



In the name of Allah, The Beneficent, The Merciful

Breakdown Cover – An Overview

This fatwa discusses whether it is acceptable to take out breakdown cover with the relevant available providers, focusing such a discussion on the two types of service providers, *ajir khas* and *ajir mushtarak* in order to come to a decision.

The paper initially outlines the levels of cover available to an individual, with services ranging from Roadside, Nationwide, Home Start and Onward Travel, varying in the degree of assistance provided, but all essentially following conventional insurance models.

The paper outlines that for a transaction between two parties to be valid, in all cases the following conditions should be met:

- Free mutual consent
- Free from *gharar* (excessive uncertainty)
- Free from *riba* (conditional increase without due consideration)
- Free from *qimar* (unilateral benefit/loss)
- Free from *meysir* (speculation)
- Two mutually contingent and inconsistent contracts are not combined

With regards to the transaction between the breakdown cover provider and the individual, the paper states that the breakdown cover transaction falls foul of the above mentioned conditions in the following areas: [inclusion of] *gharar*, *riba*, *qimar* and *meysir*.

However, the paper then proposes a counter argument that states that as the premiums paid for insurance are in consideration of a mutually agreed and defined service provided to the user, breakdown cover does not violate shari'a principles and is therefore valid.

While the paper agrees that this appears a fully plausible argument, it finds that upon examination, the element of *gharar* remaining despite this mutual agreement challenges the shari'a acceptability of this service.

The paper thereafter begins a discussion on the two types of service provider, *ajir khas* and *ajir mushtarak*. *Ajir khas* is defined as a provider whose services are exclusively available to a particular employer over a stipulated period, with the object of the contact between the individuals the 'benefit' provided by the service provider. The provider is remunerated for the duration on account of his making himself exclusively available to the user, meaning he is prevented from working for a third party during the stipulated period.

An *ajir mushtarak*, by contrast, is a service provider who is entitled to work with numerous parties and whose contract is based on the work provided. The report states that for such a contractor, the specific details of the work must be specified in the contract; however, the duration may or may not be stipulated, but in either case, he will be remunerated upon completion of the specified work.

The report states that based on the above criteria, the provider of breakdown cover falls under the category of *ajir mushtarak* and not *ajir khas*. It is further stated that although the nature of *gharar* within this contract is not such that it renders the contract void, the *gharar* still remains, as does the provision of unilateral compensation.

The paper proceeds to discuss the argument that the breakdown cover provider, due to the relative immediacy of accessibility to the service provider, may be considered an *ajir mushtarak* with elements of *khas*, thus validating the contract between user and provider. The example is provided of a wet nurse who despite being an *ajir khas*, contracts herself to another group without the permission of the first. If contracting herself out to a second party does not prevent the wet nurse from providing benefit to the first party, the wet nurse is considered both an *ajir khas* and an *ajir mushtarak*: she is committing a sin on the basis of being an *ajir khas*, but she has the right to full remuneration as a result of being an *ajir mushtarak*.

Conversely, if an *ajir mushtarak* bears a resemblance to an *ajir khas*, such as the breakdown cover provider who is accessible to the service user almost immediately, this would allow the *ajir mushtarak*, in this case the service provider, to charge a fee based on the period of the contract, even if no work is done.

However, the paper refutes this argument for the following reasons:

- 'Relative' immediate disposal does not qualify the service provider as *ajir khas*.
- The *ajir khas* is remunerated for the period of time that he is prevented from offering his services to another employer, but the breakdown cover provider is not contracted exclusively to the individual.

Thus, unlike the wet-nurse, if the *ajir khas* contracts himself with the knowledge of the customer to another party, he automatically becomes an *ajir mushtarak*.

The paper concludes this discussion by reiterating that the element of *gharar* still remains and the breakdown provider is an *ajir mushtarak* with the contract based on the provision of work that is itself contingent upon a future event, therefore, rendering the contract *fasid* and void.

However, the paper states as its final conclusion that despite the logical conclusion stated above based on strict analogy, where a genuine need exists, there is license to depart from strict analogy and tolerate excessive *gharar* on the basis of inclusion of *istihsaan*. The paper defines 'genuine need' as the provision of breakdown cover that meets the basic needs of breakdown cover on the motorway, excluding such provisions that violate the prohibition of *riba* or extend beyond basic need, such as the Home Start provision.