



<u>Decision Ref:</u>	2019-0392
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Farm & Livestock
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Rejected

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

Background

The Complainant incepted a commercial motor insurance policy with the Provider in his sole name on **27 November 2017**.

The Complainant's Case

The Complainant was transporting an already harvested crop of maize on **20 March 2018** from an open storage pit at a third party's farm to another yard which this third party was renting. The maize was damaged in transit and the Complainant sought for the Provider to provide indemnity under the terms of his commercial motor insurance policy.

The Provider declined indemnity by letter dated 30 April 2018, and in its later correspondence to the Complainant dated 25 May 2018 advised, *inter alia*, as follows:

"The indemnity issue on the policy relates to the use of the vehicle at the time.

It has been outlined to you previously that you specifically stated, when taking out the cover with [the Provider], that the vehicle would not be used "for the carriage of other people's goods for hire and reward" and that such cover was not required.

Given the background and circumstances to this accident...the policy does not extend to cover the damages and losses now being pursued”.

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

“[The Provider] aren’t recognizing that the maize being transported at the time of the incident belonged to me and not to a third party. Therefore any damage caused should be covered by the existing policy.

When [the Provider] declined to cover the loss of the third party I settled the loss directly myself at a personal cost of €138,000. I’m now seeking [the Provider] to refund me this payment in full as should be the case under the liability policy”.

The Complainant’s complaint is that the Provider wrongly or unfairly declined indemnity under his commercial motor insurance policy in respect of an incident on Tuesday **20 March 2018**.

The Provider’s Case

Provider records indicate that the Complainant incepted a commercial motor insurance policy with the Provider in his sole name on 27 November 2017, on a comprehensive basis. His occupation is listed as that of Farmer Agricultural Contractor.

The Complainant telephoned the Provider on 21 March 2018 to register a claim in relation to an incident that he reported as having occurred on 20 March 2018 when *“drawing maize for a man named [J. P.] ... from one yard to another”*. He advised that when he was tipping a trailer load of maize in a third party’s yard, a hydraulic pipe on the trailer burst causing hydraulic oil to spray on to the pit of maize. The Complainant confirmed to the claims handler that the third party was a customer and was seeking to claim for the loss of crop. The claim comprised the loss of the entire pit of maize in addition to disposal costs of the crop, as it would be deemed unfit for use, due to contamination.

The Provider-appointed Loss Adjuster made contact with both the Complainant and the third party and a site inspection was held with the third party at his yard on Friday **23 March 2018** and a separate meeting took place with the Complainant on Friday **6 April 2018**. The circumstances of the loss was discussed and both parties separately reported that the Complainant had been contracted to move an already harvested crop of maize from an open storage pit at the third party’s farm, to another yard being rented by the third party. The third party confirmed that the maize was harvested from his own crop in October 2017 and that a small portion of it would be used to feed his own livestock, with the majority of the crop to be sold to local farmers. Both parties confirmed that they have had a business relationship for the past 10 years. The Complainant confirmed to the Loss Adjuster on 6 April 2018 that he was charging the third party €7 per tonne to transport the maize.

Following its assessment, by correspondence dated **30 April 2018** the Provider declined indemnity as, at the time of the incident, the Complainant’s vehicle was being used for the

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carriage of other people's goods for reward and the Complainant did not have cover on his policy for this type of use. The Provider also confirmed its position to the third party by letter dated 30 April 2018. The Complainant then contacted the Provider stating that there may have been a misunderstanding in the details provided surrounding the circumstances of the loss and he alleged that the maize was actually owned by him and that the yard it was being delivered to, was being rented by him also. The Provider notes that this information is contradictory to that previously provided separately to the Loss Adjuster by both the Complainant and the third party.

The Provider notes that the Complainant had sought a quotation for his vehicle and contacted his local Provider branch by telephone on 10 November 2017. During this call, the Agent queried what the use of the vehicle would be, to which the Complainant replied, "*For me own use, drawing maize and drawing straw*". In addition, the Complainant confirmed that the vehicle would not be used for the carriage of other people's goods for hire or reward.

In the proposal form that he signed on 27 November 2017, the Complainant agreed that this proposal form would form the basis of his contract with the Provider and would be deemed as incorporated in his policy. The Complainant declared the use of the vehicle therein as "*Social, domestic, pleasure purposes, farming, and use in connection with the carriage of own goods*" and answered "No" to the question "*Is the vehicle used for the carriage of other people's good for hire or reward?*"

The Provider is satisfied that the policy documentation sent to the Complainant upon policy inception on 27 November 2017 was clear and specific with regards to the cover that applied. In addition to the use of the vehicle being clearly outlined on the proposal form signed by the Complainant, the policy schedule also clearly outlines the use of the vehicle as

"Social, domestic, pleasure purposes, farming, and use in connection with the carriage of own goods".

As with all policies of insurance, the customer is requested to ensure that the details of cover are correct and that the cover meets their needs. In this regard, the Provider considers that it would have been prudent for the Complainant to have contacted it, had he any concerns regarding the extent of cover under his policy.

The Provider notes that it is of vital importance that all relevant information relating to a proposed risk is declared by the proposer to the insurer. As with all policies of insurance, the proposer has a duty to disclose all material facts or information which is likely to influence an insurer's acceptance of the risk, the calculation of the premium or the terms and conditions which may be applied to such a risk. The proposal completed by the insured forms the basis of the contract of insurance between the insurer and the insured.

The Provider notes that the Complainant advises that he has settled the loss privately with the third party at a personal cost of €138,000 and seeks for the Provider to reimburse him this amount. In this regard, the Complainant has not furnished any documentation to confirm how this amount was calculated or indeed the manner in which the contaminated

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crop has been correctly disposed of, in line with Environmental Protection Agency protocols. During the Loss Adjuster's inspection of the burst hydraulic pipe, the Complainant advised that approximately 28-30 tonnes of maize was contaminated at a cost of €60 - €70 per tonne. This is at odds with the claim presented. If the entire pit of maize had been contaminated and deemed unsuitable for use, it is unclear why the pit was then covered with heavy duty polythene weighed down with used motor tyres.

In addition, taking into consideration the location of damage on the hose and the connection type and fitting area to the front of the trailer (35 feet in length), the damage presented to the hose would suggest that the path of spray of hydraulic oil would have been in a downward or upward direction. The Provider therefore would query the extent of the spray of hydraulic oil as reported by the Complainant.

In any event, the Provider notes that when the Complainant sought a quotation for his vehicle and subsequently incepted his insurance policy following the completion of a signed proposal form, it was on the basis that the vehicle would not be used for "*the carriage of other people's goods for hire or reward*". In this regard, the Complainant confirmed that the vehicle would be for his own use, to draw maize and silage. Following the inception of the policy, documentation issued to the Complainant confirming the cover in place and the policy terms and conditions and the policy premium that had been calculated on the basis of the proposed risk and the use of the vehicle as advised by the Complainant. In this regard, the Complainant's policy does not provide cover where his vehicle is being used for the carriage of other people's goods for reward, and thus his policy does not extend to cover the damages being pursued.

Accordingly, the Provider is satisfied that it correctly declined indemnity under the Complainant's commercial motor insurance policy in respect of an incident on 20 March 2018, in accordance with the policy terms and conditions.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined indemnity under the Complainant's commercial motor insurance policy, in respect of the Complainant's claim for losses arising from an incident on 20 March 2018.

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.

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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 23 October 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.

I note that the Complainant incepted a commercial motor insurance policy with the Provider on 27 November 2017, on a comprehensive basis.

The Complainant advises that on 20 March 2018, as he was tipping a trailer load of maize, a hydraulic pipe on the trailer burst, causing hydraulic oil to spray on to the pit of maize. The claim comprised the loss of an entire pit of maize in addition to the disposal costs of the crop, as it would be deemed unfit for use due to contamination, and the Complainant advises, *"I settled the loss directly myself at a personal cost of €138,000"*.

Following its claim assessment, by correspondence dated 30 April 2018 the Provider declined indemnity as, at the time of the incident, the Complainant's vehicle was being used for the carriage of other people's goods for reward and the Complainant did not have cover on his policy for this type of use.

The Complainant's commercial motor insurance policy with the Provider, like all insurance policies, does 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. In this regard, I note that the Provider telephoned the Complainant on **10 November 2017** as he had left a message the previous day advising that he wanted to incept a policy of insurance. I have listened to a recording of this telephone call and note the following exchange:

Agent: *Now, is this going to be used for social, domestic and –*

Complainant: *Just for me own use...it's only for me own use. For drawing maize.*

Agent: *Ok*

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Complainant: *For drawing maize and drawing straw.*

Agent: *Ok. And it won't be for the use of carriage for other people's goods for hire or reward?*

Complainant: *No, no, no.*

As a result, I note that the Commercial Vehicle Insurance Proposal Form dated 27 November 2017 that the Provider issued to the Complainant provides, *inter alia*, at pg. 1, as follows:

"Please check this information carefully, and sign

If any of these details are incorrect:

** Please correct them and put your initials next to the corrections, or call us on (XXX) XXXXXXX*

** Any changes may result in an adjustment to the quoted premium*

Your duty of disclosure is outlined in the important information section. If you are in any doubt as to whether or not any information is important, please disclose it to you.

In addition, I note that pg. 2 of this Proposal Form provides, *inter alia*, as follows:

"Use of the vehicle *Social, domestic, pleasure purposes, farming, and use in connection with the carriage of own goods*

Our questions and your responses

*Is the vehicle used for the carriage of other people's goods for hire or reward? **No***

I also note that pg. 4 of this Proposal Form provides, *inter alia*, as follows:

"Important Information ...

Duty of disclosure *You have a duty to disclose to us all material facts. A material fact is any information likely to influence our acceptance of your insurance, our calculation of your premium or the terms and conditions we apply to your policy ...*

If you are in any doubt as to whether or not any information is important, please disclose it to us.

Consequences of non-disclosure *If you fail to disclose to us all material facts you are likely to experience problems including:*

** your policy being treated as invalid or not having existed or cancelled,*

** the non-payment of claims ...*

Sign here

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I/We confirm that the information in this proposal form is true, accurate and complete and that I/we have disclosed all material facts.

I/We accept the terms, conditions and limitations of cover as set out by [the Provider], including the enclosed policy document and agree that the proposal form will form the basis of my/our insurance contract with [the Provider]”.

The Complainant signed below this declaration at **13:14** on **27 November 2017**, indicating that he understood and accepted that the vehicle to be insured would only be used for social, domestic, pleasure purposes, farming and the carriage of his own goods and that it would not be used for the carriage of other people’s goods for hire or reward.

Furthermore, I note that the Policy Schedule that the Provider issued to the Complainant, also dated 27 November 2017, clearly indicates, as follows:

“Use of the vehicle Social, domestic, pleasure purposes, farming, and use in connection with the carriage of own goods”.

The Complainant telephoned the Provider on Wednesday 21 March 2018 to advise that on Tuesday 20 March 2018, as he was tipping a trailer load of maize, a hydraulic pipe on the trailer burst causing hydraulic oil to spray on to the pit of maize. The claim consisted of the loss of an entire pit of maize in addition to disposal costs of the crop, as it would be deemed unfit for use due to contamination, and the Complainant advised, *“I settled the loss directly myself at a personal cost of €138,000”*. Following its claim assessment, by correspondence dated 30 April 2018 the Provider declined indemnity as, at the time of the incident, the Complainant’s vehicle was being used for the carriage of other people’s goods for reward and the Complainant did not have cover on his policy for this type of use.

In this regard, the Complainant submits, as follows:

“[The Provider] aren’t recognizing that the maize being transported at the time of the incident belonged to me and not to a third party. Therefore any damage caused should be covered by the existing policy”

I have listened to a recording of the telephone call the Complainant made to the Provider on 21 March 2018 and note the following exchange:

Agent: *You were drawing maize for a third party. Is the third party your friend, or do you know him, or what?*

Complainant: *Eh, just a customer.*

In addition, it is difficult to see how the Complainant regards the maize being transported at the time of the incident as belonging to him, particularly given that he then submits, as follows:

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“When [the Provider] declined to cover the loss of the third party I settled the loss directly myself at a personal cost of €138,000. I’m now seeking [the Provider] to refund me this payment in full as should be the case under the liability policy”.

The fact that the Complainant had to settle the loss to a third party indicates that this third party owned the crop in question.

In any event, I note that the Report from the Provider-appointed Loss Adjustor dated **10 April 2018** provides, *inter alia*, at pgs. 2-3, as follows:

“When we met with the Insured...he explained that he has been involved in the agricultural contracting business for nearly 20 years and has had a business relationship with the [third party claimant] for the past 10 years. On this particular occasion, the Insured was contracted by the Claimant to move an already harvested crop of maize from an open storage pit at the Claimant’s farm...to another yard which the Claimant was renting...the distance between the two yards is a 10-15 minutes drive.

The Insured had two articulated tipper trucks and two tractors with trailers involved in the contract and works commenced on the morning of Tuesday 13th March 2018. The Insured mentioned that while there were two trucks used, he was the only driver because while one truck was being loaded with maize, he would drive the second truck full of maize, to the other farm yard ...

The Claimant had another contractor helping out with the move (name unknown), and they moved approximately 500 ton of maize ...

When we met with the [third party] Claimant on Friday 23rd March 2018, he explained that he engaged the Insured to transport a crop of maize from his farm yard...to another farm yard he was renting...The Claimant explained that there was no written formal contract between himself and the Insured, however, it was agreed that the Insured would transport the crop of maize between the two yards and that the Insured would also provide necessary machinery to push the crop of maize onto the pit and to compact the pit as the pit was being filled”.

As a result, I am satisfied that it was reasonable for the Provider to conclude from the evidence before it, including the information made available by the Complainant himself, that the Complainant was at the time of the incident on 20 March 2018 using his vehicle for the carriage of other people’s goods for hire or reward. As the Complainant did not have cover on his policy for this type of use, I am satisfied that the Provider was entitled to decline indemnity under the Complainant’s commercial motor insurance policy in respect of the incident on 20 March 2018, in accordance with the policy terms and conditions.

In this regard, insurance contracts are contracts of utmost good faith, wherein the failure to disclose information allows the Insurer to void the policy from the outset and to refuse or cancel cover. Once nondisclosure takes place – whether innocent, deliberate or otherwise –

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the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, refuse cover, as the Provider has done in this instance.

I am satisfied that the Complainant had confirmed to the Provider when applying for his commercial motor insurance policy that the vehicle to be insured, would only be used for social, domestic, pleasure purposes, farming and the carriage of his own goods and that it would not be used for the carriage of other people's goods for hire or reward. As he was using his vehicle at the time of the incident in question on 20 March 2018, for the carriage of other people's goods for hire or reward, I am satisfied that this was in breach of the terms of cover provided by his commercial motor insurance policy with the Provider. As a result, I am of the opinion that, given the evidence made available by the parties, there is no reasonable basis upon which it would be appropriate to uphold this complaint.

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

19 November 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.