An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0565
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Rejection of claim
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

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

The Complainant's Case

The Complainant purchased a motor insurance policy with the Provider, through a broker, on **3 July 2018**. The policy is a commercial vehicle policy.

The Complainant submits that on **1 May 2019** his vehicle was *"hit by a rock"* which he asserts was *"thrown back from the vehicle in front"* of him, on an area of roadway which was undergoing roadworks. The Complainant states that:

> *"about a minute later;* [his] *vehicle started losing power, and shortly afterwards ceased operation entirely. Immediately after the impact (which caused a loud thud that* [he] *felt through the accelerator pedal) the dashboard message "Trans Failsafe Prog" appeared. This is quite obviously not a coincidence, and is directly related to and the cause of this incident"*

The Complainant asserts, in an email to the Provider dated **9 May 2019**, that he:

> *"called* [the Provider's] *Breakdown Assist number, and they told* [him he] *wasn't covered for recovery – yet* [he] *was subsequently told that* [he] *was, as there had been an incident and that it wasn't simply a breakdown, which* [he] *clearly stated to the* [Provider's] *Breakdown rep on the phone, as* [he] *would have rather it recovered to* [his] *home…"*

The Provider sets out that when the Complainant contacted it by telephone, the motorway maintenance service had already removed the vehicle off the motorway to a safe place. Thereafter, the Provider recovered the vehicle to a nearby garage. The Complainant contends that this garage was not near to his home address and that he would have preferred if the vehicle had been recovered to his home, as he had to arrange for a friend to collect him and drive him some distance to get home.

The Complainant submitted a claim to the Provider for the damage to his vehicle due to the incident. The Provider arranged for an assessor to examine the Complainant's vehicle. The Provider refused to indemnify the Complainant for accidental damage and said the breakdown was due to wear and tear.

According to the Complainant the vehicle was *"almost 10 years old"*, *"well maintained"*, *"reliable"* and had *"unusually low mileage"*. Furthermore, the Complainant asserts that *"this is not simply a mechanical fault as* [the Provider] *suggested"* and the Complainant further asserts that the Provider is wrong in its opinion of the issue being due to *"wear and tear"* and states that he was insured for *"accidental damage"*, and was:

> *"shocked and surprised that the assessor acting on behalf of* [the Provider] *wrongly suggested that no impact took place".*

The Complainant asserts that the technician who was present when the assessor carried out the vehicle assessment, told the assessor that *"the gearboxes on these vehicles gave trouble"*, thus influencing the assessor in his assessment of the claim as being caused by *"wear and tear"*. The Complainant further contends that it:

> *"was very odd that the assessor didn't ask for* [the dealership garage] *to put it on a diagnostic machine that could have determined exactly when and what happened"*.

The Complainant states that his representative asked the Provider for an estimate of repair but the Provider stated that it did *"not have a repair estimate, this will need to be sourced from the repairer direct"*.

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The Complainant submits that the Provider should be requesting and paying for an estimate of repair and sets out in an email dated **10 May 2019** that:

> *"*[the Provider] *have suggested that* [the Complainant's representative's] *request for an estimate for a repair should be borne* [by him] *and that* [he has] *to request this?* [He is] *sure that this is something that will require the stripping down of the gearbox, which* [he] *believe*[s] [the Provider] *should be requesting, and indeed paying for"*.

The Complainant asserts in an email dated **14 May 2019** that he suggested that the damage to his vehicle was to be *"repaired rather than replaced"* as he did not want an *"expensive"* bill to affect his no claims bonus.

He also stated in his email dated **9 May 2019** that he was told that as this was a commercial policy, he was not covered for a replacement vehicle, none of which he contends he was aware of on taking out the policy. The Complainant further states in his email dated **9 May 2019** that this:

> *"is hugely inconvenient as not only is it* [his] *busiest time of year, but* [his] *father is currently very ill, and* [he] *need*[s] *to take him to hospital appointments over the coming week; this is adding to what is an already incredibly stressful time"*

The Complainant purchased a new vehicle in circumstances where he believed he had no choice but to do so, as the matter was not going to be resolved quickly and he needed a vehicle. The Complainant contends that he could not get a good price for the trade-in value of the existing vehicle in its immobile state.

Thereafter, the Complainant states that he encountered delays in getting insurance on his new vehicle as he asserts:

> *"the existing policy has to be cancelled before a new one can be instituted, and no other insurance company will take this policy on whilst there is a pending claim;* [his] *only hope now is that* [the Provider] *will transfer cover to the new vehicle until the policy expires or this matter is resolved, whichever comes first"*.

The Complainant contends that he asked the Provider to transfer his cover from the old vehicle to the new vehicle and was told by a member of the Provider's staff that this could not be done, as it was *"a commercial policy going to a private policy"*. The Complainant asserts that he explained his situation and told the staff member that he had done this before without any such problem but the staff member was not helpful in offering a solution and suggested that she would transfer him to *"New Business"*, where nobody was subsequently available to take the call.

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The Complainant stated in his complaint form that he was *"conscious that* [the Provider] *may be obtuse in issuing* [his] *No Claims Bonus"* and that in a letter on **22 May 2018**, the Provider said that his annual premium was decreased, when it had increased the premium.

The Complainant contends in his letter dated **9 May 2019** that the Provider is trying to *"get out of* [its] *responsibilities to* [him]*"* and states that:

> *"it is very sharp practice for the* [the Provider] *to attempt to dismiss* [its] *responsibilities to* [him] *as* [his] *insurer"*.

The Complainant made further submissions dated **11 June 2020** in response to the Provider's submissions to this Office. In these submissions, the Complainant states that *"he is not satisfied with the excuses* [the Provider] *have proffered"* and reiterates that the incident concerning his vehicle *"was an accident rather than a breakdown"*. The Complainant states that it is *"a reasonable expectation that as part of a fully comprehensive policy, vehicle recovery from an accident would be included"*.

The Complainant also states in these further submissions that a member of staff at the location that his vehicle was towed to, suggested to the Provider's assessor that *"the gearboxes on these give trouble"*. The Complainant firmly believes that this unsolicited opinion has negatively influenced the assessor's judgment and played a part in the assessor's decision regarding the cause of damage to the vehicle.

In the further submissions, the Complainant states that the Provider has never entertained the possibility that the Provider's assessor's opinion was wrong and have declined the Complainant's *"pragmatic suggestion to strip the gearbox down to assess the damage internally"*. The Complainant states that he was informed by the Landrover garage that this was the only way of accurately assessing the damage.

The Complainant also states that the Provider's response to his assertion that the assessor should have used a diagnostic machine to determine exactly what happened, is *"repetitive, weak and inaccurate"*. Again the Complainant re-iterates his belief that the impact to the gearbox of the vehicle which he states happened mere seconds before the gearbox ceased operating, was the direct and only cause of the failure of the gearbox and the failure to the gearbox had nothing to do with wear and tear.

The Complainant further states that the assessor's response in relation to the warning light is *"weak at best"*. The Complainant re-iterates that the Trans Failsafe Prog light came on after the impact and before the vehicle started slowing down before becoming completely immobile.

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He queries how the Provider can assert that its assessor *"completed a full investigation"* when the Provider admits that the assessor did not check the vehicle's electronic data. The Complainant submits that the Provider's submissions wherein it states that *"the assessor carried out a visual inspection of the vehicle to ascertain if a rock had damaged the Complainant's vehicle"* supports the Complainant's assertion that the inspection carried out was merely a cursory, visual inspection.

The Complainant also states that the reason he did not get his vehicle assessed by a second assessor is because he was informed by staff at the Landrover garage that most assessors would know one another and would *"rarely contradict another's professional findings"*.

The Complainant also states that the Provider has admitted that it was *"remiss in* [its] *statutory obligations and duty to inform"* him of his opportunity to appeal the Provider's decision. He states that this is a *"very serious oversight"* by the Provider and has led to the Complainant having to embark upon the process of making a complaint to this office. The Complainant states that this has been *"very disappointing, upsetting and frustrating"* for him.

The Complainant states that the Provider *"seems to have a complete disregard for the fact that* [he] *had no transport to get to and from work for extended period of time and failed to grasp the fact that* [he] *needed to get a vehicle sorted out asap"*

Ultimately, the Complainant wants the Provider to cover his claim and to compensate him financially for monies he contends he lost due to having to purchase another vehicle and trade-in the damaged vehicle in an unrepaired, and immobile state following the incident with the rock.

The Provider's Case

The Provider, in its Final Response Letter dated **17 May 2019**, states that the Complainant had a commercial vehicle policy and states that it does not offer breakdown assistance on a commercial vehicle policy. It sets out that one of the Provider's customer service staff spoke to the Complainant on **2 May 2019** and explained that under his comprehensive policy, in the event of an accident he was covered for *"Accident Recovery"* which is protecting the vehicle and removing the vehicle from the motorway to a garage, however, *"breakdown"* due to a mechanical fault is not covered.

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The Provider further stated that:

> *"unfortunately* [it] *cannot compensate* [the Complainant] *for the damage to* [his] *vehicle as* [its] *investigations have found that this is a wear and tear issue and there was no damage to* [the Complainant's] *vehicle caused by a rock….*[The Complainant] [is] *free to have* [his] *vehicle assessed by* [his] *own engineer and* [the Provider] *can have* [its] *engineer liaise with them in relation to this".*

In its submissions to this Office dated **28 May 2020**, the Provider states that its investigations into the Complainant's claim centred on whether there was damage caused to the Complainant's vehicle from a rock. It states that the independent assessor it instructed *"found no damage to the vehicle caused by a rock and found that this was a wear and tear issue"*.

The Provider states that, soon after the incident, the Complainant was informed by the Provider's breakdown contractor that he had no cover on his policy for breakdown. The Provider states that the Complainant then said that his broker had advised him at the inception of the policy that there was breakdown cover included on the policy. The Provider states that on **2 May 2019**, an agent of the Provider contacted the Complainant regarding notification of this incident to the broker. The agent explained that under a comprehensive policy, the Complainant is covered for recovery but not breakdown. The Provider then cites page 12 of the policy booklet which states:

> "***Accident Recovery***
>
> *We will also pay the reasonable cost of protecting the vehicle and moving it to the nearest repairer if, as a result of any loss or damage insured under this section, the vehicle cannot be driven. We will pay the reasonable cost of delivering it to you after the repair. However, we will not pay more than the reasonable cost of transporting it to your address, as shown in the schedule."*

The Provider states that this cover is not linked with breakdown assistance. Therefore, the Provider states that if the damage was caused to the vehicle as a result of a rock, the damage to the vehicle would be covered and accident recovery damage would apply.

The Provider also refers to page 13 of the policy which states:

> ***"Exceptions to section 1***
>
> *We will not pay for:*

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1. *Loss of value, wear and tear, mechanical, electrical, electronic, computer or computer software failure or breakdown;"*

The Provider stresses that its agent provided the correct information to the Complainant when the Complainant called, namely that he was covered for recovery but not breakdown.

The Provider further states that the Complainant had availed of free roadway recovery before contact had been made with the Provider's breakdown contractor. The Provider states that the free roadway recovery removed the Complainant's vehicle from the roadway and with the Complainant's agreement, the vehicle was left outside a restaurant. The Provider then states that on **2 May 2019** its agent offered to have the vehicle recovered to one of the Provider's approved garages for assessment and the Complainant agreed to this. Later that day, the Provider states that its claims representative contacted the Complainant and advised the Complainant that the garage would not release the keys of the vehicle to the Provider without the Complainant's consent. The Provider also stated that at this stage, the garage which the claims team had contacted to repair the vehicle advised that they would be unable to complete the repairs as the issue seemed to be in relation to the gear box. The Provider states that on **4 May 2019** (incorrectly noted as **4 May 2020** by the Provider) the Complainant advised that the garage where he had left the keys were recovering the vehicle to its own garage.

The Provider states that recovery costs are covered under the policy but no recovery bill was submitted to the Provider for payment. The Provider states that if it had received a bill for recovery it would have paid those costs and this would not have impacted the Complainant's no claim bonus.

The Provider states that on **4 May 2019**, the Complainant emailed requesting a courtesy vehicle and on **7 May 2019**, the Provider replied and reiterated that it does not cover a courtesy vehicle under a commercial policy.

The Provider disputes the Complainant's assertion that the incident was not due to wear and tear or a mechanical fault but due to accidental damage. The Provider states that its assessor has stated in his report that there was no damage caused to the Complainant's vehicle as a result of a rock and has concluded that the damage was as a result of wear and tear.

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The Provider states that its assessor put the Complainant's vehicle on a lift in order to gain better access and to fully investigate the exact nature and extent of the issue with the vehicle. The Provider states that the front and underside of the vehicle were examined and the assessor found no evidence to suggest an impact had been sustained to the gearbox, or to the underside of the vehicle. The Provider states that its assessor did note impact damage sustained to a heatshield on the centre section of the exhaust system which appears to have been old pre-existing impact damage on the vehicle as it was not recently sustained and had been in its condition at the time of assessment for some time. The Provider states that its assessor provided photographs of the underside of the gearbox which showed that there was no evidence to suggest any impact had taken place. The Provider states that its assessor did not check the vehicle's electronic data but that the warning light/message seen by the Complainant comes on when the gearbox is failing.

The Provider states that its assessor noted this to the holding garage and following the assessor having tried to drive the vehicle and the holding garage advising that they could only move the vehicle in low gears, it appeared that the vehicle had a type of major gearbox fault possibly from the clutch packs having burned out. The Provider states that given a lack of impact damage or oil leaks from the gearbox unit, its assessor concluded that the Complainant's vehicle was suffering from a wear and tear issue. The Provider states that its assessor's findings were based on the assessor's inspection of the vehicle and that there is no note in the assessor's report concerning a conversation with a mechanic at the holding garage regarding gear boxes in similar vehicles generally.

The Provider states that the Complainant has not provided it with any evidence that the damage was as a result of a rock hitting his vehicle. The Provider notes that it furnished a copy of its report to the Complainant's broker and made clear on numerous occasions that the Complainant was free to instruct his own independent assessor or engineer to look at the vehicle but that the Complainant has not availed of that opportunity.

In respect of the assertion by the Complainant that the Provider should have utilised a diagnostic machine to determine exactly what happened with the vehicle, the Provider states that its assessor was satisfied that *"this was an obvious case of wear and tear and there was no damage sustained to the gear box so a diagnostic was not required"*. Furthermore, the Provider states that its assessor is of the view that it *"would be unlikely that any repairer having read a diagnostic, were it available from the vehicle would 100% confirm what exactly caused the damage."*

The Provider states that on **9 April 2020**, the Complainant's representative requested a copy of the repair estimate and was advised that the Provider did not have a repair estimate as there was no cover under the Complainant's policy for the issue with the gear box.

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The Provider states that the Complainant's broker requested that the Provider cancel the Complainant's policy on **21 May 2019** and on **28 May 2019**, the Provider issued a letter to the Complainant's broker confirming that the Complainant's policy was cancelled and no claims were reported during the time on cover.

The Provider states that it was unable to issue a no claims bonus statement to the Complainant as he had not been on cover with the Provider for a full year.

In relation to the Provider's correspondence with the Complainant in respect of his premium, the Provider states that when the policy was incepted on **3 July 2018**, the price of the policy was €844.80 per annum. The Provider states that when it offered renewal to the broker for the policy, the price took account of the claim which was open at the time and the renewal price was €1,827.12. The Provider states that on **22 May 2019**, it wrote to the Complainant and advised that the claim on the policy had been closed and advised that the annual premium had decreased to €1,631.25. The Provider then further states:

> *"Please note this letter should have noted that the renewal premium had decreased to €1,631.25".*

In relation to the Complainant's contention that he could not get a good price for the trade-in value of the existing vehicle in its 'immobile' state, the Provider states that the Complainant has supplied no evidence to justify his contention that the Provider should compensate him for that loss.

The Provider states that all of the Complainant's conversations regarding changing his cover on the policy took place with his broker and not with the Provider. The Provider states that as soon as the claim on his account was closed, the Provider notified the Complainant's broker, enabling the Complainant to get a new business quote for a private motor vehicle if he wished.

The Provider states that it was fully in compliance with the Consumer Protection Code 2012 (as amended), provisions 7.6, 7.7, 7.8, 7.9, 7.10 and 7.19. In relation to provision 7.20 (*"a regulated entity must provide a claimant with written details of any internal appeals mechanisms available to the claimant"*), the Provider accepts that in its email to the Complainant on **9 May 2019**, it did not note the appeals mechanism.

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The Complaints for Adjudication

The complaint is that the Provider:

1. Miscommunicated with the Complainant in relation to his right to have his vehicle removed;

2. Wrongfully failed to give him a replacement vehicle;

3. Wrongfully refused to indemnify the Complainant's claim for accidental damage to his vehicle;

4. Sent the Complainant misleading communication in relation to his insurance premium; and

5. Provided the Complainant with poor customer service.

A Preliminary Decision was issued to the parties on 3 November 2020, 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, the parties made the following submissions:

1. E-mail from the Complainant to this Office dated 4 November 2020.

2. E-mail, together with attachments, from the Provider to this Office dated 17 November 2020.

3. E-mail, together with attachments, from the Complainant to this Office dated 20 November 2020.

4. E-mail from the Provider to this Office dated 30 November 2020.

Copies of the above submissions were exchanged between the parties.

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

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.

The Complainant, in his post Preliminary Decision submission, stated:

> *"I might have been more effectively been able to convey the points through an oral hearing, but this avenue has also been dismissed".*

I did not dismiss the possibility of holding an Oral Hearing. Rather I carefully considered if an Oral Hearing could have been of assistance in the adjudication of the complaint. Both parties to the complaint have been given ample opportunity to furnish submissions and supply any evidence they deemed appropriate. The Complainant has not indicated what additional evidence he could provide at an Oral Hearing. Therefore, having reviewed and considered the submissions made, and evidence supplied, by the parties, 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.

I note that the Complainant incepted a *"commercial vehicle insurance"* policy with the Provider on **3 July 2018**. The policy covers *"Loss of or damage to the insured vehicle"* and states that the Provider will *"chose whether to repair or replace the vehicle(s) or any part of it or its accessories and spare parts, or pay cash to cover the amount of the loss or damage"*.

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The following terms in the policy are relevant:

> "***Accident Recovery***
>
> *We will also pay the reasonable cost of protecting the vehicle and moving it to the nearest repairer if, as a result of any loss or damage insured under this section, the vehicle cannot be driven. We will pay the reasonable cost of delivering it to you after the repair. However, we will not pay more than the reasonable cost of transporting it to your address, as shown in the schedule."*
>
> ***"Exceptions to section 1***
>
> *We will not pay for:*
>
> 1. *Loss of value, wear and tear, mechanical, electrical, electronic, computer or computer software failure or breakdown;"*

It is clear from the above that the insurance policy incepted by the Complainant with the Provider does not cover *"wear and tear"* to the vehicle. It is also clear from the above that the policy covers *"accident recovery"* only.

There is no mention in the policy of breakdown assistance being provided and furthermore, there is no mention of a courtesy vehicle being provided during the period of time when a vehicle is not roadworthy. I note that the Complainant was sold this insurance product by a broker but nonetheless, he is under an obligation to read and consider all of the pre-contractual and contractual information specific to his insurance policy, at the time he enters into the policy.

I have carefully considered the report and accompanying photographs prepared by the assessor hired by the Provider. I note that the assessor has clearly stated in the report that there is *"no evidence to suggest that an impact had been sustained to the gearbox, or to the underside of the vehicle"*. The photographs supplied by the assessor clearly evidence that the assessor used a car lift to raise the vehicle and that the interior, exterior and underside of the vehicle were assessed before the assessor came to this decision. In my Preliminary Decision I indicated that on the basis of this evidence, I must accept that it was reasonable of the Provider to hold with the findings of the assessor that the vehicle was *"suffering from a wear and tear issue"*.

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I also stated that with respect to the Complainant's contention that the damage to the vehicle's gearbox was caused by a rock thrown back from the vehicle in front of the Complainant, the Complainant had furnished no evidence to support this contention.

The Complainant, in his post Preliminary Decision submission, states:

> *To say that I'm shocked and bitterly disappointed at the Adjudicators preliminary decision is an understatement; with respect, the Adjudicator appears to have failed to appreciate and reflect on the core issue here, which is that my vehicle was involved in an accident - not a breakdown. With regard to his assertion that I provided no evidence to substantiate this, without having a dashcam, or having witnesses to this on a motorway, or indeed trying to find the rock that caused the damage, how am I supposed to have supplied this suggested evidence?*
>
> *The completely untrue - and unsubstantiated suggestion by* [Provider], *that my vehicle was immobilised by a "wear and tear" issue – which occurred immediately after my vehicle was impacted by a rock on a part of the road where large-scale roadworks were taking place, is simply not credible, yet the Adjudicator repeatedly refers to* [Provider] *incorrect and unsubstantiated "wear and tear" defence in his decision, as if this were somehow accepted as a given, which it most certainly is not. Where is their evidence of this?*
>
> *The influence that the mechanic dealing with the assessor - and his arbitrary and inappropriate assertions (which I have no doubt influenced the assessor's decision) also do not appear to have been taken into full consideration. The Adjudicator refers to the fact that another assessor's opinion was not availed of yet fails to acknowledge the reason for my lack of hiring an independent assessor, which was that a staff member in the garage suggested that this would be futile. On this point, the declination by* [Provider] *of my suggestion to conduct a diagnostic, or indeed an internal examination of the gearbox (which would have been more conclusive than a cursory external visual inspection) should also have been considered – surely the onus was on* [Provider] *to do so?*

The Complainant seems to miss the point that while he has produced no evidence to support his opinions and assertions. The Provider, on the other hand, supplied in evidence, a report and accompanying photographs prepared by an assessor which clearly stated that there was "no evidence to suggest that an impact had been sustained to the gearbox, or to the underside of the vehicle".

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I am required to arrive at my decision based on the evidence available to me. This is what I have done. As a result of the evidence supplied, I remain of the view that it was reasonable of the Provider to hold with the findings of the assessor that the vehicle was "suffering from a wear and tear issue".

Furthermore, I cannot find fault with the assessor for not carrying out a full diagnostic of the vehicle given the conclusions reached by him during his thorough, visual inspection.

I further note that the Provider gave the Complainant numerous opportunities to have the car independently assessed and if the Complainant deemed it necessary, he could have requested an assessor hired by him to run a full diagnostic on the vehicle to attempt to determine if a rock caused the damage.

I note the Complainant, in his post Preliminary Decision submission, states that I failed "to *acknowledge the reason for my lack of hiring an independent assessor, which was that a staff member in the garage suggested that this would be futile".* I am happy to acknowledge the Complainants reason for declining the offer to appoint an assessor, tough I do not find this to be a good reason not to appoint an assessor.

Accordingly, I accept that the Provider acted in accordance with the terms and conditions of the Complainant's policy when it refused to grant the Complainant a replacement vehicle and refused to indemnify the Complainant's claim for accidental damage to his vehicle.

I note that due to the Complainant's own statements when contacting the Provider's breakdown assist number and in subsequent phone calls between the Provider's representative and the Complainant, the Provider was led to believe that the damage was caused to the Complainant's vehicle as a result of a rock. As a result of this, the Provider's agent told the Complainant that the vehicle would be recovered to the Provider's approved repairer in the area to make an assessment as to how the damage to the car was incurred. I note that the Provider's agent provided the correct information to the Complainant based on the information that the Complainant supplied to the agent during his call. Therefore, I do not accept that the Provider miscommunicated with the Complainant in relation to his right to have his vehicle removed.

I note that the Provider acknowledges that it made an error in informing the Complainant on **22 May 2019** that his insurance premium had decreased and compounded this error in its submissions to this Office where it again stated that the Provider's premium had decreased. In fact, the Complainant's premium had increased from a price of €884.80 per annum from **3 July 2018** to a price of €1631.25 on renewal in **2019**.

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In my Preliminary Decision I stated that this failure to correctly inform the Complainant as to whether his premium had increased or decreased was a breach of provision 2.2 of the ***CPC 2012*** (as amended) to act with due skill, care and diligence in the best interests of the customer. I also note that the Provider failed to comply with Provision 7.20 of the ***CPC 2012*** (as amended) by failing to let the Complainant know of the internal appeals mechanisms available to him.

The Provider, in its post Preliminary Decision submission, restates much of its position as outlined in its earlier responses to the complaint. This was neither necessary nor helpful.

In relation to the premium increase/decrease issue it states in its post Preliminary Decision submission:

> *"Additionally, in respect of the point regarding the premium variance, the order the documentation was issued to the Complainant is a crucial aspect that we believe was not fully addressed within the preliminary findings. We accept that the Complainants policy premium was €884.80 per annum from 3 July 2018. The policy was due to renew on 3 July 2019, hence in advance of the renewal date we issued renewal quote documentation to the Complainant's broker*, [name redacted], *on 15 May 2019. We note that within this renewal documentation we offered the Complainant a renewal premium of €1,827.02, to continue paying by direct debit. This quotation included a loading applicable to the open claim as the complaint process was ongoing on the date the quote was calculated. On 17 May 2019, we issued the final response to the Complainant and as the Complaints Team had not identified any issues regarding the decision to decline the claim, the Claims Department proceeded to close the claim. On completion of this action the policy was referred to the Product Department to remove the claim loading and recalculate the renewal quotation. On 22 May 2019, we issued a letter to the Complainant to advise of the revised renewal quotation, within this letter we referenced that "your renewal premium has been decreased to €1,631.25." The Complainant subsequently made a request via his broker to cancel the policy and this was completed with effect from 21 May 2019. Whilst we accept when compared to the 2018 policy premium the amount of €1,631.25 is significantly higher, it is important that the wording on our letter, dated 22 May 2019, reflected an increase or decrease when compared to our letter dated 15 May 2019. We believe that as a week had passed since we issued our original renewal quote documents to the broker it would have been misleading to advise that the revised premium had increased. On this basis, we do not accept that a breach of the Consumer Protection Code occurred in respect of this matter and we believe this aspect of the preliminary findings should be reconsidered."*

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I remain of the view that the Provider's communications in relation to the premium "*increases*" and "*decreases*" and its failure to inform the Complainant of the internal appeals mechanisms available to him did not fully comply with the requirements of the **CPC 2012.**

In the interests of completeness, I note that the Complainant has provided no relevant evidence to justify a claim that the Provider gave him poor customer service. The timeline provided to this Office by the Provider shows that the Provider replied to the Complainant promptly in respect of the issues he raised and, with the exception of the limited failings identified above, replied in an accurate and professional manner.

Accordingly, while I understand the frustration the Complainant feels as a result of the unfortunate breakdown of his vehicle, I must accept that the insurance policy entered into between the Complainant and the Provider specifically excludes coverage for damage caused by "wear and tear" and that any miscommunication surrounding accident recovery versus breakdown assistance was as a result of the information supplied by the Complainant to the Provider's agent. Accordingly, the Provider is not responsible for the financial loss incurred by the Complainant as a result of this "wear and tear" nor was it obliged to provide a courtesy car to the Complainant. However, I do find that the Provider incorrectly stated that the Complainant's premium was decreasing rather than increasing and failed to inform the Complainant of its internal appeals mechanism noted above.

In my Preliminary Decision I indicated my intention to direct that the Provider make a payment of €250 to the Complainant, as compensation for these failings.

The Complainant, in his post Preliminary Decision submission, states:

> *The Adjudicator unfortunately gives as much consideration and credence to reasonably inconsequential secondary issues, such as the poor customer service, lack of the accident recovery, increased subsequent premium issue etc, as the core issue of* [the Provider's] *refusal to cover the cost of damages caused by this accident. Of the five issues listed for adjudication, only the core issue is of any real importance.*
>
> *I believe that the suggested punitive damages of a paltry €250 are both inappropriate and desultory given the facts of the matter…"*

The Complainant is correct. I have given equal consideration to all aspects of his complaint. This is the appropriate approach. I would also point out that this Office does not sanction financial service providers. That is the role of the Regulator, the Central Bank of Ireland. The compensation directed is for the inconvenience caused to the Complainant by the Provider's poor communications. It is not intended to be punitive.

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For the reasons set out in this Decision, I partially uphold this complaint and direct the Provider to make a payment of €250.00 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) and (g)*** *as I believe the Provider's conduct was unreasonable and 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 €250, 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

22 December 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.