An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0254
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Claim handling delays or issues Payment of 3rd party claim
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's complaint relates to the Provider's settlement of a Third Party claim under her Motor Insurance Policy. The complaint is that the Provider incorrectly and unreasonably assessed the Third Party claim.

The Complainant's Case

The Complainant says that despite repeated requests for clarification, the Provider has failed to explain how they have found her liable. The Complainant submits that this decision goes against both the evidence (which she says has been substantiated by the Provider's assessors report) and the Complainant's account of the event. The Complainant states that it is clear that the Provider has decided the Complainant is to blame but seem completely unable to justify that decision. The Complainant says that the only comments that the Provider has made are: *"We have no option but to find [the Complainant] liable"* and *"unfortunately [the Complainant] is liable"*. The Complainant states that these comments, and by association their decision making process, are completely unsubstantiated by any evidence whatsoever.

The Provider's Case

The Provider states the Complainant was insured with the Provider under a Motor Policy. The Complainant was involved in a motor accident on 10th April 2016. A claim was notified to the Provider by the Third Party (TP) driver on the 11th of April 2016, and the TP stated that the Complainant was at fault. The Complainant disputed this version of events, however following discussion with the Provider's claims handler and the Complainant, the Provider wrote to the Complainant advising that the Provider held the Complainant to be responsible for this accident.

The Complainant's Solicitor contacted the provider pointing out the Complainant's version of the accident. The Provider appointed one assessor to examine the Complainant's vehicle and another assessor to examine the TP's vehicle, and both reports were returned to the Provider's claims hander. The Provider's positon is that the Provider's claim handler advised the Complainant's solicitor that in light of the assessor's reports, and following discussions with both the Complainant and the TP on the telephone, the Complainant would be held liable for the accident, and the Provider would have to make an offer to the TP in respect of damage to his vehicle, and this was done. The TP claim was settled in August 2016 with the TP. This settlement was advised to the Complainant's solicitor by the Provider's claims handler. A complaint against the Provider was received by the Provider from the Complainant by way of the Financial Services Ombudsman Bureau (FSOB) in December 2016. No previous complaint had been received by the Provider, the Complainant's broker, nor the Provider's claims department.

The Provider states that a Final Response Letter was immediately issued to the Complainant in December 2016, with a copy forwarded to the FSOB also. This Final Response Letter issued to the Complainant on 13th December 2016 outlined the timeline of events and the reasons why the claim handler came to a decision that the Complainant would be liable for the accident, and the Provider's view was that it had no option but to pay the Third Parties claim.

The Provider's explanation of the conduct complained of by the Complainant:

The Complainant was involved in an accident on 10th of April 2016 and this was notified to the Provider on 11th April 2016 by the Complainant and also by the Third Party involved. The Complainant believed the TP to be at fault, the TP believed the Complainant was at fault. The Provider received a letter from the TPs insurer on 13th of April 2016 holding the Complainant at fault for the accident. The TP contacted the Provider claims hander on 28th April to discuss the circumstances of the accident. Following this call, the claims handler called the Complainant the same day to discuss the circumstances also. Having discussed the circumstances of the accident with both the Complainant and the TP, the claims handler was of the opinion that the Complainant's position would not be an easy one to defend and this was confirmed to her in this call. A letter confirming the Provider's position - that it held the Complainant to be at fault for the accident - was issued to the Complainant on 3rd of May 2016, and she passed a copy of this letter to her solicitor.

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The Complainant's Solicitor contacted the Provider on 6th of May 2016 by telephone and re-stated the Complainant's account of the accident. The Provider appointed its Assessors on 10th of May 2016 to inspect the Complainant's vehicle, and this was received by the Provider on 12th of May 2016. The Provider had appointed an engineer to inspect the TP's vehicle on the 11th of April 2016 and this was received by the Provider on 10th May 2016.

The Provider states that having reviewed both assessor's and the engineer's reports on each of the vehicles and the comments therein, and taking into account the discussions that had taken place between the Complainant and the Provider's claims handler on 11th and 28th of April 2016, and the TP and the Provider's claims handler, the Provider confirmed its opinion that the Complainant's position would be difficult to defend, and the Provider therefore held her to be liable for this accident and would have to look after the TP's claim for damage to the Third Party vehicle.
The Provider submits that having come to an opinion on the liability for this accident, the Provider's claim hander contacted the Complainant's solicitor on 3rd June 2016 by telephone, confirming that the Provider would have to make an offer to the TP in respect of their claim for damage. The Provider says that the solicitor advised he wanted to make some enquires with the Complainant's broker on the impact of a claim to the policy, and he would revert to the claims handler following his investigations. The Provider's position is that the Claims Handler contacted the Complainant's solicitor again on 10th June 2016, confirming that it would have to make an offer to the TP. The TP claim was settled by the Provider on 16th August 2016 and a settlement letter was issued to the Complainant and her solicitor on that date confirming this. The Complainant's solicitor wrote to the Provider on 18th August on receipt of this letter, requesting details of the property damage to the TP's vehicle. The Complainant also sent a letter to the Provider on the same date, confirming that she had passed all correspondence to her solicitor and that she was at a loss to learn that the Provider would settle the claim (the TP's claim was settled by this date), as she had categorically stated that the TP had overtaken her. The Provider states that the Complainant also advised in this letter that she was sending her file to the Insurance Ombudsman. The Provider says that a letter was issued to the Complainant's solicitor on the 24th August 2016, acknowledging their letter of 18th August, again confirming that as the Complainant would be held liable for the accident, the Provider had no option but to settle the TP clam for damage, and a copy of the assessors report on the TP vehicle was enclosed as requested.

The Provider states that on the 12th of December 2016, the Provider was contacted by the FSOB, advising of a complaint it had received from the Complainant. The Provider responded by email to the FSOB the following day — 13th of December 2016, confirming that it had not received a complaint from the Complainant, but on receipt of the FSOB's letter, the Provider's claims manager issued a Final Response Letter to the Complainant that day (13th Dec), and a copy of this was included with its response and explanation to the FSOB. The Final Response Letter outlined the discussions that had taken place with the Complainant, and the notes of the assessor from his report, which the Provider says supported its decision that the Complainant would be held liable for the accident and the Provider had no option

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but to settle the claim from the Third Party. The Provider's positon is that the assessors report supported the Third Party's version of events, that the Complainant would be found liable for the accident. In this letter, the Provider also referenced its

Policy wording, specifically that under General Condition section 9 - "Our Rights in the Event of a Claim", which state:

> *"You must recognise our right to:*
> *a) Take over and deal with the defence or settlement of any claim in your name".*

As regards the evidence of compliance by the Provider with the provisions of the applicable Consumer Protection Code relevant to the complaint; the Provider states that it believes Provisions CPC 7.21 and CPC 1O.9 are applicable to this dispute; Provision CPC 7.21 states:

> *"Where the policyholder who is a consumer is not the beneficiary of the settlement, the policyholder must be advised on paper or other durable medium by the regulated entity at the time that settlement is made of the final outcome of the claim, including the details of the settlement. Where applicable, the policyholder must be informed that the settlement of the claim will affect future insurance contracts of that type".*

In the above regard the Provider states that a letter issued to the Complainant on 16th August 2016, confirming that the Third Party's claim had been settled for €900+. The Provider states that this letter also advised that the settlement of the claim may affect the Complainant's future insurance contracts of this type, including any existing "No Claims Discount".

Provisions CPC 10.9 (a) regarding acknowledging a complaint within 5 business days, and CPCIO.9(d) regarding resolving a complaint within 40 business days; the Provider states that a copy of its Final Response Letter issued to the Complainant on 13th December 2016 —1 day after receipt of the Complainant's complaint notification from the FSOB and the Provider says that this letter was both acknowledgement and final response to the complaint.

The Provider's position is that having taken into account the two versions of how the Third Party's vehicle was damaged, and also having taken into consideration the two assessors reports on each vehicle, its claims handler was of the opinion that the Complainant's position would be difficult to defend, and a decision was arrived at to hold the Complainant liable for this accident. This decision and the reasons for it were advised to the Complainant and her solicitor over the telephone and confirmed in correspondence to both parties. The Provider states that it paid for

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repairs to the Third Party's vehicle and confirmation of this was issued to the Complainant and her solicitor, along with the amount paid to the other party. The Provider says that the Complainant advised that she had passed the Provider's documents to her solicitor and no formal complaint was notified to the Provider by either party.

The Provider submits that the first notice of a complaint was recorded upon receipt of notification from the FSOB on 12th December 2016. The Provider states that it responded immediately to advise that no complaint had been received by the Provider previously, and issued a Final Response to the Complainant the following day. This letter outlined the chronological sequence of events, the decision that was taken in relation to liability for the accident, and the information the Provider relied upon to come to this decision. The letter also confirmed the Provider's right under the Policy to take over and deal with the defence or settlement of any claim in the Policyholders name under General Condition section 9 "Our rights in the event of a claim".

Evidence

Time line of events

- 10th April 2016 — the Complainant was involved in a motor accident with Third Party (TP)
- 11th April 2016— Accident notified to the Provider by TP, who stated that the Complainant was the cause of the accident. The Provider appointed a Motor assessor to examine the TP's vehicle on this date. The accident was notified to the Provider on this date also by the Complainant, and she disputed the TP's account of events. A letter was issued to the Complainant confirming claim reference number and name of the handler allocated to deal with the claim.
- 13th April 2016 – the Provider received a letter from TP's insurer holding the Complainant at fault for the accident.
- 28th April 2016 —TP called the Provider again to discuss the accident and advised they were overtaking the Complainant when she turned right and hit the front passenger door of their vehicle. The Provider's claim handler called the Complainant and discussed circumstances of the accident. The claim handler advised the Complainant following this discussion that her case would not be an easy one to defend.
- 3rd May 2016 — The Provider issued a letter to the Complainant advising that it had received a claim for damages from the TP, and that she would be held liable for the accident. The Complainant was advised that the Provider had no option but to make a settlement offer to the TP.

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- 6th May 2016 — The Complainant's solicitor contacted the Provider and restated the Complainant's account of the accident to the claims handler.
- 10th May 2016 —The Provider appointed different Assessors to inspect the Complainant's vehicle. The assessors report in respect of the TP's vehicle was received from the Assessor of TP vehicle.
- 12th May 2016— the Complainant's vehicle was inspected by an Engineer (appointed by the Provider) at her home and the report following this was sent to the Provider. The assessors report stated:
  "The damage is very slight and I find it difficult to comment on how this damage would have occurred from a third party vehicle". The report also stated "No estimate of repair available and the insured does not wish to claim from her own comprehensive Policy".
- 3rd June 2016 —the claim handler spoke to the Complainant's solicitor and confirmed that following consideration of both accounts of the accident, the Provider would have to make an offer to the TP in respect of damage to their vehicle. The Complainant's solicitor advised he would check with the Complainant's insurance company to see what the implications this would have on her policy, and he would get back to the claim handler. A copy of the Assessors report was e-mailed to the Complainant's solicitor as requested.
- 10th June 2016 — Claim handler is said to have spoken to the Complainant's solicitor again and confirmed the Provider would have to make an offer to the TP.
- 16th August 2016 — The Provider settled the TP claim for €921.92 and a letter confirming this was sent to the Complainant that day confirming this information.
- 18th August 2016 — the Provider's claims handler received a letter from the Complainant's solicitor, requesting details of the property damage to the TPs vehicle.
- 24th August 2016 - Letter issued by claim handler to the Complainant's solicitor, confirming the claim had been settled by the Provider and the Complainant had been held to be at fault for the accident.
- 12th December 2016 — a Complaint was received by the Provider from the Complainant via FSOB.
- 13th December 2016 — Final Response Letter issued to the Complainant by the Provider and copy issued to FSOB by email.
- 6th February 2017 — Letter received from the Complainant by the Provider's Complaint's Officer, accompanied by estimate from Garage, for repairs to her own vehicle. This was passed to the Claims manager. Authorisation was given to Garage by the Provider's Claims Handler, to proceed with repairs to the Complainant's vehicle for the amount of €854.13.

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- 7th February 2017 - Letter to the Complainant from the Provider's Complaints Officer confirming that invoice for repairs has been passed to the Claims Manager.
- 1stMarch 2017 — Letter received by Complaints Officer from the Complainant advising that she has not received confirmation from the Provider that she can go ahead with repairs. This was passed to the Claims manager who contacted the garage that afternoon and requested them to make contact with the Complainant to arrange for repairs to be carried out. Letter issued to the Complainant by Complaints Officer confirming this information.

The Complainant's account of the accident

"There were a number of vehicles on [the road], drivers overtaking as it would appear there was a vehicle, possibly slower in front. By this time, most of the vehicles had overtaken and as I was approaching … there was a clearance – no oncoming traffic, I indicated to over take the black vehicle in front of me, however the driver behind me overtook me. He/they had been on my tail I wold say from …, I frequently used my back windscreen wipers. My speed would have been 75/80 kms. I could not believe that this vehicle did overtake me – they stopped at … I also stopped behind. The driver got out and went straight to the boot of his car, I undid my seat belt, switched off my engine and went on to say to him Excuse me, you must have seen that I was indicating, he replied your weren't looking in your mirror".

11 April 2016 – The Third Party's Insurer to the Complainant's Insurer

"From the information supplied to us it is clear that responsibility rests with your client. Our customer [TP] advised there were 2 vehicles ahead of him when [he] overtook [the Complainant] and, as [TP] did this, [the Complainant] attempted to overtake the vehicle in front of her, when [the Complainant] hit the side of [TP's] vehicle and we will be looking to you for recovery of our outlay".

13/05/2016 – Provider appointed Engineer's report

"Engineer's remarks
The vehicle I inspected with the insured and their home .. on the 12/05/16. The vehicle shows evidence of very light marks to the off side front and rear doors. As per the insured a TP vehicle overtook her while she was in the

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process of overtaking. The damage is very slight and I find it difficult to comment on how this damage would have occurred from a TP vehicle. The off side door mirror is protruding from the door and shows no evidence of damage. The insured advised when both vehicles stopped, the TP was out of the vehicle with the boot of his car open. It may be possible the TP had something protruding from the boot at the time of the impact. I can confirm your insured's car has a door mirror present and the off side indicator is operating. No estimate of repair available and the insured does not wish to claim from her own comprehensive".

03/05/2016 – Letter from the Provider to the Complainant

"We have received a claim for damages to the third party vehicle. Unfortunately you will be held liable for the accident, and we will have no option but to make an offer of settlement to the third party for damages to their vehicle".

03/06/2016 – The Complainant's solicitor to the Provider

"We thank you for the Assessor's report forwarded via email. We note the contents of the assessor's report which stated that as per our client's instructions the third party vehicle overtook her while our Client was in the process of overtaking. It is also noted that the assessor has commented on the possibility of the third party having something in his boot that caused the damage to our client's car and our client did indicate in her initial statement that the third party, …, was at the rear of his vehicle when the parties met. Our client has confirmed again today and reiterates that the version of her recollection of the accident is true and accurate. On that basis can you please revert and confirm how, if at all, our client can be held liable when she states as the driver of a lead vehicle in a convoy of cars, she commenced an overtaking move, checked her rear view mirrors and noticed that the third party car behind her was not indicating to overtake, and she therefore commenced her overtaking manoeuver. [The Complainant] states that after her manoeuvre was executed, the third party vehicle must have executed his manoeuvre and a collision occurred. Even if both manoeuvres were commenced simultaneously our client was the lead vehicle and there is an obligation on the driver to the rear to ensure that the road ahead is safe".

10th June 2016 – Provider's file note: *"Spoke to … Insured's solicitor, told him I would have to make some offer to Third Party. He seems to accept this".*

16/08/2016 – Letter from the Provider to the Complainant

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"We have had no option but to settle the third party claim in the sum of €921.92. We are now closing our file.
Please note that the settlement of any claim under your policy may affect future insurance contracts of this type, including any existing "no Claim Discount" and we recommend that you discuss the implications if any directly with your broker".

18th August 2016 – Complainant to the Provider

"I understand that [solicitor's name] has written to you some months ago, but did not receive a reply…. I am totally at a loss to learn that you may settle the above claim as I have categorically stated that the Third Party male overtook me on … Road"

18th August 2016 – the Complainant's solicitor to the Provider

"We refer to your letter dated the 16th August 2016 addressed to our client. We understood that this matter would not be resolved until you had reverted to our client or the writer. You might forward us details of the property damage to [TP's] car as our client requires sight of same".

24/08/2016 – Letter from the Provider to the Complainant's solicitor

"Unfortunately [the Complainant] would be liable for the accident, and we had no option but to settle the third party claim for the repair damage of [€900+]".

29th August 2016 – The Complainant to the Provider

"Bearing in mind that I am a well established client of your Company, a most careful driver, never making any claim, I wonder if it is possible that you can reason the huge hike in my Policy. Recently there has been a small claim made against me which I vehemently dispute and will in due course take this up with the Insurance Ombudsman. This matter is with my Solicitor who is in contact with [the Provider]".

13 December 2016 – Provider's Final Response Letter to the Complainant

"[Provider representative] spoke to your solicitor on 03/06/2016 advising we would have to make an offer to the third party. Your solicitor advised you would check with [Broker] to see the implication on your policy. He advised he would get back to him.

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[Provider representative] again spoke to your solicitor on the 10/06/2016 advising he would have to make an offer to the third party …

Conclusions
Having reviewed both assessors reports the damage to the third party vehicle is a glancing rear to front impact which support their version of events and you would be found liable for this accident.

I would refer you to your policy wording which states under the heading General Condition section 9 Our Rights in the Event of a Claim.

You must recognise our right to:

a) Take over and deal with the defence or settlement of any claim in your name.

If you wish to proceed with a claim for the damage to your own vehicle, please forward onto an estimate for repairs and I will deal with it immediately. Please note the excess on your policy is €150.
If you are dissatisfied with the final response provided in this letter you may refer your complaint for investigation by the Financial Ombudsman. .."

The Complaint/s for Adjudication

The complaint relates to the settlement of a Third Party claim under the Complainant's Motor Insurance Policy. The complaint is that the Company incorrectly assessed the Third Party's claim.

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

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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 26th July 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.

The Provider made a post Preliminary Decision submission on 19th August 2019. There was no post Preliminary Decision submissions from the Complainant.

In the Provider's post Preliminary Decision submission of 19th August 2019 it states that:

> *"It is our understanding that your office is proposing to uphold a complaint that was not raised by the Complainant, nor her representative, in this instance.*
>
> *[The Financial Services and Pensions Ombudsman has] determined that "the conduct complained of was improper", as it is [his] belief that had the Company contacted the Complainant's representative prior to settling the Third Party's claim, it may have been that there could have been further talks between the parties that* ***may*** *(Company's emphasis) have led to matters being settled outside of the insurance arrangement"".*

The Provider's positon is that this was not the case — and that this, the Provider says, is the *"Error of Fact"* which it wishes to raise. The Provider states that the FSPO believes that had this contact taken place, the outcome in respect of the Provider's decision on the Third Party's claim may have been different. The Provider says that it wishes to confirm this is not correct, and that the decision to settle the Third Party claim, would not have been different, or in any way altered, had a further call taken place with the Complainant's representative, prior to settlement.

The Provider further states:

> *"As you will note from Complainants letter to your office of 28 November 2016, the Complainant held the Third Party fully responsible for this accident, in fact, she alleges this was "insurance fraud" on his part. As this was the Complainant's position from the date she was advised of the Third Parties claim, we do not believe there are any circumstances under which the Complainant would have settled the Third Party's claim "outside the insurance arrangement"".*

The Provider states that the Complainants solicitor was to contact the Complainant's broker regarding the affect this claim would have on her Policy, and come back to the Claims handler. The Provider submits that the Complainant's representative was of the

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opinion that the claim would not be settled until he reverted to the claims handler. The Provider say however this was not the understanding of its claims handler, who was clear that he would proceed to make an offer to the Third Party. The Provider's positon is that the Complainant's representative's discussion with the broker regarding the policy was an entirely separate matter - completely unrelated to the handling of the claim. The Provider states that the misunderstanding was on the part of the Complainant's representative, not on the part of the Provider's claims handler - and that the Provider should not be penalised for this.

The Provider concludes that:

> "We are sorry that the Complainant's representative was of the impression that a further discussion would take place before the Company made our final decision in respect of liability, but this was not the Company's understanding".

Following the consideration of this additional submission, the final determination of this office is set out below.

Analysis

The complaint relates to the basis upon which the Provider dealt with the Third Party claim. While I am mindful of the Complainant's assertions that she was not at fault for the accident, it is not within the remit of this Office to assess or apportion liability to any party in relation to road traffic matters or an incident that is alleged to have led to a claim for damages.

It is clear from the policy wording that once an incident has occurred the Complainant was obliged to provide the details of the incident to the Provider. Thereafter, the Provider, as Insurer was entitled to investigate the circumstances of the incident and provide the policy cover for its policyholder and defend or settle any third party claim.

It is normal for motor insurance policies to contain a clause permitting the insurer to take over and either contest or settle a claim on behalf of the insured. This is known as a *'subrogation clause'*. In the Complainant's policy, the subrogation clause can be found within the *general conditions* of the policy.

Under General Condition section 9 - *"Our Rights in the Event of a Claim"*, it states:

> *"You must recognise our right to:*
> *a) Take over and deal with the defence or settlement of any claim in your name".*

Therefore, the Provider was entitled to take over and settle the claim under the Complainant's policy on her behalf.

It is apparent from the chronology set out above that the Provider made the appropriate enquiries to assess the claim.

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The Complainant was involved in an accident with another vehicle where both parties held the other at fault. With such cases, for the Provider to contest liability, there would have to be viable grounds for a recovery of any outlay by the Provider from a Third Party / the Third Party's Insurer. Here the Provider considered that the Complainant would be held liable for the accident, and it considered that it had no option but to make an offer of settlement to the Third Party for damages to the Third Party vehicle.

I accept that the Provider has acted within its contractual rights as set out in the insurance policy in question.

That said, the evidence also shows that the Complainant's representative wanted to make enquiries (prior to any claim settlement) about the effect that the claim might have on the Complainant's insurance.

In a telephone call of 3rd June 2016 between the Provider's Claim Handler and the Complainant's Solicitor, it was agreed that the Solicitor would make those enquiries and get back to the Claim Handler. The Claim Handler ended the call as follows: *"Come back to me again .. talk to you again".*

The evidence shows that the Complainant's solicitor followed up this telephone call with a letter of the same date (3rd June 2016) acknowledging receipt of the Assessor's report that he had requested in the telephone call. In the follow up letter the Solicitor also requested that the Claim Handler: *"revert and confirm how, if at all, our client can be held liable".* It is of note that at this point, new information was before the Complainant's representative and the query followed the examination by the representative of that information.

It is the Provider's position that its Claim Handler's file note states of 10th June 2016: *"Spoke to … Insured's solicitor, told him I would have to make some offer to Third Party. He seems to accept this".*

The Provider advised the Complainant and her solicitor on 16th August 2016 that the Third Party claim had been paid out by the Provider. The Complainant's solicitor then wrote to the Provider on 18th August 2016 stating that: *"We understood that this matter would not be resolved until you had reverted to our client or the writer".* The Complainant also wrote to the Provider on 18th August 2016 stating*: "I understand that [solicitor] has written to you some months ago, but did not receive a reply".*

There is no evidence on file indicating a response from the Provider to the Complainant's solicitor's letter of 3rd June 2016.

As stated above the Provider's positon is that there was another telephone contact with the Complainant's solicitor on 10th June 2016. However, following our request for a recording of this telephone call the Provider advised that its IT department were unable to locate the call of 10th June 2016. In the same request for information, this office sought the recording for 3rd June 2016 which was duly provided.

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On the balance of the evidence submitted, I accept that there was an agreement between the parties that further contact was to happen before the Provider made its final decision on the claim, and that this communication between the parties did not happen. The evidence of a further contact between the parties is not available for the period between 3rd June 2016, when the Complainant's solicitor spoke and wrote to the Claim Handler, and the 16th August 2016 when the Provider advised that it had settled the Third Party claim. I consider that it was important that the Complainant and her solicitor were communicated with prior to the decision to settle the Third Party claim, as it may have been that there could have been further talks between the parties that may have led to matters being settled outside of the insurance arrangement.

As regards the Provider's post Preliminary Decision submission of 19th August 2019, I am satisfied that the Complainant's complaint submissions do reference the contacts that were made between the Provider and the Complainant's representative prior to the claim settlement. I also accept that there was an expectation of a further contact from the Provider prior to any claim settlement. The Provider's position is that there was nothing that would have changed the Provider's intended claim decision had a further contact taken place and states that based upon the position the Complainant took regarding the claim it did: *"not believe that there are any circumstances under which the Complainant would have settled the Third Party's claim "outside the insurance arrangement".*

I do consider that this is a disingenuous comment from the Provider, as I consider that armed with all the information, the Complainant (and possibly with her representative's advice) may have come to a realisation that faced with a claim affecting the insurance into the future, that some agreement could have been sought with the Third Party on the payment in respect of the damage, outside the insurance arrangement. It is clear that the Complainant's representative did want further information to assess the position, before the Provider took the step of settling the claim. What would have happened after (by either the Provider, the Complainant and/or her representative and the Third Party), is, I accept, is only supposition. However, without the evidence of the Provider making that final contact on 10th June 2016, I remain of the view that there was a fall down in the service the Complainant could reasonably have expected from the Provider in relation to its claim communications. It is also noted that it took over two months from the date the Provider says it last communicated with the Complainant's solicitor (10th June 2016) until it advised the Complainant (on 16th August 2016) of the actual settlement of the claim.

While I accept that the above is the positon that prevailed, in particular that the Provider was acting within its rights in deciding whether to settle or fight the Third Party claim, I do consider that it was important that once it was agreed / intimated that a communication was to happen on the matter before any settlement was made, that the Provider would have followed through on this, and that there would be some evidence of such contact having been made.

I cannot interfere with the Provider's decision to settle the Third Party claim or direct the undoing of the effect of the claim settlement on the Complainant's insurance. In that regard, it is noted that the Complainant's own claim in respect of the damage to her own car was dealt with by the Provider and this equally would have affected her insurance. On

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that basis I consider that the more appropriate remedy for the Provider's breakdown in communication is that a compensatory payment should be made to the Complainant.

Therefore, it is my Legally Binding Decision that the complaint is partially upheld and I direct the compensatory payment of €1,000 (one thousand euro).

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)(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 payment to the Complainant in the sum of €1,000, 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

29th August 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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.