



<u>Decision Ref:</u>	2018-0172
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This claim relates to the Provider's decision to decline the Complainant's claim on his motor insurance policy, on the grounds that it was an exaggerated claim.

The Complainant's Case

The Complainant is an EU citizen, living and working in Ireland. On approximately the 10th September, 2016, he took out a motor insurance policy with the Provider through a broker, underwritten by the Provider, in respect of a 2010 registered Audi car ("**the Policy**").

On approximately the 7th September, 2017, two days before the policy expired, the Complainant's car was stolen and a claim logged with the Provider. The car was recovered and, approximately two days later, the Complainant and an inspector appointed by the Provider ("**the Inspector**") inspected the car.

The Complainant maintains that significant damage to the car was immediately apparent, which damage was due to the theft and was consistent with the car having been driven recklessly and off-road.

Summary of relevant events and documentation

Upon the advice of the Inspector, the Complainant cleaned his car, checked for any outstanding damage and on the 10th September, 2017, sent an email to the Provider summarising the damage and requesting confirmation that it would cover the cost of the repair or parts replacements under his policy ("**the Complainant's first email**"). The email stated, among other things:-

"While the car was in one piece, it immediately appeared that [it] had been driven recklessly and most likely off road, the car was very dirty and was equipped with the spare tire in the front left. The front left alloy with a broken tire was found in the boot of the car.

I got a new tire in GT Recovery and I have a receipt for €100 for the job.

I have visually inspected the car and these are my findings so far:

- *All 4 Alloys are freshly scratched.*
- *The front license plate is bend (sic).*
- *The front mudguard is scratched and it has some orange/red paint in it.*
- *All along the left side of the car there is a scratch (I think [the Inspector] has a picture documenting it)*
- *There are new scratches on the back of the car close to the left back lights and on the back mudguard*
- *On the right hand side of the car in the back of the car the mudguard is bend a [sic] scratched in proximity of the rear right tire.*

I have then [sic] drove the car back home and these are my findings:

- *The car was not starting. GT Recovery mechanic was able to fix the problem.*
- *The engine light is on*
- *The oil light went off*
- *The Particulate Filter light went off*
- *The tires pressure alarm went off*
- *The wipers are wrecked*

/Cont'd...

My car went to full maintenance in July this year and it has been serviced at regular schedules by me and previous owners.

Also please note that the main key of the car has not been recovered, I will need to purchase a new one and have the spare key re-coded”.

The Complainant followed up with his first email later that day, noting that he had forgot to mention that the full kit for changing a tire and the bolt locks were missing, as well as the user manual and commenting that *“(most likely they have used it when they needed to change a tire)”*.

In a file note dated the 11th September, 2017, the Provider described the damage as *“minor”*. By email of the same date instructing an assessor (**“the Assessor”**), the Complainant’s first email was not enclosed and the damage was described as *“scratches on the alloys and side of the vehicle. Also damage to the number plate”*.

By letter dated the 14th September, 2017, to the Complainant, the Provider advised that it had received the Assessor’s report but that he was unable to advise on a full repair costing for the theft damage until said damage has been clearly defined and stated that *“[t]o enable us to consider your claim in more detail and for our engineer to assess the full cost of repairs we ask you to detail in writing all the damage that has occurred to the vehicle because of the theft”*.

By email dated the 14th September, 2017, to the Provider the Complainant queried what more was expected from him, in view of his first email and follow up email, setting out the list of damage (**“the Complainant’s second email”**).

The Assessor inspected the vehicle and noted various items of damage to the car. In his report, before addressing whether those items were caused by the theft, he stated:-

“The vehicle was stolen after the Policyholder home was broken into and the key stolen. The vehicle was recovered with no evidence of theft damage. The Policyholder had walked around the vehicle with [a representative] from Audi South and

/Cont’d...

proceeded to point out every blemish (sic) on the vehicle and claims that there was no marks on the car prior to the theft.

We noted the following points:

- (1) The front bumper has been pointed out as being damaged but has been previously painted to a poor standard and the paint is lifting.*
- (2) The alloy road wheels have been kerbed. Whilst there is some kerb damage that may be fresh the majority of the damage is obviously old.*
- (3) There is a light rub mark on the paintwork to the rear bumper cover.*
- (4) The engine management light is indicating a fault. The owner alleges that this is only occurring since he collected the vehicle. Audi South have carried out a diagnostic check and the fault is with the exhaust and the DPF. This is a mechanical issue and would have occurred anyway.*
- (5) There are some scuffs on to the engine undertrays but no more damage than to be found on any similar vehicle in use in an urban area with speed control ramps.*
- (6) The offside rear shock is leaking but this would be an age related matter.*
- (7) We note that there is a mileage discrepancy on VMS with this vehicle as a Dealer recorded 201328 km in April 2015.*
- (8) There is a very faint scratch on the nearside panels which a professional bodyshop could polish out.*
- (9) The vehicle has four odd tyres fitted with two manufactured by Haida, one by Briway and the last one by Ovation.*

We understand that the stolen key has not been recovered and Audi can reprogram the car for approximately €350. We would advise that this claim is exaggerated and you may wish to consider your liability”.

By email dated the 20th September, 2017, the Provider sent on the Complainant’s first email (though seemingly not the follow up email) to the Assessor, together with the latter’s report and asked that the Assessor “advise on what damage you feel is associated with this incident and what damage is old damage unrelated to the theft”.

By email dated the 21st September, 2017, the Complainant requested a reply to his second email and on the same date, the Provider confirmed that the Complaint’s first email had been sent to the Assessor.

/Cont’d...

By email dated the 25th September, 2017, the Assessor wrote to the Provider noting the content of the Complaint's first email and stating:-

"As per our report the majority of this list is old damage or unrelated to the theft.

I think that most of these items were referred to in our report of 12th September but we have followed the owners [sic] list to assist with a response.

- (1) The alloys are scratched. The alloy road wheels have been kerbed. Whilst there is some kerb damage that may be fresh the majority of the damage is obviously old.*
- (2) The front number plate is slightly damaged and will need to be replaced.*
- (3) The front bumper is damaged. The front bumper has been pointed out as being damaged but has been previously painted to a poor standard and the paint is lifting. This is not theft related.*
- (4) There is a very faint scratch on the nearside panels which a professional bodyshop could polish out. This is very minor and could have occurred at any stage.*
- (5) The scratches to the rear bumper and offside quarter panel are very minor and do not appear fresh.*
- (6) The engine light is on because of an issue with the DPF.*
- (7) The DPF needs to be regenerated and this is a service issue. This occurs over a long period of time due to driving style (slow moving city traffic) and is not theft related. It may only be showing an issue now but that is coincidental to the theft and not caused by it.*
- (8) The tyre pressure alarm went off. If the vehicle was fitted with a spare and then a new tyre fitted (as explained by the customer) then he needs to reset the TPMS. This is the tyre monitoring pressure system and the dash control allows the driver to reset this. This is explained in the owner's manual.*
- (9) The wipers are wrecked. We were not made aware of this and did not notice the damage.*
- (10) We understand that the stolen key has not been recovered and Audi can reprogram the car for approximately €350.*
- (11) Whilst the owner claims that the car has been well serviced we note that budget aftermarket types are fitted and these are odd tyres by different manufacturers.*

/Cont'd...

(12) *We note that there is a mileage discrepancy on VMS with this vehicle as Dealer recorded 201328km in April 2015.*

While a theft may have occurred we feel that the list has been exaggerated and you may wish to consider your liability. We await your instructions”.

By letter dated the 25th September, 2017, the Provider summarised the matters at nos. 1, 3, 4, 5, 6, 7, 8, 9 and 12 above and stated that “[a]s much of this information conflicts the cause of damage supplied to us by you, we require a detailed explanation from you in relation to our motor engineer’s comments.

The Complainant responded by letter dated the 27th September, 2017, noting that several issues raised in his first email had not been addressed by the Provider and responding to the issues raised in the Provider’s letter of the 25th September, 2017. In particular, the Complainant stated:-

“In the list of damages caused by the theft you have missed some very important ones:

- 1. The primary key of the car has not been recovered. A new key must be purchased.*
- 2. As a result of point n.1 I needed to re-code the spare key*
- 3. One tire, front left, was busted and replaced by the individual that stole my car with the spare tire located in the boot.*
- 4. As a result of point n.3 I had to purchase a new tire from GT Recovery on the day I recovered my car.*
- 5. When the tire was replaced the full kit to replace the tire was most likely left at the location and it is now missing from the car. This includes the Audi lock bolt.*

In reference to [the Assessor’s] comments, below are my comments:

- 1. The 4 alloys are badly damaged and it is obvious that it is a fresh damage, some minor scratches might have been in there before but the fresh ones are deep and very evident.*
- 2. The front bumper has a fresh sign of red/orange paint in the front left of the car. This was not in there before the car was stolen.*
- 3. While the scratches in the nearside panel were not in there before the car was stolen I do agree that polishing the car might fix it. I have said the same to the Audi centre when I brought the car in.*

/Cont’d...

4. *The scratches on the rear bumper were not in there, they are new and they are not minor scratches.*
5. *Correct but the oil light went off.*
6. *The car was fully serviced on the 7th July 2017. I do not accept this comment.*
7. *I have never claimed any issue about tire pressure. However Audi is reporting that tires alignment is now needed.*
8. *The car was driven off road, this was obvious from the condition of the car when it has been recovered. The wipers are making noise when in use now.*
9. *This is very much concerning me. I purchased the car from Audi dealer on the 1st May 2015 and I have the Audi Service Schedule with the stamp of Audi Centre Limited dated 9th April 2015 recording 215,188km. I need an explanation to this comment from [the Assessor].*

The Complainant closed by noting that he already spent € 427.58 carrying out minimal repairs to the car and enclosed the relevant invoices.

By letter dated the 29th September, 2017, the Provider declined the claim, noting that it had passed the Complainant's letter of the 27th September, 2017, to the Assessor for review. Before advising the Complainant of his option to make a complaint to this office, the letter stated that:-

"The assessor has advised that, in his opinion, a substantial amount of the damage claimed by you is old damage and would have predated the theft of the vehicle, and much of this damage should have been noticed by you prior to the theft. In light of this, we are not in a position to indemnify any of the damage claimed by you".

The Complainant made a complaint to this office and, during that process, there were various other exchanges and clarifications regarding the relevant damage. Of particular note is the email dated the 26th March, 2018, from the Provider to this office where it was noted that *"when our Claims Handler spoke with the Assessor, he advised: when he asked the Insured to point out new and pre-existing damage on the vehicle, the Insured advised almost every blemish on the vehicle was damage because of the theft"*.

When challenged by the Complainant on this issue (among others), in an email dated the 4th April, 2018, the Provider conceded that the Audi representative, not the Complainant, was present when the Assessor carried out his inspection and therefore, the Complainant could

/Cont'd...

not have acted in the above manner. Although the Provider apologised for this error, it continued to rely on the Assessor's report and did not change its attitude to the claim.

During the process in this office, the Complainant clarified that he wished the Provider to pay for the following **"the final claim"**:-

- expenses incurred for replacing the tyre, fixing engine warning lights, re-coding the car key, totalling €427.58;
- a new car key estimated at €300;
- a new alloy wheels bolt lock, estimated at €300;
- a new kit for tyre replacement (including jack);
- fixing or replacing 4 alloys;
- fixing front and rear bumpers;
- fixing the dent close to the right rear tyre;
- fixing the scratch on the left panels of the car, through polishing or otherwise;
- fixing or replacing the front license plate.

The Provider's Case

The Provider relies on its correspondence and, in particular, on the Assessor's report, in defence of its position. It maintains that this is an exaggerated claim which it is not required to pay under the terms of the Policy. Specifically, it maintains that:-

"In the Assessor's expert opinion, a substantial amount of the damage being claimed was for old damage which should have been noticed or repaired previously, along with serviceable engine issues such as DPF/Exhaust regeneration required.

Claiming for damage not caused by the theft is a breach of policy conditions, therefore, the claim was declined".

Section 13 of the Policy upon which the Provider relies is entitled *"Misrepresentation and Fraud"* and permits the Provider to, among other things, reject a claim in particular circumstances, one of which is where a person makes a *"claim under the policy, knowing that the claim is false exaggerated or fraudulent in any way"*. In those circumstances, the

Provider maintains that it has acted in accordance with 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 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.

/Cont'd...

I am most unhappy with the conduct of the Provider in assessing the Complainant's insurance claim.

First, prior to any inspection having taken place, the Provider mis-described and diminished the extent of the damage to the Complainant's car, in its instruction to the Assessor. Instead of sending on the Complainant's first email so that each item could have been properly examined on inspection, the Provider merely stated that there were "*scratches on the alloys and side of the vehicle. Also damage to the number plate*". It is difficult to understand why the issues regarding the functioning of the car (*i.e.* the warning lights) were excluded from the instruction, as well as the existence of orange/red paint on the mudguard which, together with the damage to the license plate, could indicate that some form of collision had taken place during the theft.

Not only did this mean that the Assessor could not go through each of the matters identified by the Complainant in his inspection, this email is a relevant starting point in the denial of cover on grounds of exaggeration.

Second, the Assessor's report contains some material inconsistencies and overreaching which ought to have been considered by the Provider in this dispute. For example, it is difficult to reconcile the statement that "*[t]he vehicle was recovered with no evidence of theft damage*", with the comment that the alloy wheels "*may*" recently have been kerbed and no comment is made upon the age of a "*light rub mark*" on the paintwork of the rear bumper. In addition, without citing any evidence in support, the report states that the Complainant had pointed out every blemish when inspecting the car and, further that he had claimed that there were no marks on the car prior to the theft.

The Complainant's first email does not suggest that there were no marks on the car prior to the theft and the Provider was forced to admit later on that the Assessor was not present when the Complainant inspected the car. The report closes with the statement that "*this claim is exaggerated and you may wish to consider your liability*". However, the reasoning provided for alleging that damage is "*old*" or not "*fresh*" is sparse, at best. In addition, the

/Cont'd...

report diminishes the items of damage purely because they may be easily fixed (e.g. scratches polished out, car reprogrammed) or would have occurred anyway (e.g. the engine light) in the context where the report suggests a *"mileage discrepancy"* (which is never clarified to the Complainant despite later request) and it is suggested that the Complainant adopts a budget approach to maintenance, purely because the tires on his car are from different manufacturers.

Third, the failure to send on the Complainant's first email to the Assessor meant that various relevant matters were not fully considered by the Assessor at the time of his inspection and report. Rather, having completed his report, he was then sent the Complainant's first email and asked to consider it in light of his report with the somewhat leading request that he *"advise on what damage you feel is associated with this incident and what damage is old damage unrelated to the theft"*.

Fourth, the response from the Assessor dated the 25th September, 2017, largely consists of bare assertions of *"old"* damage and suggestions of exaggeration, without any reasoning to support those far reaching and extremely serious conclusions. For example, if kerb damage is *"obviously old"*, it should be easy to explain why this is so obvious; if a scratch could have occurred *"at any stage"*, it should be acknowledged that this could have occurred during the theft; if the appearance of the DPF light is coincidental and the Complainant maintains that it only appeared after the theft, it should not be used to ground an allegation of exaggeration of a claim.

Fifth, the failure to address the matters raised in the Complainant's letter dated the 27th September, 2017, in particular the mileage issue, is very unsatisfactory. It is difficult to understand why the Provider simply progressed to deny the claim, on such a serious basis and without even specifying the relevant clause in the Policy, without engaging further with the Complainant.

In light of the above, I am not satisfied that the Complainant made a claim *"under the policy, knowing that the claim [was] false exaggerated or fraudulent in any way"* and I am not

/Cont'd...

satisfied that the Provider was entitled to refuse to cover the claim. In those circumstances, the Provider acted in breach of contract and its conduct was most unacceptable and well below that which a consumer is entitled to expect from a regulated financial service provider.

I believe that this most serious conclusion was reached by the Provider in the absence of proper evidence and fulsome enquiry on its part, having failed to inform the Assessor of all relevant facts before he produced his report and then essentially asking that he defend it, in the face of those facts. It is wholly unsatisfactory to question the *bona fides* of a claimant and invoke the “*Misrepresentation and Fraud*” provisions of the Policy in such dubious circumstances. It was equally unsatisfactory not to engage with the Complainant’s email of the 27th September, 2017, and to simply decline the claim, without even identifying the portion of the Policy relied upon.

The Complainant was entitled to have his claim considered in a fair, reasonable and professional manner.

As this did not happen, I uphold this complaint and direct that the Provider pay a sum of €5,000 for the manner in which it has treated the Complainant and the unnecessary additional stress and anxiety it has caused him.

For the avoidance of doubt, the €5,000 will be 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 upheld, on the grounds prescribed in **Section 60(2) (a), (b), (d), (e) 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

/Cont’d...

payment to the Complainant in the sum of €5,000, 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**

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.