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| <u>Decision Ref:</u> | 2018-0194 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Household Contents |
| <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 Complainant holds an agricultural vehicle tractor insurance policy with the Company, which provides cover in respect of a number of his named agricultural machinery.

The Complainant's Case

The Complainant sets out his complaint, as follows:

"On the 4th October 2016, I was mowing some meadow on my own farm, a meadow I have been mowing for years. While mowing, the mower came in contact with a stone and it damaged the bed of the mower. As a result the bed of the mower started to leak oil. I have been using the mower for the last 6 years. I bought it originally 2nd hand...I have never had any problems with it but there had been some welding done by the previous owner. The rest of the mower is in perfect condition and all drive shafts are all in immaculate condition. [J. M.] from [the Company] in [town] recommended that I cover my baler, mower and wrapper in my insurance policy and I understood upon receiving this fully comprehensive cover that any damage received to any of these machines was all covered. [The Assessor] viewed the mower on behalf of [the Company] and he made the decision that it is "wear and tear" and that the company are not liable to pay. I cannot understand how he can come up with this conclusion as it had been working perfectly since I bought it 6 years ago. I expected to get a large number of years out of this mower...I cannot understand how "wear and tear" is used as an excuse not to pay out, when it was damaged while mowing".

In addition, the Complainant also submits in correspondence dated 26 May 2017, as follows:

"I had fully comprehensive insurance recommended for me to take out by [J. M.] of [the Company] in [town]... she reassured me that all my machinery including the mower was fully covered under the fully comprehensive insurance. Why would I take out fully comprehensive insurance for my mower, if [the Company] were going to use "wear and tear" as an excuse not to pay for any damages...I bought that mower as a long term investment second hand. I accept there was some welding done by the previous owner but I have had no problems with that mower, it worked perfect up until the stone damaged it. That was the only reason it stopped working, not due to wear and tear".

The Complainant *"would like the bed of the mower covered to be fixed"*. In this regard, the Complainant notes that it would cost *"Approx. €5,000 to be fixed and the mower was insured for €7,000"*.

The Complainant's complaint is that the Company wrongly or unfairly declined his insurance claim.

The Provider's Case

The Complainant holds an agricultural vehicle tractor insurance policy with the Company, which provides cover in respect of a number of his named agricultural machinery.

Company records indicate that the Complainant telephoned the Company on 5 October 2016 to advise that his mower had sustained damage after impacting with a rock the previous day, 4 October 2016, whilst he was mowing a meadow on his farm. The Company appointed an Assessor to examine this mower and following his initial examination on 7 October 2016, it was arranged for the mower to be dismantled for further assessment, which was carried out a few days later. The Assessor's ensuing report advised, as follows:

"Whilst examining the mower it was noted that the bed has evidence of having been previously repaired numerous times. There are areas of welded sections and the underside of the cutter bed is extensively worn. As this damaged bed is due to wear and tear it is our opinion that the insurer had no liability".

In this regard, the Company notes that the Assessor stated that the mechanical failure to the mower was due to wear and tear, a cause excluded from cover under the terms and conditions of the Complainant's agricultural vehicle tractor insurance policy.

The Claims Department spoke with the Complainant by telephone on 19 October 2016, in which the findings of the Assessor and the accident circumstances were discussed. In addition, the prospect of pre-purchase damage on the vehicle was also discussed. The Company notes that the Complainant is firm in his belief that the damage was attributable to impact with a stone.

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The Company, however, declined the Complainant's claim by way of correspondence dated 14 November 2016. The Company notes that since then a number of discussions took place between the Complainant and its Claims Department but both respective positions remained unchanged.

Accordingly, the Company is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of his agricultural vehicle tractor insurance policy.

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 19 October 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 below my final determination.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the Complainant's insurance claim. In this regard, the Complainant holds an agricultural vehicle tractor insurance policy with the Company, which provides cover in respect of a number of named agricultural machinery including a mower. The Complainant states that he was mowing a meadow on his own farm on 4 October 2016 when the mower *"came in contact with a stone and it damaged the bed of the mower. As a result the bed of the mower started to leak oil. I have been using the mower for the last 6 years. I bought it originally 2nd hand...I have never had any problems with it but there had been some welding done by the previous owner. The rest of the mower is in perfect condition and all drive shafts are all in immaculate condition"*.

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The Company-appointed Assessor examined the dismantled mower and concluded that the loss was due to wear and tear, a cause excluded from cover under the terms and conditions of the Complainant's agricultural vehicle tractor insurance policy. As a result, the Company declined the Complainant's claim by way of correspondence dated 14 November 2016.

In this regard, I note that the Company-appointed Assessor's report advises at pgs. 1-2, as follows:

"In this case we are advised the aforementioned vehicle sustained damage as a result of a collision with a rock ...

Whilst examining the mower it was noted that the bed has evidence of having been previously repaired numerous times. There are areas of welded sections and the underside of the cutter bed is extensively worn. As this damaged bed is due to wear and tear it is our opinion that the insurer had no liability".

In addition, I also note from the documentation before me that in his email to the Company at 1.37pm on 19 October 2016 the Assessor advised, as follows:

"I attended at the insured's yard to examine the mower in the first inspection. As I was unable to clearly see the mower bed I asked the insured to nominate a repairer and call me when the mower was stripped. I received a call from the repairer last Thursday and I called to [the garage] last Friday to view the mower which had been dismantled. The bed of this mower is worn out. The bed has evidence of many previous repairs. I tried to explain this to the insured but he insists that this comprehensive cover should meet the cost of repairs which would involve the complete replacement of the bed. I explained to the insured that he may understand what I was trying to explain to him if he called to the repairer to inspect the mower and see for himself. I explained to the insured that the mower bed is completely worn due to its age and the wear and tear it would be expected to sustain during its lifetime".

The Complainant submits that *"I understood upon receiving this fully comprehensive cover that any damage received to any of these machines was all covered. [The Assessor] viewed the mower on behalf of [the Company] and he made the decision that it is "wear and tear" and that the company are not liable to pay. I cannot understand how he can come up with this conclusion as it had been working perfectly since I bought it 6 years ago. I expected to get a large number of years out of this mower...I cannot understand how "wear and tear" is used as an excuse not to pay out, when it was damaged while mowing".*

In this regard, agricultural vehicle tractor insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

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In this regard, section 2, 'Loss or Damage to the Insured Vehicle' of the Complainant's agricultural vehicle tractor insurance policy document states at pg. 5, as follows:

"Exceptions

The Company shall not be liable to pay for:

(a) loss of use, depreciation, wear and tear, mechanical and/or electrical and/or electronic breakdowns, failures or breakages".

I note that the Company declined the Complainant's claim by way of correspondence dated 14 November 2016, wherein it advised that the Assessor had confirmed that the mechanical failure to the mower was due to wear and tear, a cause specifically excluded from cover under the terms and conditions of the Complainant's agricultural vehicle tractor insurance policy. I note, however, that the Complainant does not accept that the damage was due to wear and tear. Telephone recordings of calls between the Complainant and the Provider have been provided in evidence.

I have considered the content of these calls. I note from a telephone call between the Company and the Complainant on 1 February 2017 at 3.59 pm, that the Agent advised the Complainant that he could arrange at his own cost for a different Assessor to examine his mower and that the Company would consider this Assessor's report. There is no evidence before me indicating that the Complainant did so.

In any event, I accept that it was reasonable for the Company, based on the evidence before it, to conclude that the damage to the Complainant's mower was due to wear and tear.

I must point out that this does not mean that I do not accept the Complainant's version of events that the damage became apparent when he was mowing the meadow. The key issue is whether the damage was an insured peril. Based on all the evidence before me, I believe it was not.

Accordingly, I accept that the Company declined the Complainant's claim in accordance with the terms and conditions of his agricultural vehicle tractor insurance policy.

For the reasons set out above, 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**

6 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.