



<u>Decision Ref:</u>	2021-0011
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a Car Insurance Policy.

The Complainant's Case

The Complainant says that his car was damaged in an accident on **11 August 2019** and that he reported this to the Provider the following day, on **12 August 2019**. The Complainant made a statement to the Provider's investigator that the accident occurred due to:

"...a fox ran from the gap from right to left. I swerved to the right to avoid him. I'd say I wasn't doing 40km at the time. I clipped the bank on the right and flipped onto the side and over to the other side of the road. It finished on its left side against the bank on the left of the road. The roads were dry, it wasn't raining. I had my seatbelt on".

The Complainant says that as a result of the accident, the Provider declared his vehicle a "Category B write off". The Complainant further says that he was driving on his own when the accident occurred, and that there was "no personal injury and no witness".

The Complainant made a claim on his policy which the Provider declined, on the basis that it was "unable to reconcile the incident as described".

The Provider's Case

The Provider says that it appointed a claims investigator who states in his report that:

“...the damage to the vehicle does not show any mud or soil or grasses attaching and I would have expected that to be the case given the locus that was shown to me. The damage on the insured’s vehicle is predominately on the left with the left front taking a significant impact yet the insured is saying that the first impact was on the right throwing the car on to its side. The insured said that the vehicle didn’t go on its roof yet there is damage to the roof”.

In the Provider’s Engineer’s Report dated **12 August 2019** it states:

“the evidence notes clearly show that the driver’s seat belt was not in use at the time of the impact”.

The Provider in its Final Response Letter dated **13 September 2019** refers to the Motor Assessor’s findings and states that:

“Based on their findings, we are unable to reconcile the incident as described. Therefore, we will not be in a position to settle this claim at present”.

The Provider has supplied details of a Chronology of Events as follows:-

- **12 August 2019:** The Complainant notified the Provider of his claim. The Provider appointed a Motor Assessor.
- **13 August 2019:** The Motor Assessor visited at the Complainant’s address and inspected the Vehicle. The Motor Assessor sent a report to the Provider, which appointed a Claims Investigator.
- **16 August 2019:** The Provider arranged a car hire for the Complainant.
- **19 August 2019:** The Claims Investigator called to the Complainant’s address and visited the crash site identified by the Complainant, and took a statement from him. The Motor Assessor sent a further report to the Provider along with quotes for a replacement vehicle.
- **22 August 2019:** The Claims handler attempted to contact the Complainant to obtain further information from the Complainant.
- **26 August 2019:** The Claims handler made contact with the Complainant and requested his call log. The Complainant told the Claims Handler that he did not have his phone on him on the morning of the accident and did not make a call.
- **27 August 2019:** The Provider received the Claims Investigator’s report.

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- **5 September 2019:** Motor Assessor informed the Provider that he did not believe the damage was consistent with the location of the crash.
- **12 September 2019:** The Provider called the Complainant and informed him that it would not be proceeding with the claim.
- **13 September 2019:** The Provider issued the Complainant with a letter informing him that it would not be proceeding with the claim.
- **19 September 2019:** The Provider issued its Declinature Letter to the Complainant.
- **24 September 2019:** The Provider received a letter form the Complainant's solicitor.
- **27 September 2019:** The Provider paid the invoice for the Complainant's 14 day car hire.
- **27 September 2019:** The Complainant contacted the Provider requesting a letter that the vehicle was a Category B – Write off.
- **30 September 2019:** The Provider received a letter from the Complainant's solicitor.
- **15 October 2019:** The Claims Handler replied to the Complainant's solicitor.
- **13 March 2020:** Complaint made to the FSPO.

The Complaint for Adjudication

The Complaint is that the Provider wrongfully declined to pay the Complainant's claim under his policy, for the cost of damage to his vehicle.

The Complainant wants the Provider to pay him the full value of his vehicle.

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.

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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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Analysis

The Complainant maintains that the Provider wrongfully declined to pay his claim under his policy, for recovery of the cost of damage to his vehicle. In its submissions to this Office the Provider has stated that it declined the Complainant's claim because:

"The Complainant has failed to co-operate with us in order to validate their (sic) claim. We were unable to reconcile the incident as notified to us."

In declining the claim, the Provider has relied on the following provision within the "General Conditions of the Policy"; under the heading:-

"3. Your obligations in the event of a claim or prosecution

....

d. You shall give us all information and assistance as and whenever we may require".

The Provider has stated that:

"The Complainant did not furnish us with the information required. During the notification call he advised after the incident he rang the house and got his wife and son to bring the tractor down to tow the vehicle home. To our investigator he gave a signed statement advising again that he rang the house after the accident. When we requested his call logs his version of events changed and he advised that on that early Sunday morning his son was working in the field next to where the alleged accident occurred and he called out to him to bring the tractor and his son rang home to tell the complainant's wife.

When advised that, we listened to the notification call and confirm that he said he rang home after the incident his version changed again to he "ran" home. 3 different versions of events".

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I am satisfied that the Provider's submission above, is borne out by the audio evidence supplied to this office.

In addition, I note the following from the Motor Engineer's Report on page 2:

"Please note that at the time of the inspection I spoke with the insured and asked had he his seat belt on at the time of the incident and he was adamant that he had the belt on, the evidence noted clearly shows that the driver's seat belt was not in use at the time of impact."

Furthermore, I note the following from the Investigator's Report dated **26 August 2019**:

"I called to the nearest house to the alleged location and spoke to the householder there and he told me that he was not aware of any accident at that location. He further stated that he walked that road daily without fail and he would have seen signs of an accident. He stated that there was an accident further back the road towards [location] a year ago or so and it was obvious that there had been one. He felt the marks on the road side that I talked to him about were from tractors and agri vehicles entering and exiting the fields."

The Investigator's Report goes on to conclude that:

"...I also told him that he would need the call log on his phone showing that he did make the call to the house at the time and date and this would prove his claim. I told him that this was an important aspect of the claim and he should do it straight away."

The damage to the vehicle does not show any mud or soil or grasses attaching and I would have expected that to have been the case given the locus that was shown to me.

The damage on the insured vehicle is predominately on the left with the left front taking a significant impact yet the insured is saying that the first impact was on the right throwing the car to the left and on its side.

When I look at the damage on the right side of the car it should have taken the first and more serious impact as any speed would be reduced as a result of that impact. I don't see any sign of debris from the car or what I would consider consistent marks on the roadway.

The insured said that the vehicle didn't go on its roof yet there is damage to the roof.

There are no marks on the road surface that I would consider consistent with the damage to the insured vehicle.

The locus as mentioned is not a road you could speed on and one small error could result in an accident as described, but on my view not this one.

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The insured insists he wore a seat belt but the engineer says in his report that the seat belt wasn't worn at impact

....

It's my view that the accident did not happen as described."

I have examined the Verification Statement signed by the Complainant and I note that he stated that:

"I had my seatbelt on. I called my house and got my wife and son [son's name] to come down with the tractor. I put the car onto two chains and lifted it up with the front loader. I pushed it up the road ahead of me."

I note that when the claim was received, the Provider discussed the claim with the Complainant and appointed a Motor Engineer to carry out an inspection. I also note from the evidence, that the Provider supplied the Complainant with a hired car for a 14 day period. The Provider also gave the Complainant an opportunity to submit the call logs, in order for the Provider to process the claim. He did not do so however.

On the basis of the Motor Assessor's report and the absence of any call log from the Complainant to verify the events which the Complainant had set out as the basis for his claim under the policy, I am satisfied that the Provider did not act in an unreasonable manner, by forming the opinion that it was not appropriate to proceed further with the claim.

I am also satisfied that the Provider met its obligations under the Consumer Protection Code and, in particular, provisions 7.7, 7.9, 7.19 and 7.20. The Provider in its submissions to this Office has confirmed in that regard as follows:

"7.7 - Records of all conversations with the claims handler was maintained and also the customer was updated of any developments within ten business days off the development and declinature was issued to the customer.

7.9 - During the notification call the complainant was advised that the motor assessor was being appointed - the chosen Motor Assessor would contact the customer and make an appointment and would furnish the customer with their contact details. I have confirmation that this took place as normal. Please see email enclosed in documentation.

7.19 – Declinature letter was issued to the customer explaining the reasons for declinature issued on 19 September 2019.

7.20 – We do not have an internal appeals process however in the declinature letter the Complainant was advised of their option to refer their dissatisfaction to arbitration or to the office of the Financial Services and Pensions Ombudsman".

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Since the Preliminary Decision of this Office was issued to the parties, I note that the Complainant has pointed out that he is unhappy with the Provider's suggestion that the accident did not take place in the area he described. Nevertheless, on the basis of the evidence made available by the parties, I am satisfied that the Provider's refusal to admit the claim for payment was reasonable in the circumstances and I do not consider it appropriate to 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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 January 2021

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.