



<b><u>Decision Ref:</u></b>	2021-0135
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Tractor
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - accidental damage Fees & charges applied Failure to process instructions
<b><u>Outcome:</u></b>	Upheld

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

The complaint refers to the Provider's failure to indemnify the Complainant's tractor insurance claim, submitted on the Complainant's Agricultural Tractor insurance policy in **July 2019**.

**The Complainant's Case**

The Complainant states that his tractor was involved in an incident on **20 July 2019**, while he was "spreading slurry".

The Complainant states that the farm yard was wet and as he was driving the tractor with an attached full trailer, the tractor lost its grip and slid on the gravel roadway. The Complainant states that "the force of the full load of the tank coming behind caused a shock force and the tractor and trailer travelled uncontrollably along the incline of the roadway". The incident resulted in the Complainant being unable to engage the gears.

Subsequently, the tractor was inspected by a local mechanic whom the Complainant states found "significant and unusual damage to the gearbox". The gearbox was then brought to a tractor workshop and dealership garage, which inspected the damaged gearbox and which the Complainant states reported that the "massive failure" of a driver plate cover led to the secondary failure of other parts of the gearbox. The Complainant contends that both the local mechanic and the main dealership's assessment of the damage to the gearbox is not one of normal mechanical failure or wear and tear, rather it is consistent with "failure as a result of a severe impact" and that this was the result of the incident on **20 July 2019**.

The Complainant submitted a claim on his insurance policy and forwarded accompanying photographs and written statements from the local garage mechanic and the main dealership workshop manager. The local garage mechanic stated that in his:

*“long career as a mechanic, I have not seen routine wear to cause this level of damage to gearbox components. I am fully certain that the impact of the load of the full slurry tank behind tractor caused a shock impact leading to failure of the component.”*

The main dealership workshop manager states:

*“In my opinion this failure [being the failure to the gearbox] was due to a sudden shock load applied inside in the gearbox which caused the cover plate to burst and then the lugs then fell into the gearbox.*

*In my experience I have not seen this to happen before. This would not be a normal wear and tear failure but a mechanical failure due to a severe shock load been applied to the gearbox somehow”.*

An invoice for repairs submitted by the Complainant is dated **30 July 2019** and totals €5,161.06.

The Complainant is not happy with the Provider’s *“handling”* of his claim. He states that the Provider has given *“no hearing or weight to the fact that an impact caused the part to fail and insists that this occurred as a result of normal wear and tear”*.

The Complainant made further submissions to this Office dated **26 July 2020** wherein he states the reports of his mechanic and the main dealership were sent to the Provider on **19 August 2019** and again on **11 September 2019** and this was acknowledged by the Provider in an email dated **13 September 2019**. He states that it *“is obvious that the Provider gave no consideration to the reports as provided”* and he *“would have hoped that receiving both the mechanic and the main dealership’s opinion on the cause of the damage would have led to the Provider to at least seek a second opinion”*.

The Complainant made further submissions dated **12 August 2020** to this Office wherein he queries whether the Provider’s claim handler followed proper procedure by not passing on the two reports submitted by the Complainant to the motor assessor. The Complainant again emphasises that the Provider is not understanding the causative incident in this matter, namely that his tractor slid on wet concrete whilst travelling in the direction of a gravel incline, the tractor gained grip on the gravel driveway, stopped and then the force of a full liquid load in the tank caused a rear impact which caused the tractor to run away along the incline. The Complainant notes that this is the *“sudden shock load”* which his mechanic referred to in the report he submitted and points out that in the Provider’s submissions of **7 August 2020**, its assessor agrees that *“a sudden shock caused the failure of the driver plate”*.

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The Complainant states that it is *“quite disingenuous at this juncture to introduce the notion of driver error”*. He states that he did everything in his power to try to prevent further damage and save himself and the tractor when the tractor lost control. He also emphasises that he did not change gears when the tractor travelled uncontrolled along the incline and was engaged in a low as opposed to high gear when travelling through his concrete yard.

Ultimately, the Complainant wants the Provider to accept that the gearbox failed as a result of severe impact caused by the incident on **20 July 2019** and *“cover the cost of the replacement”*.

### **The Provider’s Case**

The Provider arranged an inspection of the tractor by its motor assessor on **25 July 2019**.

The Provider communicated to the Complainant during a phone call on **29 July 2019** that the motor assessor had determined that the damage sustained by the tractor was due to mechanical failure and the insurance policy would not cover the damage. Following this, the Complainant sent an email detailing the events and providing photographs of the locus which the Provider states it provided to the motor assessor for review. The Provider states that the motor assessor maintained his decision that the damage to the tractor was due to a mechanical failure.

In its Final Response Letter, dated **9 August 2019**, the Provider states that the report submitted by its appointed motor assessor found the *“hi speed drive plate”* had failed, resulting in *“damage to hi and low gears on gearbox lay shaft and 2<sup>nd</sup> gear on main shaft”*. The Provider states that its assessment of the damage shows it is *“consistent with mechanical failure and therefore not covered under policy conditions”* and *“not consistent with accident description”*.

The Provider states that it is not liable to pay for *“loss of use, depreciation, wear and tear, mechanical, electrical or electronic breakdown failures or breakages.”* pursuant to section 2 of the Complainant’s Agricultural Tractor Insurance policy.

The Provider made submissions to this Office dated **1 July 2020**. In these submissions, the Provider reiterates the factual background to the matter and confirms that it is relying on Section 2 of the policy for its declination of the Complainant’s claim. The Provider states that it received a copy of the Complainant’s mechanic and main dealership assessment reports on **12 February 2020** and states that its position has not altered as a result of these.

The Provider made further submissions to this Office dated **7 August 2020** wherein it acknowledged that it had in fact received the mechanic and car dealership reports in **September 2019** as opposed to **12 February 2020** as stated in its **1 July 2020** submissions to this Office. The Provider states that following a review of these reports in **September 2019**, the Provider’s claim handler determined that the Provider’s position remained unchanged.

The Provider states that the reports have *“since been reviewed by the independent motor assessor appointed by the Provider”*. The Provider furnished the following observations from the motor assessor:

*“Having reviewed both letters obtained, we are satisfied that the damage sustained is consistent with mechanical failure of the drive plate cover having failed. We see no reason contained in letters from repairers to cover such damage and we are therefore satisfied this claim falls under a mechanical defect and not covered under policy conditions.*

*The sudden shock load which caused failure of drive plate is most likely to have occurred due to driver error. For example driver has suddenly changed from a hi to low, or releasing clutch having changed from a hi gear or low gear whilst travelling at speed”.*

The Provider states that in order to successfully pursue a claim, the Complainant must demonstrate that the loss or damage being claimed for occurred as a result of the operation of an insured peril subject to the Terms and Conditions of the policy. The Provider notes that the mechanic’s report submitted by the Complainant confirms that *“this would not be a normal wear and tear failure but a mechanical failure due to a severe shock load being applied to the gearbox somehow”*. The Provider states that as *“there was no external impact”*, it remains satisfied that the damage sustained to the Complainant’s tractor was as a result of mechanical failure and therefore not covered under the terms of the policy.

The Provider made a further submission to this Office dated **26 August 2020**, wherein it stated that it *“remains satisfied that the damage sustained to the Complainant’s tractor was as a result of a mechanical failure as outlined in the expert report of the motor engineer who carried out a detailed inspection of the tractor”*.

### **The Complaint for Adjudication**

The complaint is that the Provider has incorrectly declined the Complainant’s tractor insurance claim.

### **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 on 15 April 2021 outlining my preliminary determination 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, I set out below my final determination.

I note that the Agricultural Tractor policy, the subject of this dispute, was inceptioned on **19 February 2010**. The policy renewal date was **19 August 2018** and the policy was renewed for a total premium of €2,511.83. The policy is held solely in the name of the Complainant.

I note that section 2 of the policy states that the Provider is liable for "*loss or damage*" to the tractor, with one of the exceptions to the coverage listed being "*loss of use, depreciation, wear and tear, mechanical and/or electrical and/or electronic breakdowns failures or breakages*".

I note that the Complainant has at all times in his claim documentation to the Provider and his submissions to this Office, consistently and clearly set out a description of how the accident occurred. Essentially, his tractor lost its grip on wet concrete, slid for a short distance, gained grip/traction on a gravel incline causing it to slow and was then impacted from behind by the loaded slurry tank attached to the tractor.

I note that the Provider's motor assessor's report does not detail this factual background to the matter, merely stating that "*damage not consistent with accident description*" occurred and stating that the "*hi speed drive plate has failed*" and attributing the damage to "*mechanical failure*" with perfunctory explanation as to why this damage was attributed to mechanical failure. I note that there is no reference to driver error in this initial report.

I note that the Provider now acknowledges that it had in fact received the Complainant's mechanic and car dealership reports as early as **September 2019** and this contradicts its submissions to this Office dated **1 July 2020** wherein it states that it did not receive these reports until **February 2020**.

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These reports submitted by the Complainant provide detailed, clear and comprehensive explanations from qualified experts experienced in tractor mechanics and maintenance who both express the view that the damage to the tractor was consistent with the description of the incident as described by the Complainant. Furthermore, the failure of the Provider to correctly note and consider the Complainant's reports when they were first sent to it in **September 2019** is a breach of provision 2.2 of the **Consumer Protection Code 2012 (as amended)** which obliges the Provider to "*act with due skill, care and diligence in the best interests of its customers*".

What is particularly concerning about the manner in which the Provider conducted itself in assessing this claim was its statement in its submissions dated **1 July 2020** wherein it stated that its position had not altered as a result of the Complainant's reports.

This is concerning because the Provider's subsequent submissions dated **7 August 2020** make it clear that it did not furnish its motor assessor with the Complainant's reports until after the date of the **1 July 2020** submissions wherein it stated that the Complainant's reports did not alter its position. It is also notable that in a phone call in **July/August 2019** between the Provider's representative and the Complainant, the Provider's representative was made aware of the Complainant's two expert reports and stated that if the Complainant sent those expert reports in, they would be considered/reviewed by the Provider. This evidently did not happen until almost a year later in **July/August 2020**.

Furthermore, it is not reasonable for the Provider to rely on the motor assessor's belated attempt to introduce the issue of "*driver error*", as the motor assessor's explanation that the "*driver suddenly changing from a hi to low, or releasing clutch having changed from a hi gear or low gear whilst travelling at speed*" does not make sense when one considers the locus of the accident, the Complainant's very plausible explanation as to how the accident occurred and his assertion that he was travelling at a low speed. It is also particularly notable that the assessor describes a "*sudden shock*" and the Complainant has at all times explained that shock as occurring from the impact of the following slurry tank into the tractor. I also note that the Provider has not indicated what section of the policy would result in "*driver error*" excluding coverage.

On the basis of the evidence before me, I accept that the Provider has unreasonably refused to indemnify the Complainant. I accept that the Complainant is entitled to recover €5,161.06 as the repair price of the tractor.

Given the inconvenience that the Complainant has suffered in order to have this matter resolved, I direct that compensation of €1,000 also be paid to the Complainant by the Provider.

For the reasons set out in this Decision, I 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 upheld, on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by making a payment of €5,161.06 as the repair price of the tractor to the Complainant. I also direct that the Provider pay a compensatory sum to the Complainant in the sum of €1,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** 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.**



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 May 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,

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**(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.**

