Decision Ref:	2021-0330
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Failure to consider vulnerability of customer Claim handling delays or issues Delayed or inadequate communication Disagreement regarding Pre-accident value provided
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Provider is the Complainant's broker. During **June 2018**, the Complainant's vehicle collided with a wall having rolled down a hill. The Complainant made a claim under the policy and is dissatisfied the Provider's conduct in respect of the claim settlement process.

The Complainant's Case

The Complainant's representative says that the Complainant is making a complaint in respect of his insurance broker, the Provider. The Complainant's representative explains that the Complainant purchased a motor insurance policy through the Provider and unfortunately, the insured vehicle was written off. The Complainant's representative says the Provider *"failed as* [the Complainant's] *Broker to handle the claim in any way shape or form."* The Complainant's representative says the Provider had no communication with the Complainant since the accident and only sent hand written compliment slips to the Complainant.

The Complainant's representative says the Provider did not recognise the Complainant as a vulnerable consumer and expected the Complainant to deal with the Insurer *"by taking screen shots from web pages on Vehicle values."* The Complainant's representative says the Provider *"handed over all responsibility to a claims handler who works for the Insurer with the Insurers interests and not the policy holders Interests at heart."*

The Complainant's representative further says that the Provider *"failed to provide any detail on his part in assisting* [the Complainant's] *claim and we feel that this resulted in a low value settlement and* [the Complainant] *being without a vehicle for a significant amount of time."*

In addition to this, the Complainant's representative says the wrong insurance discs were sent to the Complainant and the vehicle in question was not legally back on the road until **5 December 2018**.

This Office wrote to the Complainant's representative by letter dated **15 July 2020** requesting that he identify the precise conduct of the Provider which is subject to the complaint. In response to this, by email dated **15 July 2020**, the Complainant's representative set out the following:

> *"1. Failed to handle the claim on behalf of* [the Complainant]
>
> *2. Failed to act as an intermediary for* [the Complainant] *whilst negotiating the low claim settlement that was offered*
>
> *3. Failed to guide* [the Complainant] *through the claims process and effectively manage the claim on the clients behalf …*
>
> *4. Failed to identify* [the Complainant] *as a vulnerable Consumer as per Central Banks guidelines taking age and digital capabilities into account*
>
> *5. Failed to act on* [the Complainant's] *behalf when lower claim value was offered*
>
> *6. Failed to have checks in place to make sure* [the Complainant] *received the correct Insurance disc for the vehicle (3 occasions)*
>
> *7. Failed to provide any evidence that they acted on behalf of* [the Complainant] *and in his best interests when dealing with the lower claim value that was offered*
>
> *8. Failed to contact* [the Insurer] *when instructed to resolve dispute on several occasions"*

In resolution of this complaint, the Complainant's representative refers to the original letter of complaint sent to the Provider (this letter appears to be undated), where the following is sought:

> *"…*
>
> - *Reinstatement of 5 months cover … as you were instructed to freeze the policy*

/Cont'd…

- *Car hire costs @ €17.57 per day for your office short comings in issuing … an Insurance disc €316.26 (18 days). The Car was given by* [the Complainant's] *daughter for the duration of the total length of claim*
- *Shortfall in Claim value received of €4500 euros …*
- *Car Hire Costs from the date of First offer when you were contacted by* [the Complainant's representative] *informing you that the offer would not be accepted and we wanted you to act on his behalf @ €17.57 per day 75 days minus 18 days we fully expect* [the Provider] *to pay leaves €1001.49 balance*
- *A significant compensation gesture …*
- *A payment to cover* [the Complainant's representative's] *costs related to dealing with this claim. Circa 16 hours €50ph. (€800) …"*

<u>The Provider's Case</u>

On **25 June 2018**, the Provider says it received a notification of a claim in the name of the Complainant and the Complainant called to its office with a copy of the notification and a blank claim form which the Provider assisted the Complainant in completing. The Provider says the completed form and supporting documents were forwarded to the Insurer on **25 June 2018**.

On **29 June 2018**, the Provider says it received a copy of a letter from the Insurer with an update on the Loss Assessor's 'Pre Accident Settlement Offer' and an offer for the salvage of the Complainant's vehicle, Vehicle A. The Provider says it received a call from the Complainant protesting this offer. The Provider says it advised the Complainant of its professional opinion that it appeared to be a reasonable offer but that he should provide examples of his own estimates for consideration by the relevant engineer. The Provider says the Complainant advised that his son-in-law (the Complainant's representative) reckoned he could get double the salvage value for the vehicle on the open market. The Provider says there was various back and forth between the Complainant's representative, who was nominated by the Complainant to act on his behalf, with the Insurer. The Provider says it would refer this Office to the Insurer for further details on these exchanges as it was not a party to the various telephone calls.

On **16 August 2018**, the Provider says a temporary substitution was made to the policy for a rental vehicle which was phoned in by the Complainant. The Provider says this was emailed to the Insurer. On **17 August 2020**, the Provider says it received a letter from the Complainant suspending cover.

On **20 August 2018**, the Provider says it received an email from Complainant's representative expressing his dissatisfaction with the Insurer's offer following the submission of examples. The Provider says that both the Insurer and the Complainant's representative appeared to be holding fast to their cases. The Provider says all it could do for the Complainant was to notify the Insurer of the Complainant's dissatisfaction. However, it was not in a position to make the decision in respect of pre-accident value (**PAV**). The Provider says it forwarded this email to the Insurer for review.

/Cont'd…

On **29 August 2018**, the Provider says it received a copy of the correspondence regarding a settlement offer which indicated that the Insurer's engineers were not prepared to increase the settlement offer and also advised the Complainant of a salvage offer. The Provider says it was not involved in any way in negotiations about salvage and these were between the Complainant's representative, the Insurer and the relevant dismantlers.

On **10 September 2018**, the Provider says it was copied on an email to the Insurer which was a complaint regarding the Insurer's handling of the Complainant's claim.

On **4 October 2018**, the Provider says it received a telephone call from the Complainant reinstating cover on the policy on a permanent registration for Vehicle B. The Provider says the registration number given was Irish Registration 1. As Vehicle B was imported, the Provider says the Insurer requested the UK Registration due to the fact that the Irish registration was not displaying any results on the relevant database. The Provider says the UK Registration was provided by the Complainant's daughter and passed on to the Insurer.

On **11 October 2018**, the Provider says it received a call from the Insurer regarding the UK Registration submitted – it had been declared a total loss in the UK and therefore an engineer's report to determine roadworthiness was required. The Provider says it telephoned the Complainant's daughter who provided a report dated **18 October 2018** which was posted to the Insurer on the same day. On **19 October 2018**, the Provider says it received a telephone call from the Complainant's daughter looking for the insurance certificate and disc. The Provider says they had not been received by it yet.

On **22 October 2018**, the Provider says it received a call from the Complainant's daughter requesting an insurance certificate and disc. The Provider says a call was made to the Insurer to enquire as to whether the certificate and disc had been issued. The Provider says it was advised that an engineer's report had been received and the certificate and disc would be posted. On **25 October 2018**, the Provider says it received an angry call from the Complainant regarding the insurance documentation.

On **2 November 2018**, the Provider says a certificate and disc for Irish Registration 1 was received and issued. The Provider says that it was not contacted about an incorrect registration number and states that the Insurer and the Complainant's representative should be referred to for details regarding this error.

The Provider says it received a letter of complaint on **10 January 2019**.

In respect of the claim settlement offer, the Provider says Vehicle A was insured under the policy on **6 January 2016** at a value of €15,000 and the date of the accident was **23 June 2018**, a further two and a half years later. The Provider says it is reasonable to assume that the value would depreciate at a minimum of €1,000 per year and *"doubt*[s] *you would find anyone in the business to dispute this."*

/Cont'd…

The Provider says its advice to accept the settlement offer was not taken following the Complainant's discussions with his representative. The Provider says *"*[t]*he tone towards us changed to accusatory for not applying pressure to the Insurer …"*. The Provider says its advice was to provide examples to the Insurer's engineer to back up the belief that the vehicle was worth more. The Provider says the examples were declined by the engineer, however, the settlement offer was increased slightly as a gesture of goodwill. The Provider says this settlement offer was ultimately agreed further down the line and the Provider believes its advice was entirely correct and stands by it.

The Provider says it is entirely satisfied with its handling of the claim. The Provider says that had the Complainant adhered to its advice and not that of his representative, he would not have experienced the prolonged inconvenience and the matter would have been dealt with more expediently. The Provider says it does not take responsibility for any inconvenience caused to the Complainant and feels that the Complainant's representative bears the responsibility for this. The Provider says *"it's clear that* [the Complainant's representative] *was misleading* [the Complainant] *that he could get the settlement increased substantially, thus prolonging* [the Complainant's] *predicament."*

The Provider says it acknowledges the Complainant's vulnerability now that it has been brought to its attention by the Complainant's representative. The Provider advises that special consideration is now applied when dealing with the Complainant's insurance.

In response to the redress the Complainant is seeking in resolution of this complaint, the Provider says that it does not believe what is being requested is realistic and, as stated above, the Provider says it does not take any responsibility for any inconvenience caused to the Complainant. The Provider says *"we place the blame on* [the Complainant's representative's] *input, he did not act in his father in laws best interest, we believe that we did."*

In concluding its Complaint Response, the Provider says it would like to draw attention to the fact that the Complainant was a longstanding customer and very much liked. The Provider says *"we are saddened that this matter turned relations sour between us"*. The Provider says it still deals with this policy for the Complainant, although the Complainant's daughter now deals with the Provider on his behalf. The Provider says it wants to put an end to this matter once and for all as it has caused much upset. The Provider says it is an experienced insurance broker and if it has a feeling that a client has been treated unfairly it will do its utmost to resolve any issue a customer has, to the best of its ability.

The Complaints for Adjudication

The complaints are that the Provider:

Failed in its handling of the Complainant's claim and claim settlement;

/Cont'd…

Failed to identify the Complainant as a vulnerable consumer;

Failed to issue the correct insurance certificate and disc for the Complainant's vehicle and failed to have proper processes in place to prevent this from occurring; and

Proffered poor communication and customer service.

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 6 July 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, further submissions were received by this Office, copies of which 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.

The Insurer wrote to the Complainant on **25 June 2018**, requesting that he complete an enclosed accident report form. The letter also advised the Complainant of the appointment of the Motor Assessor to inspect the vehicle on the Insurer's behalf and the Complainant's right to appoint an expert appraiser.

/Cont'd…

It appears from the parties' evidence that the Complainant attended at the Provider's office around **25 June 2018** to complete the Insurer's 'Motor Incident Report Form' and did so with the assistance of the Provider. The final two sections of the form are titled 'Reporting to An Garda Síochána' and 'Declaration'. It appears that in the signature box on the Declaration section, the name of a Garda Station has been inserted. However, immediately below this appears to be the Complainant's signature.

By email dated **16 July 2018**, the Provider emailed the Insurer to arrange the temporary substitution of another van onto the Complainant's policy from **20 July 2018**.

The Insurer wrote to the Complainant in respect of his claim on **2 August 2018**, as follows:

> *"We have now received the Engineers report following inspection of your vehicle. The Engineer has declared the vehicle to be a Category B write off and valued it at €12,000 including VAT or €9,756.10 excluding VAT. Our offer in settlement of your claim is broken down as follows;*
>
> | | | | |
> |---|---|---|---|
> | *Pre-Accident Value:* | *€ 12,000* | *or* | *€9,756.10* |
> | *Less Salvage Value:* | *€ 1,677* | | *€1,677* |
> | *Less Policy Excess:* | *€ 250* | | *€250* |
> | ***Net Settlement Offer:*** | ***€10,073 (including VAT)*** | | ***€7,829.10 (excluding VAT)*** |
>
> *The Salvage offer listed above has been made by* [the Salvage Company] *and is valid for a period of 30 days. If you wish to sell the vehicle to them they will collect the vehicle and pay you the salvage amount listed above. Alternatively, at your request, we can arrange for the vehicle to be collected by our own salvage agents for disposal, in this case you will receive payment of €11,750 including VAT or €9,506 excluding VAT directly from us …"*

This letter also enclosed a document explaining each of the different vehicle category classifications.

The Complainant wrote to the Provider by letter in **August 2018** (due to the manner in which this letter was copied, the precise date is unclear), requesting that his policy be suspended from the date of the accident, as follows:

> *"I am writing to you asking you to suspend the above policy from the date of my accident since I have not had the use of the vehicle.*
>
> *The incident took place 23/06/2018.*
>
> *You will note I did have one weeks vehicle rental. Please can you arrange a refund on the weeks I have had no vehicle whilst* [the Insurer] *try to resolve my claim.*
>
> *I feel the delay is outside my control and I should not be paying for a policy while I do not have the vehicle."*

/Cont'd…

The Complainant's representative forwarded an email to the Provider on **7 August 2018** which he had sent to the Insurer earlier that day where he explained that the Insurer's settlement figure would not allow the Complainant to replace his vehicle like for like, particularly taking into account its low milage.

The Complainant's representative emailed the Insurer on **20 August 2020** in respect of the Complainant's claim and also requested that a formal complaint be lodged. This email stated as follows:

> *"I would now like this matter escalated to a complaint. Within the complaint response I would like the engineers justification on the value explaining miles, ownership condition number of seats and why he has not considered the more expensive of three vehicles originally provided. I also want the scope of the wider scope of the vehicles included in all calculations going forward.*
>
> *The engineer has made reference to a Dealership in [location]. Given the age of* [the Complainant] *yet again this engineer is taking nothing into account. Is he expected to travel to get a cheap van.*
>
> *Can you please e-mail me the engineers response as we have had nothing.*
>
> *I will reiterate* [the Complainant's] *standing on this. For him to replace his vehicle like for like he will only be accepting €14,000 ex his €250 ex. (€13,750)*
>
> *We are extremely aggrieved that this engineer has yet again taken nothing into consideration and focused completely on the lowest price vehicle. There was a vehicle within the three I sent that was plus vat and this engineer has taken it upon himself only to investigate vat status and had no consideration to the miles, pre accident condition, location of dealer, seats in vehicle and number of owners.*
>
> *There is no clear price trend for model and mileage, so I've averaged a market sample, I now wish for all of these vehicles to be taken into account in this dispute and do not want an engineer to pick examples that suits his lowest price as he had done with the 3 examples I sent originally. …"*

Approximately 30 minutes after this, the Complainant's representative emailed the Provider again, as follows:

> *"I have spoken with* [the Insurer] *this morning as yet again they did not call us back last Wednesday, Thursday or Friday.*
>
> *This morning I was told the engineer had called the three vehicles I provided as an example and has found that two of them are ex vat. He has not taken the other vehicle into consideration or everything else listed below.*

/Cont'd…

I will wait on a response from the below but if this matter is not resolve (sic) *by the end of the week we will be lodging a complaint with the Ombudsman, Can I ask that since you are* [the Complainant's] *Broker that you apply some pressure on this and get this issue resolved resolved* (sic). *The market value for this vehicle is €14,000. The Vehicle was Insured for €16,000. A like for like vehicle cannot be soured on what is being offered.*

[The Complainant] *is prepared to accept €14,000 ex his €250 xs.*

[The Complainant] *has now been without a vehicle for nearly 8 weeks. This is unacceptable.*

Can I have a response in writing please."

This email was forwarded to the Provider's 'Claims' email address the same day with the message: *"Please see attached email received from the client's son in law today."* I note that an automated response was received.

Around this time, it appears that the Provider sent a copy of the policy booklet to the Complainant with a compliment slip attached.

The compliment slip stated:

"Please find attached policy booklet. See page 20, 21 for terms and conditions of your Insurance."

It is not clear when this policy booklet was posted but it is stated by the Complainant's representative in an undated letter of complaint to the Provider from **January 2019** that it was sent around **21 August 2018**. I also note that this is not disputed by the Provider.

The Insurer wrote to the Complainant on **29 August 2018** advising that it was increasing the PAV to €12,200. In this letter, the Insurer advised, as follows:

"We have now received the Engineers follow up comments in relation to the Pre-accident value of your vehicle and they are satisfied the pre-accident value is accurate and have not agreed any increase in value. However I can advise that we have liaised with our in house Engineer and completed a VMS search online, which has confirmed a pre-accident value of €12,200 including VAT.

…

The Salvage offer listed above has been made by [a Motor Salvage Company] *and is valid for a period of 30 days. If you wish to sell the vehicle salvage to them they will collect the vehicle and pay you the salvage amount listed above. Alternatively, at your request, we can arrange for the vehicle to be collected by our own salvage agents for disposal …"*

/Cont'd…

The Complainant's representative emailed the Insurer and the Provider on **7 September 2018** and, addressing the Insurer, explained that:

> *"… this claim has been going from bad to worse.*
>
> *After resolving the issue of where the vehicle was to be taken and making sure the facility was ATF approved which it is … we were asked by* [Salvage Agent] *when we are collecting the vehicle. As per previous correspondence we did not agree that and infact* (sic) *you noted in your mail 4th Sept that 'When I asked our salvage yard (ATF facility) to return to the vehicle [sic].'*
>
> *I had a call with a very argumentative girl today who would not listen to what I was saying and explained that* [Salvage Company] *had the certification to dispose of the vehicle she argued with me that the vehicle could not be released without the appropriate documentation. I have since spent the afternoon on a call with* [Car Dismantlers] *and in fact it is* [Salvage Agent] *who must provide the documentation on site when it is brought back and they will match chassis numbers to the document. They tell me if this is not done then they can loose* (sic) *their license.*
>
> *I then escalated this to yet another complaint and spoke to a lovely gentleman …. Who listened to the facts and said he would call me back…*
>
> *It's now 18.00 and I have had no calls and we are no further ahead.*
>
> *This whole unsavoury affair does not make good reading at all. On three occasions at least we have been given the wrong information by* [the Insurer].
>
> - *How* [the Motor Assessor] *Value Cars*
> - *How we can get the vehicle back to Salvage ourselves*
> - *The delivery back to the vehicle to our ATF Facility*
> - *When and who signed the Waste Transfer forms and what location*
>
> …
>
> [The Complainant] *wants his van back as he can get double the salvage amount you are offering him. This will make up for the short fall in the settlement you have offered. It's that simple. …"*

The Insurer wrote to the Complainant on **12 February 2019**, advising that his claim had been settled, as follows:

> *"Please note that the claim has been settled in the sum of €16,849.04, broken down as follows:*
>
> | | |
> |---|---|
> | *Own damage* | *€10,765.13* |
> | *Third party property damage* | *€4,710.00* |

/Cont'd…

Towage	*€1,150.05*
Own damage claim costs	*€ 223.86*

We are obliged to inform you that claim payments made under your policy may affect future insurance contracts of this type. Please note that 'claim costs' do not in their own right affect no claim bonus entitlements.

Please note that we will retain a record of this claim and may share certain information with other Insurers and interested parties …"

It appears that the Complainant's representative made a formal complaint to the Provider at the beginning of **January 2019**. In this complaint, a number of issues were raised such as the Complainant being a vulnerable consumer due to his age and that the Provider failed to act in the Complainant's best interests when dealing with the Insurer.

In respect of the settlement offer made by the Insurer, it was stated that:

"[The Complainant's representative] *communicated with you by phone on the 8th of August and raised the concern and asked that you go back to* [the Insurer] *and fight for* [the Complainant's] *corner. You told me they would call me …. They didn't call.*

I e-mailed you on the 20th of August again raising concerns on the amount offered and the amount of time [the Complainant] *has been without a vehicle. You did not respond to the request for answers ….*

You sent a compliment slip with a policy booklet to [the Complainant] *unsigned on or around the 21/08/2018. …"*

In terms of the inspection and storage of Vehicle A, the letter states:

"Your office notified the Insurer who in turn sent an engineer to the location [the Complainant] *had the vehicle stored without contacting* [the Complainant]. *This caused* [the Complainant] *distress and he felt if he released the vehicle he would lose all bargaining power with the Insurer.* [The Complainant] *called* [the Complainant's representative] *and asked what he should do. Given that I have knowledge of the claims process I convinced* [the Complainant] *that he should release the vehicle …."*

The letter also highlighted issues surrounding the issuance of insurance certification for Vehicle B:

"[The Complainant] *purchased a New Replacement Vehicle with a UK registration. The Vehicle was recorded as a Total loss and needed and* (sic) *engineers report to check the vehicle was Roadworthy. This engineers report was hand delivered by* [the Complainant's daughter] *to your office on the 12/10/2018.*

/Cont'd…

> [The Complainant's daughter] *called to your office on the 19/10/2018 enquiring where her father's disc was …. She was abruptly told 'you'll get it when we get it' … She was told the engineers report had been sent the day it was brought in.*
>
> [The Complainant's representative] *then made contact with* [the Insurer] *and they advised they did not have the engineers report from your office.* [The Complainant's daughter] *then called your office only to be told it had in fact not been sent but would be sent that day. …"*

The letter also highlighted that an insurance disc bearing a UK registration number and not the Irish registration which the Provider was provided with or the number stated in the engineer's report.

By way of a preliminary response, the Provider wrote to the Complainant on **10 January 2019**, as follows:

> *"… I never believed you to be a vulnerable customer, as I have known you for over forty years and have known you to be quite a capable man, if this was to be contrary, I was not aware, as I don't deem age to be an automatic assumption of vulnerability.*
>
> *I assisted you to the best of my ability in obtaining you a satisfactory settlement, however I am not myself in the Motor Trade, also it appears you were being taken care of in this regard by your son in law, who if I am not mistaken is in the Motor Trade, …*
>
> *We made numerous calls on your behalf to hurry up the process, there was a backlog in the admin dept of the Insurance Company. …"*

In the response to the Provider's letter of **10 January 2019** by way of an undated letter, the Complainant's representative made the following points in respect of the Complainant being a vulnerable consumer:

> *"You failed as a Broker to deal with* [the Complainant's] *claim and failed to identify him as a vulnerable consumer given that you knew his age of [mid 70s].*
>
> *In all the dealings* [the Complainant's representative] *had with* [the Insurer] *it involved e-mails, screen shots of web pages with vehicle valuations, salvage and part valuations and continuous phone calls which we feel should have been dealt with in full or some part by you the Broker.*
>
> *You expect a [age redacted] pensioner to be able to do this when in fact he has a Broker. …"*

In this letter, the Complainant's representative also says that the Complainant has 'emphysema mobile'.

The Provider issued a Final Response letter on **20 January 2019**.

/Cont'd…

Analysis

The Complainant's representative submits that the Complainant was a vulnerable consumer. The submissions made in support of this position are that the Complainant was expected to deal with the Insurer *"by taking screen shots from web pages on Vehicle values."* In a submission dated **15 July 2018**, the Complainant's vulnerability was said to arise from his *"age and digital capabilities"*. In an undated letter responding to the Provider's of **10 January 2019**, the Complainant's representative identifies the Complainant as having *emphysema mobile*.

In a submission dated **23 November 2020**, the Complainant's representative says the Complainant had:

> *"No internet access to provide vehicle valuations*
>
> *No Internet to provide salvage amounts*
>
> *No internet to provide claims correspondence to* [the Insurer] *…"*

Chapter 12 of the ***Consumer Protection Code 2012*** (the **Code**), defines a *vulnerable consumer* as follows:

> *"… a natural person who:*
>
> *a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impairment or visually impaired persons); and/or*
>
> *b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)."*

I am quite satisfied that age alone is not sufficient to treat a person as a vulnerable consumer. Indeed to do so, would be both patronising and discriminatory. Neither do I consider this in combination with any emphysema related health conditions means the Complainant was a vulnerable consumer. In terms of the Complainant's digital capabilities, there is no evidence to suggest that the Provider advised the Complainant that he was required to use the internet when contesting the Insurer's settlement offer. If this were the case and in light of the fact that the Complainant did not have internet access, I would expect the Complainant to have made the Provider aware of this during their interactions. It would also appear that it was the Complainant's representative who engaged with the Insurer regarding screen shots, internet use an email – which is clear from the letter send to the Provider in response to the letter of **10 January 2019**. The Complainant also had the assistance of his representative from early **August 2018**, however, no suggestions were made at this time that he was a vulnerable consumer.

/Cont'd…

Therefore, having considered the evidence and the parties' submissions on this aspect of the complaint. I am satisfied that the Provider was given no reason to treat the Complainant as vulnerable.

The Complainant's position regarding the Provider's handling of his claim and the Provider's conduct in respect of the claim settlement appears to arise primarily from the fact that the Complainant was dissatisfied with the claim settlement offer initially made by the Insurer on **2 August 2018**.

In terms of what the Complainant expected of the Provider, I note in particular, the following passage from a submission dated **7 December 2020**:

> *"As for* [the Complainant's] *Broker* [the Complainant] *expected his Broker to support him other than simply filling in a claim.*
>
> *There was not a complicated matter it was simply the settlement figure offered did not support* [the Complainant] *procuring a vehicle at the amount he had paid the premium for, not even close. …*
>
> [The Complainant's representative] *applied pressure on the Insurance company and gained a raise in the offer value albeit not enough, negotiated a higher salvage amount than offered and disputed recovery and storage charges that the Insurance company tried to apply …. None of this should have happened had* [the Provider] *intervened and communicated with* [the Complainant] *and listened to his complaint. …"*

The Insurer wrote to the Complainant on **25 June 2018** providing him with certain claim information and requested that he complete the enclosed claim form. The Complainant appears to have attended the Provider's office around **25 June 2018** to complete a claim form which was subsequently passed to the Insurer. The Provider says the claim form was forwarded to the Insurer the day it was completed. I note that during a telephone conversation with the Insurer on **9 July 2018**, the Complainant was advised that the claim form had been received but there was an issue with the Complainant's signature.

It appears that a telephone conversation took place between the Complainant and the Provider towards the end of **June 2018** where the parties discussed the PAV offered by the Insurer's Motor Assessor. In a submission dated **23 November 2020**, the Complainant's representative says that:

> *"At no point whatsoever did* [the Provider] *advise* [the Complainant] *to accept the value of his vehicle. The offer was made verbally by the engineer who inspected the vehicle. It was at this point* [the Complainant] *called* [the Provider] *protesting the low value offered 29/06/20*[18]. [The Complainant's representative] *asking him to use his relationship with the Insurer to manage the settlement figure. We heard nothing from* [the Provider].

/Cont'd…

> *At no time did anyone from* [the Provider] *tell* [the Complainant] *or* [the Complainant's representative] *that it was their professional Opinion that the offer was reasonable. …"*

While it is disputed by the Complainant that the Provider advised that the PAV appeared reasonable, the parties' evidence indicates that the Provider advised the Complainant to provide his own examples of comparable vehicle values in an effort to challenge the Motor Assessor's valuation. Separately, I also note that temporary cover for a replacement vehicle appears to have been arranged on **16 July 2018** which was followed by a claim settlement offer on **2 August 2018**.

In the period between **25 June** and **2 August 2018**, the Provider assisted the Complainant with the completion of the claim form. However, the Insurer dealt with the claims process. Although the Complainant had an insurance broker (the Provider), I do not believe that, in the event of a claim, the Provider was required to take charge of the claims process on the Complainant's behalf, especially in the absence of a specific request from the Complainant nor do I agree with the position adopted by the Complainant that the Provider handed over responsibility for the claim to the Insurer who had competing interests to the Complainant.

Further to this, while the Provider was aware of the Complainant's dissatisfaction with the PAV offered by the Motor Assessor, I do not consider that this necessarily triggered any obligations on the part of the Provider to engage with the Insurer, particularly as the Provider had no reason to believe that the settlement offer was unreasonable. I also consider that it was reasonable for the Provider to advise the Complainant to seek to contest the Motor Assessor's opinion by providing alternative valuations. If the Complainant was dissatisfied with the Provider's conduct up to this point, I would have expected this to have been in some way evident from the letter sent to the Provider by the Complainant in **August 2018**.

Following this, the Complainant's representative appears to have begun to engage with the Insurer regarding the settlement offer around **7 August 2018** by email. As can be seen, the Complainant's representative forwarded this email to the Provider the same day without any additional comment. It appears that the first request made to the Provider to engage with the Insurer came from the Complainant's representative on **20 August 2018**, where the Complainant's representative asked that the Provider *apply some pressure* on the Insurer regarding the settlement offer. This email does not appear to have been responded to by the Provider but was forwarded to the Insurer for its attention. The Provider also appears to have sent the Complainant a copy of his policy booklet with the enclosed compliments slip referring him to pages 20 and 21 of the booklet.

The email of the Complainant's representative dated **7 August 2018** suggests that this individual was engaging directly with the Insurer regarding the Insurer's settlement offer. I do not consider that the forwarding of this email to the Provider without any additional comments addressed to the Provider necessarily required the Provider to take any action on foot of this email. However, there was a clear request in the email of **20 August 2018** that the Provider engage with the Insurer.

/Cont'd…

While I do not accept that the Provider was required to apply pressure on the Insurer regarding the settlement offer, I would expect the Provider to have made enquiries with the Insurer regarding the settlement offer that was made. In the circumstances, I do not believe it was appropriate to simply forward the Complainant's representative's email to the Insurer. There is also no evidence of the Provider following up either with the Insurer or the Complainant's representative subsequent to this. In particular, the Provider does not appear to have acknowledged or responded to the email of **20 August 2018** to update or advise the Complainant's representative that it could not apply the requested pressure, that it had contacted the Insurer or the efforts made to engage with the Insurer. There is also no evidence of any further efforts made by the Provider to engage with the Insurer on the matter. At the very least, I would expect the Provider to have queried the settlement offer rather than just forward the email received from the Complainant's representative.

Alternatively, the Provider could have informed the Complainant that it was not going to follow up the matter.

Further to this, in light of the email correspondence sent to the Provider, I do not consider that sending a copy of the policy booklet to the Complainant with a compliments slip referring him to two pages of booklet was appropriate and I do not consider this to be an adequate response to the earlier email received from the Complainant's representative.

For instance, it is not clear how the policy terms contained on these pages addresses the issues raised by the Complainant's representative nor is it entirely clear what the Provider was trying to communicate to the Complainant when it sent the compliments slip. It is my opinion that whatever information the Provider intended to convey to the Complainant should have set out in a letter in a clear manner and by reference to the applicable policy terms. This was also an opportunity to inform the Complainant about any contact the Provider had made with the Insurer and the precise extent of any efforts it could make on the Complainant's behalf regarding the settlement of his claim. However, the Provider did not do so. Further to this, I note in the Provider's letter of **10 January 2019** it is stated that: *"We made numerous calls on your behalf to hurry up the process, there was a backlog in the admin dept of the Insurance Company…."* However, the Provider has not supplied any details of these calls or any documentation demonstrating its telephone communications with the Insurer. If such calls were made, I would expect the Provider to have kept the Complainant updated in respect of its efforts in this regard.

The Complainant's representative has raised a number of issues regarding the claim form completed in respect of the Complainant's claim. In a submission dated **10 December 2020**, the Complainant's representative remarks that the claim form was filled in but was missing key information such as the date and policy number. The Complainant's representative also queried the manner in which the form was signed and noted that there was a blank claim form containing the policy number but no details had been filled in.

Responding to this in a submission dated **16 December 2020**, the Provider advised that the Insurer already had the policy number from the initial claim notification - which I note is evident from the Insurer's letter of **25 June 2018**.

/Cont'd…

The Provider also explained the blank form was a generic copy created on claim notification. The following underlined points were raised by the Complainant's representative and the Provider responded as follows:

> *"1.* *Not dated* [The Complainant] *did not date his signature. You will note the difference in handwriting from the rest of the claim form,* [the Provider] *completed it on his behalf, but passed the form to* [the Complainant] *to sign.*
>
> *2.* *Signature in Declaration* [The Complainant] *wrote the garda station name in the declaration, it's a common mistake, it did not create an issue for him.*
>
> *3.* *Blank Claim Form- … it's our copy that was held on file.*
>
> *4.* *Name on claim Form-* [The Complainant] *wrote … Garda station in the declaration box. If you look above the question re: garda station involved was in the above box.*
>
> *5.* *Not passed to* [the Insurer]*- This is news to us."*

In a submission dated **31 December 2020**, the Complainant's representative advised that:

> *"*[The Complainant] *cannot confirm or deny if this is his writing in the declaration box. He can confirm its his signature outside the box. If this is a common mistake and given that this is a legal declaration and could be used in a court of law should* [the Provider] *not make sure these records are filled in accurately?"*

In response to this, in a submission dated **5 January 2021**, the Provider says:

> *"We have listened to the call recording* [from 9 July 2018] … [the Insurer] *have also confirmed that they did receive that form prior to ringing* [the Complainant]. *The policy number, claim reference are on the covering letter attached to the claim form. We provided a copy of this, you are confirming that* [the Insurer] *did in fact receive the form from us, however they say that it was not signed, yet we provided a copy of the signed form from our records …"*

The Complainant has submitted a recording of a telephone conversation which took place between himself and the Insurer on **9 July 2018**. At the beginning of this call the Complainant stated that they had not heard from the Insurer in nearly three weeks. The Complainant also indicated that his garage had been in touch with him regarding the inspection of Vehicle A. The Insurer's agent advised that it was waiting for its engineer to agree a PAV with the Complainant and a signed incident report form. The Complainant expressed his dissatisfaction with the length of time it was taking to process his claim. The Insurer's agent advised the Complainant that it was yet to receive a signed incident report form from the Complainant. The Complainant stated that he did not receive any forms from the Insurer.

/Cont'd…

The Insurer's agent advised that forms were sent to the Complainant and his Broker. The Insurer's agent explained that the Provider had initially provided an incident report form but it was not signed. The Complainant was informed by the Insurer's agent that they had reverted to the Provider in order to have the form signed and that the Insurer would follow up with the Provider that morning as the form still had not been received. The Complainant advised the Insurer's agent that he spoke with the Provider and stated that the relevant form had been signed. The Insurer's agent explained that the incident report form was not clearly signed and the Provider was to revert to the Complainant regarding this. The Complainant explained that he signed the form the previous week. The Complainant advised that he would contact the Provider about the form. In response to this, the Insurer's agent explained that a clear signature was required on the declaration section of the form. Towards the end of the conversation, the Insurer's agent explained that it was an unclear signature on the form and difficult to tell that it was the Complainant's signature. The Complainant also explained the events giving the rise to the incident. The Insurer's agent then explained agreeing PAV, salvage value, storage of the vehicle and van hire.

Looking at the claim form, the policy number has not been inputted, the form has not been dated and the Complainant's signature is not in the appropriate box. The above telephone conversation indicates that the Insurer required a claim form with a clear signature.

The call also shows that both the Insurer and the Complainant were going to contact the Provider regarding the signing of the form, but it is not clear from the evidence what contact was in fact made or how the situation was resolved. However, I accept that the absence of the Complainant's signature in the appropriate section of the claim form is likely to have given rise to a certain amount of delay in processing the Complainant's claim, but not necessarily any excessive delay. In this respect, I note that the above conversation took place on **9 July 2018** and that the Insurer's settlement offer issued on **2 August 2018**. Notwithstanding this, when assisting the Complainant in completing the claim form, I am satisfied that the Provider was required to ensure it was properly completed and contained all necessary information, including being properly signed. This was not the case with the Complainant's claim form. In particular, given the nature of the declaration on the form and the requirement for the Complainant's signature, it is my opinion that the Provider should have ensured the form was properly signed. Equally, however, it is also reasonable to expect the Complainant to ensure that he was signing the form in the appropriate section.

The Provider wrote to the Insurer on **4 October 2018**, as follows:

> *"Please note perm sub to* [Irish Registration 1] *… from 1.00pm 5/10/2018."*

A report dated **15 October 2018** was prepared in respect of a roadworthiness inspection of Vehicle B which took place on **12 October 2018** and an Irish vehicle registration number is printed in the subject line of this report, (**Irish Registration 2**).

/Cont'd…

In the Provider's Final Response letter dated **20 January 2019**, it is stated that:

> *"We contacted* [the Insurer] *on the 23rd October to see had they received that report following a request from* [the Complainant's daughter]*, they had not, therefore we mailed a copy, and proceeded to wait for receipt of the cert and disc. We told* [the Complainant's daughter] *that as soon as we get it, she will get it."*

A copy of the email referred to in the above passage does not appear to have been furnished in evidence by the Provider. However, in a submission dated **7 December 2020**, the Complainant's representative provided an extract from the Final Response letter issued by the Insurer, which acknowledges that an engineer's report was received on **23 October 2018**.

It appears that the Insurer issued an insurance certificate and disc with a 'Date of Authentication' of **26 October 2018** in respect of Vehicle B but with the UK Registration. The Insurer issued another insurance certificate and disc dated **2 November 2018** in respect of Vehicle B but this time with Irish Registration 1 and again in **December 2018** with the same registration number (due to a change in underwriter).

An insurance certificate and disc with the correct registration number, Irish Registration 2, appear to have been issued in **January 2019** with a Date of Authentication of **15 January 2019**. However, it is not clear if these were issued directly to the Complainant or through the Provider.

The Insurer wrote to the Provider on **15 January 2019**, to inform it of an error in the registration number of Vehicle B, as follows:

> *"Upon investigation of a complaint on the above policy it has come to light that the registration number given on 04/10/2018* [Irish Registration 1] *is incorrect.*
>
> *I note from the engineers report that the correct registration number is* [Irish Registration 2]*. …"*

The Provider forwarded this email to the Complainant's representative on **16 January 2019**.

In a submission from the Provider accompanying an email to this Office dated **18 September 2018**, the Provider states that the first notification of the registration number for Vehicle B was given by the Complainant. In a submission dated **30 November 2020**, the Provider says:

> *"The replacement registration number was taken over the phone, the only way for us to have known at this stage that the number was incorrect would be for us to have a copy of the Vehicle Registration Cert prior to cover …."*

On considering the parties' evidence, it is not clear what date the relevant telephone conversation took place nor has the Provider supplied any written note or record of this call.

/Cont'd…

In light of this and the fact that the Provider does not appear to have call recording facilities, I am unable to determine what registration number was initially given to the Provider in respect of Vehicle B.

It is clear, however, that the incorrect registration number was forwarded by the Provider to the Insurer - this was Irish Registration 1. Yet I note that the initial insurance documentation issued by the Insurer contained the UK Registration. However, there is no evidence to suggest that the UK Registration was provided by, or received from, the Provider. Further to this, the registration number contained in the inspection report was Irish Registration 2.

While the correct registration number was stated on the inspection report, I am not satisfied that the Provider was required to review this report before sending it to the Insurer. The evidence shows that the report was prepared for the Insurer and not the Provider, the Provider was simply passing the report to the Insurer.

In the circumstances, I do not accept that the Provider was responsible for conveying incorrect vehicle registration details to the Insurer nor do I accept that the Provider failed to have proper procedures in place to prevent this from occurring.

Separately, as part of the formal complaint raised with the Provider, it was suggested that the Provider delayed in forwarding the inspection report to the Insurer. In this respect, I note it was stated in the submissions provided by the Complainant's representative that the Complainant's daughter hand delivered the report to the Provider on **12 October 2018**.

However, this is inconsistent with the contents of the report which is dated **15 October 2018** and records the inspection as taking place on **12 October 2018**. It is the Provider's evidence that the report was received on **18 October 2018** and forwarded to the Insurer the same day by post. In this respect, I note the hand written note on the copy of the report provided by the parties which states: *"To* [Name] *18/10/18"*. The Provider says this is an abbreviation for the name of the Insurer.

The date the report was delivered to the Provider is not clear from the Complainant's evidence. As noted above, the position was maintained by the Complainant's representative that the report was delivered on a date before it was drafted. As the report is dated **15 October 2018**, I am of the view that it could not have been delivered to the Provider before this. While the precise date the report was delivered to the Provider is unclear, I am satisfied that it was likely to have been delivered at some point between **15** and **18 October 2018**. I am also satisfied it is likely that the report was posted by the Provider to the Insurer on **18 October 2018**. However, the evidence suggests that the report, when posted, was not received by the Insurer. It is not clear why the report was not received but, on the basis of the available evidence, I am not satisfied this was through any fault of the Provider. It appears the Provider became aware that the report had not been received when it telephoned the Insurer on **23 October 2018**, following which, it proceeded to email a copy of the report to the Insurer that day.

/Cont'd…

Therefore, in my view the evidence does not support the assertion that the Provider unreasonably delayed in forwarding the report to the Insurer.

Section 11.5 of the Code requires a regulated entity to maintain up-to-date records in respect of its customers; in particular, customer contact details (section 11.5(b)) and all relevant information and documentation concerning a customer (section 11.5(h)). It appears from the submissions that were exchanged between the parties following the Provider's Complaint Response that the Provider did not have a telephone number for the Complainant. In light of the fact that the Complainant had been a customer of the Provider for some time, I believe the Provider should have ensured its contact details for the Complainant were up-to-date, which includes ensuring it had relevant telephone contact details.

Further to this, when responding to this complaint the Provider did not provide copies of any internal note or records in respect of its interactions with the Complainant or those acting on his behalf, whether in respect of office visits or telephone contact, nor has the Provider provided any notes or memos in respect of any telephone conversations which took place with the Insurer. Accordingly, I am of the opinion that the Provider has failed to maintain appropriate records in respect of the Complainant and the claim the subject of this complaint.

This is quite disappointing especially when it comes to telephone communication as the Provider does not have a telephone call recording system. In such circumstances, I consider it all the more important that appropriate records are maintained.

For the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay a sum of €300 in compensation to the Complainant.

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)***, as the Provider's conduct was improper.

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 €300, 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.***

/Cont'd…

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

27 September 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.