



<u>Decision Ref:</u>	2018-0053
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Farm & Livestock
<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 were the owners of a pedigree Charolais bull, which died, on or about the **06th June 2016**. The Complainants had, at all relevant times, a Policy of “*Farm Protection Insurance*” in place with the Provider, which included cover in respect of “*accidental death*”.

The Complainants submitted a claim form to the Provider, in respect of their dead bull. The Complainants’ complaint is that the Provider has wrongfully or unreasonably refused to pay benefit in respect of their claim.

The Complainants’ Case

On the **12th July 2016**, the Complainants submitted a claim to the Provider (*via* their Brokers), in respect of their Charolais bull, which had died on the **06th June 2016**.

The Complainants submit that the Policy of Insurance in place with the Provider included cover in respect of an accidental injury. The Complainants submit that their bull’s hoof became infected and he was treated by a “*hoofman*” and subsequently by a vet but the bull did not recover, and died. The Complainants submit that the Provider’s position is that this was not an accident but the Complainants submit that they have queried with the Provider, if it was not an accident, then what caused it? They submit that they have received no reply to this question.

The Complainants note that the Provider has said it was prejudiced in its ability to ascertain the cause of death, as it did not have an opportunity to inspect the bull but the Complainants

dispute that their claim was not notified to the Provider in a timely manner, as the bull died on the **06th June 2016** and they notified their Insurance Broker on **09th June 2016** who advised them what documents were required to be submitted, including a vet's report. The Complainants state they were advised that once the vet had examined the bull, that it was ok for the bull to be collected by the Knackery. The Complainants submit that they sent all the documents and information required by the Broker, to him, on the **09th June 2016** and that he advised them that he would be sending same to the Provider. They submit that at a later date, they were required to fill out a claim form and provide further details. The Complainants submit that this was sufficient and that their claim was notified on time.

The Complainants submit that the Provider seems to be implying that the bull's lameness may have been due to an ulcer in his hoof, or to old age, or as a result of laminitis and that it is therefore diagnosing the bull's lameness and coming to its own conclusion as to how he died as opposed to relying on the vet's certificate, which does not include any of these reasons for the bull's death.

The Complainants submit that they have furnished all details to the Provider, which were requested of them and believe that it is unfair of the Provider not to pay benefit in respect of their claim.

The Provider's Case

The Provider submits that a claim was notified to it by the Complainants' Insurance Broker on the **18th June 2016**, following the death of a Charolais bull on the **06th June 2016**.

The Provider submits that no cause of death was detailed in the claim documentation received, including a letter received from the treating vet, which the Complainants provided in support of their claim.

The Provider submits that the onus is on the policyholder to provide supporting evidence in relation to their claim, however, in order to assist the policyholders, the Loss Adjuster in this instance, contacted both the vet and the hoofman on a number of occasions, in order to try and establish the cause of death, as in order for the claim to be covered, the animal must have incurred an accidental injury.

The Provider submits that the Loss Adjuster, from speaking with the vet, and with the hoofman, established that the animal first displayed symptoms of lameness in **April/May 2016**. It submits that a hoofman had been engaged by the Complainants to pare the animal's hoofs. The Provider submits that the animal's condition deteriorated and the Complainants employed a vet to attend the animal. The Provider submits that the vet confirmed that the animal had a badly infected hoof and that despite medication its condition continued to deteriorate and it died. The Provider submits that although the vet suspected the cause of death to be septicaemia, it notes that because the condition of the carcass was poor, it made an accurate identification of the cause of death, difficult.

The Provider submits that the claim was not notified to it until the **18th June 2016** and the animal had been disposed of by that time, which meant that the Provider was prejudiced in its ability to verify the cause of death.

The Provider submits that the claim was declined as the cause of the suspected septicaemia has not been proven to have been caused by an accidental injury, which is required in order for the Policy cover to operate.

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 on 21 May 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 Complainants incepted a policy of insurance with the Provider, on the **08th December 2014** which was in place when the Complainants' eight year old pedigree Charolais bull died on the **06th June 2016**. They submitted a claim to the Provider in respect of this loss however the Provider declined to pay benefit pursuant to the Claim citing the fact that under the Policy, in order for the claim to be covered, the animal must have incurred an accidental injury.

Ultimately, whether the damage/loss arising from the death of the bull is covered under the Policy of Insurance falls to be determined by reference to the terms and conditions relating to cover, as set out within the Policy and Schedule of Insurance.

/Cont'd...

The Insurance Policy

Policies of Insurance are quite specific in terms of what events are and are not covered under the Policy. The events which are covered are known as “insured perils”, and in the event of a claim there is an onus upon the Policyholder to be able to demonstrate that an insured peril has occurred and that the insured peril has caused the loss.

I have had regard to the Farm Protection Policy Schedule, for the Period **08th December 2015 to 08th December 2016** and I note that the “Cover Details” include “Livestock” with the relevant sections of the Policy in place in respect of cattle, being sections 1,2,3,4,5,6 and 7.

The Policy Document provides the following in relation to Livestock, at section 7:

“The Cover

7. Mortality

Accidental injury causing death or necessitating slaughter on humane grounds of the animal(s) specified in the schedule occurring during the period of insurance occurring on land/PREMISES owned or occupied by YOU or rented to YOU but excluding accidental injury whilst LIVESTOCK is in transit (including loading or unloading for the purpose of transit) and excluding accidental injury causing death of Sheep as a result of any dog attack or dog worrying.

I further note that on page 22, the “Conditions Applicable to Section 1(b) Livestock” provide that:

It is a condition of the insurance provided under this section that

6. in the event of an occurrence which gives rise to a claim or which may give rise to a claim YOU shall give US immediate notice of such event.

(ii) if WE allege that the death of the animal is from an excluded cause, the burden of proving the contrary shall rest with YOU”.

In this instance the relevant insured peril is “accidental injury causing death” and is subject to the conditions set out in the section. Accordingly, it is necessary for the Policyholder to be able to demonstrate to the Provider that an accidental injury has occurred and resulted in death.

I note that the Complainants have submitted that the Provider’s position is that this was not an accident, but that they have queried with the Provider, if it was not an accident, then what caused it? They submit that they have received no reply to this question.

I note the Complainants contend that the Provider has declined the claim because it took the position that what occurred was not an accident and, in so doing, it diagnosed the bull’s lameness and came to its own conclusion as to how he died.

I am satisfied, however, that under the Agreement, the onus is on the Complainants, as Policyholders, to show that the animal’s death was caused by accidental injury. There is a

/Cont’d...

positive obligation upon the Complainants in this regard. There is no similar burden upon the Provider to show what the cause of death was, and it is entitled to rely on the evidence presented by the Policyholder.

The reasoning set out by the Provider in its Final Response Letter to the Complainants, is that the *“Loss adjuster attempted to confirm cause of the infection but has been unable to obtain a definitive reason for the infection. The animal is an older animal which makes it more difficult to determine a cause for this infection which resulted in the death of the animal as it could be down to a number of reasons for example the weakening of the hoof due to the animal’s age, an ulcer in the hoof, foot rot etc.”*

It goes on to say, *“In order for a claim to be paid for this type of incident the cause of the infection must be demonstrated to have been caused by an incident outlined in the policy document.”*

As noted above, the duty to demonstrate this falls upon the Policyholder. Therefore, in order for their claim to succeed, the Complainants must be able to show a definite instance of accidental injury. It is not sufficient to suggest that the death may have been, or must have been so caused.

I will turn now to look at the circumstances of the bull’s death.

Cause of Death

The Complainants included a letter from the treating vet, dated **07th June 2016**, with the Claim Form which they submitted to the Provider, which letter stated, as follows:

“I attended to a bull belonging to [the Complainants] on the 30/5/16 at my surgery. He was lame. He had been attended to by a foot man who had pared his foot. I admin antibiotics and prescribed more for him. The bull continued to deteriorate and was found dead yesterday 6/6/16. I attended the farm today 7/6/16 and examined the carcass. He was bloated, jaundiced and carcass presentation was poor.”

I note that there is a File Note of the Provider, dated **21st June 2016**, which provides as follows:

“Insd advised that claim for pedigree charolais bull, 8 years old. Had his hooves trimmed and deteriorated after that. I queried why hooves were trimmed, insd advised he was lame, I queried if insd knew why he was lame, I queried if he’d had an accident, insd advised that she didn’t know. Insd advised all docs sent into bkr. I advised we had not received same yet, would need to review vet report and obtain exact cause of death before I could confirm cover...”

A Loss Adjusting Company was appointed by the Provider on **27th June 2016**.

I note the following, from a call note, dated **08th July 2016**, in relation to a call which took place between the Loss Adjuster and the Complainants:

/Cont’d...

"I queried with [the First Complainant] as to why the bull was lame in the first place. He said he didn't know. I asked if the animal had suffered some kind of injury, he said he didn't know what had happened the bull to cause him to become lame."

By letter dated **26th July 2016** the Loss Adjusters wrote to the vet who had treated the bull. It asked the vet, among other things, to *"please provide advises [sic] on what you believe to be the suspected **cause of death** in this instance."* [original emphasis]

There is a response from the vet, dated **02nd August 2016** which states:

"I suspect the cause of death was septicaemia but carcass presentation was poor so accurate P.M was difficult."

There is a note of the Loss Adjuster dated **19th August 2016**, regarding a "call from hoofman", which states:

"He again said he has no recollection of the incident.

I asked him in general terms, what would be the cause of lameness in an older bull that he would generally see occurring, he said that potentially an ulcer could occur in the foot, or a bull might develop laminitis, or some form of chronic lameness related to age etc...He commented that in his opinion it would take a serious infection to kill a bull of this magnitude and said that such a bull "would generally die of old age" before infection"

The Loss Adjuster's Report, dated **19th August 2016**, concludes that there was no evidence put forward by the Complainants that the animal had suffered from any 'accidental injury' prior to becoming lame, and that the claim was therefore being declined.

The Loss Adjuster's Report states as follows:

This claim relates to the death of the insured's eight year old pedigree Charolais bull, occurring on 6th June 2016. The animal first displayed symptoms of lameness in April/May 2016, and the insured subsequently engaged the services of [name], 'hoofman' in an effort to resolve the animal's lameness. The bull's lameness further deteriorated following pairing, and veterinary treatment was sought for the animal on 30th May 2016. The veterinary surgeon has advised the bull had a badly infected hoof when examined on 30th May 16, and states that antibiotic treatments were administered. The bull subsequently died on 6th June 2016, and the veterinary surgeon has noted Septicaemia as the suspected cause of death. We contacted [name], hoof man, to discuss the source of the animal's initial lameness/infection. However, [name] has advised us that he does not recall the incident, and as such, could not provide any detail in respect of the matter. We also note from our discussions with the insured, that the reason for the animal initially becoming lame/infected is unknown to them. We have also sought clarification from the veterinary surgeon as to whether or not evidence of accidental injury was present on the bull's hoof during examination. However, the veterinary surgeon has responded advising that the bull had a 'badly infected hoof', and despite vigorous antibiotic, therapy, the animal deteriorated. The onus of proof for any claim rests with the insured and as no evidence

/Cont'd...

has been presented by the insured to suggest that the animal suffered any form of 'accidental injury' prior to becoming lame, we have declined liability on the insurers behalf"

The Loss Adjusting Company wrote to the Complainants on the **22nd August 2016**, declining their claim to the Provider.

The letter noted that the vet had advised that the suspected cause of death was septicaemia. It referred to section 7 of the Insurance Policy and went on to state that:

"As detailed above, the Mortality peril covers death through "accidental injury". However, we note in this instance, there is no evidence to suggest that the bull had sustained an accidental injury to the hoof which would have caused lameness/infection/septicaemia. As such, the proximate cause of the animal's death cannot be considered as "accidental injury". This claim therefore falls outside the scope of policy cover and we must decline liability on behalf of insurers as a result."

There is a note of a call which took place between the Loss Adjuster and the Second Complainant on the **24th August 2016** which states:

"[the Second Complainant] began the conversation by stating that she has received my declination letter and is not at all happy that I have declined the case...She said the bull was lame and asked how I could determine that the lameness had not arisen from an accidental injury. I advised her that I made every effort to independently validate her claim. I advised her that her 'hoofman' could not advise me on the cause of the initial lameness as he didn't recall pairing, the hoof, nor could her vet, who advised that the hoof had already been paired, when he first examined the animal's infected hoof. I asked her if she had any additional information to present in support of an accidental injury to the hoof, that would have caused the animal to become lame/infected. She said that the "bull could have walked on a stone or fallen on a slat" but she wasn't sure and "wouldn't have been with the bull 24 hours a day to know what happened him". I advised her the onus of proof rests with the insured and accidental injury to the hoof has not been proven in this case, which would have led to the lameness/infection. I advised her that an older stock bull (8 years old) can develop such things as an ulcer in the hoof and I cannot determine what caused this animal's lameness/infection from the information provided. I advised her that from the information submitted, the bull died from septicaemia as a result of a hoof infection."

As identified above, the Policy which the Complainants had in place with the Provider provided for cover in respect of "Accidental injury causing death". I am satisfied from an examination of the evidence that the Complainants' claim was notified on time. However, I am also satisfied that in order to successfully make a claim under the Policy, it is not sufficient to demonstrate that the animal was unwell and died but, rather, it must be specifically shown that an accidental injury occurred and then, for this to have caused the death of the animal.

From an examination of all of the documentation furnished, I accept that the Loss Adjuster attempted to confirm a cause for the infection but was unable to determine a cause for the

/Cont'd...

infection which led to the death of the animal. Neither can the Complainants state, or establish with any degree of certainty, how the bull's lameness and infection which caused its death occurred, and there is no evidence available that it occurred as a result of an accidental injury.

I appreciate that this will be disappointing for the Complainants but, having examined all of the available evidence in detail, and for the reasons outlined that, I accept that the Provider was entitled to rely upon the findings of the Loss Adjuster, in making its decision to decline the claim, on the basis that it had not been established that the damage was caused by an insured peril.

Therefore, I do not find that the Complainants' complaint can be 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.

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

19 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.