



<u>Decision Ref:</u>	2022-0281
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Tractor
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Claim handling delays or issues Delayed or inadequate communication Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a tractor insurance policy.

The Complainant's Case

The Complainant submits that his tractor was damaged in a fire on **21 June 2014** and that he reported this to the Provider on **23 June 2014**.

By way of letter dated **14 June 2017** the Complainant stated to the Provider that *"on review, [he gave] conflicting information regarding this tractor with that of another tractor that I owned"* and that this resulted in his accountant forwarding incorrect information to the Provider.

The Complainant states that the tractor in question was purchased for **£27,500**, less a trade-in allowance of £10,500, resulting in an overall payment of £17,000. The Complainant apologises for the confusion caused but states that he has paid his insurance premium for the tractor, he was the registered owner, and it went on fire through no fault of his own, so he says that he is entitled for the claim on the policy, to be paid out to him.

The Complainant submits that the Provider subsequently requested proof of purchase of the vehicle from the Complainant and did not respond to the clarification that the Complainant (and his accountant) provided.

He says that it *“simply regurgitated the same queries as previously raised”*. The Complainant asserts that he addressed the issues raised by the Provider.

In the Complainant’s submission dated **7 November 2019** he encloses an invoice from [Tractor Company 3] dated **23 May 2006**, showing that the tractor was purchased for **£30,500** on that date.

The Complainant states that his:

“inability to recall dates, times and purchases should not be the focus of the investigation in relation to whether or not the tractor is insured. If [the Complainant] failed to accurately recollect and provide specifics, then that is a criticism of his memory and record keeping more than anything else”

The Complainant accepts in this letter that the information he provided was not correct but that he put forward what *“he thought was correct”*. The Complainant explains that *“due to matters beyond his control, involving personal matters”*, certain documents were in a location in a family home which the Complainant had only recently regained access to.

The Complainant also states that the Provider has *“always been aware that [the Complainant] was the owner of the tractor”* due to the Complainant insuring the tractor with the Provider. He states that it is *“somewhat questionable, as to why [the Provider] felt the necessity to ask [him] to provide information already in their possession”*.

The Complainant made further submissions dated **31 July 2020** stating that the basis of the Provider’s submissions were:

“merely an attempt to raise ancillary issues and obfuscate the core issue i.e. was [the Complainant] the owner of the vehicle which was damaged, did he have an insurance contract with the provider and had he discharged the premiums of the policy so as to be indemnified if the machine was damaged”

The Complainant states that all these core questions are *“answered affirmatively”*. In short, the Complainant states that the *“position is and always has been that our client was clearly the owner of the insured vehicle and that the provider was aware of this throughout the course of their dealings”*.

The Complainant wants the Provider to admit his claim for payment.

/Cont’d...

The Provider's Case

The Provider says the policy under which the claim was made, was in force from inception on **30 January 2014**, until the policy expired on **29 January 2015**. It says that the fire claim, which is the subject of this complaint, was formally declined by the Provider on **17 April 2019**.

The Provider says it wrote to the Complainant's accountant on **26 January 2015** seeking to confirm with the accountant, what verification was supplied by the Complainant to the accountant to confirm the purchase of the tractor. On **9 February 2015**, the accountant replied to the Provider stating that the Complainant confirmed to him that he did not purchase the tractor in **March 2014**, but rather, that was when he got it valued for VRT purposes as the tractor had remained under its UK plates. The accountant stated that the Complainant had stated that the tractor was bought in **2008** in England.

In its Final Response Letter dated **24 November 2016**, the Provider acknowledges its failure to respond to the Complainant's correspondence from **02 March 2016**, **28 April 2016** and **30 May 2016** sent to the Provider. The Provider notes that it sent a letter to the Complainant on **15 June 2015** and requested a detailed explanation in relation to the "*discrepancies found in [the Complainant's] documentation*" but received no response and the file was closed by a former employee prior to **02 March 2016**. The Provider regrets "*any inconvenience caused*" in this regard. In the Final Response Letter, the Provider notes that it has outstanding questions and documentation which it requires, before it can review the matter further. It states that:

- During the notification call of this claim on **2 July 2014**, the Complainant advised that he only purchased the vehicle before Christmas (i.e. **December 2013**) for £17k cash from [Tractor Company 1]. The Provider states that this was also confirmed in the Complainant's statement to the Provider's claim investigator. The Complainant stated that the transaction was a cash deal, and therefore no invoices were available. The Complainant's accountant wrote a letter confirming the purchase on **30 January 2014**. The Provider states that it contacted [Tractor Company 1] and they "*confirmed that they did not sell that tractor to your client on this alleged date*"
- On **15 January 2015**, the Provider states that it received an invoice from the Complainant showing purchase of the tractor on **30 April 2008** for £27,500 from [Tractor Company 2]. The Provider queries why the Complainant stated he bought the tractor from [Tractor Company 1] before Christmas **2013**, then had his accountant confirm that the purchase date was **30 January 2014** and then furnished an invoice for the purchase of the tractor on **30 April 2008**.

/Cont'd...

The Provider advises that during the course of its investigation, it became concerned that the information provided by the Complainant was not consistent or accurate. By way of email dated **11 December 2018**, the Provider submitted an undated document entitled 'Tractor Insurance History' with accompanying screenshots.

This history stated that the Complainant first *"advised that the tractor was purchased in December 2013 – he then advised it was purchased in [Tractor Company 1] on the 10/12/2013. His accountant then advised that it was purchased from [Tractor Company 1] on the 30/1/2014"*. The Provider notes that the Complainant states that he paid for the tractor with cash and received no receipt. The document notes that the Complainant only insured the tractor with the Provider on **30 January 2014**. The Provider's document states that

"the garage [Tractor Company 1] confirmed no log of vehicle sold in December to Insured – however they did confirm that they did have the tractor and it was sold by them in 2005 to a different farmer in [location]. They advised that they did not get the tractor back and would not sell one without a receipt."

The document notes that on **15 January 2015**, the Complainant produced an invoice showing sale of the tractor on **30 April 2008** from [Tractor Company 2] in the UK; the owner of this garage died in **October 2008** so could not verify the sale. The Provider states that the invoice from [Tractor Company 2] on **30 April 2008** is *"clearly a false document"*. The document also notes that the Complainant insured the tractor with the Provider on three different occasions for short periods of time:

- **23 May 2006 – 24 November 2007**: The document notes that this is nearly two years prior to the Complainant's invoice of purchase from [Tractor Company 2]
- **27 February 2008 – 26 February 2009**: The document notes that this period begins nearly two months prior to the Complainant's invoice of purchase from [Tractor Company 2]
- **30 January 2014 – date of fire (21 June 2014)**

The Provider queries in the document where the Complainant had the tractor insured since **2008**, if indeed he had purchased it at that time and also queries why the tractor was *"only insured a couple of months prior to the fire which deemed it a write off"*.

In an email to this Office dated **11 December 2018**, the Provider attached the PDF document from the Complainant which the Complainant states is proof of purchase/ownership of the tractor. The Provider states that it is satisfied that the Complainant *"has not proven ownership – in addition we believe the invoice he produced is a fraudulent document"*.

/Cont'd...

By way of letter dated **17 April 2019** sent to the Solicitors for the Complainant, the Provider stated that it had *“not received a satisfactory detailed explanation for the discrepancies which arose during the course of our investigations”*.

The Provider states that it is *“of great concern”* how the invoice dated **30 April 2008** was produced by the Complainant in support of the purchase of the tractor given that the Complainant had previously insured the tractor with the Provider for the periods **23 May 2006 to 24 November 2007** and again on **27 February 2008 to 26 February 2009**.

The Provider states that it is *“difficult to comprehend how a vehicle could be placed on cover almost 2 years prior to its purchase and this naturally raises issues with the purchase document produced”*. The Provider states that

“accordingly our investigations in this matter are complete and we can advise that policy indemnity is being declined for breach of the following policy condition:

Conditions

6. Due observance and fulfilment:

The due observance and fulfilment of the terms, provisions, conditions and endorsements of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this policy”.

The Provider sent a further letter to this Office dated **4 December 2019** which was in response to the Complainant’s **12 November 2019** letter. This letter notes that the Complainant has submitted a number of documents which the Complainant states prove ownership of the tractor, however, the Provider states that *“the additional documentation provided only serves to raise further concerns”*.

The Provider states that the invoice dated **23 May 2006** from [Tractor Company 3] is made out to ‘[xxx] Builders’ and that the Complainant’s insurance policy was held in his sole name. In addition, the Provider states that the details on the invoice *“contradict information previously provided to the Provider by [Tractor Company 3] during investigation of this matter”*.

The Provider states that it is *“most alarming that the most recent submission represents the third version of events offered by the Complainant with regards to the ownership of this tractor and a valid explanation surrounding the discrepancies has not been forthcoming”*.

/Cont’d...

Specifically, the Provider references the invoice dated **30 April 2008** from [Tractor Company 2] which was submitted by the Complainant on **15 January 2015** as proof of purchase of the tractor.

The Provider issued a formal response to the complaint by way of email dated **21 July 2020**. This submission repeats much of what is set out by the Provider in its prior correspondence to the Complainant and to this Office.

The Provider states that it has

“declined to provide indemnity in respect of the loss being claimed for owing to the Complainant’s failure to demonstrate insurable interest of the tractor subject of this claim and failure to satisfactorily address inconsistencies which arose during the course of this claim. Documentation submitted by the Complainant was at variance with both information provided by the Complainant and previous policies held by the Complainant in respect of the tractor subject of the claim. During the course of this claim, the Complainant presented 3 varying accounts including the submission of purchase invoices of when and where the tractor subject of this dispute was purchased from. The onus rests with the Complainant to demonstrate the loss being claimed for and to supply the required supporting documentation accordingly.”

The Provider relies upon the ‘*Due Observance & Fulfilment*’ clause set out above and also relies upon Condition 2 of the policy which states:

*“2. **No admissions:** No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.”*

The Provider states that it is satisfied that it complied with its obligations under provision 4.35 of the Consumer Protection Code 2012 (as amended) (‘the CPC’) in that prior to policy cover commencing, the Insured signed a proposal form which included sections entitled “*Duty of Disclosure*”, “*Consequences of Non-Disclosure*” and “*Declaration*”.

A copy of the proposal form as referenced, is included within the file of papers.

/Cont’d...

The Provider also sets out the various investigations it has conducted and its reasons for its concerns that the information submitted by the Complainant is not consistent or accurate. This mirrors the concerns set out by the Provider in its prior correspondence to the Complainant and this Office.

The Provider also states that vehicle documentation/proof of ownership was not requested when this policy was initially set up. Following the quotation and subsequent completion of the proposal form by the Complainant, the Provider states that the Complainant confirmed himself as being the owner of the tractor by signing the proposal form which stated: *"it is understood that the vehicle(s): (a) is/are owned by me"*.

The Provider also states that the proposal form included a declaration that the statements made in the proposal by the Complainant *"are true and complete and I have not suppressed or mis-stated any material fact"* as well as a clause stating that the Complainant has *"a duty of disclosure to disclose [to the Provider] all material facts. A material fact is any information likely to influence our acceptance of your insurance, our calculation of your premium or the terms and conditions we apply to your policy. If you fail to disclose to us any such material fact we may cancel or invalidate your insurance policy"*.

The Provider states that proof of ownership of vehicle/vehicle registration documentation, is requested by the Provider when an Insured has registered a claim against their policy. The Provider states that *"in this instance, the Complainant failed to submit the vehicle licensing certificate or satisfactory documentation to demonstrate the insurable interest and to substantiate the claim presented to the Provider"*.

The Provider made a further submission to this Office dated **7 August 2020** wherein it disputes the assertions made by the Complainant in his **31 July 2020** letter. The Provider acknowledges that the Complainant held a policy with the Provider, paid the relevant premium and that the tractor sustained extensive damage. However, the Provider states that the Complainant has *"failed to demonstrate insurable interest of the tractor...in addition to failing to adequately address the numerous inconsistencies surrounding the version of events offered by the Complainant"*. Therefore, the Provider states that it remains of the opinion that it has not been demonstrated that the Complainant had a financial interest in the tractor.

The Complaint for Adjudication

The complaint is that the Provider wrongfully failed to admit and pay the Complainant's claim under his policy when his tractor was damaged in a fire.

/Cont'd...

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **29 June 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.

As a preliminary point, I note that by way of letter dated **14 January 2020**, this Office advised the Provider that it has no jurisdiction to investigate any suggested fraudulent activity and that it is neither established nor equipped to deal with situations involving fraudulent actions, which are a matter for An Garda Síochána, or the Courts.

I note that a policy of insurance for a tractor, is the subject of this complaint, and this policy was incepted with the Provider on **30 January 2014**, upon receipt by post, of the Complainant's completed and signed proposal form.

Before this period of insurance, the evidence submitted by the Provider demonstrates that the Complainant held insurance cover for the tractor from **23 May 2006 – 24 November 2007** and from **27 February 2008 – 26 February 2009**.

I note that the claim in respect of the tractor was notified to the Provider on **2 July 2014**.

/Cont'd...

Following investigation of the claim, I note that the Provider requested details from the Complainant in respect of the licensing and purchase of the vehicle. Having considered the evidence available, I accept that the Complainant/his representatives gave several conflicting and contradictory accounts of when the tractor was purchased:

- (i) One of the audio recordings submitted by the Provider evidences that the Complainant gave a statement to the Provider's claims investigator stating that the tractor was purchased from [Tractor Company 1] "*before Christmas*" **2013** for £17,000 in cash;
- (ii) The Complainant stated via completed claim form dated **8 July 2014** that he purchased the tractor from [Tractor Company 1] for £17,000 in cash on **30 January 2014**. This was confirmed by letter dated **22 September 2014** from the Complainant's accountant;
- (iii) By way of letter dated **14 June 2017**, the Complainant provided a purchase invoice dated **30 April 2008** for the tractor from [Tractor Company 2]. The Complainant stated that the price was £27,500 less a trade in allowance of £10,500 resulting in a cash payment of £17,000 being made;
- (iv) By way of letter dated **7 November 2019**, the Complainant submitted a purchase invoice in the sum of £30,500 dated **23 May 2006** in respect of the tractor from [Tractor Company 1]. Notably, this purchase invoice is addressed to '[xxx] Builders' rather than to the Complainant.

I note the Provider's evidence that it contacted [Tractor Company 1] to verify the sale and it stated that the tractor had been sold in **September 2005**, that it would not facilitate a "*cash deal*" and that it is company policy to issue receipts for all sales with VAT payable on all purchases. I note the Provider's evidence that [Tractor Company 2] was dissolved on **4 May 2010**.

The Complainant's explanation for the discrepancies in his submissions as to when the tractor was purchased, is to the effect that he failed to accurately recollect the details of the purchase and that he was experiencing difficulties accessing documentation due to personal reasons beyond his control.

The evidence shows that despite having ample opportunity, the Complainant and/or his representatives have failed to adequately demonstrate when the Complainant purchased the tractor, why his statements concerning the purchase details vary so significantly and why purchase invoices have been submitted which differ considerably in terms of the dates of purchase, the price of purchase and the identity of the vendor.

/Cont'd...

It is notable that condition 6 of the insurance policy states that

“The due observance and fulfilment of the terms, provisions, conditions and endorsements of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this policy.”

I am conscious that one of the arguments raised by the Complainant in his submission, since the preliminary decision of this Office was issued, is that

“[t]he basis of the refusal by the Provider was the absence of an insurable interest. This has been proven beyond any doubt the complainant had an insurable interest.”

Whilst the issue of insurable interest has been raised as an issue, I am conscious that it is the inconsistencies in the Complainant’s position that have given rise to the position adopted by the Provider, and that in its letter of 7 August 2020, it stated:

“The Provider acknowledges that the Complainant held a policy with the Provider, paid the relevant premium and that the machine subject of this dispute sustained extensive damage. However, the Complainant has failed to demonstrate insurable interest of the tractor subject of this claim in addition to failing to adequately address the numerous inconsistencies surrounding the version(s) of events offered by the Complainant and documentation submitted in support of the claim being made. The Provider remains of the opinion that it has not been demonstrated that the Complainant had a financial interest in the tractor subject of this dispute at the time of loss.”

On the basis of the evidence before this Office, I take the view that the Provider was entitled to form the opinion that the Complainant has not supplied adequate information and answers to the reasonable questions it raised, as to when and for how much the tractor was purchased. Therefore, in the absence of such adequate information, I accept that it was reasonable for the Provider to decline to admit the claim for payment, pending receipt of the required information.

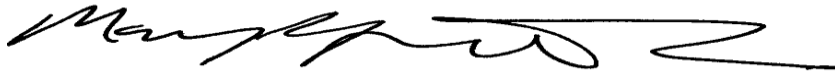
Therefore, on the basis of the evidence available, I do not consider it appropriate to uphold this complaint.

Conclusion

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

/Cont’d...

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)

23 August 2022

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.