



<u>Decision Ref:</u>	2018-0080
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - reasonable care/security of vehicle
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to a motor insurance policy and concerns the Provider's decision to decline a claim by the Complainant in respect of damage to her motor vehicle.

The Complainant's Case

The Complainant holds a comprehensive motor insurance policy (the Policy) with the Provider. The Policy was valid from 26 July 2017 for a period of 1 year.

The Complainant was involved in a road traffic accident on 30 August 2017 whereby her motor vehicle was involved in a collision with another motor vehicle. The Complainant notified the Provider of the accident on the same date and the Provider arranged for an independent inspection of the Complainant's vehicle to take place and this was carried out at her home address on 31 August 2017. Arising out of this inspection, the assessor appointed by the Provider sent his report to the Provider and, amongst other things, the report stated that one of the tyres was below the legal tread depth limit and accordingly, this would render the vehicle to be in an un-roadworthy condition.

The Provider then assessed the claim, and by letter dated 12 September 2017, the Provider advised the Complainant that it was declining her claim. The Provider stated that its reasons for declination were that the claim had been considered against the Policy conditions and the independent assessor's report and because the independent assessor had reported that

the vehicle was in an un-roadworthy condition due to one of the tyres being below the legal tread depth limit, this was a breach of the Policy conditions which the Provider asserts permits it to decline the claim.

The Complainant disputes the finding of the assessor and submits that she had four new tyres fitted on the car on 7 July 2017. In addition, the Complainant submits that the assessor's conclusion regarding the tread depth of the tyre was reached by carrying out a visual inspection only.

The Complainant complains that the Provider has wrongfully, unfairly and unreasonably declined her claim.

The Provider's Case

The Provider explains, in its response of 26 February 2018 to the Office of the Financial Services and Pensions Ombudsman, that the Complainant's claim for damage was declined following advice received in the report from the independent assessor who examined her vehicle after it was recovered. The Provider states that the assessor advised that one of the tyres on the vehicle was below the legal tread depth limit which would therefore render the vehicle un-roadworthy. The Provider states that under the terms and conditions of the Policy, in particular Policy Condition 8, there is a requirement to maintain the vehicle in a safe and roadworthy condition.

In addition, the Provider asserts that the un-roadworthy condition of the tyre was determined to have contributed to the accident and was therefore in breach of Policy Condition 9.

The Provider asserts that it was entitled to decline the claim pursuant to the terms and conditions of the Policy.

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

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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 7 June 2018, outlining my preliminary determination 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.

Further communications were received from the Complainant on 8 June 2018 and from the Provider on 10 July 2018.

Both sought clarification of my Preliminary Decision. I will deal with those queries in my direction to the Provider at the conclusion of this Legally Binding Decision.

Nothing in the submissions would lead me to alter my decision as set out in the Preliminary Decision.

Declining of claim

The Provider submits that it is entitled to decline the Policy in light of the wording of Sections 8 and 9 of the terms and conditions of the Policy.

Declinature under Section 9

At the outset, the Provider in its letter of final response to the Complainant dated 10 October 2017 and in its corrected Schedule of Evidence provided to this office on 16 March 2018, asserts that the un-roadworthy condition of the tyre contributed to the accident and was thus in breach of Section 9 of the Policy terms and conditions. In both of the above, the Provider purports to quote from Section 9 and asserts that it provides as follows:

“you must take all reasonable steps to protect from loss or damage, and keep in efficient condition, any vehicle in the description of vehicles”

Firstly, from my review of Section 9 of the Policy conditions, I was unable to locate that wording. The Policy terms and conditions furnished to me detail that Section 9 provides for the various obligations on an insured *“in the event of a claim”*. The quoted wording is not in Section 8 either.

Secondly, the Provider explicitly states that one of the reasons the claim was declined was that the un-roadworthy condition of the tyre *“contributed to the accident”* which is in breach of Section 9 of the Policy terms and conditions.

The Provider in making this assertion that the un-roadworthy condition of the tyre contributed to the accident, relies on the report of the Assessor it appointed. According to this Assessor’s report, it was appointed *“to view and assess damage to their [the*

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Complainant's] vehicle". I have reviewed in detail the report of this Assessor and I am not satisfied that the report does in fact state that the condition of the tyre contributed to the accident. In fact, what the report states (at page 2 of 15 of the report) in this context is as follows:

*"The nearside front tyre was bald and no tread depth measurement could be obtained from the tyre. The tyre was illegal and defective and **could be a contributory factor in the loss of control of the vehicle.**"*

*"The tyre was in such a poor condition it would off [sic] **no grip in wet or damp conditions** and be a contributory factor in the loss of control of the vehicle." [My emphasis].*

The above statement merely states that a bald tyre *could* be a contributory factor in the loss of control of the vehicle in certain conditions. No doubt that is correct in general terms but the above statements do not purport to be a factual narrative of what happened or what caused the accident on 30 August 2017. In particular, the Assessor's report does not appear to be stating, let alone providing any evidence:

- that the Complainant lost control of her vehicle
- that any purported loss of control occurred at all or which was wholly or partly as a result of the bald tyre
- whether weather conditions were wet or damp.

Accordingly, insofar as the Provider seeks to rely on the fact that the condition of the tyre on the Complainant's vehicle either caused or contributed to the road traffic accident for the purposes of declining her claim, I don't believe that this is sustainable in the absence of any evidence to that effect.

Indeed, I have not been provided with any evidence as to what caused the accident.

Therefore, the Provider was not entitled to decline the claim for these reasons.

Declinature under Section 8

In addition to the foregoing, the Provider relies on Section 8 of the terms and conditions of the Policy.

Section 8 provides:

Duty to Prevent Loss or Damage

8. You or any insured person must:

- *Maintain your car in a safe and roadworthy condition and, where required by law having regard to the age of your car, have a valid NCT certificate;*

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- *Take all reasonable steps to prevent accidents, injury, loss or damage;*
- *Protect your car against loss or damage;*
- *Give us reasonable access to examine your car and its documents in relation to any matter relevant to this insurance.*

The absence of a valid NCT certificate may invalidate your cover under Section 1 (loss of or damage to your car).

The Provider asserts that because a tyre on the Complainant's motor vehicle was bald, it was un-roadworthy and because it was un-roadworthy, the Complainant had failed to comply with Section 8 of the terms and conditions of the Policy and therefore it was entitled to rely on this breach as a reason for declining the claim.

Furthermore, the Provider makes a statement that "*the un-roadworthy condition of the tyre was determined to have contributed to the accident*". In arriving at this conclusion, it seeks to rely on the report of the Assessor it appointed who states that the tyre "*could be a contributory factor*" and "*the tyre was in such a poor condition it would off [sic] no grip in wet or damp conditions and be a contributory factor in the loss of control of the vehicle*".

There is no suggestion that the conditions were wet or damp nor that there was a loss of control of the vehicle. On the contrary, the Complainant states that she saw the car coming towards her and had stopped her car.

I make no finding as to where the responsibility for the accident lies. Nor have I been provided with any evidence by the Provider in this regard.

Given the serious implication of a decision to deny a claim, I would expect an insurance company to undertake a more thorough investigation of the events, undertake a more thorough examination of its own terms and conditions and be more careful and reasonable before making such a decision.

I believe the manner in which the claim was managed and declined by the Provider was unreasonable.

For this reason I am partially upholding this complaint and I direct the Provider to pay the Complainant a sum of €3,000 in compensation.

For the avoidance of doubt, the Provider is to now pay a sum of €3,000 to the Complainant in full and final settlement of all matters arising out of this dispute.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €3,000 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

17 July 2018

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**.