



<u>Decision Ref:</u>	2022-0059
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Farm & Livestock
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Policyholder, who is now deceased, incepted a **Farm Protection Policy** with a named Insurer on **5 October 2015**. The Provider, in its capacity as an insurance intermediary, arranged this policy for the Policyholder.

This complaint arises from the fact that a tractor was insured on the policy for the sum of **€1,500.00 (one thousand five hundred Euro)**. The Policyholder, and latterly the Complainants, maintain that when the policy incepted with the Insurer, through the Provider, it was the Policyholder's intention to insure his tractor for **€15,000.00 (fifteen thousand Euro)** but that this value was incorrectly recorded by the Provider and conveyed to the Insurer as being **€1,500.00**. The late Policyholder died on **1 July 2019** and the Complainants are the Executors of his Estate.

The Complainants' Case

The late Policyholder telephoned the Provider on **13 May 2019** to advise that two sheds and his tractor and trailer had been badly damaged by fire on **11 May 2019**. The Provider notified the Insurer of this loss. The late Policyholder accepted a claim settlement offer from the Insurer in the amount of **€23,475.00** in respect of the fire to the outbuildings, which was paid posthumously on **4 July 2019**, however he had refused a claim settlement offer in the amount of **€1,500.00** in respect of the loss of his tractor.

The late Policyholder said that when the policy was taken out with the Insurer, through the Provider, it had been his intention to insure his tractor for **€15,000.00**, but that this value had been incorrectly recorded by the Provider and conveyed to the Insurer as being **€1,500.00**. The Complainants say that the Provider's failure to accurately record the given value of the tractor at the time of the proposal for cover, led to an error from the outset that continued throughout the lifetime of the policy, ultimately coming to light only when the late Policyholder made a claim in **May 2019**.

The late Policyholder set out this complaint in the **Complaint Form** he submitted to this Office, as follows:

"[The policy] was purchased by me, Farm buildings, dwelling house and tractor was covered on it. The documents were returned to me which I signed. I had said 15000 euro to [the Provider] as a value for the tractor over the phone. I now realize that the value of the tractor was written as 1500 [Euro] on the policy. I did not put 1500 [Euro] as a value on it. I signed the policy thinking that the value was 15000 [Euro]. It was not properly explained to me ...

I want [the Provider] to resolve this problem with [the Insurer] on my behalf. [The Provider] are representing me and should explain that a genuine mistake was made in this instance. [The Insurer] are only prepared to cover the loss of the tractor for 1500 [Euro] [which] is not enough".

The late Policyholder's son acknowledges that documents were sent by the Provider for signature to the late Policyholder at the time of the inception of the policy in **October 2015**, but says that the late Policyholder did not realise the discrepancy in relation to the value of the tractor, as he relied on the information given to him over the telephone by the Provider when signing these policy documents.

In addition, the late Policyholder's son also acknowledges that he made telephone calls to the Provider on behalf of the late Policyholder regarding policy renewals and amendments but in that regard, in his email to this Office on **20 August 2020**, he submits that:

"The mistake was made from the beginning back in 2016. My parents didn't realise the mistake on paper. They had the documents but would ask me to make the phone calls for them".

In his email to this Office dated **12 April 2021**, the late Policyholder's son further submits that:

"...At the end of the day we are not being disingenuous about this [nor] are we looking for what we are not entitled to. We simply want a settlement that is somewhere closer to the true value of the tractor".

The Provider's Case

The Provider says that the late Policyholder's wife telephoned the Provider on **5 October 2015** to obtain an insurance quotation for a farm insurance policy.

The Provider says the late Policyholder's **Farm Protection Policy** inception was agreed with the late Policyholder over the telephone on **5 October 2015** following discussions with him and his wife, pending the completion and return of the **Statement of Fact**, (which clearly stated all values and covers) and the **Claims Declaration Form** and **Terms of Business**.

The Provider notes that the late Policyholder signed these documents on **12 October 2015** and returned them. The Provider says the policy was thus incepted on the basis of the information provided by, and subsequently signed for, by the late Policyholder.

The Provider confirms that the insured sum for the tractor of **€1,500.00**, as stated on the **Policy Schedule** at inception and at each renewal thereafter, was in accordance with the instruction of the late Policyholder.

The Provider notes that policy renewal terms were sent to the late Policyholder every year and discussions took place as to the changes required to the policy cover for the year ahead. In that regard, the Provider says it is noteworthy that the late Policyholder's son reviewed the policy in detail at renewal in **October 2017** and telephoned the Provider on **17 October 2017** to amend, among other things, the year of manufacture of the tractor from 1975 to 1985, but he sought no amendment to the insured sum of the tractor.

The Provider is satisfied that at all times it handled this matter in a clear and professional way and followed the instructions of the late Policyholder and his nominated persons, and that the documentation and telephone call recordings furnished in evidence, confirm this.

The Complaint for Adjudication

The complaint is that the Provider wrongfully or negligently failed to correctly and accurately record the late Policyholder's instructions as to the value of his tractor at the time of the proposal for the policy of insurance in late 2015, as a consequence of which the Provider did not convey an accurate indication of the value of the tractor to the Insurer, which subsequently prejudiced the late Policyholder when he later made a claim for the loss of the tractor.

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 **21 January 2022**, 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.

I note that the late Policyholder incepted a **Farm Protection Policy** with a named Insurer on **5 October 2015**. The Provider, in its capacity as an insurance intermediary, arranged this policy for him.

This complaint concerns the fact that a tractor was insured on the policy for the sum of **€1,500.00 (one thousand five hundred Euro)**.

The late Policyholder, and more recently the Complainants, maintain that when the policy was taken out with the Insurer, through the Provider, it had been the late Policyholder's intention to insure his tractor for **€15,000.00 (fifteen thousand Euro)** but that this value was incorrectly recorded by the Provider and conveyed to the Insurer as being **€1,500.00**.

The Complainants say that the Provider's failure to accurately record the value of the tractor given by the late Policyholder at the time of the proposal for cover, led to an error from the outset that continued throughout the lifetime of the policy, ultimately coming to light only when the late Policyholder made a claim in **May 2019** for the loss of his tractor.

The late Policyholder refused a claim settlement offer from the Insurer in the amount of **€1,500.00** in respect of the loss of his tractor in **May 2019**.

Recordings of telephone calls have been supplied in evidence and I note the late Policyholder's wife telephoned the Provider on **5 October 2015** to obtain an insurance quotation for a farm insurance policy, as she advised that the renewal premium with the existing insurer at that time had become "*very expensive*".

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It is clear to me that the late Policyholder's wife was conversing with the late Policyholder throughout this call and that on a number of occasions, she also referred to the cover on the policy documents from the late Policyholder's then current insurer.

I note that when the Provider asked the late Policyholder's wife the value of the tractor, she replied, following a brief aside with the late Policyholder himself:

"...around fifteen hundred, he thinks...",

and when asked as to the cover referred to in the policy documents from the late Policyholder's then current insurer, she confirms that:

"...it says third party cover applies..."

When the Provider telephoned the late Policyholder later that same day, on **5 October 2015**, to confirm the quote and the policy, I note he stated the cover for the tractor as:

"...fifteen hundred euro third party fire and theft..."

I note the late Policyholder then agreed to the premium and the inception of the policy.

The documentary evidence before me shows that the Provider then issued the late Policyholder with the **Statement of Fact**, the **Claims Declaration Form** and the **Terms of Business**. I note that **Section 6, 'Agricultural Tractor/Motor Special Types'**, of the Quotation **Statement of Fact** provided, as follows:

Registration/Serial Number	Year	Make/Model	Vehicle Type	Sum Insured	Windscreen Cover	Cover
[redacted]	1975	[redacted]	Tractors (Agri Use Only)	€1,500	Yes	Third Party Fire and Theft

The 'Declaration' section at pg. 1 of this Quotation **Statement of Fact** states, among other things, that:

"Important: we require that you (the broker) and the proposer [the late Policyholder] read and understand this Declaration".

I am satisfied from the evidence before me that the Provider recorded the sum insured of the late Policyholder's tractor at **€1,500.00** in accordance with the instructions it had received from the late Policyholder. I am also satisfied that the late Policyholder was furnished with written confirmation of this sum insured, at the inception of the policy. If having read the **Statement of Fact**, the late Policyholder was dissatisfied with the sum

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insured for his tractor, it was open to him at that time, to contact the Provider and/or the Insurer to have this amount amended.

I note from the documentation before me that the late Policyholder's son later telephoned the Provider on **17 October 2017** to increase the farmhouse sum insured to **€150,000.00** and to amend the year of manufacture of the tractor from 1975 to 1985, however he did not seek to amend the sum insured for this tractor, which was listed on the policy renewal document at **€1,500.00**. As the late Policyholder's son was in a position to be aware that the year of manufacture of the tractor was incorrectly recorded on the policy as 1975, and to request this to be changed to 1985, I take the view that he was then also in the position to identify that the sum insured for the tractor was **€1,500.00**, and to correct that figure, if it was wrong.

In relation to the recordings of telephone calls that have been furnished in evidence, I note that in his email to this Office on **7 April 2021**, the late Policyholder's son submits:

"I have listened to the Audios and I have a few observations.

My father [the late Policyholder] died due to Alzheimer's disease in 2019 so his contribution to the phone call needs to be discounted ...

In any event my mother sounded very vague especially when it came to figures. She at one stage was even going to insure the house for €7,000 until the agent quite rightly questioned the [true] value of the house. He dwelled on this aspect. Yet he did not question the value that she was putting on the tractor. Surely the agent should have exercised the same duty of care to his client when it came to the true value of the tractor in the same way as he did for the house! He didn't even offer her an opportunity to go and find the exact year for the tractor. When my mother said that it was a good tractor on the phone this was quite an understatement as it was a 1986 four wheel drive...in excellent condition.

The phone calls are quite sad really when you listen to two elderly people being rushed through figures in order to legitimise an insurance sale and contract".

I note from the contents of these recordings that took place on **5 October 2015**, that the late Policyholder's wife telephoned the Provider looking for a quote and she advised that the farmhouse was at that time insured for the sum of **€104,450.00**. The Provider asked if she wanted to increase this amount as it might be a little low and having conversed briefly with the late Policyholder, she said the figure of **€7,000.00**. I note that when pressed by the Agent, she immediately clarified that she intended to increase the farmhouse sum insured to **€107,000.00**.

In that regard, I take the view that it is unreasonable to suggest, as the late Policyholder's son appears to, that having confirmed the then farmhouse sum insured of **€104,450.00** that the late Policyholder's wife, following a brief aside with the late Policyholder himself, would then seek to reduce this cover by **€97,450.00** to **€7,000.00**.

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Neither do I accept that the Provider was under an obligation to second guess the figure which the Policyholder's wife, having spoken with him, confirmed to be the value of the tractor.

There is no evidence available that the family of the late Policyholder put the Provider on notice of the fact that the late Policyholder was suffering from Alzheimer's Disease or that the Provider was told that there may be a difficulty in accepting his instructions, in the event of him seeking to incept insurance through the Provider.

Having regard to all of the above, I am satisfied that the evidence does not support the complaint that the Provider wrongfully or negligently failed to correctly and accurately record the late Policyholder's instructions as to the value of his tractor at the time of the proposal for the policy of insurance, as a consequence of which the Provider did not convey an accurate indication of the value of the tractor to the Insurer, at the time of policy inception.

On the evidence before me I do not accept that this complaint should be upheld.

Conclusion

My Decision, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

14 February 2022

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.