Decision Ref:	2019-0017
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Rejection of claim - accidental damage Rejection of claim
Outcome:	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 notified the insurer of a claim on 22/07/16 arising from an incident which occurred on 16/07/16 when the Complainant's vehicle struck a damaged area of road resulting in a broken wheel alloy and a puncture. Following the incident, the Complainant brought her vehicle to a garage and had the damage repaired however, on driving the vehicle further, the Complainant noticed a noise which, upon investigation, transpired to be a damaged gearbox.

The Complainant made a claim on her policy in respect of the gearbox damage, maintaining that same was also the result of the incident on 16/07/16. The Insurer declined this claim relying on the opinion of a "*Motor Engineer*" who considered that the damage was not consistent with having occurred as a result of the incident. In response to this, the Complainant appealed the Insurer's decision and commissioned her own engineer who provided a contrary opinion to the effect that the damage *was* consistent with having occurred as a result of the incident. The Insured, having passed this report to its own

engineer for comment, stood over its original decision and indicated that the appeal would be declined.

Thereafter, the Insurer proposed, and the Complainant agreed, to appoint an independent third engineer. This individual provided an opinion supporting the Insurer's position in determining that the damage was *not* consistent with having occurred as a result the incident. The Complainant disputes the ability of this engineer to provide an "*independent assessment*".

The Complainant seeks that the Insurer accepts her claim relating to the gearbox damage in respect of which she has referred to a repair estimate in the amount of €10,432.62.

Separately, the Complainant takes issue with the manner in which the Insurer has engaged with her throughout the process. The Complainant refers to her "*struggle*" to get in contact with the Insurer and to the Insurer's failure to contact her other than on one (or two) occasion(s).

The Provider's Case

The Insurer relies on the two concurring engineer's reports on the basis of which it maintains it was "*reasonable to decline the claim*". The Insurer asserts that the decision to propose the appointment of an independent third engineer was taken "*in order to be fair and reasonable*" and the Insurer maintains that it has no affiliation or connection with the engineer ultimately appointed to this role.

With regard to its manner of engagement with the Complainant, the Insurer has stated as follows:

> *"… whilst I appreciate your frustration at the length of time this matter has been ongoing, we are satisfied that there were no delays in the handling of your claim and that both your claim and subsequent appeal were handled proactively."*

In support of the foregoing, the Provider has furnished this office with a timeline setting out a record of its interactions with the Complainant.

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.

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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.

Following the issue of my Preliminary Decision, both parties made further submissions as follows:

1. E-mail from the Complainant to this Office dated 19 November 2018.

2. E-mail and enclosures from the Complainant to this Office dated 14 December 2018.

3. E-mail from the Provider to this Office dated 20 December 2018.

Following consideration of these additional submissions from the parties, together with all of the evidence and submissions, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to reproduce the Insurer's timeline (subject to the redaction of the name of the Insurer and the names of certain third parties) and to set out certain relevant terms and conditions of the policy.

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Timeline

16/07/2016	Date of loss
22/07/2016	First notification of claim
22/07/2016	First call to Insured
22/07/2016	Motor Assessor (MA) appointed & estimate sent to MA
27/07/2016	Estimate sent to MA second time
02/08/2016	[redacted]eport received.
04/08/2016	Insured called for update
04/08/2016	[redacted]alled [redacted]o clarify MA report conclusion
04/08/2016	[redacted] called Insured left VM
04/08/2016	Insured called for update
08/08/2016	Insured called for update - We declined the claim verbally over the phone
08/08/2016	Insured's garage called for update
10/08/2016	Claim form received
10/08/2016	Decline letter sent
11/08/2016	Broker called for update
16/08/2016	Insured called to appeal the decline
18/08/2016	Insured's own MA report received
22/08/2016	Insured called for update
22/08/2016	Insured's MA report sent to [redacted] to review
23/08/2016	Insured called for update
23/08/2016	[redacted]emailed [redacted]for update
24/08/2016	Insured called for update
24/08/2016	Insured called for update
24/08/2016	[redacted]eview on file - reviewed by handler & discussed with claims Manager
24/08/2016	[redacted] emailed [redacted]Head Engineer to review both MA reports
25/08/2016	[redacted]called [redacted]to advise damage not covered - [redacted]waited report from [redacted]
25/08/2016	[redacted]review report received
26/08/2016	Insured called for update - advised that we were maintaining the declinature
26/08/2016	[redacted]called Insured with update - next step is to get third MA independent of Insured & [redacted] for final opinion
29/08/2016	[redacted] appointed Third MA [redacted]
30/08/2016	Insured's mother called for update
01/09/2016	Insured's mother called for update
02/09/2016	Third MA report reviewed by handler and claims Manager
02/09/2016	[redacted]alled Insured to advise await field inspection of IV by [redacted]
02/09/2016	Insured's mother called for update
06/09/2016	Insured's mother called for update
08/09/2016	Insured's mother called for update
09/09/2016	Broker called for update
12/09/2016	Insured's mother called for update - [redacted]report reviewed while on phone with claims Manager and advised that we stand over decline
13/09/2016	Decline letter sent to Supervisor for review
16/09/2016	Insured called - wants to appeal decline

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16/09/2016	Final decline letter approved & sent
16/09/2016	[redacted] called Insured to advise final decline decision approved & next steps for decline appeal
19/09/2016	Complaint received from Insured
20/09/2016	Insured emailed appeal of decline
22/09/2016	Insured called for update
22/09/2016	[redacted] called insured back to confirm email of appeal sent to second Manager
22/09/2016	Decline letter resent directly to Insured
22/09/2016	Complaint acknowledgement letter was sent to Insured
11/10/2016	Insured called to advise she has appointed a Solicitor & requested copies of the two Motor Assessor's reports
11/10/2016	Handler reviewed file with Team Coach who advised to refer to Technical Claims Manager for review & to make final decision
11/10/2016	Insured called to request Motor Assessor reports – advised case has been referred to Technical Claims Manager
12/10/2016	Insured called for an update – asked why Technical Manager has to review, advised as we have paid for the reports we need to request approval to share same
12/10/2016	Technical Manager advised Handler ok to share reports once Motor Assessors firms are happy with same
12/10/2016	Handler spoke to both Motor Assessor Firms and they advised happy for us to share reports
12/10/2016	Handler left voice mail message for Insured & asked Insured to call back to confirm if they would like us to email/post the documents
12/10/2016	Insured returned our call and asked for documents to be emailed & posted to them
12/10/2016	Letter to Insured attaching both Motor Assessors reports
17/10/2016	Complaint update letter was issued to Insured
11/11/2016	Complaints Final Response letter issued to Insured and copy sent to claims Team Coach
24/01/2017	Team Coach completed case review on file and closed the claim as no further evidence/contact received following the Final Response Letter
25/01/2017	Final Settlement letter sent to Insured to advise the claim has been closed and included details of payments made
07/12/2017	Letter received from Ombudsman's office requesting copy file

The Complainant has not taken issue with any of the detail set out in the timeline document provided by the Insurer.

Policy Terms and Conditions

Section 2, Condition 6 (a) of the Policy Document provides as follows:

The insurer shall not be liable for:

(a) Wear and tear

…

(d) mechanical, electrical, electronic or computer breakage, failure or breakdown

Analysis

I will address the complaints in relation to the declinature of the policy and the conduct of the Provider separately.

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Complaint Regarding Declinature of Claim

The central issue in respect of this aspect of the complaint is whether the damage to the Complainant's gearbox was caused by the incident on 16/07/16. The reason for this is that damage arising from a driving accident/incident is an insured peril under the policy whereas damage arising from wear and tear or from a mechanical failure is not an insured peril (as per the Policy terms reproduced above). There is no dispute in relation to the foregoing. Indeed, the insurer has stated that it will cover (subject to the application of the excess provided for in the policy) any loss associated with the damage to the tyre and alloy, which it concedes was clearly caused by the incident- it is not clear whether any claim has been made in respect of same.

Accordingly, the sole issue is whether the damage to the gearbox can be said to have been caused by the incident on 16/07/16. The Insurer's expert has stated that the damage did not arise from the incident on 16/07/16, maintaining that instead it was the result of "*mechanical failure*". The Complainant's expert disagreed and felt the damage was *"consistent with the energy from the impact to the road wheel*" and, thus, could be attributed to the incident on 16/07/16.

I have also been provided with an estimate from an Audi Garage. At the end of this estimate it states:

> "*Car came in on transporter, not driving, damage to drive shaft and gearbox. Damage seems to have been caused by impact on nearside front causing damage to drive shaft, gearbox, suspension and wheel" and*
>
> *"after carrying out inspection of this car, in our the (sic) damage to the suspension and the gearbox was caused by an impact not down to 'wear and tear'".*

I have reviewed and considered both reports and the estimate. The estimate provided by the Audi Garage simply offers an opinion which is not supported by any analysis or evidence.

Both engineers' reports set out supporting analysis and evidence.

Given the nature of the opposing opinions, I am of the view that it was reasonable and fair for the Insurer to propose an evaluation by an independent third-party engineer. The independent third-party engineer agreed with the Insurer's original engineer concluding that the damage did not arise from the incident on 16/07/16 but rather was the result of "*wear and tear*" occurring "*over an extended period of time*". No "*signs of impact damage*" were noted. I have also reviewed this report.

The Complainant, following the delivery of the independent third-party engineer's report, expressed doubt as to this individual's capacity to provide an "*independent assessment*", however the Complainant has not expanded on this in any way or provided any evidence supporting her stated suspicions.

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The Insurer has disavowed any connection or affiliation with this independent third-party engineer, as opposed to its original engineer which it acknowledges is on its panel of motor engineers.

It is worthy of mention that the Complainant agreed to the proposal to engage an independent third-party engineer, presumably on the basis (at the time) that the findings of this engineer would be accepted. However, the Complainant does not accept the opinion of this independent third-party engineer and maintains that her engineer is right, and she further maintains that, as a result, she should be entitled to compensation from the insurer.

I am not satisfied that the Complainant has established that she suffered loss arising from an insured peril. The Complainant has provided evidence tending to support her position however this is countered by the Insurer's evidence and the opinion of the independent third-party engineer.

On the basis of the evidence before me, I am compelled to conclude that the Complainant has failed to establish that the damage to the gearbox resulted from the incident on 16/07/16. Accordingly, I accept that the Insurer was entitled to decline to extend cover in respect of the loss arising from the damage to the gearbox.

For the reasons set out above, I do not uphold this aspect of the complaint.

Complaint Regarding Insurer's Conduct

The Complainant takes issue with the manner in which the Insurer engaged with her in addressing her claim. She states that it was "*a struggle to get in contact*" with the Insurer and she points out that the Insurer only contacted her on one occasion (as per the Complainant's complaint form). In response, the Insurer maintains that it did not "*get an opportunity to contact the policyholder as the policyholder/her mother/Broker contacted the claims handler on an almost daily basis however updates were provided each time.*"

In this case, the claim was made orally on 22/07/2016. The insurer's initial engineer provided its report the following week on 02/08/2016 and the Complainant was notified orally that the claim was declined on 08/08/2016. A written claim form was received on 10/08/2016 and a letter formally declining the claim was issued on the same day. The Complainant orally indicated her wish to appeal the decision to decline on 16/08/2016 and she provided her own expert report on 18/08/2016. This report was sent to the insurer's initial engineer for comment the following week on 22/08/2016 and these comments were provided on 25/08/2016 following which the Complainant was advised, on 26/08/2016, that the appeal would be rejected.

On the same day, in a second phone call, the Insurer proposed the retention of the independent third engineer for a "*final opinion*". This would seem to have had the effect of

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suspending the Insurer's orally communicated decision to reject the appeal, at least temporarily, pending the outcome of this further review. The independent third engineer was appointed 3 days later on the following Monday on 29/08/2016 and, according to the Insurer's timeline, he provided an initial report (based on a review of the two existing reports) which was reviewed on 02/09/2016. The independent third engineer carried out an inspection of the vehicle on the 05/09/2016 (as per its report) and produced its final report dated 06/09/2016 which the Insurer states it received on 09/09/2016.

Thereafter, on 12/09/2016, it was orally communicated that the Insurer would be standing over the decision to decline the claim/appeal. The Complainant orally sought to appeal this decision on 16/09/2016 and, on the same day, the Insurer issued a "*Final decline letter*" formalising the position communicated orally four days earlier. This letter was followed by a phone call, also on the same day. The Complainant furnished an email of complaint on 19/09/2016 and she emailed her written appeal of the written decision to decline on 20/09/2016.

On 22/09/2016, the Insurer notified the Complainant that her latest appeal had been sent to a second manager for review. Following further interaction in October regarding the release to the Complainant of the engineer's reports, a complaint update letter issued on 17/10/2016 and a Final Response Letter issued on 11/11/2016 addressing both the further appeal (which was rejected) and the complaint (which was also rejected).

In summary, the following are the time periods involved in addressing the various stages of the process wherein I have also noted the number of phone calls during each period made by the Complainant (or Individuals on her behalf):

Period	**Working Days**	**Number of calls made in relevant period by Complainant or Individuals on her behalf**
Date of initial oral claim (22/07/2016) to date of Initial decline (08/08/2016)	11	5
Date of receipt of written claim (10/08/2016) to date of written decline (10/08/2016)	0	0
Date of provision of Complainant's engineer's report (18/08/2016) [following indication of intention to make 1st appeal on (16/08/2016)] to date of rejection of 1st appeal (26/08/2016)	6	5
Date of proposal to appoint independent third engineer (26/08/2016) to date of	1	0

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appointment of independent third engineer (29/08/2016)		
Date of appointment of independent third engineer (29/08/2016) to date of final report of independent third engineer (06/09/2016)	6	4
Date of final report of independent third engineer (06/09/2016) to date of communication of fact that Insurer would be standing over rejection of appeal (12/09/2016)	4	3
Date of complaint (19/09/2016) to date of Final Response letter (11/11/2016) Note: this Final Response Letter also addressed the Complainant's 2nd appeal as made in writing on (20/09/2016)	39	5

I might address the relevant time periods in two categories. The first category includes everything up until the making of the complaint on 19/09/2016. I am satisfied that the Insurer dealt with each stage of the various processes as outlined above in a prompt and expedient manner.

The timeframes involved for completing components of the process were short and matters were dealt with efficiently. Insofar as the Complainant takes issue with the conduct of Insurer throughout this period, the communication received does not support her view.

The Complainant makes the point that the Insurer did not contact her more than once throughout this period. In the first instance, it appears to me that this in incorrect in that the Insurer made 5 phone calls to the Complainant in the period and issued two letters. Regardless of this, it is clear that the Complainant (or individuals on her behalf, including her broker and her mother) made numerous phone calls to the Insured throughout this period. Recordings of those telephone calls have been provided in evidence. I have considered the content of those calls which demonstrate that updates were regularly provided. Insofar as the Insurer may otherwise have been obliged to initiate contact with a view to updating the Complainant, I accept that no such requirement existed here in light of the extensive contact initiated by or on behalf of the Complainant.

The second category relates to the time period in which the Insurer dealt with the Complainant's complaint (which also addressed her 2nd appeal). This comprised 39 days. The time period involved here is somewhat longer than the periods in respect of the first

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category. However, it is the case that a thorough review of a complaint such as the one submitted by the Complainant requires reasonable time to completed.

The Consumer Protection Code provides as follows:

> *the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
>
> *the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;*
>
> *the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and*

In this case, the Insurer complied with each of these requirements.

In the circumstances, I am not satisfied that the Complainant has established that the Insurer fell below acceptable standards in terms of the timeframe within which it addressed the complaint.

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

28 January 2019

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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.