



<u>Decision Ref:</u>	2018-0140
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Motor
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Dissatisfaction with customer service
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's Irish registered Chausson, motorhome was damaged on the **25 January 2014** while in a compound in Marseille, France. The accident was caused by a third party and at the time of the accident the Complainant was at his place of residence in Australia. The Complainant, who has impaired hearing, is an Australian national who is in his 80s. The Respondent insured the motorhome at the time of the accident.

There was some difficulty processing the ensuing claim in France due to the language barrier and the different locations involved. On **26 March 2014**, the motorhome was inspected in France, on the instructions of and on behalf of the Respondent, and this inspection costed the repairs at €2,054.48.

On the **5 April 2014**, the Complainant emailed the Respondent stating:

"Does that mean that the camper has to be repaired in France by a nominated repairer...?"

On the **7 April 2014**, the Respondent stated;

"As the repairs have been agreed in France and your claim is against a French insurer I would suggest that you get the repairs done there."

On the **8 April 2014**, the Respondent emailed the Complainant to say;

“We have received the Assessor’s report....Our suggestion at this stage would be to bring the vehicle back to Ireland, we will have it assessed here and your claim will go through your own policy under the Motor Caravan Club. Can you advise if you are agreeable to this.”

The Complainant was “delighted” to bring the motorhome to Ireland to have it repaired in Ireland rather than in France. The Respondent states that the Complainant asked could the repair be carried out in Ireland or the UK and it offered its assistance to allow this to happen. The Complainant says that the Respondent suggested that he bring the motorhome back to Ireland and he agreed to this suggestion.

In early May 2014, the campervan was brought back to Ireland. On **12 May 2014** the Complainant visited the Respondent’s office to complete a claim form and he provided the Respondent with a list of parts and hourly charges from a UK based motor home company.

On the **20 May 2014**, the Respondent attempted to inspect the campervan but was unable to make contact with the person with whom the campervan was stored. On the 25 May, the Complainant provided the full address where the campervan was stored and an alternative phone number. On 9 June 2014 the campervan was inspected by the Respondent’s agent. On 23 June the Respondent emailed the UK based motor home company requesting that it forward a repair estimate once it was in a position to provide it. An estimate was not provided but the UK based motor home company gave the Respondent details of a Northern Ireland based company, CJ Ltd. The Respondent believed that CJ Ltd was a Chausson dealer and that it would be able to repair the motorhome. The Respondent forwarded the details of CJ Ltd to the Complainant on the 24 July 2014.

On 5 September 2014, when he was in Ireland, the Complainant brought the motorhome to CJ Ltd for repair, only to be told that CJ Ltd did not repair motorhomes and he was referred to an accident repair centre in Northern Ireland [referred to as “B”].

The motorhome was brought to B by the Complainant and B told the Complainant that it would contact the Respondent directly. The Complainant advised the Respondent of this on the **30 September 2014** and returned to Australia on **10 October 2014**. The Complainant emailed the Respondent’s agent on 15 October 2014 seeking an update; he received no reply and made further contact.

On **28 October 2014**, the Respondent replied to the Complainant stating that B would not order the parts until the Complainant was in Ireland. The Complainant emailed back on the 29 October stating that;

- He had taken the van to Ulster at the Respondent’s request;
- The Respondent was unhappy with the price quoted by the French insurance Company;
- The repair price had nothing to do with him;
- B advised him that the Respondent would pay for the repairs;
- The Complainant offered to pay for the parts and the Respondent could repay him.

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The Respondent forwarded the Complainant's email to B and awaited a reply from B. The Complainant was informed by the Respondent that B would contact him and explain the issue to him, but this did not happen and the Complainant contacted the Respondent on **9 December 2014**, to seek a reply and was again told that B would contact him.

The Complainant emailed the Respondent on 14 December 2014 with further queries, but received no reply. On **9 January 2015**, the Complainant emailed the Respondent outlining his frustration. The Respondent replied on 12 January 2015 stating that B would contact him. In **February 2015**, the Complainant again wrote to the Respondent and to his insurance Broker. On **9 July 2015**, the Complainant wrote another letter outlining his issues. On **24 August 2015**, the Respondent acknowledged the Complainant's complaint. On **14 September 2015**, the Respondent issued a response to the Complainant's complaint.

The Respondent required a repair estimate to process the claim and to make a settlement offer, but B failed to produce a repair estimate. Due to the lack of a repairs estimate the Respondent could not settle the claim. The Complainant attempted to move things along but he received no satisfactory response from the Respondent. The Complainant says that he lost all confidence in the Respondent.

The Complainant's Case

The Complainant says that the Respondent suggested that he bring the motorhome back to Ireland and that he agreed to this. He insists that bringing the motorhome to Ireland was the Respondent's suggestion.

On 12 May 2014 the Complainant visited the Respondent's office to complete a claim form and he furnished the Respondent with a list of parts and hourly charges from a UK based motorhome company. The Respondent says that this assessment of costs was with the Respondent at all times since May 2014 and it is on this quote which the Respondent eventually sought to rely in February 2016, to value the damage and offer settlement to the Complainant.

On 5 September 2014, before he brought the motorhome to the Northern Ireland, the Complainant called to see the Respondent's agent but was advised that she was on vacation. It is the Complainant's belief, in hindsight, that the Respondent's agent was avoiding him.

The Complainant states that he was instructed to bring the motorhome to CJ Ltd. in Northern Ireland to get a repair estimate. The Complainant says that the Respondent was misled in relation to CJ Ltd. but that the Respondent in turn misled him in relation to CJ Ltd. The Complainant says that once at CJ Ltd. he was told that it was not a Chausson Dealer nor a repair shop and he was directed to B for a repair estimate on 5 September 2014.

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The Respondent failed to reply to the Complainant's offer to purchase the parts and to seek a refund nor did it address the other issues raised in an email dated 29 October 2014 as outlined above. The Complainant says that he was never informed at this time that B was the wrong place to get an estimate and that he should seek an estimate elsewhere. It was not until the 14 September 2015 that the Respondent issued a response to the Complainant's complaint and dealt with the issues raised in the email of 29 October 2014. In the time between October 2014 and September 2015 the Complainant felt like he had hit a brick wall and that he was being avoided and stone walled by the Respondent.

The complaint is that the Respondent was guilty of delay and poor customer service when dealing with the Complainant's claim.

The Complainant states that the delay involved and the disruption to his retirement life with the impact of the stress and financial burden that went with this, are unacceptable. The Complainant seeks €2,000 redress for the loss that he has suffered as a result of selling his motorhome in the damaged state, €4,012 for the stress involved in almost continuous letters, emails and registered post to the Respondent's staff and the 19 months of delay and misinformation by the Respondent, in addition to the €5,159.72 offered by the Respondent.

The Respondent's Case

The Respondent states that the Complainant asked if the repair could be carried out in Ireland/UK and it offered its assistance to allow this to happen. The Respondent states that bringing the motorhome to CJ Ltd. was merely a "*suggestion to assist the Complainant in obtaining a repair*".

The Respondent stated by letter dated 13 November 2015 that "*We have made efforts to assist you with this during the life of your claim as it is not possible to progress your claim without an estimate.*" The Respondent has stated repeatedly that, it is the Complainant's responsibility to obtain an estimate and that the Respondent would not seek an estimate.

The Respondent accepts that the reply to the Complainant's letter of 29 October 2014 was "*not to the standard*" that it expects. The Respondent accepts that its communication with the Complainant was below the standard it expects and that it should have done more to obtain and agree a repair quote.

The Respondent made an open settlement offer to the Complainant of €5,409.72, to include costs to repair the campervan, costs of the ferry from Cherbourg to Rosslare and a payment to recognise the failure in customer service. In a letter in reply to this office dated 31 May 2017 the Respondent states;

"while I believe that not all of the delays experienced during the claim were of our making I accept we should have done more to assist the Complainant with B and there was a lack of communication on our part. In recognition of this we offered a Customer Service Award of €250."

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The Respondent's case is that the offer it has made is fair and reasonable in the circumstances. The Respondent states at item 32 of the reply to this office dated 31 May 2017 that;

"On review of the file I am satisfied that we offered assistance to the Complainant in an effort to fulfil his wish to have the campervan assessed in Ireland. I accept that there was a delay in having the campervan assessed due to us being unable to contact the Complainant's family member. I also acknowledge our customer service fell short of the standard we expect – we should have done more to assist the Complainant with the difficulties encountered in obtaining a repair quote. I believe the offer made is fair and reasonable which takes into account the shortfall in our customer service and the policy cover."

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 25 June 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, as to the merits of the complaint, the final determination of this office is set out below.

Regarding who made the decision that the Complainant should bring the motorhome to Ireland from France, I note the Respondent emailed the Complainant on 8 April 2014

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stating *“Our suggestion at this stage would be to bring the vehicle back to Ireland....Can you advise if you are agreeable to this”*.

This wording suggests that it was the Respondent which wanted this course of action and was asking the Complainant to agree to this course of action. Given the wording of this email the Respondent must take responsibility for the motorhome coming to Ireland in order to procure an assessment for the repairs in Ireland. In my opinion, it was reasonable for the Complainant to be of the view that the Respondent wanted him to bring the motorhome to Ireland to be assessed.

When, on the 24 July 2014, the Respondent forwarded the details of CJ Ltd. to the Complainant, it was reasonable in my opinion for the Complainant to believe that he was being instructed by the Respondent to go to Northern Ireland to have the motorhome assessed/repared by CJ Ltd. The Respondent should have clearly set out in this email that this was only a suggestion aimed at helping the Complainant and that equally he was free to go to a different repair company if indeed that was the position. Further, in making the decision to give the Complainant the details of CJ Ltd. there was a duty on the Respondent to ensure that CJ Ltd. was an appropriate place to get the motorhome repaired/assessed.

The Respondent stated on 12 October 2017 that *“there is no evidence to support the Complainant’s opinion the claim handler...deliberately avoided him on his visit to our office on 5 September 2014”*. The Respondent did not confirm through its HR Department whether the agent in question was or was not on vacation on this date. Even if the agent was indeed on vacation, I consider it unacceptable that the Complainant, who is an elderly man, was made to feel that he was being avoided, rather than helped in every way possible, particularly given the complicated history of events at that time.

By letter dated the 14 September 2015 the Respondent apologised for the handling of the Complainant’s claim and the lack of communications. It also accepted that the claim could have been handled in a more pro-active manner. The Respondent stated that it could not force B to provide an estimate and suggested that the Complainant bring the motorhome to a garage of his choice, to have the repairs carried out. The Respondent at no point appears to take into account that not only was the Complainant residing in Australia but he was also a man in his 80s who suffers from impaired hearing. These three factors taken together make the Complainant a person who required more than a basic level of customer service and more than the normal level of help in processing his claim. Rather than help the Complainant however, the Respondent left the Complainant feeling like he was being stone walled and ignored, his emails went months without reply and any reply he received failed to offer a resolution which took account of his age, location and hearing difficulties.

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I find it unacceptable that an elderly man would be led to believe that his age and the possibility of him not being around to pay, were factors in the manner in which his claim was being dealt with. I refer in that regard to the Complainant's letter dated 21 January 2016 which states that; *"I understood the concerns of B regarding financial risks while dealing with an 80 year (at that time) old man i.e. ending up with spare parts and no vehicle to repair relating to the death of the owner or other misadventure"*.

While I accept that the issue with B was not the fault of the Respondent, the Respondent failed to negotiate a resolution with B or to find an alternative resolution within a reasonable time, for example the Complainant could have been advised in 2014 that the Respondent would accept an estimate from an Australian body shop for cost of labour and an estimate for parts from the English motor home company as was agreed in November 2015.

In circumstances where the Respondent failed to deal with the Complainant's concerns and issues in a meaningful manner, taking account of his advanced age and hearing problems, in the period between the 15 October 2014 and 14 September 2015, I consider €250 to significantly undervalue the wrong caused to the Complainant, by the Respondent. Accordingly, I intend to direct pursuant to **Section 60(4)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent rectify the conduct complained of and pay compensation to the Complainant to an account of his choosing (within a period of 21 days of the Complainant nominating an account for payment) in the following amounts:

€5,295.75 Repairs to motorhome, less €250.00 policy excess	€5,045.75
Ferry from Cherbourg to Rosslare	€ 114.00
Compensation for failings in customer service including delays and misinformation	€2,750.00
Total	€7,909.75

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of **€7,909.75**, as outlined above, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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**

17 July 2018

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

- (a) ensures that—**
 - (i) a complainant shall not be identified by name, address or otherwise,**
 - (ii) a provider shall not be identified by name or address,**
- and**
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**