An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0104
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Claim handling delays or issues Delayed or inadequate communication Disagreement regarding Pre-accident value provided
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Complainant's car insurance policy with the Provider.

The Complainant's Case

The Complainant submits that following a car accident on **8 February 2020**, his car was inspected by the Provider's engineer who deemed the car to be a 'write-off' and the Provider subsequently valued the Complainant's car at €500.

The Complainant states that his car should be valued at €900. The Complainant states that he sent the Provider examples of similar cars and asked it to reconsider the valuation of his car but the Provider *"would not budge"*.

The Complainant states that he does *"not believe* [he has] *been represented in* [his] *best interests by the Provider"*.

By way of email dated **20 July 2020**, the Complainant submitted a letter from a car sales manager who stated that he had been servicing and maintaining the Complainant's vehicle for a number of years and it was his professional opinion at the time of the accident that the valuation of the vehicle was approximately €1,300.

By way of emails dated **22/23 July 2020**, the Complainant send photos of the other vehicle involved in the accident and the locus of the accident as well as dashcam footage in support of the contention that the damage to the vehicles was minimal.

The Complainant made a further submission to this Office dated **2 October 2020** wherein he states that he has reached the conclusion that the *"the engineer didn't discuss with me a value on the day he never mentioned money only that it was a category b write off and I would never be able to drive it again"*.

The Complainant made a further submission to this Office dated **5 October 2020**. In these submissions the Complainant acknowledges that he disclosed a previous incident to the Provider's engineer wherein his car was written off and he had it repaired. He states that he disputes the claim from the Provider's engineer that the car was *"old and shabby inside"* and states that it was *"immaculate hardly ever used leather upholstery"*. The Complainant states that he made the decision to accept the €500 valuation because it was the *"only choice"* he could make. He states that if the engineer had not categorised his car as a B write-off, then maybe he could have kept it and seen if he could repair it.

The Complainant wants the Provider to:

- Explain to him how it arrived at the valuation figure for his car;

- Compensate him for the difference between the €500 valuation the Provider ascribed to the car and the €900-€1,300 the Complainant states the car should have been valued at;

- Refund him the cost of insurance premium *"unused since the accident"*, being *"a quarter of €515"*.

The Provider's Case

The Provider in its Final Response Letter dated **12 May 2020** submits that the Providers' Assessor had deemed the Complainant's vehicle a *"Category B Write Off"* and placed a pre-accident value of €500 on the vehicle. The Provider states that the Complainant was advised on **12 February 2020** of the €300 excess on his policy, which would mean that the net settlement figure would be €200.

The Provider submits that the Complainant called the Provider on **13 February 2020** and advised that he *"wished to go ahead and settle for €200 net"*. The Provider states that it advised the Complainant of the 10 day period allowed to consider the offer but the Complainant told the Provider that he would waive the 10 day period.

The Provider states that on **14 February 2020**, the Provider called the Complainant to confirm that he had accepted the €200 offer and the Complainant confirmed his acceptance.

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The Provider made submissions to this Office on **1 October 2020** in relation to this complaint. The Provider states that under the terms and conditions of the motor insurance policy held by the Complainant, if a vehicle is written off the Provider is obliged to pay the market value of the vehicle or the amount shown in the policy schedule whichever is lower. The Provider states that the Complainant's vehicle was assessed by a qualified motor engineer who noted that the average pre-accident value of the vehicle when looking at the current market was €883 which was rounded down to allow for discount on the asking price. The engineer noted that there was a discrepancy with the vehicle's mileage and it is an English import, both of which effected the valuation. The engineer stated that the mileage had been adjusted downwards by 50,000 miles (as confirmed by the vehicle management system). The engineer also stated that the Complainant had confirmed that the car had been written off in the past and then repaired by the Complainant. In response to the valuation by the car salesman for the Complainant of €1,300, the Provider states that it contacted the salesman in question who stated that he was not aware that the vehicle had been previously written off or that the mileage had been adjusted downwards and accepted that this would affect the valuation of the vehicle.

With regard to the policy premium rebate, the Provider states that the policyholder was advised that he could call the Provider with the registration details of a new vehicle to transfer the policy to if he wished to do so. The Provider states that it also advised the Complainant that he could put his policy on hold but that he had cover to drive other people's vehicles on his policy. The Provider states that the Complainant never reverted to the Provider about transferring the policy but did suspend his policy on **21 July 2020**.

By way of further submissions to this Office dated **5 October 2020**, the Provider states that no value of the vehicle would have been discussed on the day by the engineer who inspected the vehicle as the vehicle was a write-off. The Provider states that the engineer would have to review the market for similar vehicles for sale to get the current market value of the vehicle. The Provider states that it was only subsequent to the engineer conducting a review of the history of the Complainant's vehicle that he found out that the *"vehicle was clocked and previously written off"*.

The Complaints for Adjudication

The complaints for adjudication are that the Provider undervalued the Complainant's car and withheld a rebate of the policy premium.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 3 February 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, both parties made the following submissions:

1. Three e-mails from the Complainant to this Office dated 3 February 2021, respectively.

2. E-mail dated 4 February 2021, together with attachments, from the Provider to this Office.

3. E-mail from the Complainant to this Office dated 4 February 2021.

4. Two e-mails from the Complainant to this Office dated 8 February 2021, respectively.

5. E-mail from the Complainant to this Office dated 12 February 2021.

6. E-mail from the Provider to this Office dated 15 February 2021.

Copies of these submissions were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

I have carefully considered the terms & conditions of the Complainant's policy that are applicable to this matter.

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Section 2 of the policy sets out how a claim will be settled and states that:

"The maximum we will pay in the event of:

(a) a total loss where the insured car is damaged beyond repair or is deemed by us to be uneconomical to repair, or

(b) the insured car being stolen and not recovered,

is either:

- *the market value of such a car immediately prior to the loss or damage, or*
- *the estimated value shown on your schedule,*

whichever is the lower amount"

Section 2 further states that the Provider will not pay for *"the excess amount shown in the schedule"*. The schedule included with the Provider's evidence states that the excess is *"€300 for accidental damage"*.

I note that the Provider's engineer assessed the Complainant's vehicle post the accident and determined that there was *"damage to the bonnet, the front bumper cover, the front panel, the headlamps, the air conditioning condenser and the radiator."* The Provider's engineer further stated that *"as repair costs would exceed €3000 this is best treated as a category B write off with PAV agreed at €500"*. The engineer provides 3 examples of similar vehicles in his report, which vary in price from €800-€1,000 with an average price of €833. However, the Provider's engineer notes that the vehicle is an English import and has had its mileage adjusted downwards by 50,000 miles as well as having been written off in the past. The engineer states that the value of the vehicle is therefore €500 *"to take into account these factors"*. I further note that the car salesman who had initially valued the Complainant's vehicle at €1,300 acknowledged that he would revise that figure downwards in light of the information concerning the incorrect mileage and the prior write-off.

I note that the Complainant has acknowledged that the vehicle was written off in the past and does not dispute that the vehicle's mileage has been significantly adjusted downwards. I have considered the dashcam footage and still shots of the locus of the accident submitted by the Complainant.

These do not appear to me to support the Complainant's assertion that the damage incurred by the vehicles in the accident was minimal. The footage clearly discloses an impact of some force occurring between the vehicles and the engineer's report supports the contention that more than minimal damage was sustained.

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Based on the information provided and the assessment conducted by the Provider's engineer, the downward adjustment of the value of the Complainant's vehicle from approximately €800 to €500 was reasonable and a fair valuation of the vehicle. Furthermore, the audio submitted by the Provider supports the Provider's submission that the Complainant accepted the offer of €200 and waived the 'cooling-off' period of 10 days on **13 February 2020**. This was confirmed on a further phone call between a representative of the Provider and the Complainant on **14 February 2020**.

I also accept that the Final Response Letter to the Complainant made clear to him that the value of his vehicle had been determined after the engineer had assessed the vehicle and was based on the *"age, make and model and condition of your vehicle as well as the findings of a vehicle history check (previous write off etc)."* Therefore, I cannot accept the Complainant's assertion that the Provider failed to explain the rationale for its valuation of the vehicle.

Finally, the audio evidence discloses that the Complainant was given the option of transferring his policy to a new vehicle or placing a hold on the policy, neither of which options the Complainant exercised. While I note that the Complainant did suspend his policy on **21 July 2020**, I note that he had the benefit of the policy, in that he was insured to drive other vehicles, up until that date. Therefore, I do not accept that the Complainant is entitled to any rebate/refund of his policy premium.

For the reasons outlined in this Decision, I do not uphold this complaint.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

21 April 2021

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.