



<u>Decision Ref:</u>	2021-0182
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Tractor
<u>Conduct(s) complained of:</u>	Rejection of claim Claim handling delays or issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants held a Farm Protection Policy with the Provider and their tractor was covered under this policy. In **September 2018**, the tractor suffered a breakdown and was taken to a local garage. The Complainants maintain the cause of the breakdown was the result of damage sustained to the tractor by having to drive into a water cutting on the side of the road in order to avoid an oncoming car, driving on the wrong side of the road. The Complainants made a claim under the policy in **October 2018**. However, their claim was rejected by the Provider in **December 2018**.

The Complainants' Case

The Complainants explain that the First Complainant was driving their tractor along a road on **17 September 2018** and a car came around a bend at speed, on the wrong side of the road. The First Complainant kept to the left-hand side of the road to avoid the car. However, the First Complainant *"... hit the watercutting on the edge of the road I drove on the tractor until it would not take the gears anymore."* The Complainants explain a water cutting *"... is an area that the council digger digs out many times during the year to keep water off the road surface."*

The First Complainant contacted an individual “... to take the tractor off the road and bring it to [a garage].” The Complainants state that they also informed their insurance broker about the incident.

On **2 November 2018**, the Complainants say they received a letter from the Provider advising them that an assessor would make contact with them to discuss the accident and to view the location where the accident occurred. An assessor met with the First Complainant and he was shown the water cutting. Another letter was received from the Provider on **19 November 2018**, stating that a figure of €9,870.66 (including VAT) was provisionally agreed subject to stripping the tractor.

Referring to a letter received from the Provider/Broker on **4 December 2018**, the Complainants observe that:

“This letter stated things wrong

- *The car came around bend on wrong side of road*
- *Me drove through a large puddle of water*

*[The First Complainant] asked them to listen to the tape.
It is a watercutting.*

*Engine oil changed in January
Correct*

*Transmission oil was not
Correct*

Yet the same letter stated starvation of oil due to overtightening of filter housing was the suspected cause.”

The Complainants continue their submission stating:

“This filter is plastic and as the transmission oil was not changed as it was not due a change at the time as enough hours were not on the tractor to do so the plastic housing would not have been touched or tightened or loosened so this did not cause oil starvation by this means as stated by 1st assessor in this letter.”

The Complainants also remark that this assessor has ceased employment with the Motor Assessor and “... also told the garage man he knew nothing about tractors.”

The Complainants explain they received a second assessor’s report on **29 March 2019** which contained the same findings about the oil filter and housing cap.

The Complainants advise that they retained an independent assessor to inspect the tractor and that the proprietor of a tractor services and sales garage also inspected the tractor.

The Provider's Case

The Provider explains that it received an email from the Broker on **18 September 2018**, advising that the Broker would inform the Provider if the Complainants wished to proceed with a claim under the policy. The Provider received a second email from the Broker on **8 October 2018** advising that a claim form had issued to the Complainants and requesting that a Motor Assessor be appointed.

The Provider advises that it made the first notification call on **9 October 2018** and spoke with the First Complainant and obtained details of the incident. An Accident Report Form was sent to the Broker on **10 October 2018** and the tractor was assessed on **15 October 2018**. A decline letter was issued on **6 December 2018** and the Provider spoke with the First Complainant on **7 December 2018** about its decision to decline the claim.

The Provider advises that, initially, there was a misunderstanding about the term *water cut* versus large puddle. The claims handler subsequently listened back to the first notification call from **9 October 2018** and noted on the file on **19 December 2018**, that it was a water cut. The Provider submits it is satisfied that the damage sustained to the tractor was not caused as a result of an impact, based on the First Assessor's findings.

The Provider says it received a report prepared by the Complainants' assessor on **7 February 2019**. The Provider states this report was considered and forwarded to the Motor Assessor for review. The Motor Assessor carried out a second inspection on the tractor on **25 February 2019** and correspondence on foot of this was issued to the Broker on **29 March 2019**. The Provider has also cited passages from the correspondence issued to the Broker and the comments of the Second Assessor.

Responding to the Complainants' comments that the First Assessor told an individual in the garage that he knew nothing about tractors, the Provider states that this individual no longer works for the Provider and the Provider is not in a position to ask him about these comments. The Provider submits it would fully refute that an engineer would at any stage indicate to a customer or repairer that he was not qualified to carry out an inspection. The Provider states that the First Assessor holds the following qualifications: *M.Inst.A.E.A* and *MFIEA*. This individual was employed as a motor assessor having passed the Institute of Assessors & Engineers examination and was also a fully qualified motor mechanic with vast experience in examination of engines and repairs to engines and transmissions. The Provider adds that, when employed, all engineers undergo a strict and comprehensive training programme to deal with all aspects of motor vehicles. The Provider has also set out the credentials and qualifications of the Second Assessor.

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined the Complainants' claim.

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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 Complainants were 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 **1 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.

The Complainants appointed legal representation after the preliminary decision of this office had been issued, and although a full copy of the investigation file was supplied to the legal representative on **1 March 2021**, following receipt of the Complainants' written authorisation, no submission was made on behalf of the Complainants thereafter. On **8 March 2021**, this Office advised the legal representative that a period of one more month would be permitted for receipt of a submission, but no such submission or any observations were received. On that basis, the final determination of this office is set out below.

Background

The Complainants hold a Farm Protection Policy with the Provider which covers their tractor is covered under section 6 of the policy. Section 6(b) states:

"Section 6 (b) – Loss or Damage

WE will indemnity YOU against loss of or DAMAGE (including DAMAGE by frost) to any vehicle described in the schedule hereto and/or its accessories and spare parts while thereon.

Exceptions

WE shall not be liable to pay for

(a) loss of use destruction wear and tear mechanical electrical electronic or computer breakage failure or breakdown"

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The First Complainant completed a claim form dated **9 October 2018**. This was forwarded to the Provider by the Broker on **11 October 2018**. I note that the tractor was inspected by the First Assessor on **15 October 2018** and a report prepared on foot of this inspection dated **17 October 2018**. I note that this report states:

“Purpose of Examination

To inspect your Insured’s tractor as the Insured experienced difficulties selecting Gears.

Examination

On the date of our inspection, a number of transmission components had been removed from your Insured’s tractor prior to the inspection. We examined the Transmission oil Filter Housing Cap where we noted cracks that were evident. We also observed that the Oil Filter Housing Seal was still fitted and intact. We inspected the Clutch Plate Friction Discs which have also been removed for our inspection where we noted scorch marks evident and also cracking to the Clutch Plates.

The damages that were noted on the date of our inspection would be consistent with oil starvation and our point of contact ... in the repairing garage advised that minimal oil was recovered from the tractor on the date of stripping.

...

Conclusions

We noted no impact damage evident to the Oil Filter Housing on the date of our inspection and it is a possibility that the Oil Filter Housing was possibly overtightened at some stage.

It may be prudent in this case to ascertain any service records which may be available for the tractor under review in this case. It may also be beneficial to have a locus report carried out where this fault has occurred.”

I note that subsequently an inspection of the locus of the incident, was carried out by a Claims Adjuster on **8 November 2018**. The report prepared following this inspection and dated **9 November 2018**, states:

“Circumstances

...

The reader will be familiar with minor local roads which do not have drainage systems built into the road, such as gully traps or formal drainage pipes, Local Authorities, therefore, create what are called by different name around the country but what are most commonly known as ‘Slit Trenches’ or ‘water cuts’ basically angled cuts into the soft margin or grass verge that allows water to drain from adjacent roadways in the water course, running through the ditch.

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[W]hen the Insured talks about hitting the 'water ditch' he is in fact talking about a silt trench, which, in reality, should pose ZERO problem for a car, never mind a large tractor.

Conclusion

The Insured's description of this alleged accident is somewhat credible as it occurred on a narrow country road ... During the writer's visit a number of cars passed travelling in both directions and there is clear evidence that the use of the grass margins to pass oncoming vehicles is common practice.

... [T]wo vehicles could not pass each other in safety without either slowing down and moving on the grass verge. That would be more pertinent if one of those vehicles is a commercial unit, such as a large tractor.

The grass verge where the Insured first pulled in measures c. 30cm and narrows to the water-cut with the rising bank reducing the grass verge even further.

The Insured's description of the impact, however, is that when the rear wheel hit the water-cut he hit his head on the pillar of the cab, this is obviously towards the rear of his vehicle and with a listed length of 436cm, is at least 2 metres away from the engine compartment. [The First Complainant] is obviously trying to show that the 'impact' was of such a nature as to cause him to strike his head against the pillar of the tractor cab unit, and whilst we are not in a position to say otherwise, we would be very surprised if this was true, in any way, whatsoever.

We questioned the Insured on seeing another motorist approaching, why he simply did not stop, and he stated that he did not have time to stop to let the other vehicle pass because it all occurred so fast, still, he continued on for a further 1.5 miles, all of which is somewhat incredulous, if there had been such a dramatic impact as he describes. He was quite evasive when asked about the weather conditions and if the road was wet at the time, and he could not confirm the position, one way or the other.

It is difficult to understand how there could be any impact damage to the front of the Insured's vehicle given his description of what occurred. If there is any truth to his account, then we would have expected there to be an issue with the nearside rear wheel of the tractor but that is simply not the case.

It is also difficult to see how a tractor wheel could be affected in any way by a water-cut or silt trench, even if there was a small rock in the space, that would simply be 'meat and drink' to a tractor which invariably faces much tougher challenges on the Insured's own farmland, on a daily basis.

We suspect that the Insured is 'marrying' a minor scare that may have occurred at the point indicated with the subsequent loss of power but we would harbour serious doubts in this regard.

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Naturally, we have no evidence in this regard but the complete absence of any impact damage to the engine compartment seems compelling but we assume the Motor Assessor's will cover that in their final report. ..."

This report was also accompanied by a number of photographs of the locus of the incident, including the water cut.

I note that the Provider's Claims Handler wrote to the Broker on **4 December 2018** as follows:

"The insured initially advised on 09/10/2018 when we spoke to him that the accident happened on [the location]. He advised he was coming around a bend and a car came around on the other side of the road. He swerved to miss the car and drove through a large puddle of water. As they continued on the tractor would not go in gear and he called his garage to collect the tractor.

When we received the claim form it had differing circumstance and so I called [the First Complainant] again to discuss the circumstances. He advised that the back wheel went into a water cut at the side of a road, there was a thump and a bang and he kept going. He was unsure whether or not there was any water in it at the time but didn't think there was much if any. He then got the vehicle recovered.

Our motor assessor reviewed the damages and advised there is cracking to the oil filter housing which may be consistent with oil starvation or overtightening. Service documentation was also reviewed which shows the engine oil was change in January but the transmission oil was not changed.

The motor assessor also noted that there was no sign of impact damage to the area affected which is the oil filter housing.

Our investigator met with [the First Complainant] at the accident location and viewed the area where the accident occurred. They took details of the area and this information was also provided to our motor assessor. The assessor and investigator are in agreement that the area where the vehicle came off the road was not severe enough to cause damage to the underneath of this vehicle, given that it would be used on rough terrain on a regular basis.

On consideration of the information gathered through our investigations, we are satisfied that the damage sustained to the insured vehicle is not consistent with the incident description provided and we are unable to reconcile the damages sustained with the incident alleged. The damages evident to the insured vehicle are consistent with oil starvation and on that basis we are unable to provide indemnity for this loss. We refer your client to their policy documents, Section 6 (b): Loss or Damage

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'The Insurer shall not be liable for:

- (a) loss of use, depreciation, wear and tear, mechanical, electrical, electronic or computer breakage failure or breakdown.'*

Should your client have further information or evidence that they feel will reconcile the damages in this instance, please forward this to us and we will be happy to review the case again. ..."

The First Complainant wrote to the Provider on **30 January 2019** requesting that it reconsider the claim. This letter enclosed a report prepared by an assessor retained by the Complainants (the **Complainants' Assessor**), a statement from the proprietor of the garage to which the tractor was towed (the **Garage Proprietor**) and a statement from Complainant's mechanic (the **Mechanic**). The letter also stated that the First Assessor

"... said that he was NOT familiar (sic) with tractors so how can he put in that report."

The Complainants' Assessor prepared a report following an inspection of the tractor on **14 January 2019**. The report states:

"Results of our Examination

At the time of our examination at [the garage] we took a number of photographs, which we have on file, showing the damage caused to the plastic transmission oil filter housing which had suffered a crack as a result of something sharp which had caused a crack to appear in the plastic housing itself. This had allowed the subsequent rapid loss of transmission fluid from the gearbox. This eventually lead to the overheating of the forward transmission clutch assembly along with other component including the transmission brake disc which are also located within the gearbox housing assembly. We also viewed the copy of repair estimate which we understand was agreed with [the First Assessor] without prejudice at the time of his examination. Therefore costs which total €8,696.62 + VAT have been agreed but without prejudice at this stage. The valuation of this particular tractor would be in the region of €60,000. Therefore repair costs are still variable for the accidental damage caused to the transmission as a result of this unfortunate incident"

Remarks and Conclusions

We would therefore conclude our report by confirming that the damage caused to this plastic oil filter housing was probably as a result of an unknown sharp foreign object been thrown up from the underside of the tractor or tyre, which caused the cracking of the plastic housing. This is located on the left hand side of the transmission housing as viewed from the rear on this particular tractor. [The First Complainant] has made a statement to ourselves and we understand made the statement to his insurers that the sudden transmission failure occurred immediately after the incident whereby he had to take emergency evasive action to avoid an oncoming car which was speeding on a country road and had just rounded a sharp

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bend in front of the tractor. [The First Complainant] had no choice but to take to the nearside ditch to avoid a certain head on collision. Therefore as a result of this incident unknown to [the First Complainant] the transmission oil filter housing must have suffered some form of impact damage as a result of this off road emergency excursion. We would therefore suggest that you request [the Provider] to reconsider your Insurance claim for the repairs of your tractor and if necessary supply them proof that the tractor had been maintained in accordance with the manufacturer's guidelines and that the transmission oil had not been recently replaced and that the oil in transmission was not due to be replaced until 2400 hours, the tractor had covered 2265 hours total on the 14th January 2019. This should show [the Provider] that was no need to service the transmission until the tractor had covered 2400 hours.

Thereby proving that there was no accidental over tightening of the oil filter housing which could of lead to this catastrophic transmission failure as clearly had the oil filter housing been over tightened by any service or maintenance work carried out to your tractor then the transmission would have failed much closer to any maintenance workshop. Clearly this can be proved by the fact that the tractor was lifted from the roadside ... and transported directly to [the garage]."

The Garage Proprietor's statement is dated **4 January 2019** and states:

"... I have stripped down your tractor ... and inspected damages. I found the plastic transmission oil filter, damaged, which in turn drained oil from transmission while driving, and caused damage to forward clutch pack, clutch pack housing and plates, main transmission pump, and secondary pump, brakes, and seals.

It is my opinion that some foreign object struck the oil filter while the vehicle was in use, most likely trajected from the rear tyre at speed causing the damage. ..."

The Mechanic's statement states:

"... I collected [the First Complainant's] tractor off the side of the road ... 17th of September [2018]. When I was strapping the tractor down on the low loader I noticed oil dripping from the back of the tractor.

As I drove down the road towards the N81 I could see oil staining along the road where the tractor had just come I followed the staining up until a water cutting.

I later found out to be where [the First Complainant] had gone off the road into this water cutting ditch.

I transported the tractor to [the garage] when unloading I noticed more oil on the low loader under back of the tractor.

I serviced this tractor on the 21st of January 2018 at 2,053 hours changed the engine oil and the fuel filters. I did checked (sic) the transmission oil which was clean and not due for a change till 2,400 hours."

The Second Assessor completed a report in respect of the tractor dated **26 February 2019**, which states:

"Examination

Further to our Report dated 17th October 2018, we noted that the Oil Filter Housing which had allegedly sustained impact, had cracked thus contributing to the discharge of all the Transmission Lubricating Oil from the Tractor.

Our main area of examination was the Oil Filter Housing Cap. The Oil Filter Housing Cap is manufactured of a plastic material and we noted that there is a hairline crack which appears to propagate from the top section of the Oil Filter Housing Cap and travels along down the complete side of the Cap as far as the threaded area at the lower end of the Cap.

The Repairer ... pointed out a number of what he described as impacts which are illustrated in the following Photographs B and C. However, from close examination and under extreme magnification, we found no discernible impact evident. The paint was chipped in certain areas however the chips had no relevance and were not sufficiently severe to cause a crack in the Oil Filter Housing Cap.

In Photograph D of this Report it will be observed that the crack propagates from the top section of the Oil Filter Housing Cap and travels down the side.

We would also draw attention to the Nut, located on top of the Oil Filter Housing Cap, which is part of the Oil Filter Housing Cap, the purpose of which is to allow a Spanner to be placed on top of the Oil Filter Housing Cap which then un-screws. We noted that the Crack was evident in this area and propagated down the side of the Oil Filter Housing Cap.

Conclusions

From our second examination of the Agricultural Tractor and Oil Filter Housing Cap, it is quite clear to us that this Oil Filter Housing Cap has not been impacted. There appears to be a fatigue fracture which emanates from the top section of the Oil Filter Housing Cap and travels down the side. There was no evidence of an impact noted on any area of the crack which leads us to believe that no impact has been sustained to this component.

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A number of other factors will also have to be taken into consideration. We understand that the capacity of this Transmission is approximately 68 litres of Lubricating Oil and it would have taken some period of time for the Lubricating Oil to discharge through the damaged Oil Filter Housing Cap. Furthermore, we noted that there is a Warning System available to the Driver to alert him of an 'Oil Low' level.

Unfortunately, the Tractor was dismantled on date of our Inspection and we were not in a position [to] confirm as to whether or not this Warning Light was functioning. We did enquire from the Repairer as to whether or not the Oil Warning Light was functioning and he informed us that, to the best of his recollection, he stated that it was.

Taking into consideration the foregoing, the indications are that there would have been contributory negligence on behalf of the Insured in driving the tractor for some time with the Warning Light illuminated as it is safe to say that the Oil Warning Light would have illuminated as soon as the Oil level became dangerously low."

The Claims Handler wrote to the Broker on **29 March 2019** advising that having considered the report prepared by the Complainants' Assessor and the Second Assessor, it was satisfied the loss sustained in respect of the tractor was not covered by the policy. The Second Assessor prepared a report for the Provider dated **5 February 2020**. The report states:

"[The First Assessor] inspected the vehicle on the 15th October 2018 and compiled a report on the 17th October 2018 giving a description of the damages sustained to the Transmission of the Tractor and also an indication of a possible cause in the conclusion of his report. [The First Assessor] confirms that he was satisfied at that stage that the damage did not appear to be impact related and were most likely due to overtightening of the Oil Filter Housing at some stage which caused a crack to ultimately appear in the Housing thus losing the lubricating oil from the Transmission and thus in turn causing a failure. Just to confirm that the transmission was fully dismantled on arrival of our first inspection and no instruction was given by [Provider] to the repairer to dismantle the Transmission.

At that stage no estimate was available for the repairs. From our files we noted that a repair estimate was received on the 18th November 2018 and costs were agreed on a without prejudice basis on the 12th November 2018 at €8,696.62 exclusive of vat.

The writer then was instructed to carry out a further inspection on the Tractor. This was then in turn carried out on the 25th February 2019.

In that examination it was clear to the writer that the initial findings of our engineer ... were correct in that the Transmission on this Tractor has sustained catastrophic damages due to lack of lubricating oil. This was clear to us in the photographs contained within the original report from [the First Assessor], showing that the Clutch Plates have overheated to an extent that serious damage was caused to the same. The damages to the Clutch Plates in our opinion would be consistent with lack of lubrication oil which we all understand to be the case.

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In the second report carried out by the writer on the 25th February 2019, we did take some photographs of the failed Oil Filter Housing under extreme magnification and in that report of the 25th February 2019 it is quite clear that the Plastic Oil Filter Housing had not sustained any impact which in our opinion has caused the failure of the Oil Filter Housing.

I think it would be agreed by all parties that the Oil Filter housing failure has in fact caused the loss of lubrication oil and then in turn, the catastrophic failure of the Transmission on the Tractor.

However the disagreement would appear to be that the Insured is of the opinion that the Oil Filter Housing sustained a direct impact in the incident which was described in our initial instruction, that the Insured was driving down quite a narrow road and in order to avoid an oncoming vehicle went through a cut in the road, which was filled with water, this in turn allegedly caused the damages to the Tractor.

Firstly, we have a number of difficulties with this description of the incident, we have surveyed the locus photographs and we would be of the opinion that there is no areas of the roadway which could have impacted the Oil Filter Housing as alleged. Furthermore, these Tractors as you will appreciate are designed to cross fields and work in extremely rough terrain on a daily basis, and where the accident occurred in our opinion simply could not have happened as described by the Insured.

Furthermore as the writer has mentioned in his report of the 25th February 2019, the quantity of Oil contained within the Transmission which we mentioned at the time to be approximately 68 litres of Lubricating Oil, to be lost instantaneously through this crack would not be believable, as it would take some time with the vehicle in motion or in use for the Oil to drain. Furthermore, with the Oil Level Indicator, which would display to the writer to stop the vehicle when the Oil Level reached a dangerous level should have alerted the driver to stop. ...”

The next section of this report deals with the First Assessor’s qualifications and experience.

The Complainants have also submitted a statement from the proprietor of a tractor service and sales business. This is not dated but states:

“We wish to advise that we have inspected the [brand] [model number] tractor and we can confirm that debris flew up from the wheel and broke the hydraulic oil filter housing this is a relatively common issue with this model of tractor.”

Analysis

The Provider wrote to the Broker by letter dated **4 December 2018**, to advise that the Complainants’ claim was being declined as the damage claimed was not covered under the policy. The reason was, in essence, that there was no evidence of impact damage to the oil filter housing and rather, the damage to the tractor was consistent with oil starvation.

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The Provider's decision was based on the report of the First Assessor and the investigation of the Claims Adjuster. As can be seen, the Claims Adjuster spoke with the First Complainant to ascertain the precise events which led to the incident and visited the locus of the incident. The First Assessor attended the garage to inspect the tractor and spoke with an individual in the garage. While the Complainants point out that the Provider's letter incorrectly recorded the First Complainant as having driven into a *large puddle* as opposed to a water cut, I do not accept this misunderstanding materially affected the Provider's assessment of the claim.

The Complainants asked that the Provider reconsider its decision in respect of their claim. In support of their request, the Complainants submitted a number of statements of various individuals, and a report of an assessor retained by the Complainants was also submitted. This report (and the statements) concluded that the damage to the oil filter housing was probably caused by an unknown sharp foreign object being projected upwards from the underside of the tractor or tyre. The report also advised that if evidence could be produced to show that the oil had not been recently changed or was due to be changed, this would show that the cracking was not caused by overtightening of the housing cap.

This was followed by a report of the Second Assessor which noted that hairline fractures appeared to emanate from the oil filter housing cap but under extreme magnification, no discernible evidence of impact was found. It was also noted that while there was paint chipping, this was not sufficient to cause cracking to the oil filter housing cap.

The Complainants have also referred to comments made by the First Assessor regarding his experience with tractors when he carried out his inspection. The First Assessor has since left the employment of the Provider and a statement is not available from this individual in respect of these comments. Equally, however, the Complainants have not provided a statement of the person to whom the First Assessor made these comments. The Provider has outlined the qualifications, training and experience of the First Assessor. This has also been addressed by the Second Assessor in a report dated **5 February 2020**. Furthermore, I note the report of the Complainants' Assessor or the statements submitted by the Complainants do not suggest that the findings of the First Assessor were that of a person who was not appropriately qualified or familiar with tractors. While I am not in a position to determine whether or not these comments were made, I am satisfied on the basis of the evidence presented, that the First Assessor was appropriately qualified.

The Complainants' position is that when the tractor was driven into the water cut, an unknown object was most likely projected from under the tractor and impacted the oil filter housing, causing the sudden loss of oil.

During two telephone conversations with the Provider, the First Complainant described the water cut as being *a few inches under the road and wasn't deep ... a bit of a verge*. The photographs accompanying the Claims Adjuster's report include photographs of the water cut which I accept support the First Complainant's characterisation and description of the water cut.

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I note that there was damage to the Complainants' tractor, which appears to have resulted from the loss of oil/transmission fluid. I am satisfied however that the Provider was entitled to form the opinion that there was no sufficient evidence available to show that the damage and/or the loss of oil/transmission fluid was caused or most likely caused, as a result of the tractor driving into the water cut.

In light of the circumstances giving rise to, and following, the incident, the nature and extent of the water cut, and the reports prepared on behalf of the Provider, I am satisfied that it was reasonable for the Provider to decline the Complainants' claim. Although the Complainants submitted statements and a professional report offering views in support of their claim, I am not satisfied this was sufficient to call into question or undermine the professional evidence available to the Provider such that would render its decision to decline the claim unreasonable or wrong.

Accordingly, 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**

4 June 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.