



<u>Decision Ref:</u>	2018-0141
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - insurable interest
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant incepted a policy of motor insurance with the Provider on 25 November 2014. The Complainant entered into the private purchase of a car, bearing registration number 10 xx xxx54 on 30 September 2015. It is the insurance policy in relation to this car that is the subject matter of this complaint. The vehicle was added to the Complainant's motor policy as a permanent substitution on 12 October 2015.

On 31 October 2015 the car was seized by Gardaí, as they believed it to be an illegal clone. The car has not been returned by the Gardaí to the Complainant. The Complainant submits that the car is worth between €8,000 and €9,000 and the Complainant contends that the Provider should replace her car or provide her with the economic value of the car.

The Complainant submits that the Provider has however refused to acknowledge that the loss of the car in these circumstances is an insurable event.

The Complainant's complaint is that the Provider has acted wrongfully and/or unfairly and refused to indemnify her under *"Section 1 of the insurance policy in respect of "Loss of or damage to the car"* in respect of the vehicle.

The Complainant's Case

The Complainant's representative submits that the Complainant bought the car bearing registration number 10 xx xxx54 on 30 September 2015. On 31 October 2015, Gardaí seized the car, believing it to be cloned. The car has not been returned on the basis that it is the property of a third party. The Complainant's representative submits that the car is worth between €8,000 and €9,000 and that the loss of the Complainant's car in these circumstances is an insurable event. The Complainant submits that the Provider should have replaced her car or provided her with the economic value of the car.

The Complainant's representative submits that the Provider has wrongfully refused to acknowledge that the loss of the car in these circumstances is an insurable event.

The Complainant's representative submits that the Complainant reasonably relied on the Department of Transport Vehicle Registration Certificate that issued to her in respect of the vehicle and submits that if same was issued due to third party fraud then it is unreasonable for the Complainant to be at a loss and unable to rely on this insurable event as a result.

The Complainant's representative submits that the term 'insurable event' has been narrowly and unfairly interpreted, against the interest of the Complainant. The Complainant's representative submits that she purchased the car in question in good faith. The Complainant's representative submits that the fact that it subsequently transpired to be a clone was not through any fault of her own and she has been left at a considerable loss as a result of the events that occurred.

The Provider's Case

The Provider's position is that the seizure of the Complainant's vehicle by the Gardaí is not covered under the policy of insurance which she had in place.

The Provider submits that it determined that the Complainant had purchased the vehicle bearing registration number 10 xx xxx54 for €8,000 from a seller who advertised the sale on an online forum.

The Provider submits that it spoke with the investigating Garda, on 09 February 2016, who it states advised it of the following:

- The vehicle in question was stolen in April 2015.
- The vehicle had been insured with a third party insurance provider, which indemnified its customer in respect of the loss.
- The culprits who stole it are known for buying and selling cars on an online forum.

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- The thieves changed the chassis number, tax disc and all documents for the vehicle. They sold it to a man who had it for 4 months.
- The person who had it for four months never received the Vehicle Registration Certificate (VRC) from the thieves so his Solicitor submitted an affidavit to the Department of Transport which accepted it and issued him a new VRC.
- The new VRC registration was issued as 10 xx xxx54, as the thieves had changed the vehicle's details.
- The vehicle was then sold to the Complainant.
- The Garda felt both the Complainant and the man who sold it to her are injured parties, however the Garda stated that both individuals did 'Cartell' car checks and the details that came up did not match the vehicle in question and regardless of this both went ahead with the purchase.
- Gardaí became aware of the registration change hence were looking out for the car. A Garda came upon the vehicle outside the Complainant's home and seized it.
- The car was given back to the third party insurance provider by the Gardaí to sell for salvage, as it had already compensated the original owner.

The Provider submits that it made further contact with the investigating Garda on 05 May 2016, who it says added the following information:

- When the Garda examined the vehicle he noticed false documents on the windscreen (Tax Disc and NCT).
- He called to the Complainant to alert her to the issue and confirmed there was a false chassis number on the vehicle in the presence of both her and her husband.
- During this examination, the Garda looked at the chassis number on the windscreen and under the seat. When he viewed the chassis number under the seat, this chassis number corresponded to a different vehicle registration (10 xx xxx16). Therefore he concluded that the vehicle which the Complainant had possession of, and insured, was 10 xx xxx16 and not 10 xx xxx54.
- The third party insurance company are the registered owner of vehicle 10 xx xxx16, which the Complainant is seeking to claim for under her motor insurance policy.

The Provider notes that vehicle registration number 10 xx xxx54 was added to the Complainant's motor policy on 12 October 2015. It submits that the vehicle that was represented to it was actually vehicle registration number 10 xx xxx16. The Provider submits that its underwriters were resultantly denied an opportunity to fully assess the risk proposed to it and what premium to charge. The Provider submits that these vehicles were not identical and, in fact, they were completely different insofar as they were different models, different engine sizes, different brake horsepower, different transmissions - for example the vehicle bearing registration number 10 xx xxx54 was a manual transmission while vehicle

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bearing registration number 10 xx xxx16 was an automatic transmission. The Provider submits that all of these factors would impact on what rates and terms its underwriters would apply.

The Provider submits that *“crucially, the complainant never had an insurable interest in this vehicle as she was never the legal owner. The principle of indemnity is vitally linked to the principle of insurable interest.”* The Provider has submitted that to have an insurance interest:

1. There must be a physical object exposed to loss or damage and while the Complainant insured vehicle registration 10 xx xxx 54 she never owned this vehicle or acquired legal title to it.
2. The object must be the subject matter of the insurance -The Complainant insured vehicle bearing registration number 10 xx xxx 54 but it was not the subject matter of the insurance.
3. The Insured must bear some relationship recognised by law in consequence of which she stands to benefit from the safety of the object or be prejudiced by loss of the object - The Provider submits that the Complainant never had a relationship recognised by law with the vehicle.

The Provider submits that ultimately, a person cannot seek an indemnity under a policy for an item that they do not have a legally recognised relationship with i.e. that they don't own.

The Provider submits that the onus was on the Complainant to ensure it was a legitimate purchase.

The Provider submits that, furthermore, the Complainant's policy schedule advises the following:

“Please read the details below as they are based on the information provided by you and are used to assess the terms of your cover and your premium... You must tell us any facts which are likely to affect how we assess the risks proposed for insurance. Please refer to the "Your duty to tell us all material facts" section of your Statement of Fact. If any of the information shown on this Schedule is incorrect please contact us immediately on [phone number]. Please read this policy schedule carefully in conjunction with your Statement of Fact, Motorcare Policy booklet and Road Traffic Act Certificate of Insurance as these documents all form the contract of insurance between you (the policyholder) and us [the Provider]”

The Provider submits that the Certificate of Insurance outlines the following;

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"Vehicles, or Classes of Vehicles, the use of which is covered paragraph 5.

Vehicle bearing Index Mark and Registration Number: 10 xx xxx54

Provided such vehicle has not been stolen or obtained by violence or taken without the consent of the owner or other lawful authority"

The Provider submits that the Complainant never acquired a valid legal title to the vehicle in question and the seizure of the car arose as a consequence of her failure to acquire a valid title. The Provider submits that the policy was based on the principle of indemnity and that it would run contrary to the principle of indemnity were it to compensate her for an event where the Gardaí take possession of the vehicle and restore it to its rightful owner.

The Provider submits that as the Complainant never acquired a valid legal title to the vehicle, an Garda Síochána could have confiscated the vehicle at any time. The Provider submits that this is not an event which is insurable and that it would run contrary to public policy for it to insure such events.

The Provider has informed this Office that the Complainant's policy of insurance is active, with a different vehicle currently on 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 on 14 August 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

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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 Complainant's representative, dated 10 September 2018 and 03 October 2018, and from the Provider dated 20 September 2018 and 15 October 2018, my final determination is set out below.

The Complainant entered into the private purchase of a car bearing registration number 10 xx xxx54 on 30 September 2015. The vehicle was added to the Complainant's motor policy as a permanent substitution on 12 October 2015.

On 31 October 2015 the car was seized by Gardaí, as they believed it to be a stolen vehicle and an illegal clone. The car has not been returned by the Gardaí to the Complainant, rather it was returned to its rightful owner, a third party insurance provider which had already compensated the original owner. The Complainant submits that the car is worth between €8,000 and €9,000 and the Complainant contends that the Provider should replace her car or provide her with the economic value of the car.

The Complainant submits that the Provider has however refused to acknowledge that the loss of the car in these circumstances is an insurable event.

The Complainant's representative has submitted, by email dated 23 June 2017, that the Complainant has been the victim of a crime and that the Provider has made its decision on the basis of a *"self serving narrow interpretation of the terms 'insurable event' but also 'insurable interest.'"*

He has further submitted that *"our client was the victim of a crime and that she had an insurable interest in the vehicle which [the Provider] insured and the loss of her property was an insurable event, just as if her car had been stolen from outside her home."* The Provider submitted by way of response, on 21 July 2017, that *"repossession of a car by the Gardaí does not constitute theft."*

The Complainant's representative subsequently submitted, on 25 July 2017, that *"we are not saying confiscation is the same as theft but rather we say that our client had an insurable interest when she bought the car and the confiscation when she bought the car and the confiscation was an insurable event."*

The Provider's position is that the Complainant never acquired a valid legal title to the vehicle in question and the seizure of the car arose as a consequence of her not having acquired a valid title. The Provider submits that the seizure of a car by the Gardaí and its

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return to its rightful owner is not an event which is insurable and that it would run contrary to public policy for it to insure such events.

Insurable Event

In examining this issue, I have had detailed regard to the Policy documentation which was furnished to the Complainant. The Certificate of Insurance sets out, on its face, the limits of insurance cover provided under the relevant Policy. I note with particular regard paragraph 5, which states the following:

"Vehicles, or Classes of Vehicles, the use of which is covered.

A. *Vehicle bearing Index Mark and Registration Number: 10 xx xxx54*

...

Provided such vehicle has not been stolen or obtained by violence or taken without the consent of the owner or other lawful authority" [my emphasis]

It is not in dispute between the parties that the vehicle in question, bearing registration number 10 xxxxx 54, was in the Complainant's possession having previously been stolen from its owner. As a result, and on the basis of the above clause, I do not believe that the policy in question operates to cover the loss sustained by the Complainant.

For the avoidance of doubt, I am not apportioning any blame to the Complainant in terms of the theft of the car. Rather, I think this is an unfortunate case of where the buyer needed to exercise extreme caution when buying a vehicle online.

Car History Check

The Provider submits that, on the basis of information received from the investigating Garda, the Complainant and her husband had conducted background checks on the car, prior to its purchase and therefore knew of the anomalies. The Complainant's representative has submitted that this was not in fact the case.

In examining this issue, I have not been furnished with any evidence that the Complainant, or her husband, who is a mechanic, conducted any background checks on the car's history.

I note that the Complainant discovered a document, in the glove compartment of the vehicle, which showed background checks which had been carried out by a third party. There is an email, dated 01 November 2015, to the Gardaí, attaching this "*motor check*" document. The Complainant's representative has submitted the following observations in this regard:

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It shows that after the car was bought and in fact after it was taken away our client (as she was asked to clear out the car prior to the Gardaí seizing it) our client [sic] found a car check document. This was not a car check that our client carried out but we must presume one [sic] that another person carried this out.

Having had regard to this motor check document, it can be seen that on 09 July 2015 a search was conducted on “motorcheck.ie” in respect of vehicle 10 xx xxx54, which returned the following details:

Vehicle Details

Model Description [redacted] 1.7 Cdti Exclusive 108 BHP 5DR

Engine Capacity: 1686 cc

Transmission: 6 speed manual

Body Type: 5 Door Hatchback

...

Write Off & Condition Data

Irish Write Off (Cat. A/B) No

UK Write Off (Cat. A/B/C/D) Yes

Write Off Description 03/04/2014, Category D UK

We have a record of this vehicle being previously written off. It was a category D write off, which means the vehicle has been damaged and the insurer has decided not to repair. The vehicle may be repaired and returned to the road.

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Previous Enquiries

No. of enquiries: 4(incl. current enquiry)

<i>Date</i>	<i>Time</i>	<i>Enquiry Type</i>
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<i>08/07/2015</i>	<i>18:18:40</i>	<i>Full Check</i>
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<i>08/07/2015</i>	<i>12:06:22</i>	<i>History Check</i>
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<i>07/07/2015</i>	<i>12:13:05</i>	<i>Full Check</i>
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<i>30/06/2015</i>	<i>17:06:59</i>	<i>Full Check</i>
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I note that the person identified on the document as having logged in and used the search function, was a party other than the Complainant or her husband (and appears to be the person who sold the car to the Complainant) and indeed the search dates preceded the Complainant’s purchase of the car by a couple of months.

The Complainant’s representative has submitted that the Complainant did not know that the car was an illegal clone and that she was entitled to rely on the documentation furnished

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by the seller in this regard. It has been submitted that she should therefore be entitled to recover the loss pursuant to the Policy of Insurance which she had in place with the Provider.

The Complainant's representative has submitted that *"the Complainant purchased the vehicle in reliance upon a Department of transport Vehicle registration Certificate which had issued in respect of the vehicle. This is established as an appropriate title document upon which to rely, issued as it is the Government Department responsible for vehicle registration."* I do not propose to comment on the status of the VRC save to say that possession of the VRC did not deter the Gardaí from seizing the car and returning it to its rightful owner.

I believe that it would have been prudent of the Complainant to carry out reasonable enquiries and to have conducted some checks, which are readily available online, prior to the purchase of the car, particularly given the manner in which the transaction was completed (online, from a private seller). Were I to accept the Complainant's representative's submissions in this regard, it would, by logical extension, mean that the Complainant was better placed to claim pursuant to her policy of insurance, than if she had carried out such checks. This could only act a disincentive to seeking information prior to any purchase of a vehicle from a private seller, which, in my opinion would not be a fair or reasonable outcome.

The insured peril or event which the Complainant is effectively seeking to claim for under the Policy, is the loss arising as a result of the car having been returned to its "true" (in the sense of its legal) owner. I am satisfied that if this were to constitute an insurable peril/insurable event, this would run contrary to the principles of public policy.

It is not reasonable, in my view to expect an insurance company to compensate an individual for property seized by the Gardaí and returned to its rightful owner.

I appreciate that the Complainant will be disappointed by this Decision, however, having had detailed regard to all of the evidence furnished, and on the basis of the foregoing, I am unable to find any basis upon which it would be appropriate to uphold this complaint.

I therefore find the Provider was entitled to refuse the Complainant's claim and did not act unreasonably in reaching that decision, and I do not uphold this complaint.

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

13 December 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.