



<u>Decision Ref:</u>	2021-0345
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a warranty (purchased in **June 2018** from the Provider) for the Complainant's motor vehicle.

The Complainant's Case

The Complainant submits that he "*experienced engine difficulties with [his] vehicle on the **25 March 2019***" and that after contacting the Provider his "*vehicle was thereafter, towed from his home*" to the Provider's "*authorised mechanic*". The Complainant further submits that he was informed by the garage that the "*timing chain guide was broken*" and that the estimated cost of the repair was €1,511.00.

The Complainant submits that on **27 March 2019** the Provider contacted him to "*establish why the part had failed [before it] could confirm if the repair costs would be covered [under] the warranty*". The Complainant states that he was subsequently advised by the Provider that the vehicle may need to be independently assessed and that he gave his authorisation to the garage to "*carry out whatever inspection, assessment, or dismantling required by [the Provider] in order to assess the fault and cause thereof*".

The Complainant submits that on **3 April 2019** the garage sent the Provider an "*estimate of the repair costs accompanied by [its] own opinion of the fault and photographs of the engine*".

The Complainant states that he gave permission to the garage to *“proceed to order the parts required to complete the repair of the vehicle”* and that on **5 April 2019**, the garage commenced the repairs on his vehicle.

The Complainant advises that on **8 April 2019**, the Provider informed him that it required more information from its garage *“some 15 days after [the Provider was] initially advised of the breakdown”*.

The Complainant states that on **9 April 2019** he collected his vehicle from the garage and when he subsequently contacted the Provider, it informed him that the assessment of his vehicle had taken place earlier that day, and that the *“breakdown was not covered within warranty as it was a wear and tear issue”*.

The Complainant states that on **10 April 2019**, *“the oil level warning light activated in my vehicle and I immediately filled the oil reservoir with oil”* and that he returned his vehicle to the garage on **11 April 2019**, as it was *“leaking oil”*. The Complainant further states that the garage informed him that he could collect his vehicle, as it had repaired a *“rocker cover leak in the engine”*.

The Complainant submits on **12 April 2019** that the *“oil level warning light activated on his vehicle again”* and that as the garage was closed until **15 April 2019**, he had *“no option but to take the vehicle to another garage”*. The Complainant further submits that the second garage informed him that the *“rocker cover would have to be replaced”* and that the repair made by the Provider’s garage was *“in their opinion, a totally sub-standard repair method and was wholly inappropriate and inadequate in all the circumstances”*. The Complainant contends that the Provider’s garage then confirmed to him, by email, that the *“rocker cover would indeed need to be replaced”*.

The Complainant asserts that he never gave the Provider’s authorised garage permission to *“repair any part of my engine in such a fashion”*. The Complainant advises that he instructed the second garage to replace the *“rocker cover”* and he collected his vehicle on **16 April 2019**.

The Complainant submits that on **17 April 2019** he returned the vehicle to the second garage as the *“oil level warning light activated again”*. The Complainant further submits that he was informed that the current leak was *“emanating from the rear of the gear box area as a result of the manner in which [the Provider’s authorised garage] had carried out repairs”*.

The Complainant advises that the Provider’s authorised garage *“agreed to take back my vehicle as [it] accepted the current oil leak had occurred as a result of the repairs [they] had carried out to my vehicle”*. The Complainant further advises that he could not return the vehicle until **23 April 2019**, as the Provider’s authorised garage was closed for the Easter holidays.

The Complainant states that, as of **25 April 2019**, he was still without his vehicle and that the Provider's authorised garage was either *"unable or unwilling to give me any comfort regarding what exactly the problem is with the engine, how long the repairs will take and most importantly, when I will have my vehicle returned to me duly repaired"*.

The Complainant asserts that the:

"current attitude of [the Provider] towards me shows callous disregard for the dire predicament I have faced over the last month and continue to face on a daily basis in trying to reach my employment, without any offer of a replacement car by [the Provider] despite the fact that the hire of a car was covered under the terms of the within warranty".

The Complainant further asserts that:

"at no stage was there any sympathy afforded to me [by the Provider] for the predicament I found myself in, my loss of overtime earnings and the stress I had to endure in my efforts to secure lifts to my employment on a daily basis".

The Complainant contends that had he *"been afforded the opportunity to take his vehicle to the garage of his choice, [he] would have taken it to a [vehicle's brand] dealership"*.

The Complainant submits that he *"finally got his car back on the 25 April 2019"* and that he has since traded it due to further mechanical problems. The Complainant contends that these problems were *"a result of the work that was done on the car by [the Provider's authorised garage] although he "cannot prove it"*.

In his Complaint Form when asked how he wishes for the complaint to be resolved, the Complainant states that €2,050 was paid to the Provider's authorised garage and €673.46 to the second garage. The Complainant also states that he had to pay for his own transport to his place of employment and that he lost out on overtime while his vehicle was being repaired.

By way of email dated **15 September 2020**, the Complainant states that he never said that he *"would not wait for a replacement rocker cover"* when he went to the first garage on **11 April 2019**. The Complainant states that he was simply told that the car had been repaired with silicone and queries why when the Complainant brought the car to the second garage on **12 April 2019** a new rocker cover was sourced with *"no problem"*. Furthermore, the Complainant states that he *"had no choice"* but to bring his car to the second garage as it was a Friday evening and the first garage was closed until Monday and he *"was at [his] wits end by then and couldn't take much more"*.

By way of email dated **25 November 2020**, the Complainant stated that the delay in the Provider replying to his email of **15 September 2020** *"proves that they were lying when they said I gave permission for the rocker cover to be repaired with silicone. Also they are claiming that the timing chain is a wear and tear issue, even though it turns out it's a common fault with these BMW engines"*.

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By way of email dated **4 March 2021**, the Complainant made further submissions wherein he attached the email he received from the first garage regarding the repair of the rocker cover. The Complainant states that this email shows that he was told *“that the part was repaired because they said a new one was not available that day”*.

The Complainant again reiterates that he *“was not given the option of a replacement rocker cover”*. Furthermore, the Complainant states that it is *“very suspicious”* that his car was assessed by the assessor within a day when he was initially told that it would be *“10 days to 2 weeks”* before it could be assessed.

The Provider’s Case

In its Final Response Letter dated **9 July 2019** the Provider submitted a timeline of the events and its interactions with the Complainant, from both the Provider’s perspective, and from the perspective of its authorised garage.

The Provider advises that it was unable to give a decision on the claim until *“all information was available to us”* and that *“this was a time consuming procedure as the engine had to be removed completely from the car and the internal components inspected”*.

The Provider asserts that it does sympathise with the Complainant’s predicament however, it *“simply had to wait for the confirmation of cause of failure from the garage before a decision on cover could be made”*.

The Provider contends that *“all warranty claims must be authorised in advance by the Administrator and repaired in the nearest approved workshops”*. The Provider further contends that *“the Administrator shall not be liable for any repair costs where an authority number has not been issued prior to repairs commencing. The policy holder must authorise the dismantling of any components for inspection and diagnostics. If after dismantling no liability has been found, the policy holder must bear the costs”*.

The Provider asserts that it is satisfied that the Complainant’s claim was dealt with in line with its standard procedures however, it acknowledges that the Complainant was inconvenienced in being without a vehicle for a protracted period of time, *“although this was outside of our control”*.

The Provider points to the following terms and conditions of the policy document as relevant to the dispute:

“Page 11 of Policy:- General Exclusions:

The following general exclusions apply to all warranty options covered in this policy booklet.

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Your warranty will not cover any mechanical or electrical breakdowns or fault resulting from:

- Wear and tear”

“Page 12 of Policy:-

Making a Claim:

Please remember: All warranty claims MUST be authorised in advance by the Administrator and repaired in the nearest Provider approved workshop. The Administrator shall not be liable for any repair costs where an authority number has not been issued prior to repairs commencing. The policy holder must authorise the dismantling of any component for inspection and diagnosis. If after dismantling no liability has been found, the policyholder must bear the cost.”

“Page 16 of Policy:-

Vehicle Hire:

If you make a Valid Claim, we will pay up to €30 per day, plus VAT, for up to seven days towards the cost of hiring a vehicle whilst your vehicle is being repaired. The administrator will only authorise for vehicle hire if your vehicle is being repaired under the terms and conditions of this policy and the repair time exceeds 8 hours to complete (based on ICME repair times). The vehicle hire costs will form part of the total claim amount.

IMPORTANT: Repair time does not include delays in commencing a repair for any reason (including awaiting for parts to arrive)”.

In respect of page 11 of the policy the Provider states that the Complainant’s vehicle was assessed and a report was issued by the assessor in which it was confirmed that the damage caused to the components was the direct result of wear and tear and not mechanical failure. In respect of page 12 of the policy, the Provider states that in this instance repairs were done without its approval and without any indication or confirmation from the Provider that the claim would be covered. In respect of page 16 of the policy, the Provider states that in this instance while the labour time to carry out the repair was in excess of 8 hours, as the claim was not covered, the Complainant did not qualify for a replacement vehicle.

The Provider also set out the following timeline of events relevant to this dispute:

09/06/18: Complainant purchased vehicle.

25/03/19: Complainant experienced engine difficulties and contacted the Provider.

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25/03/19: Complainant's car was recovered to a garage where it was found that the timing chain had broken or slipped.

26/03/19: The garage provided a guide estimate €1,511.84 which was based on previous similar repairs which they had carried out on the same make/model car.

27/03/19: The Provider wrote to the Complainant and advised that it had a report from the garage confirming that the problem was a broken timing chain guide and that it needed to establish the cause of the part failing before it could confirm coverage. The Provider advised the Complainant that he would need to give the garage the authorisation to dismantle any components for inspection and diagnosis. The Provider advised that it would not accept any liability until the claim had been substantiated.

03/04/19: The garage advised that it had obtained authorisation from the Complainant to proceed and carry out repairs.

08/04/19: The Complainant called for an update. The Provider had not yet received a definitive cause of failure and appointed an Assessor.

09/04/19: The Complainant advised that he had been informed by the garage that the car repairs were completed and the car was ready for collection. The Provider was furnished by the garage with an invoice for the repairs in the sum of €2,050. The car was inspected by the assessor and on the basis of the assessor's findings, the Complainant's claim was rejected.

10/04/19: The oil level low warning alarm activated when the Complainant was driving the car. He proceeded to fill the oil reservoir with oil.

11/04/19: The Complainant returned the car to the garage. The rocker cover was found to be leaking and oil was travelling down the back of the engine. A new part was not available on the day and the Complainant was not willing to leave the car with the garage so a temporary repair was carried out to the rocker cover which proved unsuccessful. The Provider wrote to the Complainant and referred him to the general exclusions in his policy i.e. *"your warranty will not cover any mechanical or electrical breakdown or fault resulting from Wear and Tear"*. The Provider reminded the Complainant that the inspection carried out by the Assessor had confirmed that the failure was as a result of wear and tear and therefore the Complainant's claim fell outside the remit of the Complainant's policy.

12/04/19: The Complainant arranged with his own garage to re-examine the car and this garage agreed that the rocker cover was leaking. The Complainant's own garage then ordered the part. The Complainant told the Provider that his own garage was of the opinion that the rocker cover had been repaired with silicone which it felt was inappropriate and inadequate.

16/04/19: A replacement rocker cover was installed by the Complainant's own garage and the Complainant collected his vehicle on same date.

25/04/19: The Provider's authorised garage replaced a rear crank oil seal to fix a second oil leak, that only became apparent after the rocker cover had been replaced.

05/05/19: The Provider received a letter dated 24/04/19 from the Complainant detailing his dissatisfaction with the Provider and its authorised garage. The Provider states that this letter was not registered with its system until 15/05/19 and was not acknowledged until 17/05/19.

12/06/19: 20-day letter sent to the Complainant

09/07/19: Final Response Letter sent to the Complainant.

The Provider states its belief that in all of its dealings with the Complainant, the Provider has acted honestly, fairly and professionally in the Complainant's best interest and the integrity of the market pursuant to provision 2.1 of the **Consumer Protection Code 2012 (as amended)** ('the CPC 2012 (as amended)'). The Provider also states its belief that it has acted with due skill, care and diligence and in the best interests of the Complainant pursuant to provision 2.2 of the CPC 2012 (as amended) and has not acted recklessly, negligently or deliberately misleadingly as to the real or perceived advantages or disadvantages of its products/services. The Provider believes that it has at all times complied with the letter and spirit of the CPC pursuant to provision 2.12 of the CPC 2012 (as amended).

The Provider also states that it is satisfied that in its dealings with the Complainant regarding the scope and cover provided by the policy, it fully disclosed all relevant information to the Complainant pursuant to provision 2.6 of the CPC 2012 (as amended) and that all information provided by the Provider to the Complainant was "*clear, accurate, up to date and written in plain English and that the method of presentation of same has not disguised, diminished or obscured any important information*" pursuant to provision 4.1 of the CPC 2012 (as amended).

The Provider stated in its Final Response Letter that while it believes that procedures were followed correctly by it, it does acknowledge that "*the process took longer than usual and the policyholder was without his car for an extended period*". Therefore, the Provider stated that "*we would like to offer... as a gesture of goodwill, the sum of €120.00 which would be the equivalent of 4 days car hire at our maximum rate*".

Upon reviewing the monetary offer of €120 made in respect of the gesture of goodwill, the Provider has stated that it is prepared to increase the offer to €210 which represents the maximum 7 days car hire allowance.

By way of email dated **26 February 2021**, the Provider made further submissions as follows:

- that the Complainant was advised by the Provider's garage that a new part should be fitted but he was not willing to allow time for the part to be sourced, therefore a temporary repair was carried out to the rocker cover; and
- that the assessor has confirmed that the failure was due to wear and tear, therefore it is not covered under the Complainant's warranty.

By way of email dated **18 March 2021**, the Provider made further submissions as follows:

- that its garage attempted a temporary fix of the rocker cover which did not work and informed the Complainant of same;
- that the Complainant was not charged for the temporary repair and the replacement would be outside the policy cover as it was damaged as a consequence of the initial failure of the timing chain;

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- that the Provider's position is that the issue with the timing chain was due to wear and tear; and
- that the assessor is an independent entity and not an employee of the Provider.

The Complaint for Adjudication

The complaint is that the Provider:

Directed the Complainant's vehicle for repairs to its authorised garage where it delivered a substandard repair method that was wholly inappropriate and inadequate in all the circumstances;

Forced the Complainant to eventually sell his car due to further mechanical problems which, he suspects, were *"a result of the work that was done on the car by [the Provider's garage]"*;

Left the Complainant without a car for a lengthy period, and with no means for him to get to his place of employment. The Provider also *"showed a callous disregard for the dire predicament [that the Complainant has] faced over the last month and continues to face on a daily basis in trying to reach [his] employment"* and did not provide the Complainant with a hire car while his car is being repaired.

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 7 September 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

I note that an independent motor assessor carried out an inspection of the Complainant's vehicle on **9 April 2019**.

The assessor produced a report on the basis of this inspection and stated that the Complainant's vehicle *"had suffered camshaft drive failure"* due to an issue with the timing chain. The assessor stated that the *"wear level on the camshaft sprocket is such that the chain jumps the worn teeth and fractures the roller rockers"* and concluded that it was his opinion that the *"damage caused to these components is the direct result of wear/tear and not mechanical failure and is a known wear issue with this type of engine"*. In his most recent correspondence to this Office, the Complainant raises suspicions about the veracity of the assessor's claims but has submitted no evidence to support these suspicions.

This report from the motor assessor is clear that his view was that the initial problem with the Complainant's vehicle was as a result of wear and tear of the vehicle's timing chain which in turn caused damage to the vehicle's rocker/rocker cover. I note that page 11 of the warranty policy states that *"wear and tear"* is not covered by the warranty.

It is unclear from the evidence submitted by the parties why the first garage did not replace/adequately repair the vehicle's rocker cover when it first had the vehicle between **25 March 2021** and **9 April 2021**. Instead it appears, that the Complainant was told by the first garage that the repairs were complete and he could collect his vehicle. At this point the Complainant paid €2,050 to the first garage. One day after collecting his vehicle, on **10 April 2021**, the vehicle experienced an oil leak due to a leak from the rocker cover. The Complainant then left his vehicle back into the first garage who performed repairs on the rocker cover. These repairs to the rocker cover were inadequate and indeed the first garage seems to foreshadow the problems that were to come, stating that *"if the leak re-occurs a new replacement rocker cover will be required"*. It should be emphasised that contrary to the initial assertions of the Provider, it was not at the behest of the Complainant that this temporary repair was carried out but rather it was at the instigation of the first garage. In any event, the temporary repair to the rocker cover carried out by the first garage lasted for only a day and the rocker cover again began to allow oil to leak.

I note that at this stage the Complainant brought the vehicle to a second garage where the issue with the rocker was properly rectified by the replacement of the rocker cover within a period of 3/4 days.

While this was in contravention with page 12 of the warranty policy, which states that all repairs must be carried out by the Provider's approved workshop and authorised in advance, I accept that the Complainant was faced with a difficult situation as he was understandably frustrated by the performance of the first garage and could not be without his vehicle for a further prolonged period of time due to work commitments. On this basis, I accept that the decision of the Complainant to take his vehicle to a second garage was an understandable and reasonable one. I note that the Complainant had to pay €673.46 to this second garage to replace the rocker, an issue which should have been dealt with properly by the first garage.

I note that further issues occurred with the vehicle and oil leaks in the week following the repair of the rocker cover and that the Complainant ultimately sold his vehicle due to further mechanical issues. While I note the Complainant's insistence that his vehicle had to be sold due to the ineffective repairs carried out by the first garage, I also note that he accepts that he cannot prove this.

The Provider did not register the Complainant's complaint dated **24 April 2019** until **15 May 2019** and the complaint was not acknowledged to the Complainant until **17 May 2019**. This is in contravention of provision 10.9 of the CPC 2012 (as amended) which states that the Provider "*must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received*".

In the interests of completeness, I note that the Provider has accepted that it did not process this matter as swiftly as it could and this led to the Complainant being without his car for a period of time. In recognition of this, the Provider has made an offer of €210, being the maximum amount allowed under the warranty for vehicle hire.

I have no evidence to contest the assessor's view that the damage to the Complainant's car was as a result of a wear and tear issue which is not covered by the Complainant's warranty. However, I also accept that the first garage, which was an authorised workshop of the Provider, performed a substandard and unsatisfactory repair to the rocker cover and this necessitated the Complainant to bring his vehicle to the second garage and make payment to enable the requisite proper repair to the rocker cover to take place.

There is no doubt that the Complainant suffered great inconvenience by having to bring his vehicle to the Provider's appointed garage. This was further exacerbated by the length of time taken to assess and decline the claim. I believe this was unreasonable.

I note the Provider has offered €210. I do not find this at all sufficient in the circumstances and I partially uphold the complaint and direct the Provider to pay a sum of €1,500 (to include the €210 already offered) 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)(b)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,500 (to include the €210 already offered to the Complainant), to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

30 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,

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(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.

