



<u>Decision Ref:</u>	2018-0156
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's complaint relates to the Insurer's decision to decline a claim made on the Complainant's car insurance policy.

The Complainant's Case

The Complainant held a car insurance policy with the Insurer. The Complainant states that on the 5th of September 2015, whilst driving, his car "*suddenly burst into flames after a loud bang*". The Complainant says that he was informed by his insurance company that the cause was "*mechanical failure*" but he disputes this and has provided copies of the vehicle's service record in support of the proposition that the car was running perfectly. The Complainant maintains that the car "*could have hit a stone or something, I don't know*".

The complaint is that the Complainant made a claim on his insurance policy which, he maintains, was improperly declined by the Insurer. The Complainants seek that the Insurer reimburse the Complainant in respect of the costs he incurred in replacing the engine of the vehicle in the amount of €2,614.99.

The Provider's Case

The Insurer relies on the report of a motor engineer which concluded that the damage to the vehicle was the result of mechanical failure. On the basis of this expert view, the

Insurer maintains it was entitled to decline the claim by reference to the terms of the policy.

The Insurer also disputes that there was any damage caused as result of fire and points out that the Complainant did not make any reference to fire in the course of his initial breakdown phone call.

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 15 October 2018, 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, my final determination is set out below.

Prior to considering the substance of the complaint, it will be useful set out certain relevant terms and conditions of the policy.

Policy Terms and Conditions

Section 1 of the policy entitled '*Loss of or damage to the car*', sets out certain exclusions which are not covered under the policy:

We will not pay for:

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1. *loss in value, wear and tear, mechanical, electrical or electronic breakdown*

...

Analysis

The sole issue in this complaint is whether the damage to the Complainant's vehicle which occurred on the 5th of September 2015 was caused as a result of mechanical failure/wear and tear or whether the damage was caused as a result of an insured peril such as accidental damage. The reason for this is that damage arising from wear and tear or from a mechanical failure is not an insured peril (as per the Policy terms reproduced above).

The Complainant does not know what caused the damage. He is unable to point to any particular incident or matter.

In correspondence to this Office he has suggested it may have been a result of the car "hitting a stone or something". He also stated "I feel it was caused by a malfunction in engine and it was not any fault of mine".

Notwithstanding this, the Complainant disputes that the damage resulted from wear and tear or from a mechanical failure. He argues that the regular service history of the vehicle coupled with evidence of his 'no claims bonus' support his proposition that the car was well maintained and well driven and that this militates against the possibility of wear and tear or mechanical breakdown. The Insurer advised the Complainant of his entitlement to have the vehicle inspected by his own independent engineer however the Complainant does not appear to have done so.

The Insurer has provided a copy of its engineer's report which includes several photographs. This report states as follows:

The engine was not starting at the time of our inspection and appears to have seized. We noted evidence of what appears to be a severe oil leak on the undercarriage. At this stage we have not found any evidence of fire damage.

Following this, the Insurer's expert inspected the vehicle more thoroughly with the benefit of a hoist and concluded as follows:

We have now inspected the vehicle up on a hoist with the engine tray in place and then with it removed. We did not find any evidence of fire damage, nor did we find any evidence of impact damage. Therefore, in our opinion the damage to your Insured's vehicle is as a result of mechanical wear and tear...

The report (as well as a subsequent email) also noted that the engine had a hole in the sump and a hole in the engine block which appeared to be the result of a "conrod" bursting out from within the engine. This too was stated to be consistent with mechanical failure.

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It is clear that the Insurer disputes the Complainant's account of his vehicle having caught fire and, in this regard, there is a stark dispute as to fact between the parties. Recordings of telephone conversations between the parties have been supplied in evidence. I have considered the recordings of the 10 phone calls provided and it is clear that the Complainant does not refer to any fire in the course of his initial road-side phone call on the 5th of September though he does make reference to smoke.

(The Complainant also makes reference to having put oil in the engine). In fact, there is no reference by the Complainant in any of the calls to fire or to flames until the call of the 16th of September 2015 when the Complainant emphasises that there was a fire which he quenched with his coat.

I accept however that I do not need to resolve this dispute of fact in order to come to a determination on the complaint. The Insurer has placed clear evidence before me that the damage to the Complainant's vehicle was the result of wear and tear and/or mechanical failure.

The Complainant has placed no direct evidence before me, rather relying largely on the vehicle's service record. This is simply not persuasive in the face of the expert evidence available to me. The service record documents do not disclose any thorough investigation of the inner workings of the engine, such as the sump and engine block and the conrods. Even if they did, this would not preclude the possibility of the conrod having burst through the engine block after the service as result of mechanical failure. The Complainant has offered no evidence whatsoever of the damage having been caused by an insured peril.

While I fully accept the Complainant's contention that what happened was not any fault of his, this does not mean that it automatically becomes an insured peril which might be paid by the insurer.

For the reasons set out above, I do not 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.

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**

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9 November 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.