An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0453
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Claim handling delays or issues Delayed or inadequate communication Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a motor insurance policy.

The Complainant's Case

The Complainant says that on **8 May 2014** her car was involved in an accident which resulted in accidental damage, that led to her vehicle being written off. The Complainant says that the cause of the damage to her car was the collapse of a derelict building adjacent to where her vehicle had been parked.

The documentation made available by the Complainant to this office records that on the date of the damage to her vehicle, having parked it at the location in question, she was approached by an individual who drew her attention to something unusual happening outside on the road. When she attempted to return to her vehicle she discovered that the area had been sealed off by the Gardaí. It seems that an un-named Garda advised the Complainant that a derelict building had been demolished, in the course of which her car had been badly damaged.

It also appears that the Complainant was given contact details, including details of an insurance broker, by a third party who presented himself as Mr. S. and appeared to accept liability. Subsequently, she met the Provider's insurance assessor and it appears that the vehicle was categorised as a "write-off". The Complainant suffered the loss of her vehicle together with the value of the car tax which had been paid for a future period, and belongings within the vehicle.

The Complainant says that although she contacted the Provider to notify it of the accident she indicated that she did not wish to make a claim for the damage to her vehicle against her own policy as *“this would have affected…[her]… no claims bonus and premium”.* However, the Complainant says that her circumstances changed and that “… *in **July 2014** I had no other option but to claim from my own policy”.*

The Complainant says that she was advised to:

> *“go with [her] own policy…and then get a full recovery and this way it would not affect [her] premium”.*

The Complainant says that from the time of the incident she has been actively investigating the claim and trying to identify the third party responsible. She says that she has identified and communicated the details of the third party’s insurance along with the name of the property owner (obtained from Dublin City Council) to the Provider and “*provided everything possible to [the Provider]”* to allow a recovery to be progressed.

The Complainant says that she is:

> *“…unhappy that my claim was not fully recovered and defended by [the Provider], my no claims bonus was stepped back at the time of the incident and I have paid a higher premium every year since”.*

The Provider’s Case

The Provider says that to date it has been unable to make a recovery in respect of its outlay for the claim. It says that the Complainant was advised on **8 May 2014** that there could be difficulty with proving negligence against a property insurer, and she was also advised on several occasions by various claims handlers, that there was no guarantee of a successful recovery in the event that she claimed on her comprehensive policy and asked the Provider to pursue recovery on her behalf.

The Provider says that indeed the Complainant ultimately made a decision to pursue a claim on her policy, because she was unable herself to obtain a recovery from the third party through her solicitors.

The Provider also says that in every case, the resources committed to seeking recovery must be commensurate with the loss sustained. It also says that there is no guarantee of recovery in any case; in this instance, the investigations pursued by its in-house legal representatives and also by 2 independent solicitors and counsel, instructed directly by the Complainant, did not give rise to the location of the owner of the building, or to an insurance provider to indemnify for the loss or indeed any other viable means of recovering the outlay in question.

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The Provider points out that if it had been possible to identify an appropriate third party, it may have considered issuing proceedings. It clarifies however, that the mere issue of proceedings would incur significant outlay and indeed advancing those proceedings would have exposed the Provider to incurring multiples of the amount already spent on the claim.

The Provider says that it explained to the Complainant that if she pursued a claim under her policy, this would affect her premium, as required by the CPC. It points in that regard to the audio evidence of telephone discussions on **8 May 2014** and **29 May 2014**. Ultimately, on **12 June 2014**, the Complainant decided to pursue a claim on her own policy and she was told at that time that this would affect her no claims bonus and she should speak to her broker to ascertain the full extent.

The Provider points out that the Complainant reverted to it having spoken with a broker and decided to pursue a claim on her policy. The Provider's note on the Complainant's file confirms that she had made a decision to claim comprehensively and she was advised that her no claims bonus would not be protected, but the Provider would try to recover "*but can't confirm 100%*". The Provider is satisfied accordingly, that the Complainant was fully aware of the terms upon which she was pursuing a claim on her policy and that there was no guarantee of a successful recovery.

The Provider also confirmed in its Final Response Letter that in its recovery investigations for the claim it had:

> "*written to the insurer of the building who confirmed that there was no insurance cover in place at the date of the loss…*"

and that it had:

> "*…sent several recovery letters to a potential owner of the building however we have not received a reply, we feel that we have exhausted our options*".

<u>The Complaint for Adjudication</u>

This complaint is that the Provider failed to recover its outlay for the Complainant's claim, from the owner or insurer of the building, the demolition of which caused damage to the Complainant's vehicle.

The Complainant is not satisfied that the Provider has investigated the matter fully, adhered to its Terms of Business or communicated adequately with her throughout these events. She wants the Provider to:

- reinstate her No Claims Bonus,
- refund the additional premium she paid to the Provider, due to the reduction in her No Claims Bonus,
- remove the Accidental Damage claim from her driving history,
- compensate her for "*the additional expenses, loss of savings and stress and upset*",
- refund the cost of fees for professional advice and representation incurred to progress the complaint.

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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 **20 November 2020**, 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, within the period permitted, the final determination of this office is set out below.

Chronology of Events

- **6 November 2013:** The Complainant incepted a car insurance policy with the Provider.

- **8 May 2014:** The Complainant's car was involved in an incident which resulted in accidental damage that led to the vehicle being written off.

- **8 May 2014:** The Complainant telephoned the Provider in relation to the incident and wanted to know what the next steps would be. The Complainant said that her vehicle was very badly damaged and told the Provider that she had spoken to the owner of the building and he confirmed that it was insured and he would pass his details on to the Complainant later that day. The Complainant asked the Provider about vehicle hire and was told that she would need to decide whether or not she wanted to claim directly, or from the Third-Party Insurer and whether or not the Third-Party Insurer would accept liability. The Complainant told the Provider that she would think about it and revert.

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- **8 May 2014:** The Complainant telephoned the Provider and gave it the Third-Party's details.

- **29 May 2014:** The Complainant telephoned the Provider for an update and was told that there was not a lot happening with the claim as the Third-Party Insurer was still investigating the cause of the incident. The Complainant told the Provider that she had a solicitor pursuing the claim on her behalf and she was told that if she was not claiming compensation it would close the file but if she changed her mind it would re-open it. The Complainant thought her vehicle was disposed of. The Provider advised the Complainant that she would have to organise this with the garage herself.

- **12 June 2014:** The Complainant telephoned the Provider and asked how her no claims bonus would be affected if she claimed. The Provider said that she would have to speak to her Broker in relation to that and told her that if she decided to claim she should let them know as there was no update from the Third-Party Insurer.

- **12 June 2014:** The Complainant telephoned the Provider and said that her Broker told her if she claimed it would affect her no claims bonus and that half her bonus would be affected. The Complainant told the Provider she was still undecided about claiming and advised that her car had been picked up on the 11 June 2014 and was going to be destroyed. The Complainant told the Provider that she was paid €750.00 for the car and had to give the logbook. The Provider advised the Complainant that she may not have any option of claiming anymore, and that she would have to find out where the car was and the Provider would speak to its engineers. The Provider advised the Complainant that if she was claiming, it would pick up the car and issue the market value to the Complainant. The Provider further said that once the figures were agreed it would then dispose of the vehicle itself.

- **12 June 2014:** The Complainant contacted the Provider and asked if it covered Solicitor's fees, but the answer was no. The Complainant told the Provider that she had spoken with her solicitors and they could contact the Provider to discuss recovery if the Provider wanted to. The Provider told the Complainant that if her solicitor became involved, the Provider would no longer be able to deal with the Complainant directly. She told the Provider that she wanted the Provider to assess the car as soon as possible and she was asked if she was going to claim. The Complainant advised that she thought so. The Provider told the Complainant that it needed to know 100% if she was going to claim so the Provider could start the process. It was going to call her later to confirm whether or not she was going to claim.

- **12 June 2014:** The Provider called the Complainant and told her that it would need the Vehicle Licensing Certificate and the NCT in order to determine the pre-accident value. It advised the Complainant that the salvage would be deducted as well as the excess. The Complainant said that she was happy with this and told the Provider that she would email it in, but that she hadn't yet decided to claim under her policy.

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- **12 June 2014:** The Complainant telephoned the Provider and told it that she would pursue a claim. The Provider reminded the Complainant that her no claims bonus would not be protected and told her that it would try to recover but couldn't guarantee this. The Complainant queried if the €750.00 would be deducted and was told that the engineer would confirm this. The Provider told the Complainant that the amount deducted would be the amount the Provider would have got had it scrapped the Complainant's vehicle with its own scrappage yard. The Provider took the Third-Party's Insurance details and told the Complainant that it would be in touch.

- **November 2014:** The Complainant's policy was due for renewal.

- **July 2014:** The Complainant made a claim on her policy.

- **April 2016:** The Complainant sent in a complaint to the Provider.

- **29 June 2018:** The Provider issued its Final Response Letter to the Complainant.

- **5 November 2018:** The Complainant's policy with the Provider for her car insurance lapsed.

Policy Terms and Conditions

I note from the policy document that the General Conditions provide:

> ***3 Handling claims against you***
> *We **may** take over and deal with the defence or settlement of any claim in the name of the insured driver.*

and

> ***9 Getting our claims costs back***
> *If we think someone else is at fault for a claim that we pay, we may follow up that claim in the name of anyone claiming cover under this policy to get back the payments that we make. Anyone making a claim under this policy must give us any help and information that we need. If, under the law of any country in which you are covered by this policy, we have to pay a claim which we would not normally have paid, we may get that payment back from you or from the person responsible.*

Analysis

This complaint arises from a motor insurance policy that was held by the Complainant with the Provider during 2014, when the Complainant's car was damaged beyond repair.

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The complainant says in that regard:

> *"I was very upset and stressed over this whole situation and in my opinion [the Provider] did nothing to hold up the Duty of care to seek and investigate into this for me, I feel I always had to contact them they never updated me with anything. Why should I be held responsible to look after the claim and have to then pay money for this if it was not my doing? ....*
>
> *I myself had to gather all information and organise to get car removed from the salvage yard, get police reports and contact third parties insurance, I provided everything possible to [the Provider] and I feel this was not investigated by them at all so, why do I pay [the Provider] all this money for them not to even help me when an accident happens and particular an accident that was not my fault and totally out of my hands?".*

In the Provider's Final Response Letter to the Complainant dated **29 June 2018**, I note that it advised:

> *"…We have exhausted all of our means of recovery in this case. We have previously written to the Insurer of the building who confirmed that there was no Insurance cover in place at the date of loss and therefore could not accept liability for the damages.*
>
> *We have made several attempts to source the owner of the building and sought advice from our legal department on potential options of recovery from the owner; unfortunately to date we have not been successful in identifying the owner.*
>
> *We have sent several recovery letters to a potential owner of the building however we have not received a reply, we feel that we have exhausted our options. If we received a response from the potential owner our Legal Department have advised we may find it difficult to prove the owner of the building was negligent. We apologise that our decision could not be more favourable to you."*

I note from the Complainant's submissions to this Office that she says:

> *"I had no other option but to claim from my policy as I needed a car but [the Provider] advised that they should be able to make a full recovery as they were going to follow up on the case"*

I note in that regard that the Complainant is unhappy that the Provider did not recover its outlay from the owner or insurer of the building. The Provider says however that the Complainant's assertion that it advised her that it should be able to make a full recovery, is not supported by the contemporaneous file notes.

In considering the evidence submitted to this Office, I note from the Provider's File Notes the following in relation to a telephone call with the Complainant on 1**2 June 2014**:

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> *"Call from ph she will now claim comp, adv xs, adv bonus not protected, adv will try recover* ***cant confirm 100%"*** *(sic)*
>
> [my emphasis]

Having considered the evidence provided to this Office, I am satisfied that the Provider told the Complainant that it would try and make a recovery but this was not guaranteed as per the notes recorded on 12 June 2014. I further note that the terms and conditions of the motor policy make clear that the Provider *"may"* take over a claim in the name of the insured driver and it "*may*" follow up a claim in the name of the insured. There is no certainty however, that it will do so. Therefore, the terms and conditions, make clear that such action is at the discretion of the Provider.

I further note in the Complainant's submissions to this Office that she:

> *"was not happy…as the value of the car was higher"*

The Provider addressed this in its submissions and said that:

> *"The Complainant did not accept the pre-accident value or the salvage value that was assessed by [the Provider's] motor assessors being €4,500 and €1,350 respectively. The Policyholder was not happy that she sold the salvage for €750 and the value of the salvage was assessed by [the Provider's] motor assessors as being €1,350. The motor assessor obtained confirmation that the Policyholder's vehicle was previously advertised for sale online in the sum of €4,500 on 24th July 2012 and this was the amount that [the Provider] had already offered for the pre-accident value. The Policyholder advised [the Provider] that she had purchased the vehicle for €5,000 after it was advertised on* [online site] *around the same time that it was advertised on* [online site] *for €4,500. In the ordinary course a car will depreciate in value over 2 years so it is difficult to understand why the Policyholder considers her vehicle had either maintained its value or increased in value. When presented with the evidence of the advertisement on* [online site] *the Policyholder accepted the pre-accident value offered by [the Provider]. [The Provider] agreed to allow the salvage value of €750 and not the amount assessed by [the Provider's] loss assessor of €1,350. Accordingly, a net settlement of €3,500 was agreed being pre-accident value of €4,500 less the salvage value as sold by the Policyholder less the excess policy of €250. The Complainant still asserts that the value of her car was higher than the price that it was advertised for sale online two years earlier. The Complainant should furnish evidence of the amount that she paid for the vehicle"*.

Similarly, I note from the file notes, that two telephone calls took place between the Complainant and the Provider on **12 June 2014**. During the first call at **11:47:06,** the Complainant told the Provider that she sold her car for scrappage and that someone gave her €750 for it. The Provider told the Complainant that if she was claiming, the Provider would be picking up the car and issuing the market value to the Complainant. The Provider told the Complainant that once the figures were agreed, it would dispose of the vehicle itself.

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During the second call at **14:38:40**, the Complainant told the Provider that she had sold the car for scrappage for €750. The Provider told the Complainant that it would carry out a valuation on the vehicle and because she sold the vehicle, the Provider would give a sale value which would be reduced. The Complainant asked the Provider if it would be the €750 that would be deducted and the Provider said that its engineer would confirm and it would be the amount the Provider would have got, had it scrapped the vehicle with its scrappage yard.

I am satisfied that the Provider told the Complainant that it *"may"* make a recovery against the Third Party, but that it was not guaranteed, as stated clearly in the policy terms and conditions. The Complainant has submitted that:

> *"…in my opinion [the Provider] did nothing to hold up there Duty of Care to seek and investigate into this for me, I fell I always had to contact them they never updated me with anything. Why should I be held responsible to look after the claim and have to then pay more money for this if it was not my doing?"*

She further submits:

> *"I myself had to gather all information and organise to get car removed from salvage yard, get police reports and contact third parties insurance, I provided everything possible to [the Provider] and I fell this was not investigated by them at all so, why do I pay [the Provider] all this money for them to not even help me when an accident happens and particular an accident that was not my fault and totally out of my hands?".*

The Complainant is not satisfied that the Provider has investigated the matter fully or adhered to its Terms of Business. The Provider has said that:

> *"It is difficult to see what more the provider could have done in this case. The claim was for an amount that was less than €4,000….*
> *….*
> *In summary, the kind of recovery action suggested by the Policyholder could easily have incurred many thousands of euro, with no guarantee of a successful outcome. The provider has the necessary due skill, care and diligence not to spend many thousands of euro in hoping to recover a sum of less than €4,000. There was no economic or commercial reality to engaging in such behaviour. The Policyholder would not spend her own money so unwisely and neither would any prudent insurer".*

The Provider has shared its own Legal Opinion of **7 February 2020,** which says:

> *"There is no legal obligation on any insurance company to pursue actions as a right in the policy booklet will always contain a discretion in favour of the insurance company. Most prudent insurance companies will naturally seek recovery where it is viable and economical to do so and will not do so when it is not".*

The Complainant says in her submissions to this Office, that:

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> *I felt I always had to contact them they never updated me on anything…I have endured a lot of stress and loss of savings due to not having a vehicle to get me to doctor and hospital appointments which I needed to attend due to an illness, then having to pay a ridiculous higher premium for a claim that [the Provider] should have recovered.*

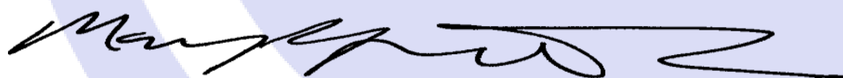
I have considered the file notes and I am satisfied that the Provider communicated adequately with the Complainant throughout these events. I am satisfied that the Complainant was very clearly advised that in making a claim it would affect her no claims bonus and her premium. She was also advised that recovery against the Third-Party Insurer was not guaranteed, and having received that information, she then made an informed decision that she would pursue a claim under her own motor policy.

I have no doubt that these events have been stressful for the Complainant and have caused tremendous inconvenience to her. Having considered all of the evidence and submissions of both parties in detail however, I take the view that the Provider has acted appropriately, within the terms and conditions of the policy and it is not responsible for the inconvenience which the Complainant has suffered. As I have not been supplied with any evidence that the Provider acted unfairly, unreasonably or improperly, I do not consider it reasonable to uphold this complaint, for the reasons set out above.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

11 December 2020

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.