



<u>Decision Ref:</u>	2021-0524
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Tractor
<u>Conduct(s) complained of:</u>	Rejection of claim - accidental damage Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

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

This complaint arises from the Provider's refusal to indemnify an insurance claim made on the Complainant's policy.

The Complainant's Case

This complaint concerns an insurance policy held by the Complainant with the Provider.

The Complainant submits that he first reported an issue with his mower on "Thurs 21/6/18". He submits that he was contacted by the assessor (hereinafter referred to as Assessor A) appointed by the Provider and advised that his vehicle could not be assessed until the following Monday:

"...their assessor phoned me @4.45pm on Friday 22/06/18. He stated that he could not assess the mower until the following Monday 25/6/18@ the earliest."

The Complainant states that when he raised the issue of work needing to be done, he was advised he was speaking to Assessor A, and not the insurance company:

"I asked him how would I get my grass cut or my work done in the meantime and his answer was I'm an assessor I'm not an insurance company."

Having raised the issue of not being able to get work done, the Complainant stated that he felt he should have been more informed, with regards to the work he could have carried out on his mower over in the meantime:

"I feel an assessor should state to a customer that if any way they intrude or interact with a machine without the assessor's consent that one might jeopardise the claim in question. "

He submits he feels he was met with a "smart answer" at an inappropriate time, showing "carelessness & negligence in dealing with a farmer's problem...".

The Complainant submits that he "proceeded to get the mower repaired" as he "couldn't wait until Monday". He submits that it was the opinion of those who repaired the vehicle that, though they could not see evidence of damage to the gearbox "In their view it was accidental damage that the noise arose from in the gearbox from hitting hollows in the field."

The Complainant submits that this was contrary to the view of Assessor A, who attended on the following Wednesday, **27 June 2018**, who believed the damage was due to "mechanical failure". The Complainant has submitted that he was unhappy with an answer given for what evidence there was to support this:

"I asked him how could he prove this and he took on A4 sheet of paper from his case with the choice of 20 answers and told me to pick one."

The Complainant submits that another assessor (herein referred to as Assessor B) appointed by the Provider, had a differing opinion from Assessor A:

"I asked another independent assessor appointed by [the Provider] in my farmyard one day afterwards to view the mower gearbox in question and straight away he said that is was accidental damage and the claim should have been paid."

The Complainant also submits that an investigator for the Provider agreed "that it could be accidental damage, but never reported back to [him] on the matter."

The Provider's Case

The Provider in its final response letter states that contact was initially made by Assessor A with the Complainant on **21 June 2018**, and the Assessor A was to follow up the following morning to arrange inspection:

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“The assessor advises us that their office made contact with you on 21st June, informed you that all assessors were currently on the road and that someone would contact you the following morning to arrange inspection of the vehicle.”

The Provider states that during the call the following day **22 June 2018**, the inspection date was agreed for Monday **25 June 2018**, and that the Complainant had agreed that the gearbox would be stripped prior to inspection:

“...it was agreed that the gearbox would need to be stripped for inspection prior to being assessed. We believe this was agreed, you told the assessor this would be done over the weekend and a meeting was arranged for Monday 25th June to view the damage.”

The Provider submits that that this meeting was cancelled by the Complainant:

“The assessor advises us that he phoned you on his way to your premises, on Monday 25th June, but you subsequently informed him that you didn’t have the time to have the gearbox stripped over the weekend.”

The Provider submits that a follow up meeting was organised for Wednesday **27 June 2018**, when the mower was assessed. At this meeting the Provider states that the Assessor A advised the Complainant that the damage was mechanical damage:

“The motor assessor informed [the Provider] that he verbally advised you that the damage caused is mechanical failure and he advised you to consult the individual who had performed recent work on the vehicle.”

The Complaint for Adjudication

The complaint is that the Provider incorrectly declined the Complainant’s claim. The Complainant also submits that the Provider showed “*carelessness and negligence*” in its handling of the Complainant’s claim and there was poor customer service in relation to Assessor A’s interactions with the Complainant.

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 **24 November 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant opened a tractor policy with the Provider on **17 August 2006**. The policy covers a number of tractors and specified items of machinery. At the time of the loss, cover was arranged on a comprehensive basis for the machine which is the subject of this dispute (a [brand redacted] mower insured for €10,000 (ten thousand euro)). The policy expired on **16 August 2020**.

I note the following chronology of events, to include communications between the parties:

- | | |
|--------------|--|
| 21 June 2018 | The Complainant reported the loss by way of telephone call to the Provider and claim was registered. Claim registration letter issued to Complainant. |
| 21 June 2018 | The Provider's Motor Engineer's office telephoned the Complainant and stated that an engineer would contact him the following morning. [The Provider has confirmed to this Office that there is no telephone recording of this conversation available]. |
| 22 June 2018 | Assessor A telephoned the Complainant to obtain further details. Assessor A stated that there would need to be a dismantling of the gearbox to allow an inspection and assessment of the damage. An inspection was agreed for 27 June 2018 . [The Provider has confirmed to this office that there is no telephone recording of this conversation available]. |

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27 June 2018	On the way to attending with the Complainant for the inspection, Assessor A telephoned the Complainant. After the Complainant removed the gearbox, inspection was conducted on the site.
2 July 2018	The Provider received the inspection report from its engineer (Assessor A).
6 July 2018	The Provider's agent telephoned the Complainant advising that the damage to the mower was deemed to be mechanical failure and not covered by the policy. The Complainant confirmed he would appoint his own motor engineer and complained that it had taken too long for the Provider's engineer to attend.
28 August 2018	The Provider's agent telephoned the Complainant to follow up on the engineer's report.
16 October 2018	The Provider's agent again telephoned the Complainant who confirmed he was submitting a letter from his garage and himself.
24 January 2019	The Provider's agent telephoned the Complainant but there was no answer.
28 February 2019	The Complainant raised an official complaint.
1 March 2019	The Complainant's letter of complaint was received by the Provider by letter dated 28 February 2019 .
1 March 2019	There was a telephone conversation between the Complainant and the Provider's agent concerning the letter of complaint.
5 March 2019	A complaint acknowledgment letter was issued to the Complainant.
5 March 2019	The Complainant telephoned the Provider.
9 March 2019	The Complainant telephoned the Provider.
14 March 2019	Telephone conversation between the Provider's agent and the Complainant. During this call, the Provider's agent said that the damage was a mechanical failure. [The Provider has confirmed to this Office that there is no telephone recording of this conversation available].

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- 15 March 2019 The final response letter from the Provider issued to the Complainant.
- 19 March 2019 Telephone discussion between the Complainant and Provider's agent. [The Provider has confirmed to this office that there is no telephone recording of this conversation available].
- 20 March 2019 Telephone conversation between the Provider's agent and the Complainant.
- 21 March 2019 Telephone conversation between the Provider's agent and the Complainant.
- 21 March 2019 Telephone conversation between the Provider's agent and the Complainant. The Provider has submitted to this Office that during this call it reiterated its position that damage was not covered by the policy and the Complainant disputed the Provider's findings. [The Provider has confirmed to this office that there is no telephone recording of this conversation available].
- 22 March 2019 Telephone conversation between the Provider's agent and the Complainant. The Provider has submitted to this Office that during this call the complaint outcome was discussed and the options available to the Complainant should he wish to pursue this matter further. [The Provider has confirmed to this Office that there is no telephone recording of this conversation available].
- 27 March 2019 Telephone conversation between the Provider's agent and the Complainant. The Provider has submitted to this Office that during this call the Complainant confirmed he would proceed to arbitration unless a settlement was reached. [The Provider has confirmed to this Office that there is no telephone recording of this conversation available].
- 3 April 2019 Telephone conversation between the Provider's agent and the Complainant. The Provider has submitted to this Office that during this call the Complainant stated that his complaint was not properly answered, and he believed the motor engineer appointed by the Provider should have been able to confirm the issue with the machine before repairs were carried out. [The Provider has confirmed to this office that there is no telephone recording of this conversation available].

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13 June 2019

Telephone conversation between the Provider's agent and the Complainant. During this call the Provider's agent and the Complainant spoke about the claim for the motor.

The Policy Terms and Conditions set out in the policy document provide as follows at page 4 & 5:

"SECTION 2 – LOSS OR DAMAGE TO INSURED VEHICLE

The Company will indemnify the Insured against loss of or damage to any vehicle described in the Schedule hereto and its accessories and spare parts while thereon.

The Company may at its own option repair or reinstate or replace such vehicle or any part thereof and/or its accessories and spare parts or may pay in cash the amount of the loss or damage. If any part or accessory of the vehicle described in the Schedule hereto is obsolete or unobtainable from its makers, the liability of the Company in respect of such part or accessory shall be limited to the cost of such part or accessory as set out in the maker's last published price list together with current labour charge for the fitting thereof. If to the knowledge of the Company the vehicle is the subject of a Hire, Lease or Finance Agreement (including Hire Purchase) such payment shall be made to the owner of whose receipt shall be a full and final discharge to the Company in respect of such loss or damage.

If such vehicle is disabled by reason of loss or damage insured under this Policy the Company will bear the reasonable cost of protection and removal to the nearest repairers. The Company will also pay the reasonable cost of delivery to the Insured after repair of such loss or damage not exceeding the reasonable cost of transport to the address of the Insured."

EXCEPTIONS

The Company shall not be liable to pay for:

- (a) Loss of use depreciation wear and tear mechanical and/or electrical and/or electronic breakdowns failures or breakages*
- (b) Damage to tyres by application of brakes or by punctures cuts or bursts*
- (c) Damage to any vehicle described in the Schedule hereto and/or its accessories and spare parts caused by the goods carried therein*
- (d) Damage to any vehicle described in the Schedule hereto and/or its accessories and spare parts where such damage arises from, is attributable to or caused by the action of frost*
- (e) Damage to windscreens or windows"*

I note that during the call between the Complainant and Provider's agent on **21 June 2018**, after the Complainant described the issue with the mower, the Provider's agent stated *"there is a possibility that it's a wear and tear issue, which wouldn't be covered..."*.

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During this call, the Provider's agent was clear in stating that an assessor would have to inspect the mower before a decision could be made whether the claim would be covered under the policy.

The Provider has submitted that it appointed Assessor A to inspect the damaged mower. Following the examination on **27 June 2018**, the Provider's Assessor A determined that the damage was due to a mechanical failure, which the Provider stated was "*a cause excluded from cover under the terms... of the policy*".

The Provider has further stated that notwithstanding that repairs had already been carried out prior to the notification of this claim to it, "*it is beyond doubt that repairs to the machine should not have commenced until the Motor Engineer had an opportunity to inspect the damaged mower*".

The Complainant has disputed the findings of the of the Provider's Assessor A and the Provider has submitted that it told the Complainant that he had the option of engaging an engineer of his choosing at his own expense, if he so wished.

The Provider's "**Claim intake notes**" state that the incident was reported as follows:

"PH was mowing a field with a lot of wholes in is [sic] and rough ground with rock, Mower would have been jolting and hopping around. There was a loud noise form mower are all of a sudden [sic]. He replaced the bearing in the more and this did not fix it."

The Assessor A provided a report on foot of the **27 June 2018** inspection, which stated regarding the damage sustained on 21 June 2018, as follows:

"The insured advised that a noise came into the gearbox of the mower and he removed the gearbox from the mower and brought it to his repairer and I am advised that bearings were fitted. On reinstalling the gearbox it failed to operate properly and the mower was not used. I requested that the gearbox was dismantled before my visit to the insured and when I attended it had been partially dismantled.

I observed that the intermediate bevel gear was not attached to its splined shaft and this gear was retrieved from the bottom of one half of the box as was its spacer shim and securing circlip. This gear had 2 teeth broken and these were also retrieved from the inside of the box as was several parts of the bearing of the box which carries the interconnecting shaft behind the bevel gear.

It is clear from my observations that the retaining clip has come off the shaft and allowed the gear to become dislocated and resulted in fracture of the teeth and breakup of the new bearing.

In light of the immediate previous repairs and its non operation subsequently, there may be a liability with the previous repairer and accordingly I have not discussed or agreed repair costs as this is a mechanical failure."

This report also included photographs of the mower in question.

I note that during a telephone call on **6 July 2018**, the Complainant informed the Provider's agent that he did not accept Assessor A's engineer's report and would be appointing his own assessor at his own cost. The Complainant also stated that the four days it took for Assessor A to come out to inspect the mower was excessive and he was advised by the Provider's agent that the reason for this was because it was a busy time of year.

On **28 February 2019** the Complainant wrote a letter of complaint to the Provider which stated that he was mowing a crop of hay on his land when a noise occurred, and he ceased cutting the land at that point. He stated an assessor phoned him Thursday morning (**21 June 2018**) and told him he was busy and could not call that day but maybe the following day. The Complainant stated that he was incurring huge losses at this stage because the weather was perfect for mowing and he had 200 acres. He stated he asked Assessor A if he could get a replacement mower to keep him going in the meantime, but Assessor A stated that he could not answer this and to contact the Provider.

The Complainant stated that Assessor A told him that he was understaffed and the Complainant would have to wait for him to call to assess the machine. The letter further stated *"I thought this was extremely poor form as I have this mower comprehensively insured since 2007 and not once have I claimed against it. The assessor assured me that he would be able to define the cause of damage when he would assess it. It was Friday evening at this stage and I had no choice but to take it upon myself to try and fix it."*

The letter went on to state that the Complainant was required to hire a contractor to work on his farm, because when he brought the mower to a third party to fix it over the weekend, the third party did not have the relevant part in stock until the following Tuesday. In this letter he stated the third party eventually replaced two bearings in it.

In the letter he also stated that Assessor A eventually came to see the gearbox the following Wednesday morning (**27 June 2018**). Assessor A took several photos and told him to contact the third party who had worked on the mower as it was their fault as they caused the mechanical failure. The letter stated *"When I asked what caused the problem he gave me a choice of 20 answers and said to take my pick. I was disappointed with the call out and how the problem was dealt with."*

The letter concluded with the following paragraph:

"The remainder of the summer sent negative vibes towards my farming enterprise as it was cost after cost. It cost us 3750 plus vat to get the mower back in production and the cost of 4850 plus the vat to an outside contractor to do my work for me. This is a loss to me of 8600 euro plus vat.

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Why do I have my mower insured comprehensively if I'm not covered for accidental damage to it and how could any customer of [the Provider] find 8600 plus vat out of their own pockets after the gruesome farming year we had in 2018 due to the harsh weather conditions.

I'm writing this letter to have my side of the story heard. I would like to think that I am a valued customer of [the Provider] for the last 15 years and my parents for years before that. I and [the third party] feel the noise to the mower is a result of accidental damage. As this is covered under my policy I think I should be compensated for my losses."

The Complainant also enclosed a letter dated **27 February 2018** from the Third Party Mechanic who carried out works on the mower.

This letter stated as follows:

"In July 2018, on inspection of noise from gyro head gearbox of mower I... feel this noise arose as a result of accidental damage happening while mowing with machine i.e. hitting a dip in the field or by way of a jolt [sic] from tractor wheel and mower wheel hitting severe dips or hollos [sic] in the field. We proceeded to replace two bearings on gearbox as this was normal practice. Gearbox and labor prices of €3750 plus VAT."

The Third Party Mechanic provided a further email to this Office which mirrored their assessment put forward in the letter of **February 2018**, namely that the gearbox was unfit for repair and "uneconomical" and that the damage caused was accidental damage.

Following the Complainant's letter of **28 February 2018**, Assessor A provided an update by way of letter dated **12 March 2018** which responded to matters raised in the letter.

Assessor A gave a breakdown of his understanding of events before discussing his inspection. In respect of the events, Assessor A provided the following timeline:

Thursday 21 June 2018 at 12.09pm Instructions sent to his office.

21 June 2018 at 16.12.pm An agent of Assessor A spoke to the Complainant and stated all its engineers were on the road and someone would speak to him in the morning.

Friday 22 June 2018 Assessor A telephoned the Complainant and tried to establish what the issue was. Because the gearbox was not yet dismantled, Assessor A told the Complainant it needed to be done before he could inspect and the Complainant agreed to do this over the weekend.

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Monday 25 June 2018 Assessor A telephoned the Complainant on his way to inspect the mower, but was advised that the gearbox had not been dismantled. As a result, Assessor A stated he would call **27 June 2018** instead.

Wednesday 27 June 2018 Assessor A telephoned the Complainant on his way to inspect the mower, but was advised that the gearbox had not been dismantled. However, on arrival on the site, the gearbox was dismantled whilst he was present.

The letter then describes the inspection by Assessor A reiterating the issues regarding mechanical failure as per his earlier letter of **27 June 2018**. He added the following:

“The Insured was advised at this time that the damage was mechanical failure and in light of the recent work carried out to the box he should consult with the repairer on these matters.

The Insured repeatedly asked if the repairer was at fault and I advised that the Engineer had no role in making comment on the issue re the previous repairs but that he should consult with his repairer.

It is my opinion in this case that I facilitated the inspection in every way possible despite the frustrations of the Insured not honouring the commitments given re dismantling.

It is my opinion that this was mechanical failure and same is supported by the photographs furnished with the report.

Please note that the letter of complaint states that I contacted the Insured by phone on Thursday morning. This is incorrect as the insured was contacted by [assessor agent] from this office at approximately 4.00pm on the 21-06-2018 and I first spoke with the Insured on the following morning 22-06-2018 as per the timeline set out above.

During this call on Friday morning the issue of a replacement mower was raised by the Insured and I advised he should consult with [the Provider] on this matter as this was a policy issue and outside my remit in dealing with the Insured.

At no time during the discussions was the Insured advised that this office was understaffed and all delays in conducting this inspection was a result of the Insured not being in a position to have the gearbox dismantled and not honouring his undertakings.”

The Provider sent a final response letter to the Complainant dated **15 March 2019**. The Provider’s letter set out the timeline of events as put forth in Assessor A’s letter of **12 March 2018**.

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In particular, the Provider stated that it had been agreed over the phone between Assessor A and the Complainant that the gearbox would need to be removed and this would be done by the Complainant over the weekend and Assessor A would then inspect on the following Monday (**25 June 2018**). The letter went on to state that on **25 June 2018** Assessor A had telephoned the Complainant on his way to inspect the mower, but had been advised that the gearbox had not yet been dismantled. As a result, Assessor A stated he would call on Wednesday **27 June 2018** instead.

In the letter of **15 March 2019**, the Provider submitted that on **27 June 2018**, after the gearbox end plate was removed:

“it was observed that the bevel gear was off the shaft. The assessor advises that he retrieved the gear from the bottom of the gearbox along with the retaining clip and spacer. He also noted that a new bearing had been fitted to the shaft behind the bevel gear position and noted that parts of this new bearing had broken up with same located and removed from the bottom of the gearbox along with two teeth from the bevel gear.

The motor assessor informed [Provider] that he verbally advised you that the damage caused is mechanical failure and he advised you to consult the individual who had performed recent work on the gearbox.

The motor assessor has reiterated to [Provider] that he is firmly of the belief that the damage caused is mechanical failure and therefore would not be covered under the policy of insurance

In conclusion we have found no grounds to uphold your complaint in this instance.”

The Provider has submitted a file note of a conversation between a Provider's agent and the Complainant from **21 March 2019**. Though there is no audio recording of this telephone conversation, the Provider has a written record of the call as follows:

“PH on again... I have discussed the claim with PH and the fact that we are making the decision based on the information that is put before us and that there is no evidence of accidental damage and the motor assessor says this is mechanical in nature. The PH say the assessor guaranteed to him that he would be able to pinpoint what happened to the vehicle. I stressed to PH that if this was said, this was said before the PH proceeded to bring the vehicle in to have works completed on it. I told the PH, categorically, that the assessor will not be able to tell the PH what was wrong with it before he saw it and after it had been brought in an [sic] had work already done on it. PH doesn't accept this and say that his garage said “in their opinion”, this is accidental damage. I again say that with the facts in front of me this is mechanical. He said I was talking [sic] the motor assessor over him to which I said I was taking the evidence and what may or may not have been said between 2 people [sic], I can't confirm, therefore I must disregard and base a decision on facts.

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He continued to say that I wasn't answering the complaint. I reiterated that the assessor will not be able to give a definitive [sic] of what was wrong before it was brought in for work to be completed and in his opinion there is no evidence of accidental damage. PH doesn't accept this and says that the assessor should have said that the machine is not to be worked on prior to his inspection."

The Complainant has submitted that he believes the Provider's claims officer seemed to be siding with Assessor A even though the mechanics who were hired by the Complainant to carry out the repairs (Third Party Mechanic) provided a written document stating that, in their view, it was accidental damage.

The Complainant stated he has endured a *"draining and mentally distressing"* six months with the Provider's claims officer who he said denied the claim and has left the Complainant feeling *"frustrated"*.

The Complainant also stated that he asked another independent assessor appointed by the Provider *"in his farmyard one day afterwards"* to view the mower gearbox in question and *"straight away he said that it was accidental damage and the claim should have been paid"* but it was not. He queried how two assessors of the Provider could contradict each other in this way.

I note that when the Complainant forwarded the email from the Third Party Mechanic to this office, the Provider gave a response by way of letter dated **20 October 2020**. The Provider submitted that it noted the comments of the Third Party Mechanic and it passed on the comments to Assessor A. Assessor A concurred that the damage was not due to wear and tear but advised that there was no physical evidence to support the assumption that the gears and shafts sustained twisting and bending due to sudden shock, as advised by the Third Party Mechanic. The letter noted that Assessor A stated that the mower was fitted with a slip clutch to protect the machine from any potential damage that may be sustained in a lockup situation and Assessor A is satisfied that the cause of failure in this case is clear as set out in his report following his early inspection.

The Complainant responded by letter on **28 October 2020**. In this letter he firstly queried why Assessor A and/or Provider did not make reference to the Third Party Mechanic opinion in their earlier reports, in circumstances where the Third Party Mechanic's opinion had already been made available to them.

The Complainant further rejected the findings of Assessor A, and stated that if the gearbox had been removed and inspected by Assessor A, rather than conducting a report based on photographs only, Assessor A *"would have had his answer today"* regarding the issue with the mower.

On **18 November 2020**, the Provider responded by letter to the Complainant. The letter confirmed that Assessor A reviewed the letter compiled by the Third Party Mechanic and contacted him to discuss the matter thereafter. The Provider in its letter stated that the level of dismantling undertaken at the time of the original inspection was sufficient for Assessor A to understand how the damage had been sustained.

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The letter also responded to the specific matter raised by the Complainant regarding an issue with the “*slip clutch*”. The Complainant in his earlier letter had stated that the mentioning of this “*slip clutch*” was an inaccuracy on the part of Assessor A. In its response letter, the Provider stated the “*slip clutch*” was noted in Assessor A’s report because it was specifically mentioned in the Third Party Mechanic’s letter of **27 February 2019**.

The Provider concluded by stating that the Complainant appeared to suggest that Assessor A had no understanding of how the Complainant’s mower operated and it wished to confirm that Assessor A is a fully qualified motor engineer with considerable experience having worked with agricultural machinery for over 30 years. Therefore, it considered it unnecessary for the Complainant to provide photographs as suggested in his letter of **28 October 2018**.

Finally, the Complainant submits that another assessor, Assessor B, appointed by the Provider, had a differing opinion to Assessor A:

“I asked another independent assessor appointed by [the Provider] in my farmyard one day afterwards to view the mower gearbox in question and straight away he said that it was accidental damage and the claim should have been paid.”

The Provider has submitted to this office that it has no knowledge or record of a second assessor being instructed to inspect the mower.

Analysis

I note section 2 of the policy which provides:

“The Company may at its own option repair or reinstate or replace such vehicle or any part thereof and/or its accessories and spare parts or may pay in cash the amount of the loss or damage.”

Section 2 also provides:

“If such vehicle is disabled by reason of loss or damage insured under this Policy the Company will bear the reasonable cost of protection and removal to the nearest repairers. The Company will also pay the reasonable cost of delivery to the Insured after repair of such loss or damage not exceeding the reasonable cost of transport to the address of the Insured.”

EXCEPTIONS

The Company shall not be liable to pay for:

- (a) Loss of use depreciation wear and tear mechanical and/or electrical and/or electronic breakdowns failures or breakages*
- (b) Damage to tyres by application of brakes or by punctures cuts or bursts*
- (c) Damage to any vehicle described in the Schedule hereto and/or its accessories and spare parts caused by the goods carried therein*

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- (d) *Damage to any vehicle described in the Schedule hereto and/or its accessories and spare parts where such damage arises from, is attributable to or caused by the action of frost*
- (e) *Damage to windscreens or windows"*

I note that the Complainant telephoned the Provider early on **21 June 2018** regarding the issue with his mower and at 4.12pm an agent of Assessor A contacted the Complainant. On the morning of Friday **22 June 2018**, Assessor A telephoned the Complainant and tried to establish what the issue was. Assessor A stated that, because the gearbox was not yet dismantled, it would need to be done before he could inspect and the Complainant agreed to do this over the weekend.

Whilst the complainant is dissatisfied that when he raised a query with Assessor A regarding cover for a replacement mower, and Assessor A confirmed to him that he should speak directly to the Provider, I do not accept that this was an inappropriate response on behalf of Assessor A, who had been appointed for the purpose only of examining the damaged mower. I am satisfied that he correctly directed the Complainant to the Provider for any queries regarding the extent of cover and whether this would include a replacement mower, pending the repair of his own. It is unclear why the Complainant did not follow up with this query directly with the Provider which would have been best placed to respond directly to the Complainant.

The Complainant has also raised a complaint that Assessor A should have told him that if he intruded or interacted with the machine "*without the assessor's consent*" that it "*might jeopardise the claim in question.*" I do not accept the Complainant's complaint in this regard, as Assessor A made it clear that he would have to inspect the mower before the claim could be verified. In my opinion, given that Assessor A had made it clear to the Complainant that it would be necessary for him to inspect the mower before it could be determined whether or not the damage would be covered, I consider that it was reasonable for the Complainant to have understood that any interference with the condition of the mower (whether by repairs or otherwise) before that inspection would impact on Assessor A's ability to carry out that inspection.

I am conscious that the Complainant has not submitted any evidence to indicate that he told Assessor A that he was intending to have the mower repaired himself when he spoke to him on **22 June 2018** over the phone, which might have triggered Assessor A in confirming to the Complainant that any such repairs would impact upon and potentially undermine his examination and assessment of the damage to the mower.

Turning to the issue of suggested delay in having the mower inspected. I note that the Complainant notified the Provider early on **21 June 2018** regarding the issue of his mower and he was contacted by Assessor A himself on **22 June 2018** (after an agent of Assessor A spoke to him on 4.12pm on **21 June 2018**) to make arrangements to attend and inspect.

The Complainant has submitted that Assessor A told him during this call on **22 June 2018** that "*he couldn't come until the following Monday*".

The Provider in its final response letter of **15 March 2019** contradicted this and stated

“The motor assessor informs [the Provider] that he phoned you on 22nd June and that you advised that the vehicle was still with you, you briefly discussed the apparent damage and it was agreed that the gearbox would need to be stripped for inspection prior to being assessed.”

The Provider’s letter stated:

“The assessor advises us that he phoned you on his way to your premises, on Monday 25th June, but you subsequently informed him that you didn’t have the time to have the gearbox stripped over the weekend. The motor assessor informs us that a follow meeting is then arranged for Wednesday 27th June to establish if the damage could then be inspected.

On Wednesday 27th June, the motor assessor spoke to you again as he was travelling to your premises. He informs [the Provider] that you told him that the gearbox had still not been stripped for inspection but it was agreed that the assessor would proceed to you premises and that the gearbox would be dismantled for inspection.”

There is no recording or transcript of these phone calls available. Accordingly, it is unclear what was exactly agreed during the telephone call from Friday **22 June 2018** between Assessor A and the Complainant. Assessor A has stated *“all delays in conducting this inspection was a result of the Insured not being in a position to have the gearbox dismantled and not honouring his undertakings.”*

I accept the Provider’s position that an appointment had been made for Assessor A to attend to examine the mower on Monday 25 June 2018 and that Assessor A was in fact en route to the Complainant to conduct the assessment when it came to light during a telephone call to the Complainant that the gearbox had not yet been prepared. In those circumstances, whatever small delay ensued before the assessment of the damage could proceed, I am not satisfied that the responsibility for this delay can be placed only upon the Provider.

In respect of the telephone conversation between the Provider’s agent and the Complainant on **5 March 2019**, the Complainant called the claims department of the Provider. I note that the Provider’s agent during this call was particularly abrupt and unreceptive to his call, and indeed was positively rude to the Complainant. Although the Complainant had mistakenly called the claims department regarding detail about his complaint, in my opinion the tone and language of the Provider’s agent was entirely unnecessary and unprofessional. I am satisfied that this interaction wholly failed to comply with provision 2.1 of the Central Bank of Ireland’s Consumer Protection Code (“CPC”), requiring that a financial service provider *“acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market”*.

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I am disappointed to note that throughout this call, the Provider's agent consistently spoke over the Complainant and was extremely rude, to the point where the Complainant stated *"..in fairness, there is no point in being abrupt with me..."*.

When the Provider's agent discovered that the Complainant's call concerned a complaint and then spoke with her colleague, with a view to transferring the call, she stated *"I have a very unhappy fella on here for ya..."* and *"he's like a riddle trying to get news out of him, what he wants"*.

I am pleased to note that the colleague who then took over the call was very professional in his interactions with the Complainant, and the tone he adopted was helpful and considerate.

Regarding the Complainant submission that another Assessor B appointed by the Provider, had a differing opinion to Assessor A, there is no evidence before this Office to substantiate this second opinion. Accordingly, I don't accept that it can be taken into consideration for the purpose of this investigation.

Turning finally to the decision to reject the claim, I note the reasoning provided in the letter of **15 March 2019** which states as follows:

"it was observed that the bevel gear was off the shaft. The assessor advises that he retrieved the gear from the bottom of the gearbox along with the retaining clip and spacer. He also noted that a new bearing had been fitted to the shaft behind the bevel gear position and noted that parts of this new bearing had broken up with same located and removed from the bottom of the gearbox along with two teeth from the bevel gear.

The motor assessor informed [the Provider] that he verbally advised you that the damage caused is mechanical failure and he advised you to consult the individual who had performed recent work on the gearbox."

However, I note that on **28 February 2019**, prior to the Provider issuing this rejection letter, the Complainant had appeared to send the Provider a letter of **27 February 2019** from the Third Party Mechanic who carried out works on the mower. This letter stated as follows:

"In July 2018, on inspection of noise from gyro headgear box of mower I... feel this noise arose as a result of accidental damage happening while mowing with machine i.e. hitting a dip in the field or by way of a jolt [sic] from tractor wheel and mower wheel hitting severe dips or hollos [sic] in the field. We proceeded to replace two bearings on gearbox as this was normal practice. Gearbox and labour prices of €3750 plus VAT."

However, Assessor A's second report dated **12 March 2019**, which post-dated the report of the Third Party Mechanic, did not make any reference to the letter of **27 February 2019** or the contents therein.

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Indeed, on **6 October 2020**, the Complainant submitted to this Office another expert opinion of the Third Party Mechanic. When this was made available to the Provider, it responded by way of letter on **20 October 2020** and stated that its expert engineer advised that there was no physical evidence to support the assumption that the gears and shafts sustained twisting and bending due to sudden shock as advised by the Third Party Mechanic.

However, I note the submission of the Complainant in his letter for response dated **28 October 2020** where he argues that it appears the earlier reports of Assessor A did not take into account the letter of **27 February 2019** from the Third Party Mechanic. During the call on **5 March 2019**, the Provider's agent from the complaints department stated to the Complainant "*I can confirm we have your complaint letter on file...so this was referred to the motor team*".

It is not clear from this telephone call whether the "letter" he was referring to, which was made available to the motor team, was the letter of **27 February 2019**. The Complainant again raised this in his telephone conversation of **21 March 2019** with the Provider's local office, when he made reference to the letter of the Third Party Mechanic and during the telephone call of **13 June 2019** with the Provider's agent where he stated "*[Mr W on behalf of the Provider] took no notification...to the letter that was sent to him on behalf of [Third Party Mechanic] who gave their opinion...*".

In its response letter dated **18 November 2020**, the Provider stated:

"we ...confirm that a copy of the Complainant's letter was forwarded to the office of the engineer [engineer company]. We can confirm that motor engineer [Mr J] [of engineer company] reviewed the letter compiled by [Third Party Mechanic] and contacted him to discuss the matter thereafter."

It is noteworthy from the response that Mr J of the engineer company was the one who reviewed the expert views of Third Party Mechanic (rather than Assessor A). The Provider does not deny or respond to the assertion that it failed to furnish the letter of **27 February 2019** to Assessor A in advance of his report dated **12 March 2019** or that the letter was not considered and taken into account in its final response letter of **15 March 2019**. In this regard, it is notable that reference to "*slip clutch*", which was mentioned in the earlier **27 February 2019** letter, was only mentioned for the first time by the Provider on **20 October 2020**. I am satisfied that the Complainant's letter of 27 February 2019 ought to have been made available to Assessor A for consideration and in my opinion, ought to have been addressed in Assessor A's second report dated 12 March 2019. The Provider's failure to address the contents of that letter until a considerable time later was unhelpful to the Complainant's understanding of the decision which had been taken regarding his claim.

I don't accept that it was appropriate for the Provider's report of **12 March 2019**, from Assessor A, leading to its final decision to reject the claim on **15 March 2019**, to fail to have any regard to the contents of the report of the Third Party Mechanic of **27 February 2019** which the Complainant had made it clear he wished to rely upon.

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Whilst the Provider has addressed the content of the report of February 2019, in more recent times, I am satisfied that it failed to do so in a timely manner when it ought to have turned its attention to that aspect of the matter, for the purpose of its consideration as to whether or not the claim should be admitted or declined.

Accordingly, whilst I am satisfied, on balance, to accept on the basis of the evidence available, including the Provider's response to this complaint in **2020**, that it was reasonable for the Provider to form the opinion that the damage sustained by the Complainant's mower in June 2018 was a mechanical failure, nevertheless, I take the view on the evidence before me that the manner in which the Provider went about assessing the Complainant's claim from June 2018 and in particular in early 2019, was flawed. I also take the view that the inappropriate and rude manner in which the Provider initially interacted with the Complainant in March 2019, was unacceptable and fell below the standard which the Complainant was entitled to expect. In my opinion, both these aspects of that conduct on the part of the Provider was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

In those circumstances, I consider it appropriate to partially uphold the complaint. Whilst I do not accept that it was unreasonable for the Provider to decline the Complainant's claim, I am satisfied that the Provider was guilty of very poor customer service and to mark that decision, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant as specified below, in order to conclude.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000 (three thousand Euro), 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.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

16 December 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.