



<b><u>Decision Ref:</u></b>	2019-0073
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim Delayed or inadequate communication Failure to provide product/service information
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

##### **Background**

This complaint concerns a motor insurance policy held by the Complainants and underwritten by the Provider. The Complainants made a claim on their policy in February 2018 which was repudiated by the Provider.

##### **The Complainants' Case**

The Complainants submit that they purchased a “*full comprehensive car insurance*” policy through an intermediary, underwritten by the Provider, on 15<sup>th</sup> February 2017. They further submit that they made a claim on their policy in February 2018, when it was discovered during servicing that their vehicle’s wiring had been damaged by “*vermin*”. The Complainants state that after “*several days/phonecalls etc*” the Provider repudiated their claim because “[*damage*] *by rodents is excluded*” under their motor insurance policy. The Complainants submit that they “*never received*” the policy booklet from the intermediary which sold them the policy. However, the Complainants assert that “*full comprehensive insurance should cover everything*” and want the Provider to “*pay full expenses incurred*” by them with regard to their damaged vehicle.

### **The Provider's Case**

The Provider states that:

*"No insurer offers a motor insurance contract that 'covers everything'. Exceptions and exclusions are standard in any insurance contract and unfortunately, our policy does not cover damage to the vehicle by vermin nor does it cover gradually operating causes or electrical/electronic breakdown".*

The Provider submits that the cause of damage to the Complainants' vehicle is not covered by their motor insurance policy and therefore the Provider cannot assist the Complainants with their loss.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongly refused to pay the Complainants' claim on their comprehensive motor 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 on 12<sup>th</sup> February 2019, 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.

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## Evidence

### **Policy Document**

Page 3 of the policy document states that:

*"You have paid the premium, We have agreed to insure You for the period shown in Your Schedule, subject to the terms, conditions and exclusions in this booklet."*

A "cooling-off period" of 14 days from the policy's start date is noted on page 6 of the policy document.

Exceptions to the policy are noted on page 16 under **D: General Exceptions**, which includes the following:

*"A. Except where it is necessary to meet the requirements of Road Traffic legislation, We will NOT pay for:*

*8. loss or damage to an insured vehicle caused by vermin, such as animals or insects that are destructive in their natural behaviour; or considered pests or nuisances, including (but not limited to) rodents, weasles, squirrels, flies, and cockroaches;"*

As part of its formal response to this Office, the Provider confirms that it delivered 100 copies of the Policy Document to the Complainants' insurance broker in January 2017 and that 45 motor insurance policies had been taken out by the time the Complainants' policy was inception, leaving 55 copies of the booklet on hand.

The Provider submits that a .pdf version of the policy document was also available on its website.

### Analysis

The Complainants make three main arguments:

1. The Complainants submit that they did not receive a copy of the policy document;
2. The Complainants did not realise that damage by rodents was excluded from their motor insurance policy;
3. A comprehensive motor insurance policy should "cover everything".

As the policy was sold to the Complainants by an intermediary, the Provider does not bear the responsibility for ensuring that the Complainants received a copy of the policy document. However, the Provider notes that it facilitates access to the policy document online, via a .pdf link on its website. The Provider has also calculated how many policy document brochures were furnished to the intermediary around the time when the Complainants took out their policy, and estimate that the intermediary should have had over 50 brochures on hand at the time the Complainants' policy was inception. I am satisfied that the Provider met its obligations with regard to making the policy document available, and as the Complainants purchased the policy via an independent intermediary, the obligation to ensure that the Complainants were given all relevant details of the policy being purchased was not an obligation of the Provider's.

The fact that damage caused by rodents was not covered by the Complainants' policy was clearly stated on page 16 of the policy document under the heading '**D: General Exceptions**'. Exception number 8 states that loss or damage to an insured vehicle caused by vermin is excluded from the policy. It goes on to clarify this as meaning animals or insects that are destructive in their natural behaviour, or are considered pests or nuisances, and gives examples of such creatures, "*including (but not limited to) rodents, weasles, squirrels, flies, and cockroaches*".

The Consumer Protection Code 2012 states that key information must be brought to the attention of consumers in a way that ensures that the method of presentation does not disguise, diminish or obscure this information.

I am satisfied that the fact that the Complainants' policy does not cover damage or loss to a vehicle caused by rodents was clearly stated in the policy document governing the contractual arrangement.

The Complainants assert that a comprehensive motor insurance policy should "*cover everything*". The Complainant's motor insurance policy, like all insurance policies, did not provide cover for every eventuality; rather the cover which was in place was subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that **Section D: General Exceptions (A.)** of the applicable Motor Insurance Policy Document provides, *inter alia*, for a number of exceptions as follows:

1. *"any accident, injury, loss or damage arising during or as a result of an earthquake;*
2. *any accident, injury, loss or damage arising during or as a result of a riot or civil commotion happening anywhere outside the Republic of Ireland, Northern Ireland, Great Britain, the Isle of Man, or the Channel Islands (unless You can prove that the loss, damage, or injury was not caused by that riot or civil commotion);*
3. *loss or damage directly caused by pressure waves that are a result of aircraft or other flying objects travelling at or above the speed of sound;*
4. *loss of or damage to any property, or for any indirect or consequential loss or expense, or for any legal liability directly or indirectly caused by, contributed to, or arising from*
  - (i) *ionising radiation or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from burning nuclear fuel, or*
  - (ii) *the radioactive, toxic, explosive or other dangerous properties of any explosive nuclear assembly or part of it;*
5. *any consequence of war, revolution, or a similar event;*
6. *any consequence of Terrorism, including any action taken to control or prevent an act of Terrorism;*
7. *any accident, injury, loss or damage, including consequential loss, or any liability of any nature whilst the insured vehicle is in (or on) that part of an aerodrome, airport, airfield, or military base, which is provided for*
  - (i) *the take-off or landing of aircraft and for the movement of aircraft on the ground, or*
  - (ii) *aircraft parking (aprons), including associated service roads, refuelling areas, and ground equipment parking areas;*

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8. *loss or damage to an insured vehicle caused by vermin, such as animals or insects that are destructive in their natural behaviour; or considered pests or nuisances, including (but not limited to) rodents, weasels, squirrels, flies, and cockroaches;*
9. *any liability, loss, damage, cost or expense directly or indirectly caused by, resulting from (or in connection with) losing, altering, damaging, or reducing the availability of a computer system, hardware programme, software, data-information store, microchip, integrated circuit or similar device in computer equipment or non-computer equipment that results from deliberately or negligently transferring (electronically or otherwise) a computer programme that contains any damaging code including computer viruses, worms, logic bombs or Trojan horses”.*

Though loss or damage caused by vermin may not be a universal exception, or, as the Complainants suggest, not a ‘common’ exception for motor insurance policies, an underwriter is entitled to stipulate what it is and is not willing to cover under a policy, as long as this is clearly stated in the policy document. It is then up to the proposer to decide whether they wish to accept an offer of insurance under those terms.

I am satisfied that the Provider was entitled to exclude certain types of loss or damage from the Complainants’ comprehensive motor insurance policy, and that it clearly stated and explained the exclusion which is the subject of this complaint.

For the reasons set out above, there is no evidence available that the Provider acted wrongfully in declining the Complainants’ claim and, consequently, I do not believe it would be appropriate to 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.**

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

11 March 2019

**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**

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**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**

