An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0192
Sector:	Insurance
Product / Service:	Farm & Livestock
Conduct(s) complained of:	Claim handling delays or issues Disagreement regarding Settlement amount offered
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant, a Limited Company in the construction trade, incepted a Contractors Plant and Special Types insurance policy with the Company on 3 May 2017. This policy provides accidental fire and theft cover for the mobile special types or yellow plant machinery that are listed on the policy schedule.

The Complainant's Case

The Complainant's excavator machine was damaged by electrical fire on 12 May 2017 and his Broker subsequently submitted a claim to the Company on 17 May 2017.

Following its assessment of this claim, the Company emailed a claim settlement offer of €17,530 to the Complainant's Broker on 19 June 2017, calculated by way of a pre-accident value of the machine of €26,000, less the policy excess of €315 and the salvage offer of €8,155 from a named garage. In this regard, the Complainant states *"the machine is insured for €27,500,* [the Company] *only offered €26,000, leaving us short €1500"*.

In addition, the Complainant's Broker contacted the Company on 17 July 2017 seeking the following additional costs to be considered as part of the claim settlement; namely, storage charges in the amount of €6,160, hire charges for a replacement machine in the amount of €7,700 and recovery charges in the amount of €2,200. Having considered the invoice supplied, the Company revised its settlement offer on 7 September 2017 to include an additional €2,200 for recovery charges but advised the Complainant that hire and storage charges were not covered under his policy.

In this regard, the Complainant submits, as follows:

> *"The insurance Company is refusing to cover storage of the machine. This machine has been stored on behalf of the insurance Company in a safe and secure storage yard. This obviously carries a cost and the policy in question covers this type of expense. I now have a substantial cost for this storage of the machine and the Company…are refusing to pay this"*.

The Complainant seeks *"full payment of storage costs as per our policy wording"*, which he calculates as *"storage €80 per day, original invoice 77 days @ €80 p/d = €6,160; long term cost €100 p/w @ 40 weeks = €4,000"*.

In his email dated 16 July 2018, the Complainant notes that the salvage offer of €8,155 made by the Company as part of its initial claim settlement offer on 19 June 2017 has since been reduced to €6,000 and submits that *"we were at no point advised that the salvage costs were liable to reductions"*. In this regard, the Complainant submits that the Company *"reduced the salvage amount without any notification while they delayed the payment of storage cost"*. In addition, the Complainant notes that the Company *"claims the offer was for a 10 day period only but not stated on* [its] *correspondence on the 15 January 2018 or any other correspondence"*.

In addition, in his email dated 16 July 2018, the Complainant further submits that as a result of the actions of the Company throughout its claims assessment process he has been, as follows:

> *"Left short €1500 on insured amount of machine*
>
> *Left short storage cost €4,000*
>
> *Reduced salvage cost without any notification or warning. Left short €2155*
>
> *Left without ability to replace machine in* [an] *adequate timeframe*
>
> *Left without the ability to meet commitments due to loss of ability of earnings*
>
> *Left unable to replace the damaged item …*
>
> *How long more have we to wait to be paid for our machine considering we have paid* [the Company] *in full for this policy two years ago. We have been left in a position where we are unable to replace this machine, unable to generate income* [from] *this machine, loss of work because we did not have a replacement machine or the capacity to replace it. Put through a process where we have incurred thousands of pounds in man hours in e mails and phone calls which are still ongoing"*.

The Complainant's complaint is that the Company wrongly and unfairly assessed his insurance claim.

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The Provider's Case

Company records indicate that the Complainant incepted a Contractors Plant and Special Types insurance policy with the Company on 3 May 2017.

This policy provides accidental fire and theft cover for the mobile special types or yellow plant machinery that are listed on the policy schedule.

The Complainant's Broker notified the Company by email on 17 May 2017 of a claim in respect of electrical fire damage to the Complainant's excavator machine. The Company-appointed Engineer inspected this machine on 19 May 2017 at a farmyard premises close to the Complainant's business address. Following this inspection, the machine was deemed to be beyond economical repair. As its inspection was then fully completed, the Company notes that there was no requirement for the Complainant to hold on to the machine thereafter.

The Company emailed a claim settlement offer of €17,530 to the Complainant's Broker on 19 June 2017, calculated by way of a pre-accident value of the machine of €26,000, less the policy excess of €315 and the salvage offer of €8,155 from a named garage. In this regard, the Complainant would receive a settlement amount of €17,530 from the Company and if he chose to accept the salvage offer he would receive a further €8,155, or he could keep the machine and arrange for its sale privately.

In relation to the pre-accident value of the machine, the Company notes that it is commonly known that when a person insures a vehicle they will, in the event of a loss, receive the lower of the current market value or the insured amount, as an insurance policy is only designed to put a person back in the same financial position that they were in prior to the loss. Whilst the Complainant did indeed insure his excavator machine for the sum of €27,500, the Company submits that this was not its value immediately before the claim.

In this regard, the Engineer spoke with a dealer at the time of the loss who advised that it had a 2007 excavator machine that was serviced and ready for work for sale at €27,000, excluding VAT. This dealer advised that had it been a 2006 excavator machine, as was the Complainant's machine, it would be seeking €26,000, excluding VAT. The Company states that it has no doubts whatsoever that the pre-accident value, which it notes that the Complainant previously agreed to with the Engineer shortly after inspection, is a fair and reasonable offer that puts him back in the same position he was in prior to the loss.

The Company notes that the Complainant then presented a further claim on 17 July 2017 in respect of storage charges, hire charges for a replacement machine and recovery charges. The Company requested invoices from the Complainant on 19 July 2017 in order to validate these additional expenses. On 1 August 2017, the Complainant presented an invoice detailing storage charges in the amount of €6,160, hire charges for a replacement machine in the amount of €7,700 and recovery charges in the amount of €2,200.

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Storage Charges:

The Complainant submitted a claim in respect of storage charges, at that time in the amount of €6,160. The Company is satisfied that the terms and conditions of the Complainant's policy does not cover storage charges and that this was fully explained to the Complainant and his Broker, however he has refused to accept this position. To date, despite the information provided by the Company and the fact that there is no cover for storage under his policy, the Complainant has kept the machine in storage, accruing costs. In this regard, the Company notes that the Complainant has a duty to mitigate his own losses in the event of a claim.

It is clear in this case that even after the question of storage charges had been raised and the Company had made it clear that this was not covered, the Complainant did not take any action to reduce his costs. The Company cannot accept liability for any storage charges incurred whatsoever and submits that the Complainant is fully responsible for these costs and this is a matter that he himself needs to resolve directly with the storage farmyard.

In addition, whilst the Complainant comments that "this machine has been stored on behalf of the insurance Company in a safe and secure storage yard", the Company notes that the machine is owned by the Complainant and at no time did it request for it to be held in storage nor would it insist on the machine being kept in any particular place. Instead, the Company took instruction from the Complainant as to where he had stored the machine only so it could advise the Engineer as to where the machine could be inspected. Furthermore, the Company notes that it advised the Complainant by email on 19 June 2017 that "the salvage need not be retained any longer" and in addition to this, he had been given the option of keeping the salvage and arranging for its sale privately.

Hire Charges:

The Complainant submitted a claim in respect of hire charges for a replacement machine in the amount of €7,700. The Company is satisfied that Complainant's policy does not provide cover for hire charges of a replacement machine.

Recovery Charges:

The Complainant submitted a claim in respect of recovery charges in the amount of €2,200. Although it considered this cost excessive, in a bid to be fair to the Complainant the Company allowed for the full amount without any adjustment.

As a result, the Company amended the claim settlement offer it had first offered the Complainant by email on 19 June 2017 to include €2,200 for recovery charges. The Complainant's Broker was notified of this revised offer by way of email on 7 September 2017. In this regard, the Complainant would receive a settlement amount of €19,730 from the Company and if he chose to accept the salvage agent offer to buy the salvage he would receive a further €8,155, or he could keep the salvage and arrange for its sale privately. The Company also explained to the Complainant and his Broker in this email that storage charges were not covered under the policy.

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The Company followed up with a number of emails to the Complainant's Broker asking if the Complainant accepted this revised offer, however the Complainant would not accept the offer as it did not include, among other things, storage charges. The Company is satisfied that as a result of its claims settlement offer, which it considers to be reasonable, the Complainant, despite his assertions to the contrary, did have access to funds to replace the machine. As he continued not to accept its claim settlement offer, the Company, conscious that the Complainant may need to purchase a new machine and in a final effort to be flexible, issued an interim settlement payment to the Complainant in July 2018 in the amount of €19,730, pending the outcome of this complaint process.

In this regard, the Company emailed the Complainant on 5 July 2018 to advise that "this payment is provisional and it is hoped that this will assist you pending a final decision by the Ombudsman in relation to your complaint". Company records indicate that the Complainant presented this cheque on 20 July 2018.

The Company stands over its original claim settlement offer, however the salvage agent is understandably no longer willing to pay €8,155 for a machine that has inevitably deteriorated from being left in a farmyard for an extensive amount of time. For this reason, although it has no liability in this regard, the Company did seek further salvage offers on behalf of the Complainant. The highest offer it could obtain was an offer of €6,000 and contact details for this salvage agent has been provided to the Complainant and he should contact the salvage agent before the offer has expired if he wishes to accept it.

The Company has issued the Complainant with a payment of €19,730, which it is satisfied represents the full amount due in respect of this claim. In addition, the Complainant has the choice to sell the salvage to the salvage agent and receive an additional payment of €6,000 or to keep the salvage and arrange for its sale privately. In this regard, the Company submits that the Complainant's insistence on retaining the machine in storage resulting in its salvage value depreciating is not within its control and that it is the Complainant who is fully responsible for this. The Company also notes that whilst it originally gave the Complainant the option of arranging the sale of the salvage himself or allowing the Company to take ownership of same, where it would then arrange for the sale of the salvage, this option is no longer available as the storage yard would now require payment before allowing the Company to pick up the salvage.

The Company notes that the Complainant persisted in having the excavator machine held in storage despite its clear confirmation shortly after a claim for storage charges was presented for consideration that cover for storage was not provided and, in any event, the Company submits that the machine could simply have been stored within the Complainant's existing yard, that is, where the machine was always stored prior to the loss when, for example, it was not in use or closed for business.

The Company states that it always strives to be fair and reasonable when dealing with any claim presented to it and it is fully satisfied that its dealings with the Complainant and his claim were no different to this practice. Accordingly, the Company is fully satisfied that it

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handled the Complainant's claim in line with the policy terms and conditions and that its final settlement of €19,730 is both fair and reasonable.

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 5 November 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, I set out my final determination below.

The complaint at hand is, in essence, that the Company wrongly and unfairly assessed the Complainant's insurance claim.

In this regard, the Complainant incepted a Contractors Plant and Special Types insurance policy with the Company on 3 May 2017. This policy provides accidental fire and theft cover for the mobile special types or yellow plant machinery that are listed on the policy schedule. The Complainant's excavator machine was listed on his policy schedule, valued at €27,500. This machine was damaged by electrical fire on 12 May 2017 and his Broker subsequently submitted a claim to the Company on 17 May 2017.

Following its assessment of this claim, the Company emailed the Complainant's Broker with a claim settlement offer of €17,530 on 19 June 2017, calculated by way of a pre-accident value of €26,000, less the policy excess of €315 and the salvage offer of €8,155 from a named garage.

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The Complainant's Broker contacted the Company on 17 July 2017 seeking the following additional costs to be considered as part of the claim settlement; namely, storage charges in the amount of €6,160, hire charges for a replacement machine in the amount of €7,700 and recovery charges in the amount of €2,200.

Having considered the invoice supplied, the Company amended its claim settlement offer to include €2,200 for recovery charges. The Complainant's Broker was notified of this revised offer by email on 7 September 2017. In this regard, the Complainant would receive a settlement amount of €19,730 from the Company and if he chose to accept the salvage agent offer to buy the salvage he would receive a further €8,155, or he could keep the salvage and arrange for its sale privately. The Company also explained to the Complainant and his Broker in this email that hire and storage charges were not covered under the policy.

The Complainant did not want to accept this offer as it did not include cover in respect of the storage charges. As the matter remained unresolved at that time for nearly a year, the Company, as an interim measure, issued a payment to the Complainant in July 2018 in the amount of €19,730, pending the outcome of the complaint to this Office. The Company considers this to be the full claim settlement amount that the Complainant is due. The Company also noted in July 2018 that the salvage offer of €8,155 from a named garage was, due to the passing of time, no longer valid and that the highest salvage offer it could obtain at that time was €6,000.

There are a number of elements to the Complainant's complaint, insofar that he disputes the pre-accident value of his excavator machine as determined by the Company, he does not accept that his policy does not provide cover for the storage charges he has incurred nor does he accept the recent reduction in the salvage offer and he complains that the Company's unwillingness to resolve these matters resulted in delays that left him unable to replace his machine within an adequate timeframe.

I note that the Company determined the pre-accident value of the Complainant's excavator machine to be €26,000. In this regard, the Complainant states *"the machine is insured for €27,500,* [the Company] *only offered €26,000, leaving us short €1500"*. It is difficult to place a precise figure on the pre-accident market value of a vehicle or machine. This value is not necessarily the actual value of the vehicle when the policy was originally affected or its worth to the Complainant at the time of the damage. Assessment of the market value of a vehicle or machine includes consideration of the make, model, age, condition, use and accrued hours or mileage of the vehicle or machine in question. Whilst it is not the role of this Office to determine the market value of the machine in question, I do however note that the Company provided the Complainant with the information it used concerning his vehicle and comparative vehicles for sale at that time in support of its valuation. In this regard, the Company-appointed Engineer spoke with a dealer in Co. Limerick at the time of the loss who advised that it had a 2007 excavator machine that was serviced and ready for work for sale at €27,000, excluding VAT. This dealer advised that had it been a 2006 excavator machine, as was the Complainant's machine, it would be seeking €26,000, excluding VAT. I accept that this indicates that the Company assessed the value of the Complainant's vehicle in accordance with industry practice.

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With regard to the storage charges, I note that the Complainant submitted a claim in respect of storage charges, at that time in the amount of €6,160. The Company states that it is satisfied that the terms and conditions of the Complainant's policy does not provide cover for storage charges and that this was fully explained to the Complainant and his Broker. The Complainant refuses to accept this position and submits, as follows:

> *"The insurance Company is refusing to cover storage of the machine. This machine has been stored on behalf of the insurance Company in a safe and secure storage yard. This obviously carries a cost and the policy in question covers this type of expense. I now have a substantial cost for this storage of the machine and the Company…are refusing to pay this"*.

I note that the Complainant does not advise which provision of his policy document he considers indicates that cover is provided in respect of storage charges. Whilst the Complainant submits that his excavator machine *"has been stored on behalf of the insurance Company in a safe and secure yard"*, I note from the documentary evidence before me that the Company email to the Complainant's Broker on 19 June 2017 clearly advised *"The salvage need not be retained any longer"*. In any event, I have examined the policy terms and conditions and I note that it is not stated anywhere in the terms and conditions of the Complainant's policy that storage charges would be covered in the event of a claim.

With regard to the reduced salvage offer, in his email dated 16 July 2018, the Complainant notes that the salvage offer of €8,155 made by the Company as part of its initial claim settlement offer on 19 June 2017 and its amended claim offer on 7 September 2017 has since been reduced to €6,000. In this regard, the Company has since advised the Complainant in its correspondence dated 8 August 2018 that *"the original salvage offer has now expired but we have sourced a new offer for you for €6,000"*. The Complainant submits that *"we were at no point advised that the salvage costs were liable to reductions"*. It does not seem unreasonable to me that a salvage agent would be unwilling to pay the same amount for a machine a year after what it was originally willing to pay when it first made the offer.

I note too that the Complainant could have accepted the salvage offer when it was first made on 19 June 2017, given that the Company email to the Complainant's Broker on that date clearly advised that *"the salvage need not be retained any longer"* and that the Complainant did not at the time or since dispute that offer amount.

In addition, the Complainant also submits that the Company *"claims the offer was for a 10 day period only but not stated on* [its] *correspondence on the 15 January 2018 or any other correspondence"*. However, I note that the Company email to the Complainant's Broker on 19 June 2017 clearly advised, *"We are obliged to allow you a 10 Day Cooling Off period to give you time to accept or reject the offer"*. In addition, the Company email to the Complainant's Broker on 7 September 2017 with the revised offer also advised, *"The Insured may accept or reject this offer with 10 business days"*. I accept that this indicates that the offer remains valid for a period of ten days and is not open-ended.

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Finally, the Complainant considers that the Company's unwillingness to resolve these matters resulted in delays that left him unable to replace his machine within an adequate timeframe. I do not accept this to be the case. The Company determined the pre-accident value of the Complainant's excavator machine and sourced the salvage offer as part of its original claim settlement offer made on 19 June 2017. In addition, the Company confirmed to the Complainant in its email of 7 September 2017 that his policy did not provide cover in respect of storage charges and it allowed for the recovery charges sought. This revised claim settlement offer that the Company emailed to the Complainant's Broker on 7 September 2017 would have provided the Complainant with €27,885 if he had accepted it at that time. I accept that the Complainant was then at that time in receipt of a full and reasonable claim settlement offer that would have enabled him to replace his machine.

Accordingly, I accept that the Company correctly and fairly assessed the Complainant's insurance claim in accordance with the terms and conditions of his policy.

For the above reasons therefore, I do not uphold this complaint.

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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

27 November 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.