



<u>Decision Ref:</u>	2019-0015
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Partially upheld

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

The complaint relates to motor insurance policy and the Provider's refusal to indemnify the Complainant.

The Complainant's Case

The Complainant holds a motor insurance policy that is underwritten by the Provider. He states that while driving his car on 15 October 2016, his wife drove into floodwaters at a fast speed. The Complainant states that she drove for approximately 4-5 miles further before pulling into a garage when she realised that there was something wrong with the car and the engine was failing. The Complainant states that he asked his mechanic what the cause of the failure was and the mechanic's opinion was that the failure was caused by water ingress. The Complainant lodged a claim under his motor insurance policy for the cost of the repairs but his claim was refused as it was deemed that the problem with the car was due to a mechanical problem which is not covered under the policy.

The Complainant commissioned an independent engineers report in January 2017, which agreed with his mechanic's assessment. When the Complainant submitted this report to the Provider, the Provider had its assessor carry out a further examination which upheld the Provider's previous finding.

The Complainant is unhappy that the Provider has refused to indemnify him and the complaint is that the Provider has wrongfully, unreasonably and through a mistake of law or fact refused to fully indemnify the Complainant for the loss in question and the Complainant is seeking to be compensated by the Provider for the loss suffered.

The Provider's Case

The Provider states that it follows the advice and expertise of its nominated engineer who was of the view that the engine sustained a mechanical failure as a result of a lubrication issue which is not consistent with the incident circumstances reported to them by the Complainant or his mechanic or assessor. The Provider states that mechanical failures or breakdowns are specifically excluded on 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 Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 27 November 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, I set out below my final determination.

I have been provided with a copy of the motor insurance policy relevant to this claim.

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Amongst other things, the policy provides for loss or damage to the insured vehicle under “insured section B” of the policy. Clause 3.3 of insured section B provides for “loss or damage limitations and exclusions”. In particular, clause 3.3.7 provides as follows:

3.3.7 Mechanical or electrical breakdowns

This insured section B does not cover mechanical, electrical, electronic, computer failures or breakdowns or breakages, or damage to the transmission by the application of brakes.

In that regard, the wording of the policy is clear, loss or damage to the insured vehicle is excluded if it arises out of a mechanical or electrical breakdown of the vehicle.

It is the Complainant’s position that his car suffered engine failure due to water ingress and not mechanical breakdown. In support of this, the Complainant engaged an independent Consulting Automotive Engineer Assessor, to inspect the vehicle and to provide his expert opinion and diagnosis as to what caused the vehicle to suffer engine failure. Amongst other things, the Complainant’s assessor concludes that the vehicle sustained engine motor damage due to water ingress into the air filter box. He states that this is evident due to the condition of the ‘conrod no. 4’. As is apparent from this report, this conclusion and opinion is arrived at following a detailed inspection of the car and its relevant parts.

The Provider on the other hand, engaged its own Consulting Engineer and Assessor to carry out an inspection of the vehicle and produce a report. This assessor produced a report dated 7 April 2017. Amongst other things, the assessor concludes that having examined the engine block cylinders, they noted no evidence of damage consistent with water ingress. It is their opinion that the damage sustained to the vehicle’s engine is inconsistent with water ingress and consistent with the lubrication issue for the reasons set out in its report. Similarly to the Complainant’s assessor’s report, this conclusion and opinion is arrived at following a detailed inspection of the car and its relevant parts.

In this matter, there are conflicting findings of two motor assessors. I do not propose to prefer the findings of one motor assessor over the other in order to determine the dispute.

Given the difference in the reports of the assessors, I believe it would have been appropriate for the parties to agree to have the matter assessed by a third assessor who should have been independent of both parties and both assessors.

I note the assessor appointed by the Provider estimated the cost of repair at €5,660.98 inclusive of VAT, while the Complainant supplied a repair estimate of € 10,143.96.

Given the level of conflict between both the assessors’ reports and the estimates of the repairs, I partially uphold this complaint and direct that the Provider pay the Complainant a sum of €5,000 in full and final settlement of the claim.

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 payment to the Complainant in the sum of €5,000 (in full and final settlement of this claim), 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 January 2019

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.