



<u>Decision Ref:</u>	2019-0280
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Other
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/security of vehicle Delayed or inadequate communication Complaint handling (Consumer Protection Code) Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant entered into an insurance policy in respect of a motorhome through an insurance broker in **2016**. The insurance policy is underwritten by the Provider against which this complaint is made. In **May 2017**, while holidaying in France, the Complainant's motorhome broke down. The motorhome's clutch and gear box had broken due to wear and tear. The Complainant accepts wear and tear of these parts is not covered by the insurance policy. However, the Complainant states that further damage was sustained to the gearbox housing during or after the removal of the motorhome from its location to a designated garage. The Provider refused to indemnify the Complainant in respect of this.

The Complainant's Case

The Complainant states that on **20 May 2017**, his motorhome broke down in France, he could not get the motorhome into gear as the clutch was broken. He states that he contacted the Provider and was initially informed that his claim was not covered by the policy. The Complainant contacted the Provider again the next day who agreed to provide cover and requested that the Complainant bring the motorhome to a garage for repairs. The

Complainant states that he was unable to do this as he was holidaying in a remote rural location and did not have sufficient fluency to communicate with the relevant parties.

The Complainant states that the Provider told him that he was not entitled to a replacement vehicle and that the policy only covered the cost of towing the vehicle. The motorhome was taken by a garage approximately 20 kilometres away.

The Complainant was told to collect the motorhome in 3 days. After 3 to 4 days the Complainant states that he had not received any contact from the garage. The Complainant's wife received a call from the Provider's breakdown assist to inform her that a replacement car should have been provided and that one would be arranged. Following this, the Complainant was provided with a replacement car.

The Complainant states that he was informed by the garage that the shaft in the gear box was broken and that a new gearbox was needed which could not be sourced in France. The Complainant tried, unsuccessfully, to source one in Ireland.

The Complainant states that the motorhome was fully serviced and checked in Ireland before departing for France. He states that it is his mechanic's opinion that there were no problems with the motorhome and that he was of the view that the clutch was not faulty. He also advised that his mechanic was of the view that the damage to the shaft is very uncommon and was probably not caused by the clutch. The Complainant states that two further mechanics agreed with this view.

In light of this, the Complainant's position is that the damage was caused in some other way. He believes that damage was caused when the motorhome was being removed to the garage or during or after the removal of the clutch from the motorhome. The Complainant states that he asked the Provider on numerous occasions to have the gearbox checked to determine the cause of this secondary damage. He states that the Provider maintains the position that the damage was caused by wear and tear and therefore is not covered by the policy.

The Complainant accepts that the initial damage was caused by wear and tear and is therefore not covered under the policy, however he submits that this secondary damage to the gearbox should be covered under the policy as he submits that it is provided under the "Exceptions" heading in the policy, that;

"-Mechanical or electrical breakdowns, failures or breakages

-[The Provider] will not pay for the item which broke down, failed or broke but [the Provider] will pay for any consequent loss or damage which is covered, except that caused by a failure of portable electricity generating equipment"

The Complainant referred to the policy which states:

"We will reply to your complaint within seven days. We will investigate your complaint. We will keep you informed of progress. We will do everything possible to

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sort out your complaint. We will use feedback from you to improve our service and [sic] also [the Provider] will not pay for the item which broke down, failed or broke but [the Provider] will pay for any consequent loss or damage which is covered, except that caused by a failure of portable electricity generating equipment.”

In response to the Provider's engineer's report the Complainant states that the motorhome was not in motion when the problem occurred, as surmised by the engineer in his report. The Complainant states that the motorhome was stationary for two days prior to the breakdown as he intended to bring it to a mechanic to inspect it. The Complainant states that when he started the motorhome, after the Provider advised him to bring it to a mechanic, he could not get it into gear. The Complainant states that the rust that was present, and referred to by the Provider's engineer, could be explained by the fact that the gearbox was exposed to the weather for a number of months.

The Complainant states that he is seeking to claim a write-off or repair of the gearbox due to secondary damage caused by wear and tear in the clutch. The Complaint states that the Provider should investigate the cause of the shaft in the gearbox breaking and if a replacement cannot be sourced then it should write off the motorhome and reimburse the Complainant.

The Complainant further states that from **20 May 2017**, when the motorhome broke down, to **31 August 2017** is too long to have to wait for the Provider to resolve the problem. He states that the Provider should have responded to his email complaints and should not have ignored them. He states that he was getting some phone calls but nothing that was helping to get his problem sorted. He states that it was not until he agreed to have the motorhome scrapped that the Provider became eager to help.

The Provider's Case

The Provider states that the Complainant's motorhome was recovered and brought to a garage on **16 May 2017**. The garage advised the Complainant that the clutch and gear box had fully broken and would need to be replaced. The Provider states that the Complainant's claim was declined because this mechanical breakdown was not covered by the policy.

The Provider has submitted an opinion of its chief engineer who, having examined the photographs of the motorhome supplied by the Complainant, states that the damage caused is a result of mechanical failure and wear and tear of the gear-ox release bearing and clutch.

The Provider states that it discussed options regarding the scrapping, repatriation and repair of the motorhome with the Complainant. The Provider states that repairs were impractical due to the unavailability of parts. The Provider offered €440 towards repatriation or scrapping of the motorhome as this was the amount of the unused balance of the benefit remaining in respect of repatriation/scrapping, after the costs involved in towing the Complainant's vehicle to the garage.

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The Provider states that the Complainant decided to scrap the vehicle and that it explained the process to the Complainant and was willing to assist with this. The Provider states that the Complainant changed his mind and wanted the motorhome towed back to a location in France which the Provider arranged.

The Provider states that on **20 June 2017**, it explained its decision and cover position to the Complainant and formally issued a letter to him advising that it was not in a position to indemnify him.

The Complaint(s) for Adjudication

The complaints for adjudication are that:

1. The Provider wrongfully refused to cover the secondary damage caused to the gear box;
2. The Provider failed to investigate the cause of the break in the shaft of the gearbox;
3. The Provider delayed in resolving the Complainant's claim; and
4. The Provider ignored the Complainant's emails.

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 July 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

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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.

Following the issue of my Preliminary Decision the Provider made a further submission to this Office by e-mail dated 30 July 2019, a copy of which was transmitted to the Complainant for his consideration.

The Complainant has not made any further submission.

Following the consideration of the Provider's additional submission, together with all of the evidence submitted, I set out below my final determination.

I note at the outset that the date referred to by the Complainant on the Complaint form states that the breakdown occurred on **20 May 2017**, which appears to be an error as I note from copies of emails furnished by the Provider to this office in the course of the investigation that the Complainant emailed the Provider on **19 May** advising that he had used the Provider's breakdown service recently and was following up on the status of the motorhome. It appears that the correct date on which the breakdown occurred was **17 May 2017**.

The Complainant incepted the insurance policy in **November 2016**. I have considered the relevant policy document furnished to this office by the Provider in its submissions and note the following sections:

"Section 1(A) Comprehensive

The company will pay for accidental loss of or damage to your camper, its motoring accessories and specific items as shown below while they are in or on your camper or in your own private garage.

Replacement Car

If your camper is disabled as a result of an incident that will give rise to a valid claim under this policy, we will at our option provide or arrange to provide you with a replacement car or pay up to €20.32 per day incurred by you in hiring a replacement car ...

Temporary use on the Continent of Europe

Section 1 of your policy also operates while your camper is on the Continent of Europe ...

Repairs, storage, collection and delivery

... A maximum limit of €200 will operate for all fees connected with towage and storage of your campervan ...

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If your camper is disabled, the company will pay the reasonable cost of protection and removal to the nearest competent repairers.

After it has been repaired the company will pay for the reasonable cost of delivery of your vehicle to your address in the Republic of Ireland. ...

Exceptions

The company will not pay for:

- Losses you sustain from not being able to use your camper (including the cost of hiring another vehicle)

...

- Wear and tear

...

- Mechanical or electrical breakdowns, failures or breakages

- The company will not pay for the item which broke down, failed or broke but the company will pay for any consequential loss or damage which is covered

...

General Exemptions

...

This Policy does not apply

[When the camper]

2. Is being driven by, or in the charge of any person who is not covered by your certificate of insurance.

Then

(a) The cover provided under the loss of or damage to the insured campervan will not apply; ..."

The Complainant's Certificate of Insurance lists the Complainant and two other individuals as the "Drivers, or Classes of Drivers, whose driving is covered."

In a letter dated **20 June 2017**, the Provider wrote to the Complainant in the following terms:

"... You have advised us that your car was not involved in an accident but that when you were driving your gear box broke.

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We are sorry to hear of your loss. However, as we have advised, damage/loss such as this is not covered under your policy. See Section 1 – excludes damage caused by ‘wear and tear, mechanical or electrical failure, breakdown or breakages ...’

We regret therefore that we are not in a position to indemnify you for the loss as your policy does not cover this. ...”

The Provider has also furnished in evidence the opinion of its chief engineer dated **15 February 2018**:

“Having the opportunity to examine in detail the colour images supplied by the insured it is my opinion that the gear-box release bearings have been seized onto the spigot shaft and in turn when the clutch pedal was depressed by the insured, the clutch released at the moment of seizure and the gear-box fork broke the gear-box internal housing and the clutch release fork fell into the gear-box damaging the clutch. This would happen as the engine was running and in motion and the insured advised that he had difficulty getting it into gear. There is scoring on the fork and a degree of rust on the spigot shaft and this rust is not normal. The spigot shaft should be clean and free of rust. The type of damage to the gear-box and the scoring visible on the inside of the gear-box as shown in the colour images would be typical of this type of bearing seizure and would cause a clean break of the gear-box housing. I am satisfied that this damage is as a result of mechanical failure and wear and tear of the gear-box release bearing and clutch ...”

I note that in an email dated **25 October 2018**, the Complainant, in response to the Provider’s engineer’s comments that the damage to the gearbox housing would happen as the engine was running and in motion, states:

“... I will say that the camper van was not in motion when the problem happened. It was stationery for 2 days as I was going to bring it to a mechanic to look at it and when I started it after being advised by [the Provider] to bring it to a mechanic , I tried to get it into gear then problem happened. ...”

While the Complainant states that the motorhome was not in motion, he does acknowledge that he started it and tried to get it into gear, following the request by the Provider to bring it to a garage in France.

In reaching my decision in respect of this complaint I have had regard to a number of provisions of the Consumer Protection Code 2012 (the **Code**). In particular, I note the following provisions:

“CLAIMS PROCESSING

7.6 A regulated entity must endeavour to verify the validity of a claim received from a claimant prior to making a decision on its outcome.

7.7 A regulated entity must have in place a written procedure for the effective and proper handling of claims. At a minimum, the procedure must provide that:

...

e) a record must be maintained of all conversations with the claimant in relation to the claim; and

f) the regulated entity must, while the claim is ongoing, provide the claimant with updates of any developments affecting the outcome of the claim within ten business days of the development.

...

7.9 Where a regulated entity engages the services of a loss adjuster and/or expert appraiser it must notify the claimant of the contact details of the loss adjuster and/or expert appraiser it has appointed to assist in the processing of the claim and that such loss adjuster and/or expert appraiser acts in the interest of the regulated entity and the regulated entity must maintain a record of this notification.

7.10 In the case of motor insurance and property insurance claims, and other claims where relevant, the regulated entity must notify the claimant that the claimant may appoint a loss assessor to act in their interests but that any such appointment will be at the claimant's expense and the regulated entity must maintain a record of this notification.

...

7.19 If the regulated entity decides to decline the claim, the reasons for that decision must be provided to the claimant on paper or on another durable medium.

...

COMPLAINTS RESOLUTION

...

10.7 A regulated entity must seek to resolve any complaints with consumers."

Complaint 1

The Provider has refused the Complainant's claim because the damage in question was due to wear and tear and mechanical failure. The Provider's chief engineer has examined various photographs of the gearbox and has come to a conclusion that supports this position. The Complainant has not provided any expert analysis of the photographs that were furnished by the Complainant to the Provider and subsequently examined by the Provider's engineer. While the Complainant has offered in evidence the views expressed by three mechanics, the Complainant has not submitted any reports or evidence supplied directly from these mechanics or any appropriately qualified expert. The Complainant's account of the opinions expressed by those mechanics is not sufficient to support his complaint and to outweigh the Provider's expert evidence.

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I stated in my Preliminary Decision that in the course of its correspondence with the Complainant, the Provider had not advised the Complainant of his right to appoint a loss assessor and that the Provider had not produced any record of such advice being given in compliance with its obligation under section 7.10 of the Code which states;

“7.10 In the case of motor insurance and property insurance claims, and other claims where relevant, the regulated entity must notify the claimant that the claimant may appoint a loss assessor to act in their interests but that any such appointment will be at the claimant’s expense and the regulated entity must maintain a record of this notification.”

I indicated this to be a failure on the part of the Provider and not in compliance with its obligations under the Code. I pointed out that there was no evidence that the provision of any such notification to the Complainant would have made any difference to the outcome, as the claim was declined, meaning that the role of the loss assessor in assessing liability/loss would not have been required and may simply have added to the Complainant’s costs.

The Provider, in its post Preliminary Decision submission of 30 July 2019, states:

“I wish to point out that we did advise the Complainant that he may appoint a Loss Assessor. This was and is on the back of our claims letters.

I set out the wording [Provider] used on our letters in 2017 and have attached a copy for you.

Other Information

You may appoint a Loss Assessor to assist you with your claim at your expense. Such costs are not covered under your Insurance policy. Our preference is to deal directly with you.

In our experience claims settle faster when we deal directly with our customers and any repairs carried out to your property are fully guaranteed by [Provider]. Should you choose to appoint a Loss Assessor to assist you with your claim please ensure that they:

- 1. Are authorised by the Central Bank of Ireland*
- 2. Meet the regulatory competence standards set by the Central Bank*
- 3. Give you full details of their fees in advance*

This appears to be the information that would have been contained on the back of a claims letter in 2018. This material, nor the copy of the claims letter, does not appear to have been previously furnished to this Office which is disappointing.

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The insurance policy covers accidental loss and damage. The policy makes clear that wear and tear is not covered. Mechanical damage is not covered, only consequential loss or damage flowing from this. Having considered the evidence and submissions of the parties, I accept that the damage caused to the gearbox housing, the secondary damage complained of by the Complainant, was due to wear and tear and mechanical failure and was not consequential loss or damage within the meaning of the policy.

Further to this, the Complainant states that the secondary damage to the gearbox housing was caused or sustained at the time of or during the removal of the motorhome to the designated garage. Alternatively, the Complainant states that the damage occurred during or after the removal of the clutch from the motorhome. The policy document makes clear that the policy does not apply if the motorhome is being driven by or is in the charge of a person who is not covered by the Complainant's certificate of insurance. Furthermore, on the basis of the Complainant's submission as to when the damage occurred, it occurred at a point in time when the motorhome was under the control of the garage and its personnel. The insurance policy does not extend cover to damage sustained in such circumstances.

Therefore, I do not uphold this aspect of the complaint.

Complaint 2

The Complainant states that the Provider failed to investigate the cause of the break in the shaft of the gearbox. Following the Provider's decision to refuse the Complainant's claim on **20 June 2017**, the Complainant raised this issue with the Provider by email dated **23 June 2017** and requested that it be investigated.

In one of the Provider's file notes dated **29 June 2017**, an email to be sent to the Complainant is recorded which states:

"... We have referred your claim to our Head Engineer who has confirmed this is mechanical failure. ..."

The Provider states that three further emails were sent to the Complainant. These emails are very similar to the one referred to above. Having reviewed these emails submitted by the Provider, I note that they do not contain any information regarding their author or recipient, nor do they contain details of any date or time. In the previous section I have quoted extensively from the Provider's engineer's report and in light of this and, notwithstanding that it is not clear if these emails were sent, I accept that the Provider has demonstrated that it did investigate the cause of the break in the shaft of the gearbox.

Therefore, I do not uphold this aspect of the complaint.

Complaints 3 & 4

The Complainant has expressed overall dissatisfaction at the manner in which his claim and complaint were dealt with. The Complainant states that **20 May 2017** to **31 August 2017** was too long to wait in order to resolve his claim. He further states that his emails were ignored by the Provider.

I am aware of a series of emails exchanged between the Complainant's insurance broker and the Provider regarding the Complainant's claim between **19 May 2017** and **11 July 2017**. These emails discuss the Complainant's claim, repatriation, damage, repairs and a courtesy car. I note that reference has been made by the Complainant to telephone conversations regarding his claim, however, no recordings have been furnished by the Provider. In its submission letter to this Office dated **2 February 2018**, the Provider states at paragraph 23, which deals with telephone recordings, that these are "*Non Applicable.*" The Complainant has provided almost no detail surrounding telephone conversations with the Provider. Equally, the Provider has provided no detail in this regard either. Section 7.7(e) of the Code requires the Provider to maintain a record of all conversations with the Complainant relating to a claim. No such record has been furnished by the Provider. If the Provider has recordings of telephone conversations, they should have been furnished to this Office for the purpose of the Adjudication process.

The Complainant has submitted in evidence a number of emails sent to the Provider's customer care email address beginning on **23 June 2017**. An automated response acknowledging the Complainant's email was received the same day. A further email of the same date was sent to the Complainant by one of the Provider's agents informing him that his query was forwarded to the relevant manager.

The Complainant emailed the Provider's customer care email address on **29 June 2017** and received a response from one of the Provider's agents on the same day. The Complainant sent three further emails to the Provider's customer care email address on **7 July 2017**, **15 July 2017** and **25 July 2017**. The Provider's agent responded to these emails on **26 July 2017** apologising for the lack of response and informed him that his email would be forwarded to the relevant department for urgent attention.

In a further email dated **30 July 2017** from the Complainant to the Provider's customer care email address, the Complainant complained about the lack of response he was receiving. By letter dated **1 August 2017**, the Provider wrote:

"Thank you for your email dated 30/07/2017. Apologies you have not received any of our communications but I can assure you that we emailed you on the 20th, 29th, & 30th of June to advise that this loss was as a result of mechanical failure which is not covered under you policy.

As a good will gesture we are willing to offer €400 towards the cost of the repatriation/scrappage of your vehicle. ..."

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While the documents provided in evidence suggest that the Provider made attempts to investigate and reply to the Complainant regarding his claim, under the section *Complaint 2* above, I noted that the emails being referred to in the Provider's letter dated 1 August 2017, do not contain certain important details, therefore, I am unable to determine when and to whom they were sent. However, I note that the emails sent to the Provider's customer care email address were not ignored and were responded to.

I consider the goodwill gesture offered by the Provider to be a reasonable sum of compensation for the inconvenience caused to the Complainant regarding this aspect of his complaint and the Provider's failure to comply with 7.10 of the Code. In these circumstances, on the basis that this sum remains available to the Complainant, I do not uphold this aspect of the complaint.

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**

3 September 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

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

