



<u>Decision Ref:</u>	2021-0193
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Other
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Failure to process instructions in a timely manner Maladministration Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a motor insurance policy and in particular, the breakdown rescue service in the particular policy.

The Complainants' Case

The Complainants took out a "Caravanners Scheme Policy" with the Provider. They state that their camper van broke down while they were in France on 26 June 2018 and they contacted the Provider's breakdown assist service. The Complainants further submits they were informed by the Provider that the cost of the repairs totalled €1479.49 and while the vehicle was being repaired, they returned to Ireland on 27 June 2018.

The Complainants advise that on 5 July 2018, the Provider confirmed their vehicle would be ready for collection on 12 July 2018. The Complainants returned to France on 10 July 2018 to collect it. They advised that they arrived at the garage on 12 July 2018 and were informed that their vehicle was not ready for collection as a part was due to arrive on 13 July 2018. The Complainants state that this was a cause of huge inconvenience for them as they had been informed by the Provider that the vehicle was ready. They further assert that the Provider informed them that it took all of the responsibility for the miscommunications of how the matter was being dealt with so far and that it would contact the garage to discuss the delay. The Complainants state that the Provider then informed them that their vehicle would be ready for a collection at 5 PM on 13 July 2018.

The Complainants state that on 13 July 2018, the Provider informed them that their vehicle will be ready to collect and that the cost of the repairs would be €2600. The Complainants assert that the Provider had not communicated the increased cost to them previously. The Complainants state that the Provider later informed the Complainants that it would investigate who was at fault for the price increase and the lack of communication. The Complainants believes that the Provider was going to deal with the garage on their behalf and it was not something that they should worry about.

The Complainants state that the Provider subsequently telephoned them to inform them that it had not given permission to the garage for the price increase and if they wanted their vehicle, they would have to go to the garage and pay €2600 themselves. The Complainants allege that this conversation made them feel threatened to pay the money in order to get their vehicle back and that the representative was a very difficult and bullying person.

The Complainants state that on 16 July 2018, they contacted their insurance broker who referred their complaints to the Irish branch of the breakdown assist Provider who ultimately made arrangements for them to collect their vehicle from the garage and informed them that they would only have to pay the original quote, and agreed a cost of €1479.49.

The Complainants state that the Provider then contacted them to tell them that it would not be liable for any additional costs and when the Complainants requested an escalation of their case, the Provider informed them that their case was closed.

The Complainants state that between 21 July 2018 and 25 July 2018, the Provider conceded is that it had made key mistakes.

The Complainants state that their vehicle broke down again in France on 23 August 2018 and they called the Provider for breakdown assistance. The Complainants state that the garage put in a coolant and remarked that one of the coolant pipes going to the engine was not secured properly and that it was possible that the last garage did not secure the pipe properly. The Complainants advise that the vehicle was repaired at this point and the Provider emailed them and advised that there was a possible warranty issue regarding the previous incident in June 2018.

The Complainants advise that they have yet to receive a breakdown of the work that was carried out on the van in June 2018 and that they feel unsafe driving a van without knowing what work was done or not done on it.

The complaint is that the Provider:

1. Provided poor communication, customer service and complaints handling throughout and at times made the Complainants feel threatened and bullied. In addition, the complainants allege that the Provider failed in its duty of care to them and to act in their best interest.

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2. Miscommunicated key pieces of information to the complainants regarding the vehicle repair costs and collection date from the garage.
3. Transported the Complainants vehicle to an incompetent and unprofessional garage for repairs.
4. Did not furnish the complainants with the receipt or a diagnostic report for the repair of their vehicle as agreed.
5. Directed the Complainants initially to the Ombudsman in the United Kingdom in error.

The Complainants are seeking from the Provider:

1. A receipt and full breakdown of the works carried out on their vehicle in June 2018.
2. To send their vehicle to an independent and competent garage where it can be assessed what repairs were carried out on the vehicle and to certify the vehicle as being safe to use.
3. To compensate the Complainants for all out-of-pocket expenses including accommodation and car rental costs.
4. To compensate the Complainants for the disturbance, bullying and alleged lack of care and empathy shown by the Provider and for them still feeling unsafe when using their vehicle since the initial repair in June 2018.

The Provider's Case

The Provider accepts that there were shortcomings in the complaints handling process which included poor communication and customer service and that the Complainants were erroneously referred initially to the Ombudsman in the United Kingdom.

The Provider however, disputes the other grounds of complaint. The Provider asserts that it complied with its obligations under the breakdown rescue service under the policy. In particular, the Provider asserts that the nature of the benefit is to provide assistance to the customer in the event of a breakdown but that the policy does not cover repairs to the vehicle. In addition, the Provider asserts that the terms of the policy clearly set out that the Provider is not to be held responsible for any failure on the part of the garage to perform or carry out repairs adequately. The Provider also asserts that it is up to the Complainants to agree the cost of the repairs with the garage and to liaise with the garage directly with regards to receiving information on the scope and nature of the works carried out. The Provider asserts, that notwithstanding the foregoing, it did assist the Complainants in reducing the costs notwithstanding that it was outside of the scope of the policy and the Providers also made a contribution of €400 towards the repairs as a gesture of goodwill.

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.

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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 6 October 2020, 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.

Following the issue of my Preliminary Decision, the Complainants and the Provider made further submissions, a copy of which were exchanged with the parties.

Having considered the parties' additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

A copy of the Caravanners Scheme Policy has been furnished to this office. For completeness, the relevant section of the policy relating to Breakdown Rescue is set out below.

Section 7 – Breakdown Rescue

Please note:

We will not be liable for any expenses you incur without our prior approval or for expenses you incur without first dialing the phone number(s) provided.

What does Breakdown mean?

It refers to mechanical breakdown, fire, theft or any attempted theft, malicious damage, punctures that require assistance to fix or replace a wheel, lost keys, stolen keys, keys broken in locks or in the motor caravan.

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Benefits under your Breakdown Rescue cover

Roadside and driveway assistance

We will send a competent repairer to help you at the scene. If your motor caravan can be repaired immediately, we will provide up to one hour's free labour. You must be with the motor caravan when the repairer arrives. If you are not with the motor caravan and we cannot help you, you must pay for any help you then need.

Towing

We will arrange and pay for the cost of towing the Motor Caravan to the nearest competent repairer or to your own garage whichever is the closest.

Finishing the journey outside of Ireland

If the motor caravan breaks down and we have arranged for the caravan to be taken to the nearest competent repairer locally, but repairs will take more than 12 hours, we will reimburse up to €400/£350 per claim (up to a maximum of €1000/£800 per policy year) towards additional hotel accommodation – room only. You will need to arrange and pay these costs yourself and claim them back from us by completing a claim form and supplying the relevant receipts or invoices.

*You can request a claim form by calling [*****]*

If the motor caravan breaks down and cannot be fixed by your planned return date we will reimburse the costs up to €500/£350 per claim (up to a maximum of €1500/£1300 per policy year) towards the cost of bringing the motor caravan back to your home address as shown on your policy schedule.

*You will need to arrange and pay these costs yourself and claim them back from us by completing a claim form and supplying the relevant receipts or invoices. You can request a claim form by calling [*****]*

Where am I covered?

Cover applies to the following countries: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia Herzegovina, Bulgaria, Croatia, Cyprus (South), Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian mainland (west of Urals), San Marino, Serbia, Slovakia, Slovenia, Spain (excluding Ceuta and Melilla), Sweden, Switzerland, Turkey (in Europe) plus Iskudar, Ukraine, United Kingdom (including the Channel Islands and the Isle of Man), Vatican City and any offshore islands of the above, except overseas territories outside of Europe.

Important information about your Cover [Provider] will not be liable for any expense incurred without their prior approval or for expenses incurred by you without ringing the phone number(s) provided first.

Exclusions

We are not liable for:

- 1 Any liability or consequential loss arising from any act performed in the execution of the assistance provided.*
- 2 Expenses which are recoverable from any other source.*
- 3 Any claim arising where the motor caravan is carrying more passengers or towing a greater weight than that for which it was designed, or arising directly from unreasonable driving on unsuitable terrain.*
- 4 Any accident or breakdown resulting from wilful or deliberate act.*
- 5 The cost of repairing the motor caravan other than as described in the benefits section.*
- 6 The cost of any parts, keys, lubricants, fluids or fuel required to restore the motor caravans' mobility.*
- 7 Any claim caused by fuels, mineral essences or other flammable materials, explosives or toxins transported in the motor caravan.*
- 8 Any costs:*

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- (a) *In relation to storage charges; where you are unable to provide proof of purchase in the form of receipts or invoices;*
- (b) *in relation to getting the motor caravan to your home following an accident, fire, theft or any attempted theft, malicious damage;*
- (c) *In relation to getting the motor caravan home if the motor caravan is beyond commercial economic repair;*
- (d) *in relation to getting the passengers home where the motor caravan cannot be repaired by your planned return date or the motor caravan is beyond commercial economic repair; or*
- (e) *In relation to recovery of animals.*

9. *Any expenses incurred without our prior approval or any expenses incurred by you without ringing the phone number(s) provided first*

Limit of responsibility

1 *We will not be responsible for any inability on their part to provide the services specified in this section.*

2 *We will not be responsible for any failure on their part to perform any obligation caused as a result of: Act of God, Government control, Restrictions, Prohibitions, or any other Act or Omission of any Public Authority (including government) whether Local, National or International, or the default of any Supplier, Agent or other Person or of Labour Disputes or Difficulties.*

3 *We will not be responsible for any failure on their part to perform such obligations as a result of any other cause whatsoever where such cause is beyond their reasonable control.*

4 *We will not be responsible for any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power except so far as it is necessary to meet the requirements of the Road Traffic Acts.*

It is clear that the policy provides limited cover. In particular, the following is relevant:

Breakdown rescue cover provides roadside assistance. Roadside assistance means that the Provider will send a competent repairer to assist at the scene of the breakdown and if the vehicle can be repaired immediately, the Provider will provide up to 1 hours free labour. That was not the case in this instance.

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In the event that the vehicle needs to be towed, the Provider will arrange for and pay for the cost of towing the vehicle to "the nearest competent repairer".

If the vehicle breaks down outside of Ireland and repairs will take more than 12 hours, the Provider will reimburse policyholders up to €400 per claim towards additional hotel accommodation.

Cover applies to France where the Complainants were at the time.

The terms and conditions expressly exclude liability of the Provider for any consequential loss arising from any act performed in the execution of the assistance provided.

Therefore, the wording of the terms and conditions of the breakdown assistance benefit in the policy limits the obligations of the Provider to arranging and paying for the cost of towing the vehicle to the nearest competent repairer.

The terms and conditions do not provide for cover in respect of the costs of repairing the vehicle and the terms and conditions of the policy do not involve the Provider in agreeing and negotiating costs with the garage in respect of any repairs.

The Complainants complain that the Provider was guilty of mis-communicating key pieces of information to the Complainants regarding the vehicle repair costs and the collection date from the garage. It appears from the totality of the evidence provided to this office that the miscommunication of information pertaining to the accuracy of the collection date and the augmentation in the repair costs emanated from the garage in France. That information was then conveyed to the Complainants by the Provider but, on balance, I am not able to find any culpability on the part of the Provider in merely passing on information provided to it by the garage in France.

The Complainants also complain that the Provider transported the Complainants vehicle to an incompetent and unprofessional garage for repairs. The terms and condition of the policy do state that the Provider will tow the camper van to a "competent repairer". The Complainants believe that the repairs carried out in June 2018 were inadequate and were as a result of incompetence on the part of the garage in France. The Provider seeks to rely on the "limits of responsibility" part of section 7 of the policy booklet (quoted above). The Provider submits in its submissions to this office that this states that the Provider is not liable for the actions of the garage that carried out the repairs to the Complainants vehicle. However, the wording of this particular part of the policy does not expressly state that and it is unclear precisely what limits the Provider is seeking to impose on the policy. What the policy does expressly state is that the vehicle will be towed to a garage that is "competent".

The policy provides that the Provider is not liable for *any* consequential loss arising from *any* act performed in the execution of the assistance provided and therefore, I accept that this would extend to any works carried out by the garage if there had been an onus on the Provider in respect of the works actually carried out.

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In addition, while it appears there is a belief that the works carried out in June 2018 did not in fact address or properly repair the vehicle, there is no clear evidence showing that the works carried out on the vehicle in June 2018 were incompetent or that the garage is not a 'competent' garage.

In light of the fact that the duties of the Provider are as set out above, I do not accept that there is culpability on the part of the Provider in failing to procure or delaying in procuring a receipt or a diagnostic report for the repair of their vehicle.

In addition to the foregoing, the Complainants complain that the Provider proffered poor communication, customer service and complaints handling throughout and at times made the Complainants feel threatened and bullied. In addition, the Complainants allege that the Provider failed in its duty of care to them and to act in their best interest.

The Complainants also raise the fact that the Provider directed the Complainants initially to the Ombudsman in the United Kingdom in error.

Sections 10.1 and 10.9 of the Consumer Protection Code 2012 provide:

10.1 *A **regulated entity** must have written procedures in place for the effective handling of errors which affect **consumers**. At a minimum, these procedures must provide for the following:*

10.2

- a) *the identification of the cause of the error;*
- b) *the identification of all affected **consumers**;*
- c) *the appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;*
- d) *proper control of the correction process; and*
- e) *escalation of errors to compliance/risk functions and senior management.*

10.9.1 *A **regulated entity** must have in place a written procedure for the proper handling of **complaints**. This procedure need not apply where the **complaint** has been resolved to the Complainants satisfaction within five **business days**, provided however that a **record** of this fact is maintained. At a minimum this procedure must provide that:*

- a) *the **regulated entity** must acknowledge each **complaint** on paper or on another **durable medium** within five **business days** of the **complaint** being received;*
- b) *the **regulated entity** must provide the Complainants with the name of one or more individuals appointed by the **regulated entity** to be the Complainants point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be progressed any further;*

- c) *the **regulated entity** must provide the Complainants with a regular update, on paper or on another **durable medium**, on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**, starting from the date on which the **complaint** was made;*

Dealing firstly with the allegation that the Provider made the Complainants feel threatened and bullied. Recordings of telephone calls between the Complainant and the Provider have been submitted in evidence. I have considered the audio recordings of the telephone calls that were furnished to this office and I have considered the written communications between the parties.

It appears from the Complainants' submissions to this Office, including those of **5 and 19 March 2020, 8 April 2020** and their post Preliminary Decision submission dated **25 October 2020** (copies of which were transmitted to the Provider for its consideration) that they believe some recordings of telephone calls, which they consider to be relevant, are missing from the Provider's responses to this Office.

In that regard, I found it necessary to write to the Provider on **20 April 2021** requesting it to provide recordings of the further calls which the Complainants have continuously asserted took place between them and the Provider over various dates.

The Provider, in its response to this Office dated 28 April 2021, advised that *"I can tell you that [the Provider] have provided all of the telephone recordings that were available to your office as part of our formal response... and "the [breakdown services provider] have fully investigated this matter and have supplied a log of telephone conversations between the breakdown provider and [the Complainants]. The call recordings for some of these calls are unavailable and the [breakdown service provider] have provided [the Provider] with a detailed explanation as to why these calls are unavailable"*.

The explanation provided as to why these calls were unavailable is that as:

"The provision of breakdown services in Europe by the [breakdown services provider], is managed by a team in [location in France] who are both ISO 901 and 2600 accredited. This team provide roadside assistance for the financial services and the automotive sectors in Europe. This team takes all customer calls that relate to breakdowns that occur in Europe.

[...]

As outlined above we are unable to provide these calls. At the time of the Complainant's breakdown these calls are only stored for 2 months. Due to the time that has elapsed the calls were deleted in conjunction with the CNIL (Commission nationale de L'informatique et des libertes).

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The CNIL is a French organisation that is widely recognised for protecting personal data, supporting innovation and preserving individual liberties. It is regulated under the French Data Protection Act. In 2018 recorded calls were kept for 2 months and used for training, evaluation and improving service quality, they were not used for complaint handling. This has since been updated and calls can be stored for longer (6 months) and used with voice encryption for complaint investigation”.

It is further detailed that in relation to two other calls dated “20th and 21st December 2018” which were “specifically relating to the complaint handling” and “related to provision of incorrect ombudsman details and apology for same” which were not available to be submitted to this office, could not be submitted “due to the rare occurrence of a member of staff hot desking at the time of the calls being made”.

While it is most disappointing that the Provider was not in a position to supply this office with all call recordings, in the circumstances where the Provider had to abide by the French data protection laws, which were applicable at that time, I accept this as a reasonable justification for the Provider’s inability to submit these calls.

However, the Provider’s explanation as to why the two calls dated “20th and 21st December 2018” to its Customer Care Teams calls, were not submitted is unsatisfactory. Furthermore, it is disappointing that the Provider did not explain why these recordings were not available at an earlier stage in the investigation of the complaint.

In the absence of the call recordings, the Provider has submitted its full claims and calls log, which detail the dates, times and a brief description of the call content with the Complainants.

I have considered the content of these, in conjunction with the previous call recordings submitted to this office.

Notwithstanding the fact that there are shortcomings on the part of the Provider in its complaint handling, communication and customer service, I have been provided with no evidence that would support the serious charge of making the Complainants feel threatened or bullied.

However, there were clearly shortcomings on the part of the Provider in the lack of timeliness and the manner in which the complaint was dealt with and also the error in initially referring the Complainants to the Ombudsman in the United Kingdom.

While the Provider makes the case that it went out of its way to assist the Complainants throughout the process, it does acknowledge that there were shortcomings in its complaints handling and that this complaint has identified areas in the Provider's complaint handling process that requires improvement.

Given the concession on the part of the Provider of shortcomings in complaint handling, this aspect of the complaint does not require determination, but I nonetheless note the delays in the complaint handling process and the confusion caused at certain instances by the Provider. In addition, I note the contents of the audio recording between the First Named Complainant and the Provider on 17 July 2018. Having considered the audio recording, I am of the view that the Provider appeared to be unaware of up-to-date information which caused further confusion and frustration on the part of the Complainants and the Provider's representative on this call did not offer particularly helpful assistance and this represents a material shortcoming in customer service and complaint handling.

I note that the Provider in acknowledgement of the poor complaint handling and customer service received by the Complainants has offered €600 in recognition of these shortcomings. I believe this sum is reasonable in the circumstances.

I note that that the Complainants have requested that I make a determination on the "*competency of garages*" involved. It must be noted that I investigate complaints against the conduct of financial service providers and pension providers. It is not within my remit to make judgements on the competency or ability of a mechanic. It would therefore not be appropriate for me to make such determinations or comment further on this matter.

For the reasons outlined in this Decision, I do not 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

16 June 2021

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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.