



<u>Decision Ref:</u>	2021-0073
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - insurable interest Lapse/cancellation of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the refusal of the Provider to indemnify the Complainant for the theft of his motor vehicle.

The Complainant's Case

The Complainant states in his Complaint Form, that his motor vehicle was stolen from outside his home on **10 April 2018**. The Complainant states that he “got a call” from a UK number asking “would he accept €1500 as a settlement as it was not worth what it was insured for”. The Complainant states that on submitting a claim to the Provider, the claim was declined with the Provider stating that he had no insurable interest in the vehicle at the date of the loss. The Complainant states that the Provider also cancelled his insurance.

The Complainant states that having booked the vehicle in for a pre-NCT he realised that the vehicle had been registered to his son. The Complainant submits that he posted the logbook on **2 April 2018** to the Department of Transport, Tourism and Sport to have the vehicle registered in his name. The Complainant states that due to the delay in the postal service, the log book was only received by the Department on **12 April 2018** which is the date which the Department registered the change of ownership. The Complainant has submitted in evidence a letter dated **6 September 2018** from [Vendor] where it states the vehicle was purchased from it on **6 December 2017** and “... secretary mistakenly thought the complainant's son was purchasing the car and entered his details to the VRC”.

On **3 April 2020**, the Complainant made a further submission to this Office stating that when “he was changing [his] insurance...as it was an ex taxi, I had to sign a letter stating that I wouldn't use it as a taxi”. Ultimately, the Complainant wants the Provider to make “full payment of my car book value at the time it was stolen, my insurance back and a clear record”.

The Provider's Case

The Provider, in its Final Response Letter dated **7 November 2018**, states that it is declining the claim as *"the policy holder has not shown he had an insurable interest in the vehicle on the date of theft 10 April 2018"*. The Provider also states that there were inconsistencies with information provided by the Complainant to the Provider's Investigator on **26 June 2018**. The Provider states that in his statement on **26 June 2018**, the Complainant advised that:

*"He had the car about 10 months
He further advised that would have been about August last year (2017)
He advised that his son bought the car originally and he bought it off him
He advised that he bought it off [Car Dealer 1] or [Car Dealer 2]"*

The Provider states in its Final Response Letter that it has a copy of a call recording from its valuation team on **15 June 2018**, wherein the Complainant confirmed that he bought the vehicle from [Car Dealer 1]. The Provider further states that on the theft section of the report form received from the Complainant via email on **30 May 2018**, the Complainant advised that the date of purchase of the vehicle was **1 June 2017**. The Provider states that all of the foregoing is *"completely at variance"* with information provided by [Vendor] in correspondence of **6 September 2018** wherein it is stated that the Complainant purchased the vehicle from [Vendor] on **6 December 2017**. The Provider states that the tax office was only notified on **12 April 2018** of the Complainant's ownership of the vehicle, two days subsequent to the theft on **10 April 2018**.

The Provider made further submissions to this Office on **19 May 2020**. In these submissions it states that the Complainant bought a comprehensive motor policy from it on **1 June 2016**. The Provider states that on **10 April 2018**, it was notified of the theft of the Complainant's vehicle. The Provider states that following the investigation into the claim, it took the decision to invoke the cancellation of the Complainant's motor insurance vehicle with effect from **26 November 2018**. The Provider then states that following a request from the insurance broker, the policy was subsequently cancelled from **23 November 2018**.

The Provider states that the stolen vehicle had been temporarily insured under the insurance policy from **27 October 2017** to **10 November 2017** and had then been added permanently under the Complainant's motor insurance policy with effect from **6 December 2017**. The Provider states that in normal circumstances, the Complainant's policy provided cover for theft, as detailed on page 8 of the policy document:

"We will pay for loss of or damage to your Car...caused by...theft or attempted theft"

The Provider further states that on **11 April 2018** it confirmed the circumstances of the theft with the Complainant and advised him that he would need to complete a Motor Incident Report form.

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The Provider states that during routine investigation of the claim, it noted that the insured vehicle's NCT had expired since **22 October 2017** and that the Motor Tax had expired on **31 January 2018**.

The Provider states that for theft claims it expects the policyholder to provide proof of ownership of the items claimed for. It states that on **18 April 2018** it issued the Complainant with a letter outlining the documents required in order to progress the claim, and that amongst the documents it requested, were a purchasing invoice, vehicle registration certificate and a completed motor incident report form.

The Provider states that on **26 April 2018**, it received an email from the Complainant advising that all documents pertaining to the vehicle were inside the stolen car, except for the car's Registration Certificate. The Provider also states that on **30 May 2018** it received:

- the completed motor incident report stating that the date of purchase of the vehicle was **1 June 2017**;
- The vehicle registration certificate noting the date of sale as **2 April 2018**;
- A letter from the Complainant advising that *"in the car was a folder with the information you are looking for except the registration book"*.

The Provider states that on **12 June 2018**, it received confirmation from the Irish Motor Tax office that the change in ownership of the stolen vehicle was submitted to the Department of Transport on **12 April 2018** (two days after the vehicle had been stolen) with a backdated date of sale to **2 April 2018**.

The Provider states that on **15 June 2018**, during a telephone conversation with its valuation team, the Complainant advised that he had the vehicle for a while but he only changed the name recently. The Provider states that during this conversation, the Complainant advised that he had bought the vehicle from his son who owns a garage called [Name] and that he paid €5,000 for the vehicle. The Provider states that subsequently, on **26 June 2018**, the Complainant met with its appointed claim investigator and in his statement he advised that he had the vehicle for the previous ten months before it was stolen (since approximately **August-September 2017**) and that he had bought it from a garage called [Name redacted]. He advised that his son bought the vehicle first and he then bought it from his son.

The Provider states that on **24 July 2018**, it issued its formal claim declination letter, based on the fact that the legal transfer of ownership of the vehicle was notified to the Department of Transport on **12 April 2018**, two days after the vehicle had been reported stolen.

Following a complaint received from the Insurance Broker and the Complainant's solicitor, the Provider states that it reopened the claim. The Provider states that the insurance broker provided it with a document dated **6 September 2018** purporting to be the proof of purchase. The seller is noted as [Vendor] and the document notes that the Complainant bought the vehicle on **6 December 2017**. This letter advises that due to an administrative error, the Complainant's son was noted as the named registered owner of the vehicle.

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The Provider states that further enquiries into the details of the company noted that the VAT number on the proof of purchase letter was invalid, and that the registered address for the above mentioned selling company was the same as the Complainant's address.

The Provider notes that the Complainant had stated on **6 December 2017** on the motor insurance policy, when he arranged permanent cover for the vehicle which was ultimately stolen, that he was the owner of the vehicle at that time and that the vehicle was registered in his name. The Provider notes that the motor insurance policy documents state that:

"We will only provide the insurance described in this policy if

- 1. The information detailed on your proposal form and material fact declaration or your statement of fact is to the best of your knowledge and belief correct and complete"*

The Provider notes that a similar statement is contained at page 19 of the policy document.

The Provider states that at the time of adding the car onto the Complainant's motor insurance policy, on **5 December 2017**, the Complainant confirmed to the insurance broker that he was the owner of the car and that he was the registered owner of the insured vehicle. The Provider states that this constitutes a material fact and it formed the basis on which proposed cover for the vehicle, was presented to the Provider.

The Provider also points to a contradiction in the Complainant's evidence when he stated, in his letter addressed to the Provider's office dated **17 May 2018**, that *"in the car was a folder with the information you are looking for except the registration book"*. The Provider states that this contradicts the Complainant's statement in his complaint form that he *"sent the logbook [to the Department] on or around the 02nd of April"* meaning that he could not have been in possession of the vehicle's certificate of registration confirming his ownership on the day of the theft, as same was only issued by the Department on **17 April 2018**. The Provider also pointed out that the proof of purchase document received from [Vendor] states that the Complainant bought the vehicle on **6 December 2017**, which the Provider states is different from the information contained in the vehicle's legal documents. The Provider states that the Complainant, in correspondence received on **30 May 2018**, advised that the date of purchase was **1 June 2017**. Furthermore, the Provider submits that the vehicle's registration certificate notes a date of sale of **2 April 2018** and also that the Complainant stated to the Provider's investigator that he bought the vehicle in **August-September 2017**.

In relation to the phone call that the Complainant received concerning the value of the vehicle, the Provider states that it appointed a firm of valuation experts to establish the pre-theft value of the Complainant's vehicle and that this firm rang the Complainant and agreed with him that the pre-theft value was €1,575 subject to the policy excess of €250 and salvage. The Provider states that no claim settlement offer was made to the Complainant and the Complainant's claim was declined as per the Provider's letter of **24 July 2018** and

that this declinature was upheld as outlined in the Final Response Letter of **7 November 2018**.

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined to indemnify the Complainant in respect of the theft of a vehicle in April 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.

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 **25 February 2021**, 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 motor insurance policy with the Provider on **1 June 2016** and subsequently, the vehicle at issue was temporarily insured under the insurance policy between **27 October 2017** and **10 November 2017** and was then added permanently under the Complainant's motor insurance policy with effect from **6 December 2017**. I note that the Complainant's policy provided cover for theft, as detailed on page 8 of the policy document:

"We will pay for loss of or damage to your Car...caused by...theft or attempted theft"

However, I accept that in order to make a valid claim, the Complainant must have valid insurance cover, on the basis of an *"insurable interest"* in the vehicle in question. To demonstrate this, the Complainant must show that at the relevant time of the theft he had some legal or equitable interest in the vehicle. In this regard, I note that on **18 April 2018**, the Provider issued the Complainant with a letter outlining the documents required in order

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to progress the claim, and requested a purchasing invoice, vehicle registration certificate and a completed motor incident report form.

I also note that the Complainant has provided numerous, contradictory accounts as to the date of purchase of the vehicle. In this regard, I note that:

- The proof of purchase document received from [Vendor] states that the Complainant bought the vehicle on **6 December 2017**. The Complainant's representative also stated that the vehicle had been purchased in **December 2017** (during a phone call with a representative of the Provider;)
- The Complainant stated during a phone call with the Provider's representative on **15 June 2018** that he bought the car from his son's tow company, [Car Dealer 1];
- The Complainant, in correspondence received on **30 May 2018**, advised that the date of purchase was **1 June 2017**;
- The vehicle's registration certificate notes a date of sale of **2 April 2018**; and
- The Complainant stated to the Provider's investigator that he bought the vehicle in **August-September 2017**.

I also note the Provider's submission that the VAT number for the company on the proof of purchase letter was invalid and that the registered address for the company [Vendor] was the same as the Complainant's address and I note also that this has not been challenged by the Complainant.

While the Complainant submits that he posted the logbook on **2 April 2018** to the Department of Transport, Tourism and Sport to have the vehicle registered in his name and that this was delayed due to the postal service, he has provided no evidence of the posting on that date.

Having considered the parties' submissions, I must accept that conflicting, contradictory accounts as to the date of purchase of the vehicle were given by the Complainant, as a result of which, it was not possible for the Provider to state with any certainty what date the vehicle had been purchased by him. Accordingly, I take the view that it was reasonable for the Provider to conclude that the Complainant had no "*insurable interest*" in the vehicle, at the time of the theft.

In respect of the Complainant's assertion that he "*got a call*" from a UK number asking "*would he accept €1500 as a settlement as it was not worth what it was insured for*", I note from the audio recordings submitted by the Provider in evidence that there was a phone call on **15 June 2018** between a representative from a firm of valuation experts and the Complainant. The purpose of this call was clearly stated at the outset, to establish the pre-theft value of the Complainant's vehicle. The phone call makes clear that a further phone call would take place on **25 June 2018** to agree the pre-theft value.

By way of submissions from the Provider to this Office, dated **29 October 2020**, the Provider states that the call did not take place on **25 June 2018** but instead took place on **12 July 2018**. The Provider has been unable to locate a recording of this call on **12 July 2018**. As a result, there is insufficient evidence before me to form an opinion as to what was discussed between the valuation expert and the Complainant on **12 July 2018**, however, I accept,

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based on the evidence available that the purpose of the initial call was to agree a pre-theft value, rather than to offer a “*settlement*” to the Complainant, as suggested by him. Subsequently, before the second in July, the Provider was taking steps to validate the claim and the evidence does not suggest that the assessment ever reached the stage where a settlement offer was authorised to be made to the Complainant.

Having examined the evidence in this matter, in my opinion, the Complainant has not established that the Provider provided him with poor customer service. Whilst I understand the frustration the Complainant must feel, as a result of the refusal of the claim, I must accept that the Complainant has not been able to demonstrate an “*insurable interest*” in the vehicle at the time of the theft. As a result, bearing in mind the contradictory and conflicting evidence put forward by the Complainant, I accept that the Provider is not obligated to indemnify the Complainant in respect of the theft of the vehicle.

In those circumstances, the evidence before me does not disclose any wrongdoing on the part of the Provider, and for that reason, I do not consider it 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 March 2021

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.