking over the salvage on the vehicle, therefore please remove any personal items from the vehicle as soon as possible and confirm the location so we can arrange collection.*

*We would like to remind you that storage charges are not covered under the policy.*

*Please contact [contact details] to confirm your acceptance of this offer. Alternatively you can contact us by email at [email address] or by fax at [fax number].*

/Cont'd...

*We await hearing from you.”*

By email dated **27<sup>th</sup> June 2012** the Complainant’s Solicitor wrote to the Claim Handler and requested an increase in the amount of money offered, stating:

*“I confirm that I have taken up to date instructions from my client. He is not happy to accept this figure of 1,500.00 as he believes it is grossly undervaluing the vehicle. He states that the vehicle was insured one month before it was stolen. [The Provider] insisted on it being insured for 4,000.00.*

*In this regard please reply with an amended offer. Please note that my client is now without a vehicle for a number of weeks. Also please note that you did not have to pay any storage charges.”*

I note, in this regard, that as per the statement contained in the Complainant’s Representative’s letter to this Office, received on the 14th December 2015, that the *“value of the vehicle had been agreed with the [Provider’s] Representative a month earlier at €4,000 a reduction of €2000 from the previous year. This was done in my home when my Insurances were due for renewal and review.”*

The Claim Handler responded by email of same date, that, it was, unfortunately, not in a position to increase its offer and advised that *“At no stage do our local office advise customers on what sum insured to put on their vehicles. This is the customer’s decision.”*

Because this discussion took place in the Complainant’s Representative’s home, there are no call recordings available by way of evidence in this regard.

After receiving no further contact from the Complainant or his solicitor, the Provider issued a follow up letter, to the Complainant, dated **25<sup>th</sup> February 2013**, asking him to contact the Provider’s Motor Team, to confirm whether he would be proceeding with the claim.

There is an Internal File Note of the Provider, which states that on 08<sup>th</sup> March 2013, the Complainant rang the Provider to advise that he was going ahead with the claim, but that he had somebody else dealing with the claim at that they would be in touch in due course.

By email dated **08<sup>th</sup> April 2013**, the Provider’s Sales Representative who had previously dealt with the Complainant’s father regarding Policy Renewals, made contact with the Provider’s Claims Department, to see if the Provider would increase the offer:

*“I advised [the Complainant’s] dad...that the PAV of the jeep was correct at €1500 as it had high mileage and a similar jeep from another garage that [Assessor] checked with, in the region of €1200...”*

/Cont’d...

*[The Complainant's Representative] says all he wants is the same jeep with year and engine and if it could be supplied to him by [the Provider] he would be happy with that.*

*[The Complainant's Representative] says [the Provider] are being unrealistic with the offer of €1500 for his jeep with a higher spec engine.*

*Can you ring [The Complainant's Representative phone number]...and discuss further with him to reach a settlement!*

*[The Complainant's Representative] pays all the insurance and bills for the farm and for [the Complainant]. All the renewals are due on the 12<sup>th</sup> April and are totalling €8010.00".*

The Claim Handler responded the same day, stating "I will give him a call but unfortunately we cannot increase the offer."

There is an Internal File Note of the Provider, dated **09<sup>th</sup> April 2013**, stating that the Claim Handler had tried to contact Complainant's Representative but had no received no answer.

On the **10<sup>th</sup> April 2013**, the Provider issued another letter of offer to the Complainant, in the sum of €1,500, which did not represent an increase on previous offers.

By letter dated **15<sup>th</sup> April 2013**, the Provider's Sales Representative again contacted the Claim Handler to query whether an increased offer could be made. The Claim Handler responded in the negative.

The next correspondence between the parties, was by way of letter, dated the **16<sup>th</sup> July 2013**, from the Provider, to the Complainant, advising that as it had not heard back in relation to this matter, and in the event it did not hear from him within 21 days, it would assume that he was not proceeding with the claim and would close its file in the matter.

There is an internal email of the Provider, dated **23<sup>rd</sup> September 2013**, advising the Claims Service that the "ex-gratia committee" had agreed to settle the claim for €2,250.

By email dated **23<sup>rd</sup> September 2013**, a member of the Provider's Motor Team, wrote to the Sales Representative, advising her that he had tried to contact the Complainant's father on a couple of occasions that day but had received no response and that the salvage and that "VLC" needed to be collected before it could proceed to issue payment.

By letter dated **24<sup>th</sup> September 2013**, the same writer asked the Complainant to make contact with the Provider's Motor Team, to discuss and finalise the claim.

/Cont'd...



An Internal File Note of the Provider's, dated **13<sup>th</sup> November 2013**, states that the Claim Handler rang the insured and received no answer, so left a message.

A further letter issued from the Claim Handler, on **13<sup>th</sup> November 2013**, to the Complainant, asking him to contact the Motor Team, to discuss the claim.

By letter dated **29<sup>th</sup> December 2013**, the Complainant wrote to the Provider, authorising his father to act as his representative on his behalf, in relation to the claim.

By letter dated **07<sup>th</sup> January 2014** the Claims Department wrote to the Complainant's Representative re-iterating its offer of €1,500 in full and final settlement of the claim. The Complainant's Representative responded, declining the offer and describing it as "*an insult*".

It is not clear why the Provider repeated its offer of €1500 rather than the €2250 which was approved by the ex-gratia committee. However, shortly afterwards, by letter dated **20<sup>th</sup> January 2014**, the Provider's Claims Department wrote again to the Complainant's Representative, increasing the sum offered by way of settlement, advising:

*"following representation from your Local Office I confirm that we are prepared to offer you the sum of €2,250, in full and final settlement of your claim."*

The Claim Handler wrote to the Sales Representative by email of the **30<sup>th</sup> April 2014**, asking the Sales Representative whether she was going to talk to the Insured "*about the salvage/VLC or should I contact him again.*" The Sales Representative replied that she would ring him and revert with his response.

By email dated **09<sup>th</sup> May 2014** the Sales Representative advised the Provider that she had:

*"just spoke to [Complainant's Representative].*

*He took the engine out and is using it on another jeep [registration number] where the engine is damaged, previously insured under wife's policy [policy number], subs done on 11.12.2013 to [registration number]. It's costing €350 to put the engine into the 04 jeep.*

*He wants at least €2000 for the damaged jeep, he says it cost him €150 to tow it. He says all he ever wanted was a replacement jeep the same as his 98 jeep with the same good engine as these old engines give no trouble. This claim has cost him money, he bought a 02 jeep worth €12,000 with a loan.*

*Because of the amount of premium we get from [Complainant's Representative] each year can we settle for €2000 excluding the engine?"*

/Cont'd...

The Provider's response advised that:

*"I have spoken to claims on this one. They have advised me that this vehicle is a Category B write off which means it must be disposed of. So unfortunately all we can do is stand over our original agreed offer of €2,250."*

By email dated **24<sup>th</sup> June 2014** the Claim Handler advised the Sales Representative that, *"this file has been open for over 2 years now and we are anxious to get it settled asap. Are we now ok to collect the salvage?"* There is a File Note of the Provider which states that the Sales Representative responded the next day, advising *"will ring insured and revert with a reply."*

A File Note, dated **30<sup>th</sup> June 2014**, indicated that the Claim Handler *"spoke with Rep, insd wants to know salvage value, advised insd cannot keep salvage so amount doesn't come into it. Advised very clearer [sic] that ins cannot keep salvage."*

A further File Note, dated **17<sup>th</sup> July 2014**, shows that the Claim Handler contacted the Sales Representative, advising *"As we have not heard from the insd I will have no choice but to close of our."* [sic]

By letter dated **11<sup>th</sup> September 2014**, the Provider wrote to the loss assessing company acting on behalf of the Complainant's Representative. It advised, the loss assessor that:

*"we note that the 98 ... Jeep was deemed a category B write off (which legally must be destroyed) we note that [the Complainant/Complainant's Representative] were not satisfied with the settlement pre theft value of €1,500 for the vehicle and this was then in turn referred to [Sales Representative] in Xxxxxx Local Office and she made an appeal on the [the Complainant/Complainant's Representative]'s behalf and it was agreed that we would make an ex-gratia payment of €2250 in total for the vehicle. Please note that when a vehicle is deemed a write off category B the vehicle MUST be broken down and a cert of destruction sent to Department of Transport in Shannon.*

*We note that the ex-gratia offer of €2250 was made to the [Complainant's Representative]'s son on the 20/01/14 and in turn the handler requested the vehicle licensing certificate in order to progress the payment which the handler has never received. Handler was then contacted by [the Sales Representative] requesting if the [Complainant/Complainant's Representative] could keep the salvage and this was declined as it legally has to be destroyed. We note that the [Complainant/Complainant's Representative] then put forward through [the Sales Representative] to keep the engine and take €2000 for the remaining salvage. I have now spoke with the Motor Team and we have agreed that if they wish to keep the engine only we will allow same but we must dispose of the rest of the jeep legally.*

/Cont'd...

*If you wish to avail of the following offer please contact the handler [Claim Handler's name and telephone number] to discuss same:*

- *Pre-Theft Value based of [sic] ex gratia payment €2250*
- *Less €250 for the engine salvage (remaining salvage to be collected by our salvage agent and destroyed)*

*Total full and Final Offer for the salvage.*

An Internal File Note of the Provider, dated **11<sup>th</sup> September 2014**, states that:

*"Complaint dealt with – it has been agreed that we will allow the customer to keep the engine and we have offered him €2000 pav (ex gratia) for the remaining salvage and cost of reasonable towing on sight of invoice as per complaint final response letter. PH has been advised to contact handler if he wished to accept the full and final offer. We still need logbook keys and invoice for towing."*

A letter, dated **21<sup>st</sup> January 2015**, issued from the Provider, to the Complainant, requesting a response to its previous correspondence. I note that this should have been directed to the Complainant's father, in his capacity as the Complainant's Representative, given the letter of authority which had been submitted previously to the Provider. This is a disappointing lapse on the part of the Provider, however I note it was addressed to the Complainant's Representative's home address and there is nothing before me which suggest that this letter did not reach the attention of the Complainant's Representative.

On this same date, **21<sup>st</sup> January 2015**, the Provider received a letter from the Complainant's Representative, dated **19<sup>th</sup> January 2015**, accepting the settlement offer of €2,250 stating:

*"With reference to above and correspondence from you dated 11/9/2014. Reluctantly I am prepared to accept your company's pre theft value of €2250 for my son [son's name]stolen damaged jeep regd no [...].*

*The jeep can be collected from [Name of Garage Owner, Address and telephone number]*

*Also attached is a bill from [Garage] for towing charges of €250 in relation to the jeep.*

*...*

*NB Also enclosed is the vehicle registration certificate for [the jeep's registration number]."*

Following this, there is a File Note which indicates that, on **21<sup>st</sup> January 2015**, the Claim Handler, *"called insd to advised [sic] we need the VLC (VRC sent in) Insd said he has this and will send in. Asked if we should collect salvage and he said no. Agreed to contact him when I receive the VLC."*

/Cont'd...

By letter dated **23<sup>rd</sup> March 2015**, the Claim Handler wrote to the Complainant requesting the original Vehicle Licensing Certificate for the vehicle. Again, I note that this should have been directed to the Complainant's father as his Representative. Whilst it is unsatisfactory that this occurred again, I note that it was however, as with the previous letter, issued to the address of the Complainant's father and there is no indication that the letter did not come to his attention.

There is a File Note of the Provider which states that, a few days later, on **26<sup>th</sup> March 2015** a call was received "*from PH father – he was in LO. He has VLC reg to PH. PH advised to leave with LO to forward in internal post.*"

A Local Sales Representative sent the Claim Handler an email, on the **26<sup>th</sup> March 2015**, enclosing copy log book for the Complainant's jeep and advising that the original was to follow in the post.

There is a File Note of the Provider, stating that on **27<sup>th</sup> March 2015**, the Claim Handler called the Complainant's Representative, to arrange for the collection of the salvage, and was told that he would contact her when he was ready.

By letter dated **19<sup>th</sup> May 2015**, the Provider wrote to the Complainant (again not the Complainant's Representative but to Complainant's Representative's address), referring to the phone call of the 27<sup>th</sup> March, advising that "*in order to proceed we need to collect the salvage of the vehicle*". The letter stated that if no response was received within 7 days it would proceed to close the file.

On **29<sup>th</sup> May 2015**, when no contact was received from the Complainant's Representative, the Provider closed its file on the matter.

By Complaint Form dated **20<sup>th</sup> December 2015**, the Complainant's Representative submitted a complaint to this office.

As noted above, the Complainant's complaint concerns alleged delays in making payment of monies pursuant to his claim as well as an alleged undervaluation of the Complainant's loss by the Provider. I will examine each issue in turn, beginning with the issue of valuation.

### Valuation

I have reproduced, below, the relevant Insurance Schedule for the vehicle in question, which contains a paragraph in relation to the Complainant's Estimated Value of the vehicle.

/Cont'd...

	Issue Date: 26/04/2012 Policy No: 00780894/22/01 Renewal Date: 13th April Premium: €354.78CR
--	---

**Your Commercial Vehicle Insurance Schedule**

**Period of Insurance:**  
 From 13 April, 2012 To 12 April, 2013  
 and any subsequent period for which the Insured shall pay and the company shall accept the premium required for the renewal of this Policy.

**Business or Occupation**  
 Farmer  
 Carrying on or engaged in the Business or Occupation shown and no other for the purpose of this insurance.

**This Schedule is operative in respect of the following vehicle only:**

Registration Number	Year	Capacity	Make & Model	Body	Your Estimated Value**
[REDACTED]	1998	1 ton	[REDACTED]	Jeep	€4,000

**\*\*Please note that in the event of a total loss your claim will be assessed on the basis of the market valuation immediately prior to the date of loss. The maximum payment that can be made however cannot exceed your estimated value. It is also important to note that a vehicle will depreciate and reduce in value according to its age, mileage and condition. Accordingly you should review your estimated value at each renewal date to ensure you are not over or under estimating your vehicle's valuation.**

**Limitations As To Use:** As referred to in 04 & 11 under the above heading in this Policy.

**Description Of Drivers:** As referred to under the above heading in this Policy.

**Cover Operative:** Comprehensive, i.e. Sections 1 & 2 of the policy are operative.

**Endorsement Number(s) attaching to and forming part of this Policy**

<b>01</b>	€250 Accidental Damage Excess applies in addition to that stated hereunder.						
	<table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"><u>Name</u></th> <th style="text-align: left;"><u>Date of Birth</u></th> <th style="text-align: left;"><u>Excess Applicable</u></th> </tr> </thead> <tbody> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> <td>€375</td> </tr> </tbody> </table>	<u>Name</u>	<u>Date of Birth</u>	<u>Excess Applicable</u>	[REDACTED]	[REDACTED]	€375
<u>Name</u>	<u>Date of Birth</u>	<u>Excess Applicable</u>					
[REDACTED]	[REDACTED]	€375					
<b>10</b>	Including Driving by [REDACTED]						
<b>50</b>	Excluding learner permit/provisional licence holders.						
<b>59</b>	Including Third Party attached Trailer Cover.						
<b>68</b>	No claim rebate deleted						

The Complainant's Representative submits that the value of the vehicle had been agreed with the Insurance Representative a month previously, at €4,000. As noted previously, the Complainant's Representative has submitted that, "This was done in my home when my Insurances were due for renewal and review." There is, therefore, no audio evidence available of call recordings between the parties, discussing the value of the vehicle, or other evidence available in this regard.

I note that the following note appears on the Insurance Schedule in respect of the "Estimated Value", which is placed on the vehicle, by the Policyholder:

**"Your Estimated Value" \*\* €4,000**

*\*\* Please note that in the event of a total loss your claim will be assessed on the basis of the market valuation immediately prior to the date of loss. The maximum payment that can be made however cannot exceed your estimated value. It is also important to note that a vehicle will depreciate in value according to its age, mileage and condition.*

/Cont'd...

*Accordingly you should review your estimated value at each renewal date to ensure you are not over or under estimating your vehicle's valuation.*

By email dated 27<sup>th</sup> June 2012, to the Claim Handler, the Complainant's Solicitor requested an increase in the amount of money offered, stating:

*"I confirm that I have taken up to date instructions from my client. He is not happy to accept this figure of 1,500.00 as he believes it is grossly undervaluing the vehicle. He states that the vehicle was insured one month before it was stolen. [The Provider's Rep] insisted on it being insured for 4,000.00."*

The Claim Handler responded by email of same date, that, it was unfortunately not in a position to increase its offer and advised that *"At no stage do our local office advise customers on what sum insured to put on their vehicles. This is the customer's decision."*

The note which appears on the Schedule, above, makes it clear that the responsibility for estimating the appropriate value rests with the Policy Holder. It is described as ***"Your Estimated Value"*** [emphasis added] and advises that *"you should review your estimated value at each renewal date to ensure you are not over or under estimating your vehicle's valuation."*

I am satisfied that the Provider had made it clear, in this way, that the onus was on the Policyholder to satisfy himself as to the appropriate figure. I also note that there is no evidence available to confirm that the Provider imposed its own opinion as to the value of the vehicle, at the time of the renewal.

It is also clear from the note that the Provider did not undertake to provide compensation in this amount in the event of loss, but rather, it stated, *"in the event of a total loss your claim will be assessed on the basis of the market valuation immediately prior to the date of loss. The maximum payment that can be made however cannot exceed your estimated value."*

The *"market valuation"* in this instance was identified by the assessor who inspected the vehicle as follows:

**Vehicle Details**

<b>Make/model</b>		<b>Transmission</b>	Manual
<b>Reg:</b>		<b>VIN</b>	JACUBS69DV7102400
<b>Year</b>		<b>Static test</b>	No
<b>Odometer</b>	181121 Miles	<b>Damage Type</b>	Theft
<b>Colour</b>	BEIGE	<b>Pre Acc Cond</b>	No
<b>Finish Type</b>	Metallic clear over base	<b>Security</b>	None
<b>CC/Kg</b>	3100CC	<b>Air Bags</b>	Unknown
<b>Fuel Type</b>	Diesel		

**Tyre Treads**

<b>RF</b>	<b>RR</b>	<b>LR</b>	<b>LF</b>	<b>SP</b>
2.00	8.00	3.00	3.00	

**Valuation Summary**

<b>PAV</b>	1500.00 / 1500.00	<b>Vat registration</b>	no
<b>Salvage Value</b>	700.00	<b>Salvage Category</b>	Category B
<b>Towing</b>			
<b>Car Hire</b>		<b>No of Days</b>	
<b>VAT (if recoverable)</b>	0	<b>Salvage Agent</b>	
<b>Amount to Settle</b>		<b>Phone No.</b>	
<b>Insurance Link</b>		<b>HP Check</b>	

The following note appears beneath this:

**Vehicle Inspection**

*22/5/12 Write off report cat. B vehicle sustained extensive damage along both sides, and onto roof and all glass. Taking into consideration the extent of damages this vehicle is now a write off with PAV at €1500.00 excl VAT (Sourced with [Garage, telephone number], Similar vehicle available with higher mileage for €1200.00 [telephone number]) Salvage referred to [name] for collection. M.A opinion on salvage €700.00 Approx. Note: Ignition intact not forced. The vehicle is not equipped with an immobilizer. Holding Garage [Name and Telephone Number] advise salvage bid of €300 with charges waived – recovery €250.00, and storage charges €18 days at €25.00 per day total €450.00 to date.*

The Complainant’s Representative has submitted that the sum of €2,250, offered by the Provider was not sufficient, and I note his explanation regarding the change of engine capacity introduced by the manufacturer of in 1999. However, no evidence of similar jeeps for sale has been submitted by the Complainant or his Representative.

Submissions have been furnished by both parties to this complaint regarding the purported removal of the engine from the jeep, by the Complainant’s Representative. The Provider has submitted that it was informed by the Sales Representative, who was dealing with the Complainant’s Representative, that it had been removed, as per the email received from the Sales Representative, as set out about. The Complainant maintains that this is absolutely not the case and has taken some exception to such a statement, furnishing photographs of the engine, *in situ*, in support of the fact that it has not been removed. I do not intend to

/Cont’d...

comment on this aspect of dispute between the parties, as I do not believe it is necessary in the context of determining the within complaint, as it does not have a bearing on the valuation issue and/or the purported delays on the part of the Provider. As noted above, the Provider has acquiesced to the Complainant's Representative retaining the engine, subject to a decrease in the settlement monies of €250.00.

In respect of the valuation, I am satisfied that it was not unreasonable of the Provider to rely on the report received from the Motor Assessor in respect of the valuation. It subsequently increased this amount, upon petition by the Sales Representative.

I am satisfied, having regard to the Schedule, above, that there was no obligation upon the Provider to offer payment in the sum of €4,000, to reflect the Complainant's Estimated Value. Rather, it is made clear to the Policy Holder that, *"in the event of a total loss your claim will be assessed on the basis of the market valuation immediately prior to the date of loss."*

In the context of the complaint before this Office, it is noted that the Complainant's Representative voluntarily accepted the offer made by the Provider, in the sum of €2,250, albeit stating that this decision to accept the offer was reluctant. If the Complainant was not satisfied with this amount, then a more appropriate course of action would have been to decline this offer. As it stood, however, having accepted the settlement offered, he did not, in March 2015, proceed to arrange for the collection of the salvage and the disposal of the salvage. Having had regard to all of the evidence before me, I do not consider that the Provider acted wrongfully or unreasonably in the valuation of the vehicle which was ultimately accepted by the Complainant's Representative, or in its dealings with the Complainant and/or his Representative in this regard.

I do not find therefore, that, on the basis of the evidence furnished, it is appropriate to uphold this aspect of the Complainant's Complaint, as regards the valuation.

#### **Premium Refund/ No Claims Bonus**

The Complainant's Representative has sought a refund of the *"unused insurance premium"*, in the sum of €360.00.

The Provider has pointed out that the Complainant did not ask to cancel the policy, but that, in any event, there is no refund available of a premium if a claim has occurred during the period of insurance as per the policy terms and conditions issued at inception.

In relation to the Complainant's request for miscellaneous expenses, the Provider has submitted that these do not fall to be covered under the policy of insurance and says it is satisfied that the delays were caused by the Complainant and/or his Representative.

/Cont'd...



Further, by letter dated 20<sup>th</sup> August 2017, to this Office, the Complainant's Representative stated that the Complainant was concerned that his No Claims Bonus had been lost. The Provider responded, by email dated 23<sup>rd</sup> August, advising that as the Complainant's vehicle had been insured as a farm vehicle, on farm rates, as reflected by the premium paid, that there was not any No Claims Discount applicable under the Policy.

In examining each of these issues, I have had regard to the Commercial Vehicle Policy, furnished by the Provider, which the Provider says was furnished to the Complainant at the time the Policy was incepted.

The Policy states, within the section entitled "Endorsements", at Endorsement number 69:

*NO CLAIM DISCOUNT DELETED*

*It is agreed that the section of this Policy headed "No Claim Discount" is deleted.*

I am satisfied, therefore, that there is not any such Discount applicable under the Policy.

In relation to the Complainant's request for a refund of the unused portion of the premium, I note that within the section entitled "Conditions", at page 16, Condition 8 states as follows:

*Cancellation of Policy*

- (a) The company may cancel this Policy by sending ten days' notice by registered letter to the Insured at his last known address and in such event, provided no claim has occurred, will return to the Insured the premium less the pro rata portion thereof for the period the Policy has been in force.*
- (b) You, the Insured, may cancel the Policy at any time by sending us instructions in writing and returning the Insurance Certificate and Disc on issue. Provided no claim has occurred during the period of insurance the Company will return the premium for the unexpired period of cover less and administration charge.*

[My Emphasis]

I am satisfied that even in the event that the Complainant had requested to cancel the Policy, the Policy makes it clear that a pro-rata refund of the premium is available only if a claim has not occurred during the currency of the Policy. As a claim was made by the Complainant during the course of the Period of Insurance, I do not find that a refund was applicable in the circumstances.

**Delay**

The Complainant's representative has submitted that the Provider has delayed unduly in making payment in accordance with the Complainant's claim.

/Cont'd...

By way of timeline, I note that on 20<sup>th</sup> January 2014 an “*ex-gratia offer*” of €2,250 was made to the Complainant’s Representative.

By letter dated 11<sup>th</sup> September 2014, the Provider wrote to the loss assessing company acting on behalf of the Complainant’s Representative, re-iterating the offer of €2,250.

By letter dated 19<sup>th</sup> January 2015, the Complainant’s Representative accepted the settlement offer of €2,250.

This was almost exactly one year after receiving the offer itself.

The Complainant’s Representative has describes the course of events, during the intervening period, as follows:

*“On 20/1/14, an offer of €2,350 was made which I reluctantly accepted. Also a payment was to be made towards the cost of getting the vehicle home from Xxxxxxxx. During 2014, I made enquiries about the scrap value of...the damaged jeep with a view to buying it off [the Provider], so that I could use the engine in another jeep that I had. Eventually I was told that I could not purchase the jeep for salvage. On 19/1/15, I wrote a letter to [the Provider’s Claims Department] accepting the offer of €2250 and attached the Registration Certificate of the vehicle and a bill for towing charges from Mr [M.] who towed the vehicle. Also in the letter, I gave instructions where the jeep could be collected from and included Mr [M]’s mobile phone number. The vehicle is currently stored at Mr [M]’s garage. To date 10/12/15 I haven’t got any reply from my letter to [the Provider].”*

I accept that this letter advised where the jeep could be collected from, however, subsequent to this, there is an Internal File Note of the Provider, which states that the Claim Handler having contacted the Complainant’s Representative in relation to collecting the salvage, was informed by the Complainant’s Representative that he would contact her when he was ready to arrange for the collection of the salvage.

There is nothing from the evidence which has been made available to me which demonstrates that the Complainant’s Representative subsequently made contact with the Provider, to this end.

It is clear from the correspondence which is set out in detail, above, that the Complainant’s Representative was on notice of the fact that, before payment could be made, the Provider required consent for the collection of the vehicle – either with or without the engine, and that the amount of monies payable, in the event that the Complainant wished to hold on to the engine would be would be €2,000, plus a towing fee of €250.

By letter dated 14<sup>th</sup> January 2016, to the Complainant, the Provider stated that:

/Cont’d...

*“There seems to be some confusion in relation to the settlement of this claim...[o]n the day the Claims Handler was arranging the collection of the vehicle (27<sup>th</sup> March 2015) your father advised us that he would inform the handler when it was ready for collection. Your father never responded to us in relation to the collection of the vehicle and we therefore issued a letter dated the 19<sup>th</sup> May 2015 which was sent to you directly requesting confirmation that it was in order to collect the vehicle. Again we received no response from you or your father within the 7 days offered in the letter of the 19<sup>th</sup> May 2015 therefore the file was closed. It is only now that we receive any correspondence in relation to the claim and it seems that the above agreement and correspondence has been disregarded by you or your father.”*

I am satisfied that whilst the Complainant had a right to receive payment as agreed with the Provider, the settlement, agreed between the parties, gave rise to certain requirements on the part of the Complainant, including expressly confirming to the Provider that it was in order to collect the vehicle.

Taking into account all of the evidence before me, I do not find that the Provider acted unreasonably or was guilty of delay and, therefore in my opinion, there are no grounds for upholding this aspect of Complainant’s complaint.

If the Complainant now wishes to receive payment of the agreed settlement monies of €2,250 (comprising €2,000, in settlement of the claim, plus the towing fee of €250, whilst keeping the engine) then I would recommend that he proceed to contact the Provider in relation to the collection and disposal of the vehicle, so that the matter can then be finalised.

**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.**

**MARYROSE MCGOVERN  
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

5 June 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.**