



<u>Decision Ref:</u>	2022-0266
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Dissatisfaction with customer service Failure to provide correct information Failure to process instructions Rejection of claim
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a **Premier Cover Mechanical and Electrical Breakdown Insurance for New and Used Cars and LCVs Policy** ('the policy') with a named Insurer for the policy period **8 December 2018 to 17 December 2020**. This policy was underwritten by the Provider and provided the Complainant with mechanical breakdown cover, in respect of his vehicle. This complaint concerns the Provider's decision to decline the Complainant's claim arising from a mechanical fault to the reduction gear of his vehicle.

The Complainant's Case

The Complainant says that in **June 2020**, following a mechanical breakdown fault with his vehicle, a four wheel drive diesel hybrid, he submitted a claim, along with a diagnostic report from the main dealer garage that set out the fault, as follows:

"Hybrid mode not operating

When zev selected centre display shows that electrical mode unavailable. Carry out diagnostics with PPS. Fault P1ABF reduction gear fault issue. Carry out checks to wiring and hybrid components all tested ok. Fault lies with reduction gear".

Following its claim assessment, the Insurer emailed the Complainant on **16 June 2020** to advise that it was declining the claim.

The Complainant was advised that the claim was declined because the electric reduction gear is excluded from cover, by way of the 'Electric Vehicles' subsection of the 'Applicable To All Cover Levels' section at pg. 6 of the **Mechanical and Electrical Breakdown Insurance for New and Used Cars and LCV's Policy Booklet** ('the **Policy Booklet**'), and also because it was not listed as specifically covered by way of the '4x4 Transmission' subsection of the 'Premium Cover' section at pg. 10 of the **Policy Booklet**.

The Complainant submitted a complaint by way of email on **17 June 2020** and this was forwarded to the Provider for its consideration.

The Complainant also submitted a further diagnostic report from the main dealer garage that set out the fault and the cost of repairs, as follows:

"Hybrid mode not operating in 4x4 or ZEV mode.

When zev or 4x4 mode is selected centre display shows that electrical mode is unavailable with the selector light returning to auto. Carry out diagnostics with pps. fault issue which means that hybrid and 4x4 mode are inoperative. While the reduction gear is a mechanical part it is part of the hybrid transfer box which engages the hybrid and 4x4 mode.

*Reduction gear €1633.16
Gear €83.55
Gear oil €67.02
Labour 7hrs @ €110 - €770*

Total €2533.73 ex vat".

Following its complaint review, the Provider wrote to the Complainant on **29 July 2020** to advise that it was satisfied that the claim had been assessed correctly and that it was standing over the decision to decline indemnity because the part of the vehicle for which the claim was being made, is not included in the 'Premium Cover' provided by his policy.

The Complainant submits in the **Complaint Form** he completed that:

"... Since the rejection of the claim by [the Provider] the reduction gearbox has been removed from the Car and dismantled. Upon inspection it was determined that a ball bearing in the rear reduction gearbox has suffered a mechanical breakdown ...

For the avoidance of any doubt...the mechanical breakdown the Car suffered is due to a sizeable metal ball bearing contained in a heavyweight metal mechanical gearbox and not (as [the Insurer and the Provider] make out) and (sic) electrical part or component ..."

The Complainant says that the Provider was incorrect to classify his vehicle as an electric vehicle and to then contend that cover is excluded by way of the 'Electric Vehicles' subsection of the '**Applicable To All Cover Levels**' section at pg. 6 of the **Policy Booklet**.

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In that regard, the Complainant sets out in the **Complaint Form** that:

“... In terms of the Car itself, it has a primary 2 litre diesel engine which drives the front wheels and a secondary electric motor which drives the rear wheels depending on the driver selectable mode of operation which includes: 4x4, Auto (Hybrid) and ZEV (Zero Emissions Vehicle). The Car, as is specifically described in the Policy, is “HYBRID 2.0D 4.4 ALLURE EGC”. This identification clearly describes the Car’s attributes including the Hybrid, 2.0 Diesel engine and the 4x4 transmission configuration. The vehicle is a four-wheel-drive diesel hybrid vehicle and not an electric vehicle.

In accordance with its terms of the Policy ‘the laws of the Eire will apply’ to it. In this regard, Irish legislation (introduced by section 7(b),(i),(l) of Finance Act 2017 which amends the Taxes Consolidation Act 2017) gives the following definition of an electric vehicle: “electric vehicle means a vehicle that derives its motive power exclusively from an electric motor” [emphasis added]. Therefore, in accordance with the laws applicable to the Policy (and the plain and ordinary language used), the Vehicle is not an electric vehicle ...”

in his submission to this Office dated **21 January 2022**, the Complainant notes that in a newer version of the policy document, the ‘Electric Vehicles’ subsection of the ‘Applicable To All Cover Levels’ section has been amended to now read ‘Electric & hybrid vehicles’.

In addition, the Complainant says that the Provider is incorrect in rejecting his claim as it is ignoring the operative elements of cover including under the ‘4x4 Transmission’ subsection of the ‘Premium Cover’ section at pg. 10 of **Policy Booklet**. In that regard, the Complainant sets out in the **Complaint Form** that:

“... a ball bearing in the 4x4 transmission has suffered mechanical breakdown. [The Provider] have not provided any reason why they are refusing the claim, given that cover clearly applies to mechanical breakdown including in respect of the 4x4 transmission ...”

The Complainant also says that the Provider has failed to review his claim and complaint in a fair and independent manner and that instead of relying on the examination of an external expert, it has relied entirely on the professional opinion of its own internal engineers. In that regard, the Complainant sets out in the **Complaint Form** that:

“... The process under which [the Provider] purport to examine [the Insurer’s] (itself) decision is manifestly flawed. It should be noted that [the Provider] specially state that they have no technical expertise, instead relying on [the Insurer]. It lacks any, or any sufficient level of internal investigation probity into a claim, for [the Provider] to depend entirely on the views and comments of the partisan prior decision maker whose decision they are purportedly reviewing.

In any event, it appears that the only factor, of technical nature, that [the Provider] actually rely on is that “The in-house engineers at [the Insurer], who are professional

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in their field, have advised that the electric part of your vehicle would contain the above listed components". This incomplete and vague statement does nothing to support [the Provider's] decision to deny the claim especially in light of the comments above in respect of the purported electric vehicle exclusion.

In addition, it should be noted that [in its letter of 29 July 2020, the Provider] state the following:

"I appreciate that you may disagree with this, as we are not the experts we are reliant on the professional opinion of the engineers at [the Insurer] and so without persuasive evidence to show otherwise I do think it's reasonable for the technicians comments to form the basis of the claims decision".

This again highlight the inappropriate reliance on [the Insurer], but also, taking the above to is (sic) logical conclusion, it appears that [the Provider] are stating that it will take the subjective comments of their own representatives as being conclusive evidence of any fact and that if any customer wishes state a claim it must also procure evidence (rather than a mere main dealer diagnostic report as in this case) to do so. Such a situation is highly prejudicial to a customer, such as myself, who is already facing significant cost and inconvenience, to have to take further steps in procuring 'evidence' of the mechanical breakdown because of [the Insurer's] refusal to consider anything other than their own personnel's subjective view. In any event clearly the evidence now available...substantiates the veracity of the claim in respect of the mechanical nature of the breakdown ..."

The Complainant says that he has supplied the Provider with a diagnostic report from the main dealer garage that states that the fault was caused by a reduction gear issue and that the reduction gear is a mechanical part of the hybrid transfer box which engages the hybrid and 4x4 mode.

The Complainant says that if the Provider had intended for the exclusion pertaining to the cause of the breakdown to have applied to all vehicles, included diesel 4x4 hybrid vehicles such as his, then this exclusion should have been specifically noted in the **Policy Document**.

The Complainant submits in the **Complaint Form** that:

"... in the round, and even without consideration of intricate technical aspects of the claim, it is reasonable to assume that 'premier' breakdown should cover any major mechanical breakdown having a direct and serious bearing on the proper basic functioning of a motor car ..."

Similarly, in his submission to this Office dated **21 January 2022**, the Complainant submits, among other things, that:

"... it should be remembered that at the heart of the issue is that the Provider is refusing to pay a mechanical breakdown under a policy which is specifically offered as being a policy to cover mechanical breakdowns. Even without having to refer to

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the the (sic) technical jargon and detail below it should simply be enough that a mechanical breakdown happened in the normal course of operating the car, ipso facto the 'premier' policy should reasonably be expected to pay out.

The car was used normally, there is no bad faith, the amount sought is comparable to the amount contemplated under the policy, and there are no complicating factors or technicalities; a mechanical breakdown happened, and the mechanical breakdown policy should reasonably meet the cost of repair. In other words, what is the point of a mechanical breakdown policy if it does not cover mechanical breakdown? ...

*In [its **Formal Response** to the complaint investigation by this Office dated **14 January 2022**,] the Provider confirms that they are not relying on the electric vehicle exclusion set out in the policy – and they confirm it does not apply to the car in question ...*

... the Provider confirms that the vehicle is a 4x4 and...refers to vehicle having 4WD (4 wheel drive or 4x4) mode which provides 'max grip, drive etc'. Therefore, it is uncontentious that the 4x4 transmission of the vehicle is covered under the policy ...

... the Provider confirms that 'While the reduction gear is a mechanical [part] it is part of the hybrid transfer box which engages the hybrid and 4x4 mode' [emphasis added], which clearly states that the part that failed is a part of the 'transfer box' engaged in 4x4 mode (albeit also engaged in hybrid mode) ...

... the Provider confirms that one of the specific parts covered is the '4x4 Transmission', with no words of exclusion or limitation (other than certain oil leaks, etc which are not relevant to this complaint).

... the Provider confirms that the 'transfer box' is covered under the policy and that within the transfer box, bearing are covered ...

Based on the above factors, taken directly from the Provider's own response, the claim is covered both under the general heading of '4x4 Transmission' and as component of the 4x4 transfer box, and on that basis (and in the absence of any exclusion to the contrary) there is no tenable reason upon which the Provider rejected the claim ...

It is further solemnly attested by me that at all relevant times I have held a firm belief that my policy covered the 4x4 transmission of my car and should, in all fairness, pay out in the unfortunate event of a costly unforeseen mechanical failure..."

The Complainant seeks for the Provider to admit his claim and reimburse him for the full cost of the repairs to his vehicle in the amount of **€3,142.09 (three thousand one hundred and forty-two Euro and nine Cent)**, as well as adequate monetary compensation for the inconvenience that this matter had caused.

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The Provider's Case

The Provider states that the Complainant held a **Premier Cover Mechanical and Electrical Breakdown Insurance for New and Used Cars and LCVs Policy** from **18 December 2018 to 17 December 2020** in respect of his 4x4 hybrid diesel vehicle, with a claim limit of **€2,500.00 (two thousand five hundred Euro)** including VAT.

The Provider says that this policy offers a specifically listed component level of cover, in that it only covers the specifically listed components, not all components on the vehicle.

The Provider confirms that at the point of sale of the policy, the customer is provided with a copy of the **Policy Schedule** and the **Mechanical and Electrical Breakdown Insurance for New and Used Cars and LCVs Policy Booklet** which details the policy terms and conditions and the limitations of cover. The Provider says that customers should always familiarise themselves with the level of cover on the vehicle, and if upon reviewing the information decide that the policy does not meet their insurance requirements, they may cancel the policy with 14 days.

The Provider notes that the 'Certificate of Insurance' section at pg. 5 of the **Policy Booklet** provides, as follows:

"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".

The Provider also notes that the 'Terms and Conditions of Warranty Cover' section at pg. 15 of the **Policy Booklet** provides that:

"1. This Extended Warranty policy and Warranty Certificate shall be read together as one contract and any word or expression to which a special meaning has been given shall have the same meaning wherever it may appear. Only the parts specifically listed will be covered by the Extended Warranty".

The Provider says the Complainant telephoned on **12 April 2020** and the following note in relation to this call is recorded on its system:

"Customer called, there is a glitch with the hybrid system in the rear differential / gearbox. They are awaiting instruction and they have already paid for the diagnostics at 110.00. I asked if he has a copy of diagnostics, estimate – no all inform provided by phone.

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I went through everything in detail, e.g advised a main dealer in Dublin would be approx. 160.00 euros an hour and that we cap the labour at 65 an hour so if the repair time is 5 hours we would pay 325.00 euros leaving 475.00 for you to pay. Also advised that a differential or gearbox in main dealer can be as high as 4, 5 or 6k and that the claim limit is 2.5k so we would recommend in first instance emailing current estimate and diagnostics and can then advise further once we know what the fault is and if need to move the car to 7th gear (an approved gearbox repairer)".

Following receipt of the claim, the Provider says its in-house engineers telephoned the main dealer garage on **16 June 2020** and the following note in relation to this call is recorded on its system:

"Spoke with repair who confirmed that the reduction gear is within the rear suspension and is a hybrid electric gearbox. Not covered as we only cover mechanical gearboxes".

The Provider says that following this telephone call, the Agent emailed the Provider at **15:27** on **16 June 2020** to advise, among other things, as follows:

"... after receiving your claim today I called the repairer directly to get a better understanding of the problem and whet (sic) the fault was.

It was explained to me by the garage that when the ZEV mode was selected, there was an error message on the display for "electrical mode unavailable". They had looked into the issue and traced the possible issue to the electric reduction gear for the rear drive of the vehicle."

In addition, the Provider notes that the main dealer garage provided the following information in writing when the claim was submitted by the Complainant:

"Hybrid mode not operating

When zev selected centre display shows that electrical mode unavailable. Carry out diagnostics with PPS. Fault P1ABF reduction gear fault issue. Carry out checks to wiring and hybrid components all tested ok. Fault lies with reduction gear".

The Provider notes that the Complainant's vehicle has four drive modes, namely, Auto Mode, where the vehicle controls drive electronically for greater fuel consumption but better performance; Z Mode (Zero Emission Mode), where there is 100% electric driving with no pollution or noise emissions; Sport Mode (Boost Effect), where the diesel and electric combines together for optimum drive through all four wheels; and 4WD Mode, where the diesel and electric combines together for max grip, drive etc.

The Provider says that the Complainant's vehicle specification allows it to run as an electric vehicle only, combustion engine only or both together (hybrid mode). The Provider says it is the electric vehicle, which is not working in this instance, in that the combustion engine drive is working correctly.

The Provider says that the reason why the fault in question is not a qualifying fault under the policy is that the component, namely, the reduction gear, or any internal parts of the reduction gear, is not listed under the policy and therefore is not covered. The Provider reiterates that the policy offers a specifically listed component level of cover and as such, it only covers the components that are listed under the 'Premium Cover' section at pgs. 10 and 11 of **Policy Booklet**. In this regard, the Provider notes that the 'Premium Cover' section at pg. 10 of the **Policy Booklet** provides cover for '**4x4 transmission**', as follows:

"COVERED COMPONENTS

The following specifically listed components and labour costs are covered against Mechanical Breakdown provided that the Terms and Conditions of this Policy are fully complied with. Within the Warranty period, the number of claims are limited to the retail value of the Vehicle.

...

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).

4x4 Differential: Planetary gear assembly, crown wheel and pinion assembly, internal shafts, bearings and bushes, thrust washers, spacers, bevel gears, includes front, rear and centre differential on 4x4 vehicles (excluding viscous couplings and fluid differentials, oil leaks)".

The Provider says it accepts that in the Complainant's situation there is a mechanical fault with the rear electric drive reduction gear, which is causing the electric drive to not operate. It says that the reduction gear is part of the rear electric drive and assists the running of the electrical side of the vehicle and that if you disconnect the electrical part of the vehicle, this component would not work. The Provider says that due to this fault, the vehicle will only be able to operate in Auto Mode, allowing the vehicle to select the diesel engine, and any mode where diesel drive can be selected, and that this confirms that it is the electric side that is inoperative.

In relation to the Complainant's comments that the fault of the vehicle was due to a sizable metal ball bearing, contained in a heavyweight metal mechanical gearbox and should be covered by the policy, the Provider says that because the reduction gear is not covered by the policy, it follows that none of the internal components of the reduction gearbox would be covered.

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The Provider says that the reduction gear is not part of a manual or automatic gearbox and nor is it listed under the cover provided by the '4x4 Transmission' subsection at pg. 10 of the **Policy Booklet**.

The Provider notes that the 'Applicable To All Cover Levels' section at pg. 6 of the **Policy Booklet** provides that:

"ELECTRIC VEHICLES

If You have an electric vehicle the following components will not be covered: Li-ion battery (EV battery), traction motor, traction motor inverter, VCM (vehicle control module), reduction gear, AC/DC converter, on-board charger, charge connector and cable".

The Provider says it is not relying on this subsection to decline the Complainant's claim, rather the claim was rejected because the component is not listed under the 'Premium Cover' section at pgs. 10 and 11 of **Policy Booklet**. The Provider notes, however, that the Complainant's vehicle is a hybrid, as it uses two different sources of drive, one from the combustion engine and the other from an electric battery. In that regard, as the vehicle would not be a hybrid unless it has electric drive, the Provider says it could also decline the claim as the reduction gear is specifically excluded on vehicles with electric drives.

The Provider says that the term 'electric vehicle' is not defined in the policy as an electric vehicle is any vehicle which has electric drive. As a hybrid vehicle has both drive from the combustion engine and an electric battery, it falls under the classification of an electric vehicle as well as a combustion engine diesel vehicle, namely, a hybrid.

In response to the Complainant's comments that as the **Finance Act 2017** defines an electric vehicle as "*a vehicle that derives its motive power exclusively from an electric motor*" and thus that his claim should be admitted and paid because his vehicle is not powered exclusively from an electric motor but rather is a hybrid car that also contains a diesel engine, the Provider notes that an electric vehicle derives all of its power from electrical sources and a hybrid vehicle derives some of its power from a conventional gasoline or diesel engine or from electric source, thereby able to run in either engine mode or electric mode. The Provider says that without both things, the vehicle would not be a hybrid and therefore the vehicle is electric and has a combustion engine.

The Provider says that the fault to the Complainant's vehicle is exclusive to its electric drive and therefore this confirms that the fault falls into electric vehicle categorisation. In any event, the Provider reiterates that it is not relying upon the vehicle being an electric vehicle in declining the Complainant's claim, but rather it is rejecting the claim because the component, the reduction gear, is not covered by the policy as the reduction gear is not listed under those components covered by the 'Premium Cover' section at pgs. 10 and 11 of **Policy Booklet**.

The Provider is satisfied that the level of cover and the components covered are clearly described under the 'Premier Cover' section of the **Policy Booklet**, which lists all of the components that are covered by this level of policy cover, and which does not list reduction gear. In addition, the Provider confirms that the words 'component' and 'part' are used interchangeably throughout the **Policy Booklet** and confirms that a component or a part is any element present within the vehicle.

The Provider says that the Complainant's claim was reviewed in a fair and independent manner by its in-house engineers, in line with the level of cover on the vehicle. The Provider confirms that the in-house engineers did contact the main dealer garage to clarify the fault and confirm that it was the reduction gear. In that regard, the Provider says there would be no need to obtain the opinion of an external or independent assessor on the fault as the in-house engineers are familiar with the vehicle and the particular component, as well as the extent of components covered by the level of cover of the Complainant's policy.

In relation to the Complainant's comments that it was highly prejudicial for the Provider to request that he seek additional evidence from another external engineer in relation to this matter and that the evidence which he has supplied to date verifies the mechanical nature of the breakdown of the vehicle that has led to the claim, the Provider says it is not aware that it requested the Complainant to seek any such additional information.

The Provider confirms, however, that the Complainant obtained further written information from the main dealer garage which he furnished to it on **26 June 2020** and which stated the following amended information:

"Hybrid mode not operating in 4x4 or ZEV mode.

When zev or 4x4 mode is selected, centre display shows that electrical mode is unavailable with the selector light returning to auto. Carry out diagnostics with pps. fault code P1ABF reduction gear fault issue which means that hybrid and 4x4 mode are inoperative. While the reduction gear is a mechanical part it is part of the hybrid transfer box which engages the hybrid and 4x4 mode".

The Provider says the Complainant's claim was assessed in line with the level of cover on the vehicle. The Provider notes that the reduction gear is not covered under the policy, in that the reduction gear is not any of the components listed under the '4x4 Transmission' subsection of the 'Premium Cover' section of the **Policy Booklet**, nor is it part of a manual or automatic gearbox; rather the reduction gear is an electric drive component which is not listed under the level of policy cover held by the Complainant.

Accordingly, the Provider is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of his policy, in that the faulty component, the reduction gear, is not listed as one of those components covered by his policy.

Furthermore, the Provider notes that the Complainant's vehicle was in for a service at the time the claim was submitted on **16 June 2020** and that the service interval on his vehicle is 30,000km or 12 months, whichever occurs first.

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The Provider says that at the time of the claim, the vehicle had covered 17,008km and been out 17 months and 29 days. It is a policy term and condition that the vehicle be serviced in line with the manufactures service interval.

I note that the Provider says that if the reduction gear had been a covered component under his policy, which it says it is not, it would have then sought a copy of any service invoices carried out on the vehicle since the Complainant had purchased it in **December 2018**, to confirm that it had been serviced as per the manufactures service interval.

In that regard, the Provider says that if the **June 2020** was the first service on the vehicle since the Complainant has purchased it in **December 2018**, this would have led to a claim rejection as the service was almost six months overdue.

The Complaint for Adjudication

The complaint that the Provider wrongfully declined to admit and pay the Complainant's claim and failed to deal with the claim in a fair and reasonable manner.

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 **4 July 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. Following the consideration of additional submissions from the parties, the final determination of this Office is set out below.

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I note that the Complainant held a **Premier Cover Mechanical and Electrical Breakdown Insurance for New and Used Cars and LCVs Policy** with a named Insurer that was underwritten by the Provider. This policy provided the Complainant with mechanical breakdown cover in respect of his vehicle, subject to the policy terms and conditions.

In **June 2020**, following a mechanical breakdown fault with his vehicle, a four-wheel drive diesel hybrid, the Complainant submitted a claim to the Insurer, along with a diagnostic report from the main dealer garage that set out the fault, as follows:

“Hybrid mode not operating

When zev selected centre display shows that electrical mode unavailable. Carry out diagnostics with PPS. Fault P1ABF reduction gear fault issue. Carry out checks to wiring and hybrid components all tested ok. Fault lies with reduction gear”.

The Complainant subsequently submitted a further diagnostic report from the main dealer garage that set out the fault, as follows:

“Hybrid mode not operating in 4x4 or ZEV mode.

When zev or 4x4 mode is selected centre display shows that electrical mode is unavailable with the selector light returning to auto. Carry out diagnostics with pps. fault code P1ABF reduction gear fault issue which means that hybrid and 4x4 mode are inoperative. While the reduction gear is a mechanical part it is part of the hybrid transfer box which engages the hybrid and 4x4 mode”.

I note that following its claim assessment, the Insurer emailed the Complainant on **16 June 2020** to advise that it was declining the claim, firstly because the electric reduction gear was excluded from cover by way of the ‘Electric Vehicles’ subsection of the ‘Applicable To All Cover Levels’ section at pg. 6 of the **Mechanical and Electrical Breakdown Insurance for New and Used Cars and LCV’s Policy Booklet**, because *“the electrical reduction gear is part of the electrical vehicle specification on your car”*. Secondly, the Complainant was advised that the claim was declined also because the reduction gear was not listed as specifically covered by way of the ‘4x4 Transmission’ subsection of the ‘Premium Cover’ section at pg. 10 of the **Policy Booklet**.

The Provider upheld this decision by way of its letter to the Complainant on **28 July 2020**. I note that in its **Formal Response** to the complaint investigation by this Office dated **14 January 2022**, the Provider advised that it had declined the claim because the faulty component, the reduction gear, is not part of a manual or automatic gearbox and the reduction gear is not listed under the cover provided by the ‘4x4 Transmission’ subsection of the ‘Premium Cover’ section at pg. 10 of **Policy Booklet**. I note that the Provider also advised in its formal response to the investigation of this Office, that the Complainant’s vehicle would not be a hybrid unless it had electric drive, and therefore it could also decline the claim as the reduction gear is specifically excluded on vehicles with electric drives by the ‘Electric Vehicles’ subsection of the ‘Applicable To All Cover Levels’ section at pg. 6 of the **Policy Booklet**.

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The Complainant's policy, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements, exclusions and limitations set out in the policy documentation.

The 'Certificate of Insurance' section at pg. 5 of the **Policy Booklet** provides:

"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".

[underlining added for emphasis]

The 'Terms and Conditions of Warranty Cover' section at pg. 15 of the **Policy Booklet** provides:

"1. This Extended Warranty policy and Warranty Certificate shall be read together as one contract and any word or expression to which a special meaning has been given shall have the same meaning wherever it may appear. Only the parts specifically listed will be covered by the Extended Warranty".

[underlining added for emphasis]

The **Policy Schedule** details the Complainant's chosen level of policy cover, as follows:

***"Cover level: Premier Policy
Breakdown Cover"***

In this regard, the 'Premium Cover' section at pg. 10 of the **Policy Booklet** provides that:

"COVERED COMPONENTS

The following specifically listed components and labour costs are covered against Mechanical Breakdown, provided that the Terms and Conditions of this Policy are fully complied with. Within the Warranty period, the number of claims are limited to the retail value of the Vehicle ...

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).

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4x4 Differential: Planetary gear assembly, crown wheel and pinion assembly, internal shafts, bearings and bushes, thrust washers, spacers, bevel gears, includes front, rear and centre differential on 4x4 vehicles (excluded viscous couplings and fluid differentials, oil leaks)".

[underlining above added for emphasis]

The diagnostic report from the main dealer garage that the Complainant submitted as part of his claim, identified the fault with his vehicle, as follows:

"Fault P1ABF reduction gear fault issue".

I note that the '4x4 Transmission' subsection only provides cover for the specifically listed components, but in this instance, the 4x4 transfer box is specifically identified within the policy cover. I am conscious that the information supplied by the dealer specified as follows:

"Hybrid mode not operating in 4x4 or ZEV mode.

When zev or 4x4 mode is selected, centre display shows that electrical mode is unavailable with the selector light returning to auto. Carry out diagnostics with pps. fault code P1ABF reduction gear fault issue which means that hybrid and 4x4 mode are inoperative. While the reduction gear is a mechanical part it is part of the hybrid transfer box which engages the hybrid and 4x4 mode".

[Underlining added for emphasis]

As the reduction gear was noted by the dealer to be part of the transfer box, I am not convinced that the position taken by the Provider was a correct one. In my opinion, the policy provisions are anything but clear and are likely to cause very considerable confusion to a reader of the policy.

Although the diagnostic information available from the dealer makes clear that, in the situation of the Complainant's vehicle, the reduction gear was not part of a manual or automatic gearbox, I take the view that neither was it part of an electric vehicle, and therefore the policy provisions governing exclusions for electric vehicles were not relevant to the Complainant's position. I have formed this view because I note that under the exclusion headed "*ELECTRIC VEHICLES*" the following exclusion is noted:-

"ELECTRIC VEHICLES

If You have an electric vehicle the following components will not be covered: Li-ion battery (EV battery), traction motor, traction motor inverter, VCM (vehicle control module), reduction gear, AC/DC converter, on-board charger, charge connector and cable".

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In those circumstances, if the Complainant's car was an electric vehicle, I am satisfied that there would be a stronger argument that his claim was excluded. I take the view however, that the Complainant is correct to point to the definition under the Finance Act 2017 to the effect that an electric vehicle is "*a vehicle that derives its motive power exclusively from an electric motor*". The car in question did not derive its motor power exclusively from an electric motor. In those circumstances, I am not satisfied to accept that the Complainant's claim was excluded by the exclusion quoted above, although I note that this exclusion was specifically referred to within the email from the Insurer to the Complainant on **16 June 2020**.

In those circumstances and given that the reduction gear forms part of the vehicle's hybrid transfer box, and the transfer box is specifically identified in the definitions under Covered Components, I am inclined to the view that applying a *contra proferentem* approach, the policy should have been interpreted in the Complainant's favour.

In those circumstances, I do not accept that the Provider was entitled to maintain the position which it did and, in my opinion, the Provider's decision to stand over the position that the claim should be declined, was unreasonable conduct within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

In those circumstances, I consider it appropriate, as directed below, to require the Provider to re-assess the claim, and to admit that claim unless (as already raised by the Provider as an issue, in its evidence to this Office) the service history of the vehicle transpires to exclude the claim, for the reasons which have been referred to above by the Provider, in respect of which no finding is made by this Decision.

I note that the Provider has made reference to the unclear position regarding the vehicle's service history, and it will be a matter for the Complainant to clarify or further clarify this to the Provider, so as to meet the requirements of cover. I note in that respect that, in response to the preliminary decision of this Office, the Complainant has made it clear that the history of engagement between the parties is such that the Provider was previously "*satisfied that there was no delinquency in respect of the service interval*".

If the Complainant transpires to be correct in that regard, no further issue should arise to delay the payment of the claim. It should be noted however that this decision has made no finding regarding the correct service interval for the vehicle, as that element of any potential difficulty as between the parties, has not formed part of this complaint investigation.

I do not accept, as suggested by the Complainant, in response to the preliminary decision of this Office, that a direction by this Office to re-assess the claim, and to take account of the vehicle service issue, "*amounts to an invitation to the Provider to attempt to reject the claim all over again (on a different basis to the first rejection)*". Neither do I accept, as suggested, that such a direction is one which runs "*entirely contrary to the meaning of the Act*". Rather, this direction recognises that another aspect of the information required for claim assessment was not finalised, but was specifically mentioned by the Provider, when the claim was in fact wrongfully rejected on a different basis.

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The Complainant suggest that this Office “took no account of my response to that issue”. It is not a matter for this Office however to assess the claim, as this is a matter for the Provider alone. As the service history of the vehicle is another element of any claim assessment which will fall to be considered by the Provider, I do not accept, as suggested by the Complainant, in response to the preliminary decision of this Office, that I should direct “the payment by the Provider of the entire claim (up to the limit set out in the policy) of €2,500 for the claim itself in addition to the i.e. €1,000 compensation.”

In those circumstances, to mark my decision that this complaint should be upheld, I consider it appropriate to make the directions specified below for rectification, and for the payment of a compensatory payment to the Complainant to reflect the inconvenience caused to him by the wrongful declination of the claim in 2020.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) (a) and (d)** respectively, and **Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of, by re-assessing the claim, and I direct the Provider to admit that claim for payment unless the service history of the vehicle transpires to exclude cover, and I also direct the Provider to make a compensatory payment to the Complainant in the sum of €1,000, 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
Financial Services and Pensions Ombudsman (Acting)

16 August 2022

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PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.