An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0155
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Rejection of claim
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant had a commercial motor insurance policy with the Provider for the period 27 February 2017 to 26 February 2018 in respect of a vehicle.

The Complainant's vehicle sustained damage while being driven by the Complainant on **6 July 2017**. The Complainant subsequently made a claim under the insurance policy in respect of the damage to the vehicle. The Provider refused the claim on the grounds that the damage caused to the vehicle was not caused in the manner described by the Complainant and the Provider was therefore, unable to validate the claim.

The Complainant's Case

The Complainant states that he was travelling in his vehicle on the night of **6 July 2017** to his cousin's house at approximately 11.15pm. The Complainant states that he was travelling at approximately 45/50mph when he hit something on the road which impacted the underside of the vehicle a number of times. He then stopped the vehicle to try and determine what he hit but was unable to see anything.

The Complainant says he continued driving at a slow speed to his cousin's house which was a further 2 miles away, from where the incident had occurred. After a short period, the Complainant left his cousin's house and drove for a further 1.5 miles. The Complainant

describes that the engine at that time was noisier than usual and that a rattle was coming from the engine. During this time the engine stalled which the Complainant states may have been because he selected the incorrect gear. The Complainant states that he panicked when the vehicle stopped as he thought it may have been damaged. The Complainant then walked back to his cousin's house and arranged for the vehicle to be towed to his cousin's house.

The day following the incident, the Complainant's mechanic inspected the vehicle. The Complainant states that his mechanic determined that his vehicle had sustained damage. Following this, the vehicle was towed to the Complainant's house. On **11 July 2017**, the vehicle was towed to a designated garage for inspection by the Provider's engineer/assessor.

The Complainant states that the vehicle was serviced 3 months prior to the incident by his mechanic which included 3 filter changes and an oil change. He states that there was never any trouble with the engine and that the only work done on the vehicle was spring and shock replacements. At the time of the incident the vehicle had a DOE certificate which was due for renewal in the weeks following the incident.

The Complainant states that he received misleading telephone calls on **3 August 2017** from the Provider regarding the status of the vehicle. During the first call he was informed that the vehicle was driving and during the second call he was informed that the vehicle was not driving. The Complainant states that he was told that he would have to tow the vehicle from the designated garage as there was a part missing from the vehicle before it arrived at the garage. Further to this, the Complainant states that Provider's call representative spoke to him in a rude and insinuating manner during the course of the second call.

Finally, the Complainant states that there was no need to tow the vehicle from his house to the designated garage for inspection; there being no reason why the vehicle could not have been inspected at his house. The Complainant also states that while the vehicle was in the care of the designated garage, a part was unlawfully removed.

The Provider's Case

In the Provider's decision in respect of the Complainant's claim it states that it is not providing an indemnity on the basis that its engineer confirmed that it was not possible that the damage to the vehicle occurred in the manner as outlined by the Complainant.

The Provider states that it is its engineer's opinion that if the underside of the vehicle had been impacted with something which was sufficient in size and strength to put a hole in the sump of the vehicle, it would be expected that the object would also have caused the underside of the vehicle to sustain further marks or damage which it states was not the case.

The Provider further states that if the sump had been damaged while the Complainant was driving the vehicle, as advised by the Complainant, there would be evidence of engine oil blow back on the underside of the vehicle or the rear loading door of the vehicle as the

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engine sump would be emptying and would hold approximately 6 litres of oil. The Provider states this was not the case.

The Provider states that it referred the Complainant to section 7.6 of the Consumer Protection Code 2012:

"7.6 A regulated entity must endeavour to verify the validity of a claim received from a claimant prior to making a decision on its outcome."

This office has also been referred to the Provider's policy booklet, outlining the Terms and Conditions of Cover in particular the following sections:

> *"**General conditions which apply to the whole policy***
>
> ***These general conditions apply to all sections of this policy.***
>
> *Where we refer to 'you' in these conditions, it includes your personal representative'*
>
> *1. We will only have to make a payment under this policy if:*
>
> *(a) all the answers in the proposal and declaration for this insurance are true and complete (the proposal and declaration form the basis of this contract between us and you); and*
>
> *(b) you or any insured person meets all the terms, conditions and endorsements of this policy.*
>
> *…*
>
> ***14. Fraud***
>
> *If any claim is in any way fraudulent or exaggerated, the insured person or anyone acting on their behalf has used any fraudulent methods to benefit under this policy, or you have given us false or stolen documents, you and they will lose any rights under this policy. We may also prosecute you or them."*

The Provider states that on **10 July 2017** its claims representative spoke with the Complainant and asked if it could arrange for the vehicle to be brought to a garage as its engineer would need to get the vehicle on a ramp in order to carry out a proper inspection. The Provider states that the Complainant had no issue with this. The Provider has also furnished email correspondence between the parties to this effect. The Provider states that it confirmed by email dated 29 August 2017, that no parts were removed from the vehicle while it was at the designated garage.

With respect to the calls that took place on 3 August 2017, the Provider states that these calls were not recorded. However, it spoke with the call representative and it confirms that its agent did advise the Complainant that the vehicle was drivable. The Provider acknowledges this was an error on its part and states that the call representative called the Complainant back a few minutes later, to confirm that vehicle could not be driven. An apology was also offered to the Complainant.

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The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration and treated the Complainant unfairly because:-

1. The Provider failed to admit his claim and pay benefit under the policy.

2. The vehicle was needlessly towed from the Complainant's home to a designated garage for inspection when it could have been inspected at the Complainant's home.
3. A mechanical part was stolen/unlawfully removed from the vehicle while in the care of the designated garage.

4. The Complainant received misleading information during telephone calls on 3 August 2017 from the Provider regarding the status of the vehicle.

5. The manner in which the Provider's claim representative spoke to the Complainant in the second call which took place on 3 August 2017 was rude and inappropriate.

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 on 5 April 2019, 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, the final determination of this office is set out below.

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Recordings of telephone calls between the Provider's agent and the Complainant have been furnished in evidence. These relate to three calls which took place on 7 July 2017 regarding the notification of the incident, and one which took place on 10 July 2017 regarding the inspection of the vehicle. I have listened to these calls in full and make the following brief summary.

The first call is in relation to the Complainant's notification of the incident to the Provider for the purposes of making a claim under the policy. The second call was from the Provider's agent seeking to confirm the make, model and registration number of the vehicle. The third call was again from the Provider's agent informing the Complainant that its system was down and to re-confirm certain details regarding the incident and the vehicle. The fourth call was from the Provider's agent informing the Complainant that the vehicle may need to be placed on a ramp to allow the assessor to inspect it requiring the vehicle to be moved to the designated garage. The Complainant made no objection to this.

Declinature of the Claim

In the course of its investigation into the Complainant's claim, the Provider retained the services of an engineer/assessor to inspect the Complainant's vehicle. In the Engineer's Report, the following is noted:

> *"The insured vehicle was in poor condition with evident old pre accident damage sustained to the left hand front corner and with visible corrosion present on the front cross member of the vehicle …*
>
> *… the Insured vehicle had sustained an impact to the right hand front corner of the engine sump; at the front facing side, which had split open the sump, approximately 15-20mm in length.*
>
> *Whilst there is evidence of black oil on the bottom of the sump and lower cross member … [this] appears to have occurred as a result of the front crankshaft oil seal having leaked over a period of time as it was partially absorbed into the cross member and sump of the vehicle.*
>
> *There was no evidence of engine oil blow back, on the underside of the vehicle or the rear loading door of the vehicle as one would expect to find had the vehicle been driven whilst emptying the engine sump … We did note an oil leak around the rear differential, again, it appears to have been in this condition for some time … the transmission transfer box had the oil level bung missing from same; we then checked the oil level and there did not seem to be any quantity of oil in same; had there been any oil present, it was at a below advised level and would have caused damage to have been sustained had the vehicle been driven in this condition.*
>
> *We carried out some pre start checks on the engine of the Insured vehicle and we topped up the engine oil in same, we used a battery pack and the engine started and ran with the oil light on the dashboard going out as one would expect. … Given the*

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lack of oil splatter beneath the vehicle it is difficult to see as to how this vehicle sump was impacted during driving; we would also note that generally had the underside of a vehicle been impacted with something which was sufficient in size and strength to have put a hole in the sump of a vehicle, we expect that the object would have also caused marks or damage to have been further sustained to the underside of the vehicle, this was not the case.

You may wish to consider having the holding garage seal the sump temporarily in order to test drive the vehicle."

In an email dated 21 July 2017, which appears to be from the Provider's engineer/assessor to the Provider it is stated:

"In our opinion, one would expect to have found signs of fresh oil dispersed along the underside of the vehicle; this was not the case.

It is also very unusual that at the time of our inspection I was able to start and run the engine briefly which would not have been the case had the engine run out of engine oil and sustained damage. …"

In a further email dated 31 July 2017, following the test recommended by the Provider's engineer/assessor regarding the sealing of the sump on the vehicle, the following comments are made:

"They [the designated garage] found that the vehicle started and the oil light went out; there was a ticking noise at approx. 3000rpm; this appears to have been consistent and as a result of wear and tear and not as a result of oil starvation.

This vehicle would require a considerable amount of work were it to pass a DOE test and in the opinion of [the designated garage] this would out-weigh the value of the Insured vehicle.

It has been our experience that had an engine lost the engine oil and was driven a distance that one would expect the crankshaft bearings to have sustained damage; this is not the case. This coupled with the fact that we found no fresh oil on the underside of the vehicle during our inspection and the fact that the Insured advised that his vehicle had broken down on the road and needed to be recovered; does not add up when both myself and [the designated garage] were able to start and run the vehicle."

On 3 August 2017, the Complainant was informed by the Provider that his claim was refused for the reasons set out above. In response, by email dated 21 August 2017, the Complainant raised a number of issues surrounding his claim. The Complainant stated:

"… regardless to how I described it and the findings of an assessor (a report which I can not see) this is what happened and that's it…"

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The Complainant then proceeded to clarify certain issues, in particular he writes:

> *"After the incident when i said it Cut out I realize that I let it cut out … I think i did try start it that's when id have heard what was a different noise then i normally would have [sic]…*
>
> *Also talking to him he believes My times were a bit off … saying on leaving his house I sat outside his house for a further half hour or there abouts talking … with your engine running …"*

In light of the contents of the foregoing email, the Provider's engineer/assessor, by email dated 28 August 2017, was of the view that this did not change the findings and remained satisfied that the noise coming from the engine was a result of wear and tear and not a result of a sudden loss of oil.

In addition to the sections contained in the Provider's policy booklet and cited above, one further section is of note in light of the Provider's position. In the section titled ***Section 1 Loss of or damage to the insured vehicle***, the sub-section titled ***Exceptions to section 1*** states:

> *"We will not cover:*
>
> 1. *loss of value, wear and tear, mechanical, electrical, electronic, computer or computer software failure or breakdown;"*

In line with section 7.6 of the Consumer Protection Code 2012, the Provider has sought to verify the validity of the Complainant's claim. In doing so, it retained the services of an engineer/assessor to inspect the vehicle to determine the nature, cause and extent of the damage sustained as a result of the events that took place on the night of 6 July 2017 as conveyed by the Complainant. Following its investigation into the claim, the Provider refused the claim on the grounds that it was unable to verify the claim, for the reasons set out above. In my opinion, in light of the evidence and submissions made, the Provider was entitled to refuse the claim.

In reaching this decision, I note that the evidence which the Complainant seeks to rely upon in support of his complaint is simply his recollection of the events which transpired on the night of 6 July 2017. The Complainant states his mechanic inspected the vehicle the day after the incident and noted that it had sustained damage. In light of the evidence presented, this is a bare and unsupported assertion; nothing further has been submitted by the Complainant or furnished in respect of the nature, cause or extent of the damage or condition of the vehicle. No independent or expert evidence had been submitted by him to support his position nor has any evidence been submitted to call into question the findings of the Provider's engineer/assessor. With this in mind, I note that in line with section 7.10 of the Consumer Protection Code 2012, by email dated 7 July 2017 the Provider informed the Complainant of his entitlement to appoint his own loss assessor in respect of the claim.

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Accordingly, I am satisfied that the Provider was entitled to form the opinion on the basis of the evidence available to it, that the claim made by the Complainant for benefits under the policy, should be declined.

Other elements of the Complainant's dissatisfaction.

I am satisfied from the documentation before me that the Provider has explained why it was necessary to tow the Complainant's vehicle to an appropriate garage facility; this was to ensure that the vehicle could be placed on a ramp in order to carry out a proper inspection. The Complainant has also indicated dissatisfaction with a part which he believes was not missing from the vehicle at the time when it was towed to the Provider's nominated garage and he believes that in the course of being assessed, this part was stolen. The Provider, for its part, has confirmed that having examined this suggestion, it was in a position to confirm from its review that no works or alterations had been completed to the vehicle while at the garage. Whilst it is clear that the oil level bung was missing from the transfer box of the vehicle, there is simply no adequate evidence available to this office on which to form a view as to when and how the bung in question came to be missing.

With respect to the telephone conversations that took place on 3 August 2018 between the parties, in my opinion, the contrary statements provided to the Complainant regarding the status of the vehicle was simply a mistake. The evidence and submissions confirm that this mistake was clarified within minutes by the Provider's call representative and an apology was offered. Further clarification, in the same terms, was given by the Provider to Complainant by email dated 28 August 2017 on foot of the Complainant's email dated 21 August 2017. In those circumstances, I take the view that it would not be appropriate to uphold this element of the complaint, given that the mis-information has long since been admitted by the Provider and in particular, given that it was corrected within a matter of minutes.

Finally, the Provider has not dealt with the Complainant's complaint regarding the rude and insinuating manner which he believes the Provider's call representative spoke to him. I note that there is no recording of this conversation. The Complainant's case is simply that he was spoken to in a rude and insinuating manner. Whilst the Complainant was entitled to be dealt with in a courteous and professional manner, there is an absence of any detail from the Complainant as to precisely what was said as a result of which he became displeased. It is possible that the discussion simply involved a misunderstanding, but in the absence of adequate evidence regarding the precise content of the discussion, there is no basis before the FSPO upon which this element of the Complainant's complaint can be upheld.

Whilst clearly the Complainant is unhappy with the Provider's response to his claim for benefits under the policy, and the discussions which ensued surrounding the Provider's decision to decline the claim, on the basis of the evidence before me and in particular, on the basis of the engineer's report, I take the view that the Provider was entitled to decline the claim and accordingly, there is no evidence before me of any substantial wrongdoing on the part of the Provider. Consequently, this complaint cannot be upheld.

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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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

1 May 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.