



<b><u>Decision Ref:</u></b>	2019-0351
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Motor
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - insurable interest
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant incepted a motor trade insurance policy with the Provider on **1 October 2014**, which was cancelled on **30 September 2015**. The Provider is the insurer, and the policy was underwritten by a named underwriter.

**The Complainant's Case**

The Complainant states that his friend, Mr Z. purchased a vehicle on his behalf on **20 May 2015**, which was then stolen two days later, on **22 May 2015**. He submitted a motor insurance claim in respect of this theft but following the Provider's investigations into the matter, the underwriters wrote to the Complainant on 21 September 2015 declining indemnity, as follows:

*"From the documentation supplied to us it is evident that [Mr Z.] was the purchaser of the vehicle. He made payment of both the deposit and the balance from his debit card and bank account respectively, and was the only person in possession of the car until it was stolen two days after being collected from [the Car Auctioneers]. We note from the statement given to our investigator that [Mr Z.] was not an employee of yours, nor was he a Named Driver under the policy. In addition, the Vehicle Registration Certificate submitted was still in the name of the previous owner".*

In this regard, the Complainant sets out his complaint, as follows:

*"I bought car...on 20/05/2015 from [the Car Auctioneers]. This car was stolen on 22/05/2015. The RF101 [Notification of Change of Vehicle Ownership] was completed by [the Car Auctioneers] at [address] and signed by me. The car was paid for by my good friend [Mr Z.], who has helped me out before in similar matters. [The Provider] refused to pay out on this theft as [it] contends that [Mr Z.] was the owner of this vehicle. I am very unhappy with this decision by [the Provider]."*

- 1) I am out of pocket to the sum of €29,990.*
- 2) I was left with no insurance cover for 2 months.*
- 3) [The Provider] only gave me six days' notice, but it should have been 16 days' notice.*

*My wife suffers from Multiple Sclerosis and my car is adapted to suit her disability. It was my intention to adapt my new Mercedes to suit my wife's disability. Because of [the Provider's] procrastination and delays, my wife was house bound for 2 months. I have been driving for 40 years without claims or accidents. I have been treated with contempt and my good name has been sullied by [the Provider]. Even though I have maximum no claims bonus, [the Provider] increased my insurance by 50% and gave me only 3<sup>rd</sup> party instead of the comprehensive that I had.*

*I believe that my signature on their RF101 confirms my legal ownership of this vehicle. I require payment in full for my vehicle that was stolen. I require the loading of 50% removed from my insurance policy. I require all restrictions lifted from my policy. I also require an apology for the fact that my character has been sullied by [the Provider]."*

*I bought this vehicle as I have a tax concession available due to my wife's condition. The retail book value of this vehicle was €39,000. I bought it for €29,990 and would have received €7,500 back from V.R.T. due to my wife's illness.*

*Legally, I signed the RF101 and I am legally the owner of this vehicle. The financing of this vehicle is a private matter between myself and [Mr Z.]".*

The Complainant has submitted a copy of the RF101 Notification of Change of Vehicle Ownership, which is dated **20 May 2015** and which he signed.

In addition, in his email to this Office dated 29 June 2016, the Complainant submits, as follows:

*"Just to clarify the log book situation. The book was filled out by [the Car Auctioneers] in my name and address and should have been posted to Dept. of Transport, Shannon but it was posted by mistake to an old address of [my friend, Mr Z.] which he still owns but the tenants did not give him the post until 3 weeks later. The insurance company had requested same, which I posted to them. If I was a dishonest person, I would have posted it to Dept. of Transport and it would have been put into my name*

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*as the registered owner from date of sale and there would have been no dispute between [the Provider] and I. Because I did the correct thing I am now in this situation which is very wrong ... The log book is never given to anybody unless they have a motor trades number, which [Mr Z.] does not have but did have years ago under his old address which was on file in [the Car Auctioneers] and that is where the mistake was made”.*

In its correspondence to the Provider dated 29 September 2015, the Complainant’s Solicitors advise, *inter alia*, as follows:

*“Given [the Complainant’s] circumstances in nursing a sick wife and being her carer, [he] has to rely on the goodness of friends and family to help him out in bad times. [Mr Z.] has been a life-long friend of [the Complainant] and his wife and was motivated only to assist [the Complainant] by providing a loan for the purchase of this vehicle. There is nothing sinister in this arrangement and [the Complainant] takes grave exception to any alternative suggestion and indeed innuendo as inferred [by the Provider] in your letter.*

*Following purchase of this vehicle, it is regrettable that [the Car Auctioneers] sent the tax book to the incorrect address, thus delaying the transfer of name ownership. However, the registration certificate clearly shows [the Complainant] as the owner. [The Complainant] has thoroughly explained the errors made by [the Car Auctioneers] subsequent to the purchase, including delivering one key only to [Mr Z.]. In any event, the subsequent theft of the vehicle was the subject of an investigation by An Garda Siochana and the vehicle remains untraced thus far”.*

As a result, the Complainant seeks from the Provider *“payment of €30,000 for the car [and] the loading of 50% lifted from my policy, which will last about 5 years”.*

### **The Provider’s Case**

Provider records indicate that the Complainant incepted a motor trade insurance policy with the Provider on **1 October 2014**. The Provider is the insurer, and the policy was underwritten by a named underwriter.

The Provider received notification by email from the underwriters on 28 May 2015 that a vehicle owned by the Complainant had been stolen on 22 May 2015. The Provider notes that the underwriters wrote to the Complainant on 28 May 2015 requesting documentation relating to the vehicle. In addition, the Provider’s Investigator telephoned the Complainant to arrange to take a statement regarding the circumstances of the theft. The Investigator then met with the Complainant and his friend, Mr Z. on 2 June 2015 and a statement was taken from both individuals and a report prepared for the Provider.

Mr Z. called to the Provider’s office on 11 June 2015 and submitted the Vehicle Licence Certificate in the name of the previous owners, one Mercedes key, an insurance cert and a

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sales invoice from the Car Auctioneers. The Provider referred the key for forensic analysis on 30 June 2015 and received the forensic key report on 5 July 2015.

The Provider notes that the underwriters wrote to the Complainant on 17 July 2015 requesting further information relating to the purchase of the vehicle. The Complainant responded on 28 July 2017 enclosing certain documents, including a copy of the sales invoice for the vehicle. The underwriters wrote again to the Complainant on 19 August 2015 requesting documentary evidence of how the vehicle was paid for. The Complainant responded on 1 September 2015, enclosing a copy of Mr Z.'s bank statement, showing a debit card transaction of €1,500 and a further transaction in the amount of €28,402.25, both to the Car Auctioneers on the 20 May 2015.

In this regard, the Provider notes that Mr Z. purchased and paid for the stolen vehicle, that the vehicle had never been in the possession of the Complainant but instead had remained in the care of Mr Z. and that the vehicle licence certificate was still registered in the name of the previous owners, after the theft of the vehicle. The Provider is satisfied that it carried out a thorough and detailed investigation to establish the ownership of the vehicle, prior to referring its file on the matter to the underwriters on 14 September 2015. In this regard, the Provider is satisfied that it presented the facts to the underwriters and that the underwriters subsequently concluded that the Complainant had no insurable interest in the vehicle on the date of theft, and thus no indemnity was to be provided.

The Provider is satisfied that the Complainant did not have any insurable interest in the vehicle at the date of loss. In this regard, the Provider is satisfied that as the vehicle was not owned by the Complainant and registered in his name, that it did not therefore fulfil the criteria to be deemed an Insured Vehicle under the terms of the Complainant's policy. In addition, the Provider notes that the only person covered to drive a vehicle under the Complainant's policy was the Complainant himself, or any person using the vehicle for demonstration purposes whilst being accompanied by the Complainant. As a result, there was no cover under the Complainant's policy for any of the days Mr Z. drove the vehicle and/or had the vehicle in his care.

The Provider notes that the Complainant has also complained about the subsequent increase to his premium and reduction in his policy cover from comprehensive to third party only. In this regard, the Provider notes that when the underwriters issued the policy renewal notice to the Complainant on 8 September 2015, the claim in respect of the stolen vehicle was still active. As a result, his no claims bonus was stepped back and this was reflected in the premium offered. The claim was subsequently declined and the underwriters withdrew its renewal terms, based on the outcome of the Provider's investigations into the matter. Whilst the offer of any terms of insurance is a matter for the underwriters, the Provider does note that the underwriters have since provided the Complainant with cover, following a submission from the Declined Cases Committee.

In conclusion, the Provider is satisfied that it carried out a thorough and detailed investigation to establish the ownership of the vehicle, prior to referring its file on the matter to the underwriters on 14 September 2015. In this regard, the Provider is satisfied that it presented the facts to the underwriters and that the underwriters subsequently concluded

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that the Complainant had no insurable interest in the vehicle on the date of theft, and thus no indemnity was to be provided.

### **The Complaint for Adjudication**

The Complainant's complaint is that the Provider wrongly or unfairly investigated the Complainant's motor insurance claim in relation to the theft of his vehicle, which led the underwriters to decline his claim, increase his premium and reduce his policy 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 11 September 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, within the period permitted, the final determination of this office is set out below.

The complaint at hand is that the Provider wrongly or unfairly investigated the Complainant's motor insurance claim in relation to the theft of his vehicle, which led the underwriters to decline his claim, increase his premium and reduce his policy cover.

The Complainant states that his friend, Mr Z. purchased a vehicle on his behalf on 20 May 2015, which was then stolen two days later, on 22 May 2015. He submitted a motor insurance claim in respect of this theft but following the Provider's investigations into the

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matter, the underwriters wrote to the Complainant on 21 September 2015 declining indemnity, as follows:

*"From the documentation supplied to us it is evident that [Mr Z.] was the purchaser of the vehicle. He made payment of both the deposit and the balance from his debit card and bank account respectively, and was the only person in possession of the car until it was stolen two days after being collected from [the Car Auctioneers]. We note from the statement given to our investigator that [Mr Z.] was not an employee of yours, nor was he a Named Driver under the policy. In addition, the Vehicle Registration Certificate submitted was still in the name of the previous owner ...*

*We can only assess a case based on the information available to our office. On this occasion, we regret to advise that the loss has not been proven under the terms of your policy, as we have not been able to establish any insurable interest between you and the vehicle. Therefore we will not be providing indemnity in relation to this claim".*

In addition, following its review into the matter, the underwriters wrote to the Complainant on 27 October 2015, as follows:

*"Based on documentation supplied by you it is clear that the owner of this vehicle is [Mr Z.]. We understand this vehicle was purchased and paid for in full at [the Car Auctioneers] on 20<sup>th</sup> May 2015 by [Mr Z.] and was in his possession on the date of the theft, 22<sup>nd</sup> May 2015.*

*We confirm that your insurance policy is written on a named driver basis and [Mr Z.] was not noted as a named driver under this policy and therefore there was no cover for this vehicle whilst it was in the possession of [Mr Z.].*

*The operative clause under Section 3 of the policy states we will cover you for loss or damage to the Insured Vehicle caused by theft or attempted theft.*

*As per the policy booklet for a vehicle to fall within our definition of an Insured Vehicle it must be a vehicle owned by you and registered in your name or a vehicle owned by you for the purpose of resale in connection with your motor trade business only (evidence of purchase will be required).*

*As previously advised, the loss falls outside of the scope of cover provided under this policy and therefore we regret to advise that our position as already stated in our letter dated 21<sup>st</sup> September 2015 remains unchanged".*

In this regard, the Complainant submits, *inter alia*, as follows:

*"I bought car...on 20/05/2015 from [the Car Auctioneers]. This car was stolen on 22/05/2015. The RF101 [Notification of Change of Vehicle Ownership] was completed by [the Car Auctioneers]...and signed by me. The car was paid for by my good friend [Mr Z.], who has helped me out before in similar matters.*

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[The Provider] refused to pay out on this theft as [it] contends that [Mr Z.] was the owner of this vehicle. I am very unhappy with this decision by [the Provider]. 1) I am out of pocket to the sum of €29,990. 2) I was left with no insurance cover for 2 months

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I have been treated with contempt and my good name has been sullied by [the Provider]. Even though I have maximum no claims bonus, [the underwriters] increased my insurance by 50% and gave me only 3<sup>rd</sup> party instead of the comprehensive that I had.

I believe that my signature on their RF101 confirms my legal ownership of this vehicle. I require payment in full for my vehicle that was stolen. I require the loading of 50% removed from my insurance policy. I require all restrictions lifted from my policy. I also require an apology for the fact that my character has been sullied by [the Provider].

I bought this vehicle as I have a tax concession available due to my wife's condition. The retail book value of this vehicle was €39,000. I bought it for €29,990 and would have received €7,500 back from V.R.T. due to my wife's illness.

Legally, I signed the RF101 and I am legally the owner of this vehicle. The financing of this vehicle is a private matter between myself and [Mr Z.]”.

The Complainant complains that the Provider wrongly or unfairly investigated the Complainant's motor insurance claim in relation to the theft of his vehicle, which led the underwriters to decline his claim, increase his premium and reduce his policy cover.

I note that the Provider states that it received notification by email on 28 May 2015 that a vehicle owned by the Complainant had been stolen on 22 May 2015. The Provider's Investigator telephoned the Complainant to arrange to take a statement regarding the circumstances of the theft. In this regard, the Investigator met with the Complainant and his friend, Mr Z. on 2 June 2015 and a statement was taken from both individuals. I note from the documentary evidence before me that the Complainant states in his signed Statement taken by the Provider's Investigator, on 2 June 2015, as follows:

*“I hold a commercial policy of insurance with [the Provider]. I am a mechanic by trade and use that policy in that pursuit. On the 19<sup>th</sup> of May 2015 I asked [Mr Z.] to attend a car auction at [the Car Auctioneers] in xxx to bid on a Mercedes car at the auction on my behalf. I told him that if he got it for €30k or less to buy it on my behalf. He rang me later that day and told me he had bought the car and he was taking it back to his home in [location]. I had given my insurance policy to [Mr Z.] to go to and tax the car in [location] straight away however he told me [the Auctioneers] would not give him the VLC so he could not tax it. I would not drive the car without tax. The price paid was €29,990. [Mr Z.] paid for the car by Bank Draft. [He] took his car back to his place. [He] rang me in a panic on the Friday night and told me the car was taken. Garda W. from [location] rang me later that night about the car and he asked me to go to [specified] Garda Station to make a statement and I did that. I have the invoice for the car at my home in [location]. I also have a letter from the Garda in [location]*

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*confirming the report with the PULSE number on it. I have not got the VLC back from the tax office yet”.*

In addition, Mr Z. states, *inter alia*, in his signed Statement taken by the Provider’s Investigator on 2 June 2015, as follows:

*“On the 19<sup>th</sup> of May 2015 I attended a car auction at [the Car Auctioneers]. I bid and bought a Mercedes car...on behalf of [the Complainant]. I paid for the car in [M. Car Auctions] on the 20<sup>th</sup> of May, I paid €29,990 for it by Bank Draft...I took the car home...I went into [location] and put €50 Diesel in it. I then drove the car back home and parked it [in] the driveway, locked it up and took the key into the house with me. I parked my own car behind it. It was there overnight Wednesday and Thursday, [the Complainant] would not collect it because it was not taxed. I went out on Friday morning and the car was still there. I came back about 10pm Friday night and the car was not in the driveway.*

*I spoke to my neighbour and he saw the car there 12.30 – 1pm. My daughter was home in bed sick and she knew nothing about it. I had the key with me all day and I gave it to [the Complainant] afterwards. [The Car Auctioneers] would not give me the VLC, I wanted to take it straight into the tax office in [location] and tax it. My son and daughter came home about 3pm on the Friday and the car was not there, they would not know that I had the key or that anything was wrong. I went down to [location] Garda on the Friday night and reported it to Garda W. there...I have not heard back from the Garda since. The car is gone for registration in [the Complainant’s] name and the VLC is not back yet”.*

I note from the documentary evidence before me that the Car Auctioneers Sale Invoice dated 19 May 2015 names the Complainant’s friend, Mr Z. as the Purchaser of the vehicle. It is accepted by both parties that the Complainant’s friend, Mr Z. paid the €1,500 deposit for the vehicle by using his own debit card, and then paid the balance of €28,400 by way of a bank draft in his name. It is also accepted by both parties that the Complainant’s friend, Mr Z. collected the vehicle on 20 May 2015 and that the vehicle remained in the care of Mr Z. until it was stolen on 22 May 2015.

I am thus satisfied that it was reasonable for the Provider and the underwriters to conclude from the evidence before it that the Complainant’s friend, Mr Z. purchased and paid for the stolen vehicle, that the vehicle had never been in the possession of the Complainant and that the vehicle licence certificate was still registered in the name of the previous owners after the theft. As a result, I am also satisfied that it was reasonable for the Provider and the underwriters to conclude that the vehicle did not fulfil the criteria to be deemed an Insured Vehicle under the terms of the Complainant’s policy.

In this regard, the ‘**Definitions**’ section of the applicable Motor Trade Insurance Policy provides, *inter alia*, at pgs. 2 – 3, as follows:

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*“Insured Vehicle – The vehicle shown on the current Schedule and Certificate of Motor Insurance, provided it falls into one of the following categories and is not contained in the list of excluded vehicles in General Exclusions.*

- ***a vehicle owned by you and registered in your name***
- *a vehicle owned by you for the purposes of resale in connection with your motor trade business only (evidence of purchase will be required)”.*

**[Emphasis added]**

I am also satisfied that it was reasonable for the Provider and the underwriters to conclude from the evidence before it that the Complainant did not have any insurable interest in the vehicle at the date of loss. In addition, I note that the only person covered to drive a vehicle under the Complainant’s policy, was the Complainant himself, or any person using the vehicle for demonstration purposes whilst being accompanied by the Complainant.

As a result, I am satisfied that in any event it was reasonable for the Provider and the underwriters to conclude that there was no cover under the Complainant’s policy for any of the days Mr Z. drove the vehicle and/or had the vehicle in his care as his policy cover only extends to vehicles owed by him or in his custody, care or control. In this regard, I note that the Complainant’s Certificate of Insurance provides, as follows:

***“Persons or Classes of persons, whose liability is covered:***

*Any person, with the permission of the Insured for the purposes of Demonstration Use only, provided that they are accompanied at all times by the Insured or an authorised driver noted hereunder:-*

[The Complainant]

***Vehicles, or classes of vehicles, the use of which is covered:***

*Any Motor Vehicle owned by or in the custody, care or control of the Insured, excluding motorcycles, mopeds, quads, tricycles and/or commercial vehicles with a designed gross vehicle weight that exceeds 10 tonnes, (unless noted on the schedule), vehicle transporters or recovery units capable of carrying more than two vehicles, steam driven vehicles or any vehicles owned by any named driver.*

Having considered the matter at length, I note that the Complainant has found himself in a difficult position in circumstances where the car which he may have intended to purchase, was not covered by his motor trade insurance policy with the Provider. For the reasons outlined and detailed above however, I am satisfied that the Provider adequately investigated the circumstances surrounding the Complainant’s claim which ultimately led to the insurers declining the payment of benefit on foot of that claim.

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I am satisfied on the basis of the evidence before me, that the Provider and the insurers were entitled to maintain the position which they did. Accordingly, it is my Decision therefore, on the evidence before me that this complaint cannot be upheld.

### **Conclusion**

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

**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**

3 October 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.