



<u>Decision Ref:</u>	2021-0213
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Rejection of claim
<u>Outcome:</u>	Rejected

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

The Complainant incepted a warranty policy in respect of his jeep with an insurance company (the **Insurer**) in **September 2018**. This policy was underwritten by the Provider, against which this complaint is made. The Complainant made a claim under the policy in **November 2018**. The claim was declined by the Insurer and the decision to decline the claim was subsequently upheld by the Provider. The Complainant is dissatisfied with the decision to decline his claim.

The Complainant's Case

The Complainant explains that following the expiry of the warranty on his jeep in early **2018**, he purchased warranty cover from the Insurer on **25 September 2018**. The Complainant experienced mechanical failure on his jeep relating to the four wheel drive system on **12 November 2018**. A Main Dealer inspected the jeep and provided the Complainant with a report. The Complainant submitted a claim to the Insurer by email dated **20 November 2018**. The Complainant also shared the report prepared by the Main Dealer. The Complainant's claim was rejected by the Insurer on **21 November 2018**. The Complainant disagrees with the Insurer's position and has quoted the relevant part of the Insurer's response as follows:

'Unfortunately the claim has been rejected as the splines are not broken but worn due to in service deterioration. The [policy] only provides cover to components for sudden Mechanical Breakdown.'

The definition of mechanical breakdown can be found in the definitions on page 4 of the Policy booklet, as follows: MECHANICAL BREAKDOWN – The sudden and unforeseen failure of a component, arising from any permanent mechanical or electrical defect, (for a reason other than wear and tear, normal deterioration or negligence) causing sudden stoppage of its function, necessitating the immediate repair or replacement of the component before normal operation can be resumed.'

The Complainant explains that he responded to the Insurer on **21 November 2018** setting out the basis for disagreement with the decision to reject his claim. The Insurer responded to the Complainant the same day confirming its decision to decline the claim. The Complainant states that he received a letter from the Provider on **27 November 2018** advising that it was investigating the Complainant's claim. A Final Response letter was issued on **17 January 2019** agreeing with the decision of the Insurer to decline the Complainant's claim.

The Provider's Case

As part of the investigation of this complaint, the Provider was furnished with a Summary of Complaint by this Office on **25 May 2020**. This incorporates a *Schedule of Questions* regarding the complaint to which the Provider is requested to respond. It is also requested that a *Schedule of Evidence* be provided which contains information and documentation relevant to the complaint. It was requested that the Provider's formal response to the complaint be provided within 20 working days of receipt of the Summary of Complaint. However, a response was not received from the Provider.

This Office wrote to the Provider by letter dated **6 July 2020** requesting its formal response, noting same was two weeks overdue. By email dated **7 July 2020**, the Provider responded by providing this Office with a copy of the Final Response letter issued to the Complainant. This Office responded on the same day requesting a response to the Summary of Complaint. Following this request, a formal response had still not been received and this Office wrote to the Provider again on **21 July 2020** requesting a formal response to the complaint within 15 working days.

By letter dated **21 August 2020**, this Office informed the Provider that as no response had been received, the complaint would proceed to adjudication on the basis that the Provider had no further submission to make and had failed to respond to the Summary of Complaint. A final letter was issued to the Provider on **30 September 2020** informing it that the adjudication of the complaint was proceeding on the basis that the Provider had failed to respond to this Office or furnish any of the evidence previously requested.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably declined the Complainant's claim.

/Cont'd...

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 23 November 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 Complainant made a submission under cover of his e-mails dated 23 and 24 November 2020, together with attachments, copies of which were transmitted to the Provider for its consideration.

The Provider has not made any further submission.

At the outset, I must point out that the refusal by the Provider to engage with the investigation processes of this Office are completely unacceptable.

I would remind the Provider of its obligations under the ***Financial Services and Pensions Ombudsman Act 2017*** to furnish evidence requested by this Office. In particular, I would draw the Provider's attention to Section 47 (3) of the Act, which states:

"In conducting an investigation, the Ombudsman may—

(a) require any person, who in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his or her power or control, that is relevant to the investigation, to—

/Cont'd...

(i) provide to him or her that information, either orally or in writing,

(ii) produce to him or her that document or a copy of the document,

As the Provider has refused or failed to meet its obligations under the **Financial Services and Pensions Ombudsman Act 2017** to furnish the evidence requested by this Office, I propose to bring this matter to the attention of the Central Bank of Ireland for any action it may deem appropriate.

In his post Preliminary Decision submission dated **23 November 2020**, the Complainant submits that he is:

“concerned that my garage engineering report may not have been considered in this preliminary decision (please find attached and outlined below). I also do not see direct reference to this report in the attached PRELIMINARY DECISION document. It states the splines were inspected and found to be "sheared". The definition of sheared is "break off or cause to break off". As per the explanation from the insurer on the 20 Nov 2018; "Had the splines have been broken the claim would have been accepted".”

The Complainant then quotes the engineer’s report:

Garage engineer's report (15/11/2018):

*"Check customer report of 4wd not right, feels like there is no drive from the rear. Inspected 4wd. Found no drive going to rear wheels. Removed prop shaft and removed transfer unit. **Found splines on transfer unit sheared**. Need to replace transfer unit and Gearbox differential"*

The Complainant, in a further post Preliminary Decision submission dated **24 November 2020**, reiterates the comment that he does not believe the engineer’s report was considered.

The Complainant submits that the:

“Reason for the further submission: I am concerned that my main dealer garage engineering report may not have been considered in this preliminary decision. This report clearly states "Found splines in transfer unit sheared". [FYI, the splines are an internal component of the 4 wheel drive transfer box that allow the engine to power the rear wheels]. The definition of 'sheared' is "to break off or cause to break off". On the 20th of Nov 2018 the insurer [...] head of engineering stated "Had the splines been broken the claim would have been accepted". Therefore the rejection of my claim is a direct contradiction by the [the Provider] with their own head of engineering and I believe a breach of their warranty insurance policy (see references below).”

The Complainant then quotes from the Car Protect Warranty Policy Booklet and states at:

Page 10 of the "Car Protect Warranty Policy Booklet" regarding the inclusion of cover for the 4x4 transfer box:

4X4 TRANSMISSION

Warranty is as listed for 2 wheel drive vehicles plus the specialist components indicated. 4x4 transfer box: The following internal mechanical components are included: Transfer gears, selectors, shafts, transfer shafts, needle and roller bearings, output shafts and bushes (excluding oil leaks).

Page 4 of the "Car Protect Warranty Policy Booklet", regarding the definition of what is covered under this policy:

WHAT IS COVERED BY YOUR POLICY

The sole purpose of this Policy is to indemnify You against the unforeseen Mechanical Breakdown of the specifically listed parts under the level of cover You have chosen within the booklet. The Policy type, duration and maximum Indemnity will be those selected and as stated on the Warranty Certificate. No claim for payment can be released until the Administrator has received the Policy premium in full.

Page 4 of the "Car Protect Warranty Policy Booklet", regarding the definition of "Mechanical Breakdown":

MECHANICAL BREAKDOWN - *The sudden and unforeseen failure of a component, arising from any permanent mechanical or electrical defect, (for a reason other than wear and tear, normal deterioration or negligence) causing sudden stoppage of its function, necessitating immediate repair or replacement of the component before normal operation can be resumed.*

The Complainant details that the Provider's assessment of the matter was incorrect:

"The [Provider] is claiming that the failure of the 4 wheel drive transfer box is based on wear and tear. There is no evidence to back this up and this view is in direct contradiction with their own head of engineering and the findings of my main dealer engineering inspection report".

The engineer's report, which the Complainant submits was not considered or referenced, is a single page document with the following statement in the main body:

"Check customer report of 4wd not right feels like there is no drive from the rear Inspected 4wd. Found no drive going to rear wheels.

/Cont'd...

Removed prop shaft and removed transfer unit. Found splines on transfer unit sheared. Need to replace transfer unit and Gearbox differential”.

This was previously submitted by the Complainant as part of his online complaint on **19 February 2020**, therefore I had access to, and did consider it, during my adjudication of the complaint.

I accept that the Complainant’s concern that I had not considered the garage report may be due to the statement in my Preliminary Decision where I stated:

“While a copy of Main Dealer’s report and other documentation supporting the Complainant’s claim have not been provided, the evidence is that the jeep was not subject to the sudden and unforeseen failure of a component arising from any permanent mechanical defect. The evidence is that the splines were worn but not broken. This has not been disputed or contradicted by the Complainant. The Insurer and the Provider have taken the position that the damage to the splines related to wear and tear/normal deterioration. The Complainant has not provided any evidence to dispute or contradict this nor has he provided any evidence to show the damage being claimed for comes within the policy definition of Mechanical Breakdown and would not be considered or attributable to wear and tear or normal deterioration”.

I should clarify that the Complainant had submitted supporting documentation, which he believes evidenced the sudden and unforeseen failure of a component arising from any permanent mechanical defect. This was the report from his main motor dealer referred to above.

I don't believe that because this very limited garage report used the word 'sheared' that this is sufficient to bring the claim within the definition of 'Mechanical Breakdown' or that the damage was not caused by 'Wear and Tear'. There is also no commentary on the condition of the splines or the transfer assembly or the reason why/cause of the splines shearing in this brief document.

While the Complainant asserts that the unit being “*sheared*” should be considered sudden and unforeseen failure of a component arising from any permanent mechanical defect, it remains my view that it was not unreasonable for the Provider to form the view that the damage being claimed for came within the policy definition of Mechanical Breakdown and would not be considered or attributable to wear and tear or normal deterioration.

Background

The warranty policy entered into with the Insurer and underwritten by the Provider covered the period **25 September 2018 to 24 September 2019**. In or around **20 November 2018**, the Complainant submitted a claim under the policy together with a copy of a report prepared by the Main Dealer and a number of photographs.

/Cont’d...

A copy of the claim form/initial claim documentation submitted to the Insurer has not been provided and neither has a copy of the report or photographs sent by the Complainant to the Insurer.

The Insurer wrote to the Complainant on **21 November 2018** declining the claim:

“Unfortunately the claim has been rejected as the splines are not broken but worn due to in service deterioration.

The [policy] only provides cover to components for sudden Mechanical Breakdown. The definition of Mechanical Breakdown can be found within the definitions on page 4 of the Policy booklet, as follows: ...”

In an email dated **21 November 2018**, the Complainant expressed his disagreement with the decision of the Insurer by way of a complaint in the following terms:

“... I believe the term of your policy that you have referred to below (titled ‘MECHANICAL BREAKDOWN’) is not in line with the general principles of the Consumer Protection Code as outlined by the Central Bank of Ireland. It is my understanding that every moving mechanical component of a car is susceptible and impacted by ‘wear and tear’ and ‘normal deterioration’. Therefore the failure of a component that causes mechanical breakdown is always going to have an element of normal wear and tear as a % of contribution to the cause of the overall failure of that component. It is only a brand new components (completely unused) that will have no element of wear and tear and where you can contribute 100% of the failure to mechanical defect only. Any and all moving components in a car will be susceptible to normal wear and tear, and therefore this term in your policy allows you to avoid all responsibility and for covering the cost of repair to any moving component of a domestic motor vehicle should that component suffer a mechanical defect. Effectively this is a ‘catch all’ ‘get out clause’ that allows you to avoid responsibility and payment (at your discretion) and is certainly not fair and not acting in the best interests of the consumer.”

Responding later the same day, the Insurer’s Head Engineer outlined the position as follows:

“I have reviewed all correspondence and photos and am in agreement with the claim rejection as there was no sudden mechanical failure to the splines of the Transfer assembly. Had the splines have been broken the claim would have been accepted, but as they were worn as a result of in service deterioration the claim was rejected in line with Policy cover.

From reviewing the pictures it does appear, from the visible rust, that the transfer assembly has suffered some water ingress, perhaps from a seal, which could have advanced the wear evident on the splines due to lack of lubrication.

/Cont’d...

You state that you first noticed symptoms on the 12.11.2018 but from reviewing the photos and the extent of the wear, the fault would have been present in the vehicle when you purchased the policy on the 25.09.18 and consequently developed to noticeable symptoms. ...

You would be correct in your statement 'that every moving mechanical component in a car is susceptible and impacted by wear and tear and normal deterioration' however the [policy] does not provide cover for components that require replacing due to wear and tear. ..."

The Complainant wrote to the Main Dealer on **23 November 2018** to explain that the Insurer had declined his claim on the basis "... the seal has gone on the transfer box before the warranty was taken out and the water has caused accelerated wear and tear degeneration of the spline." The Main Dealer responded on **26 November 2018** expressing the view that:

"The rust is not due to water.

The seal was intact when the transfer was removed. There is also an interlock on the casings to make them as close to impenetrable as possible.

There would also be water in the gear-oil if it were due to water ingress.

There will always be a slight bit of moisture due to the heat of the 4wd system.

...

I'm surprised at your Insurer as the terms seemed to state an issue like this would be covered."

The Provider wrote to the Complainant by letter dated **27 November 2018** to explain that the matters raised in respect of his claim were being referred to its Customer Relations Team in the UK.

The Provider issued a Final Response letter on **17 January 2019**, and referring to the policy definitions of *Indemnity* and *Mechanical Breakdown* explained:

"Conclusions

Having now completed my review of this matter I should firstly explain that no insurance policy will provide cover for every eventuality that may occur. Your policy provides cover for the specific events as detailed in your policy document, and the cover provided is subject to the exclusions and terms and conditions contained within the wording.

Not all events which may occur will therefore be covered, and any claim submitted must be considered in accordance with the cover provided and will be subject to the terms and conditions of that cover.

/Cont'd...

From the information supplied by a vehicle technician, who is an expert in his field, it is apparent the damage is not an actual or sudden mechanical failure and that the issue reported is due to general wear and tear to the splines of the transfer assembly over time, which is not covered under your policy, the decision to decline your claim is correct.

Under the circumstances, I must unfortunately advise that I am in agreement that your claim falls outside the scope of your policy cover on this occasion and must maintain the decision previously conveyed to you by [the Insurer]. ...”

The Policy

In the *What is Covered by Your Policy* section of the Complainant’s policy, it states:

“The sole purpose of this Policy is to indemnify You against the unforeseen Mechanical Breakdown of the specifically listed parts under the level of cover You have chosen within the booklet”

The policy also contains the following definitions:

“Indemnity – *The sole purpose of this Policy is to indemnify the Extended Warranty Policy Holder in the event of Mechanical Breakdown of the insured’s Vehicle as stated in the Warranty Certificate. The Insurer’s liability shall be only the actual failed parts required to return the Vehicle to its pre-claim condition. This is not a service or maintenance policy.*

...

Mechanical Breakdown – *The sudden and unforeseen failure of a component, arising from any permanent mechanical defect, (for a reason other than wear and tear, normal deterioration or negligence) causing sudden stoppage of its function, necessitating immediate repair or replacement of the component before normal operation can be resumed.*

...

Wear and Tear – *The gradual deterioration associated with the normal use and age of the Vehicle and its components.*
...”

Analysis

It appears from the evidence that the Complainant’s claim was for damage to or caused by splines in the transfer assembly of his jeep.

/Cont’d...

The warranty policy offered cover in respect of *Mechanical Breakdown* but not *Wear and Tear*. These terms are specifically defined in the policy. Therefore, for a claim to be accepted, the Complainant must satisfy the Insurer and/or the Provider that the damage he was claiming for was in respect of a *Mechanical Breakdown* within the definition of the policy.

The claim was rejected by the Insurer on the basis that the splines were not broken but worn due to in-service deterioration. The Insurer's Head of Engineering subsequently explained to the Complainant that the splines were not the subject of sudden mechanical failure but were worn, essentially from wear and tear/normal deterioration. The view was also expressed that there may have been water ingress in the transfer assembly and this could have accelerated wear to the splines. It is further stated that the fault could have been present in the jeep when it was purchased by the Complainant.

While a copy of Main Dealer's report and other documentation supporting the Complainant's claim have not been provided, the evidence is that the jeep was not subject to the *sudden and unforeseen failure of a component arising from any permanent mechanical defect*. The evidence is that the splines were worn but not broken. This has not been disputed or contradicted by the Complainant. The Insurer and the Provider have taken the position that the damage to the splines related to wear and tear/normal deterioration. The Complainant has not provided any evidence to dispute or contradict this nor has he provided any evidence to show the damage being claimed for comes within the policy definition of *Mechanical Breakdown* and would not be considered or attributable to *wear and tear or normal deterioration*.

Therefore, in light of the evidence in this complaint and the terms of the policy, I accept that the Insurer and the Provider were entitled to decline the Complainant's claim. Accordingly, I do not uphold this complaint.

However, while I accept the Provider was entitled to decline the claim under the policy, it is most unacceptable that it has refused or failed to meet its obligations under the ***Financial Services and Pensions Ombudsman Act 2017*** to furnish the evidence requested by this Office during the investigation of this complaint. For this reason, I am bringing this matter to the attention of the Central Bank of Ireland for any action it may deem appropriate.

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

23 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.