



<u>Decision Ref:</u>	2022-0337
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a motor insurance policy.

The Complainant's Case

The Complainant's vehicle was damaged in an accident on **11 February 2020** when it was driven into a partially flooded road. The Complainant holds a policy of motor insurance with the Provider, and he made contact to make a claim in relation to the vehicle.

The Complainant states that the vehicle was a "*custom build*" and that "*due to a long list of custom specifications*" the value of the vehicle was €130,000 (one hundred and thirty thousand Euro) and that he communicated the value of custom specifications of the vehicle to the Provider at the time of incepting the insurance policy.

When the Complainant made this complaint, he was unhappy with the assessment carried out by the Provider's assessor, who had determined that the vehicle was a write off and had ascribed it a pre-accident value of €60,000 (sixty thousand Euro). The Complainant stated that the inspection was "*about 7-10 minutes*" and the decision to write off the vehicle was "*based on pictures only*", and that the assessment carried out was "*a scam*".

The Complainant stated that he had the vehicle inspected by the manufacturer who advised that the vehicle required *"2 elements replaced"*. He said that he further had it inspected by an independent assessor who concluded that *"the car is in a position to be repaired"*.

The Complainant also complained that he did not receive a replacement vehicle after he reported the accident which he stated, he should have received.

The Provider's Case

The Provider states that when it was informed of the claim it instructed an independent assessor who researched the vehicle and placed a pre-accident value of €60,000 (sixty thousand Euro) and that this valuation *"took into consideration all standard and custom specifications"*. The Provider states that the *"exact specifications of the insured vehicle were obtained directly from [the manufacturer]"*. The Provider further states that the independent assessment obtained by the Complainant, also assessed the vehicle as having a pre-accident value of €60,000.

The Provider states that after the accident the vehicle was taken to the manufacturer's garage, which *"found damage to the heater because of water ingress... [and] also advised of a possible engine issue and a wiring loom issue."* The Provider's independent assessor physically inspected the vehicle on **2 March 2020**, and it was their *"professional opinion that the vehicle would not be suitable for a safe repair."*

The Provider states that due to the electrical fault in the undercarriage of the vehicle, as a result of being submerged, there would be a *"risk of fire"* should the Auxiliary Cabin Heater fail and further that *"corrosion may occur in the wiring of the vehicle which runs under the vehicle which could also contribute to a fire"*. It was on the basis of these safety concerns that the independent assessor determined that the vehicle should be treated as an *"end-of-life vehicle"*. The Provider further states that the Complainant's own independent assessor concluded that the vehicle *"may not be a viable repair"*.

The Provider states that it received a complaint from the Complainant on **19 March 2020** that the independent assessor had *"only spent five minutes inspecting the vehicle"* and this was investigated by the Provider's chief engineer who contacted the managing director of the independent assessor. The independent assessor *"completely disputed the allegation"* and it was the opinion of both the managing director of the independent assessor and the Provider's chief engineer that the report was *"detailed and precise and reflective of the damage caused to the insured vehicle"*.

The Provider states, with reference to pre-accident value, that on **26 August 2020** it paid:

- **€44,074.66** (forty-four thousand and seventy-four Euro and sixty-six Cent) to the Hire Purchase company and
- **€22,425.34** (twenty-two thousand, four hundred and twenty-five Euro and thirty-four Cent) to the Complainant.

The Provider says that this represented a pre-accident value at a total of **€66,500** (sixty-six thousand, five hundred Euro) which is €6,500 (six thousand, five hundred Euro) above the pre accident value assessed by both experts.

The Provider states that it also waived the excess of €350 (three hundred and fifty Euro) and made an ex-gratia payment to the Complainant of €300 (three hundred Euro) on **30 September 2020** and that the Provider wrote off the final instalment of the premium due for the Complainant's policy, which was not paid by the Complainant, and which amounted to €177.98 (one hundred and seventy-seven Euro and ninety-eight Cent).

In relation to the failure to provide a replacement vehicle the Provider states that the Complainant "*had not opted for the Car replacement Optional extra on his policy*". The Provider states that the Complainant was offered car hire on **3 July 2020** but "*as it was not a like for like vehicle*" the Complainant did not accept it.

The Complaint for Adjudication

The complaint is that the Provider wrongfully categorised the Complainant's vehicle as a write off, and proffered poor customer service to him throughout the handling of his claim. Although the Complainant was originally dissatisfied with the pre-accident value attributed to his insured vehicle, I note that in **August 2020**, the month after he had made his complaint to this Office, the parties reached an agreement regarding the pre-accident value and that element of the Complainant's dissatisfaction was thereby resolved.

Decision

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

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

A Preliminary Decision was issued to the parties on **5 August 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant first incepted a policy of comprehensive motor insurance with the Provider in **2010**. Cover was renewed in November 2019 and the Policy Schedule dated **3 November 2019** records that the Complainant's vehicle had an insured value of €120,000 (one hundred and twenty thousand Euro) and was a **2016** model. The policy schedule further records that "**Section 10 Replacement car**" is "*not applicable*".

The Provider's 'Terms of Business' set out the following in relation to valuation:

"How we value your vehicle

In the event that our [Provider] Motor Engineer deems your vehicle a total loss i.e. it is beyond economical repair, our [Provider] Motor Engineer will base the value of your vehicle on what it was worth prior to the accident.

Our [Provider] Motor Engineer will research this value by using current Motor Trade publications. These are as follows:

- 1. Irish Car Sales websites*
- 2. Local SIMI (Society of Irish Motor Industry) Car Sales Dealers*

Once we have agreed the value with you, we will take ownership of your vehicle"

The '**Car Insurance Policy**' contains the main terms and conditions agreed between the parties and the extracts relevant to this complaint are set out below.

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Section 1 dealing with “*loss and damage to your car*” sets out that the Provider will pay for “*loss or damage to your car, and its accessories while in your car, up to the market value of your car*”.

It further set out the circumstances in which a replacement car will be provided by the Provider during settlement of the claim, and it specifies that this will only be available where:

“the loss or damage happens before your car is one year old”

I note that the vehicle was inspected by an independent assessor appointed by the Provider (referred to as ‘the Provider’s Expert’) on **2 March 2020**, and this resulted in a report of **4 March 2020** with the following relevant extracts:

“the Insured informed the Writer that he attempted to drive through a flooded area and in the course of driving through the flood the Engine stopped abruptly and necessitated Recovery of the vehicle from the flooded area.

The Insured stated that the vehicle was submerged in the flooded water up to the level of the Floor and which would have included the Undercarriage however after the vehicle was recovered and after numerous attempts, the Insured stated that the Engine started but was erratic and a loss of power was noted. He also informed us that a noise was emanating from the Undercarriage in the area where the Auxiliary Cabin Heater was located, and which was abnormal due to the fact that the vehicle had never continuously ran this Heater previous to the Incident under review.

On driving the vehicle, the Insured stated that the Engine performance became less erratic however was intermittently losing power and intermittently becoming erratic and vibrating.

EXAMINATION

Examination of the Engine revealed that it started normally and no audible noises were noted from the Engine.

However, during the course of our Examination, we left the Engine running and then noted a slight vibration intermittently emanating from the Engine.

There was an audible noise emanating from the Undercarriage of the vehicle relating to the Auxiliary Cab Heater and which was running continuously.

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CONCLUSION

From our examination of this vehicle we noted that there is an Electrical fault in the Undercarriage of the vehicle resulting from having been submerged in flood water and as the Auxiliary Cavin Heater is running continuously, there would be the risk of fire should this Unit fail.

Also the Undercarriage was submerged, corrosion may occur in the Wiring of the vehicle which could also contribute to a fire and could cause safety concerns should a Safety System fail if this vehicle was involved in a Road Traffic Accident.

In the interest of safety and taking the foregoing into consideration we would be of the opinion that the most satisfactory manner in dealing with this vehicle would be to deem it an end-of-life vehicle.”

VEHICLE CONDITION AND VALUE

Apart from the damages outlined in the foregoing, this vehicle was in good condition.

...

We have researched the current market for this make/model/specification of vehicle, and it is our opinion that the pre-accident value would have been in the region of €60,000.00 inclusive of VAT. The pre-accident value takes into consideration pre-accident condition, mileage, Road Tax and NCT status of the vehicle.”

The report includes screenshots of online advertisements for five vehicles of the same make and model, though all are of a vintage of **2017**, rather than **2016**. The range of values on these advertisements are from €54,895 to €65,995.

I also note that the Complainant instructed his own independent assessor (referred to below as the ‘Complainant’s Expert’) who inspected the vehicle some four months later on **9 July 2020** and provided a report dated **15 July 2020**. The following relevant extracts are set out below:

“HISTORY

You have advised this vehicle was subject of a damage as a result of driving through floodwater in late January of 2020. The vehicle cut out when almost through the flood. You were able to restart the vehicle and continue you journey. The vehicle did not sustain any water ingress to the interior. Initially you assumed the vehicle had escaped damage, however, an auxiliary heater motor fixed to the underside of the vehicle was constantly running.

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The vehicle returned to service, however, it sustained an engine failure. You notified your insurance and they have deemed the vehicle to be uneconomical to repair.

ENGINEER'S FINDINGS

At our inspection in July 2020 the engine of the vehicle is locked, and the vehicle's engine would not start therefore we could not diagnose if the electrical systems performed as they should.

...

The vehicle requires a replacement engine.

At the time the vehicle entered the repairer's originally, the auxiliary heater (fitted along the left chassis leg of the vehicle) ran constantly. This issue has been diagnosed as requiring replacement due to water contamination, both electrical connecting blocks to this auxiliary heater have evidence of corrosion on their connecting pins these will require cleaning also.

At the time of our inspection there was no evidence of water ingress into the interior of this vehicle.

...

CONCLUSION

We are in receipt of an estimate of €21732.23 vat inclusive from [Manufacturer's Garage] however we believe that this could increase due to extra damage relating to the intercooler, turbo and exhaust gas recirculating valve which could increase by approximately €5000.00 to €26732.23 vat inclusive.

Our inspection was approximately 6 months after the initial incident.

This vehicle has a Pre-Flood Value of €60,000.00 vat inclusive.

...

Taking the above into account this vehicle is in a repairable proposition, however, it is possible for other electrical components to have damage recorded to them and may be also require replacement."

The Provider's Expert responded to this report in an email dated **20 July 2020** and set out as follows:

"We are now in receipt of the insured's Independent Engineers report, however we have previously categorised the vehicle as End of Life salvage category B due to the risk of electrical failure in regards to non-deployment of the safety restraint systems in the event of an accident, and the risk of fire due to corrosion and short circuit in the vehicle wiring which we also advised may not have been evident at the time of our inspection but which would most likely surface at a later stage.

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We note that the Independent Assessor has now noted corrosion to the wiring plugs as some time has lapsed following our inspection which would be consistent with the projected theory that unforeseen damages have been sustained to the wiring and possible unforeseen damages to the control units for various components increasing the risk factor outlined in our report. We also note that damages have now been sustained to the engine where the engine requires replacement along with the possibility of some of the ancillary components which have all come to light during the few months following our inspection therefore reinforcing our theory.

As there would be a high possibility of further issues arising relating to the electrical components in the vehicle and a possible risk of fire we would firmly be of the opinion that this vehicle would be best treated as an End of Life vehicle with a salvage category of B.

We note that our previous calculations and market research placed a PAV of €60,000 inclusive of vat on the insured vehicle which we would be of the opinion would be sufficient in reinstating the insured to their pre incident position. We note that the Independent Assessor has also placed a PAV of €60,000 inclusive of vat on the insured vehicle. Taking the forgoing into consideration we would not be able to justify an increase in the PAV of the insured vehicle.”

The Complainant then sent an email to a representative of the Provider on **4 August 2020** in which he stated:

“My issue is that I lose 55% of the value and can’t buy anything comparable for this price, I will be satisfy with refund of 65k-70k closer to 70k the better.

...

When we will agree the final price and refund then I will be happy with and would like to pull back or stop the complains because didn’t help anybody.”

Subsequent internal correspondence within the Provider resulting in an increased pre accident value of **€66,500** (sixty-six thousand, five hundred Euro) being offered to the Complainant on 14 August 2020. The Complainant responded on **18 August 2020** by way of email and states *“I would like to confirm that I’m accepting the proposed settlement of 66,500 Euro material damage claim”*.

The Complainant says that the vehicle was wrongly classed by the Provider as End-of-Life, that he did not receive a replacement vehicle, and that there were delays and customer service failings during the claims process.

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In relation to the first element, the role of this Office is not to determine the status of the vehicle; this investigation is concerned solely with whether the Provider, in making its decision on the claim, acted in a way that was reasonable and fair.

I note that the Provider's Expert came to the conclusion that there was an unacceptable risk of electrical fault, which caused the vehicle to be a safety hazard. The evidence shows that the report prepared is detailed and the Provider's Expert also considered the report of the Complainant's Expert and set out his reasoning for why his view remained unchanged.

In my opinion, it was not unreasonable or improper for the Provider to act upon the expert opinion it obtained, and I am conscious that the Complainant's Expert accepted that, as the vehicle could not be started, the electrical components could not be properly analysed and so they could not rule out the risk identified. I am satisfied that the safety concern raised by the Provider's expert, was a matter to be taken seriously by the Provider, in its approach to the claim.

Turning to the issue of a replacement vehicle, I am satisfied that the 'Policy Schedule' is clear that a replacement vehicle was an optional extra not chosen by the Complainant. Consequently, there is no evidence of any failing on the part of the Provider for not supplying a replacement car. I note that, in the event, notwithstanding that there was no cover for a replacement car, the Provider states that the Complainant was in fact offered a hire car on 3 July 2020, but he declined this offer because the vehicle was not, "*like for like*".

In relation to the standard of customer service proffered it has been accepted by the Provider that there were delays in relation to the processing of the claim. As there were a number of inspections of the vehicle it was inevitable, in my opinion, that this would add to the length of time for the insurance claim to be processed and I note that upon receipt of the Complainant's Expert report, the Provider's Expert responded within five days, which I consider to be a very reasonable response time. I also note that this claim was being dealt with during the onset of the COVID-19 pandemic and associated lockdowns, with the consequent additional challenges for businesses in their service provision.

Other than delay, the Complainant's suggestion of customer service failings, appears to arise from the report of the Provider's Expert which he disagreed with. I am satisfied that the report drafted was detailed and reasoned and I see no evidence to bear out the contention that it was in any way a "*scam*", as suggested by the Complainant. I note that the Complainant disagreed with the report and obtained his own assessor's report and ultimately accepted the agreed pre-accident value, in settlement of his claim.

I am conscious that the Provider waived both the excess and the final payment outstanding on the Complainant's insurance premium and it also made an ex-gratia payment of €300, all of which amounted to a value to the Complainant of €827.98 (eight hundred and twenty-seven Euro and ninety-eight Cent). I am satisfied that this was more than adequate to compensate the Complainant for any arguable delay attributable to the fault of the Provider and I do not accept that there is any reasonable basis upon which it would be appropriate to uphold this complaint.

Whilst I have noted from the Complainant's submissions, in response to the preliminary decision issued by this Office, that he remains unhappy with the history and the timeframe of this matter, on the basis of the evidence made available, I do not accept that it would be appropriate to uphold the complaint that the Provider wrongfully categorised the Complainant's vehicle as a write off, and proffered poor customer service to him throughout the handling of his claim.

Conclusion

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

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



**MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)**

17 October 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

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Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.

