



<u>Decision Ref:</u>	2018-0031
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure & voiding
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to the decision taken by the Provider to cancel the Complainant's motor insurance policy from inception on 1st April 2016, with effect from 22nd April 2016.

The Complainant's Case

The Complainant submits that he obtained a car insurance quotation from the Provider on **24th March 2016**, which he accepted and, on the back of which, a policy issued in due course. However, the Provider subsequently cancelled the policy on the grounds that the Complainant had not disclosed an 'own damage' loss claim which had been made with his previous insurers within the previous 3 years.

The Complainant submits that the Provider acted incorrectly and unreasonably in cancelling the policy and that what occurred, did so because of the way in which the online insurance proposal form was designed and presented to him for completion. He said that the design and presentation of the form resulted in his being unaware of the Provider's assumption in this regard.

The Complainant submits that he has been treated by the Provider as if he had deliberately misled it and he considers that he has suffered reputational damage as a result of its cancelling the insurance policy. He points to the fact that a consequence of the cancellation is that in future he will be required to disclose this to any potential motor insurers. The Complainant submits that he inadvertently and innocently overlooked the Assumptions on

the proposal form, which he says was presented at the end of a long form of tick boxes and statements.

He submits that he has since had his insurance proposal accepted by another insurer which has issued him his current motor insurance policy and submits that this insurer's proposal was presented in a straight forward and 'upfront' way, in which material facts relevant to the proposal were the subject of straight forward questions and were not presented in the guise of assumptions.

The Complainant submits that the Provider's on line proposal is a faulty document which unfairly puts an onus on a proposer to do the insurer's work. He submits that the Provider has not been able to furnish him with a true facsimile of the on line proposal form which he completed, to verify the questions that were asked and the answers which were given on that form, which he says is highly unsatisfactory.

The Complainant submits that a proposer should not be at risk for not checking assumptions, which should never have been set out as assumptions. The Complainant submits that the subject matter of these assumptions should have been asked as clear simple questions which the proposer would see immediately and would answer. The Complainant has said that he found it difficult to navigate through the form and to review those parts already completed.

He submits that it is his belief that it is the responsibility of the Provider to ask questions and for the proposer to answer. He submits that it is absolutely not the case that it is his responsibility to check that the answers provided do not contradict unfounded assumptions they have made.

In respect of the "Car Insurance Temporary cover pack" which was issued to the Complainant on the **30th March 2016**, the Complainant submits that at the time he received that letter, he *"naturally had assumed everything was in order subject to sending the proof of no claims discount"*.

The Complainant submits that it should have been clear to the Provider that, having accepted a proposal, and having issued a motor insurance certificate and a policy schedule, and having indicated that a policy booklet was available online, that it was too late to expect a policy holder to peruse in detail a statement of fact regarding a contract already completed.

The Complainant notes that the last paragraph of the Policy Statement of Fact, comprising a 'declaration', was never signed by him. The Complainant submits that references made by the Provider to this Declaration seems to him that by quoting that 'declaration' that they are attempting to imply that this formed part of the insurance contract and that he signed and confirmed the declaration as an act, independently of the other acts of completion of the proposal form. The Complainant submits that this would be grossly misleading. The Complainant says that he made no comment on the 'declaration' because, at that stage, he considered the contract was already arranged and dealt with.

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The Complainant queries why the Provider did not just ask him a straight forward question on the proposal as to what previous claims he had, which, he submits, would have avoided the problem which arose.

The Complainant submits when he had ticked the box, which resulted in the acceptance of certain assumptions made by the Provider, that this was an accidental or inadvertent failure on his part and that he was unaware of the implications of ticking the box. He contends that the Provider, once aware of the issue, should have given him the option to accept or decline an alternative quotation, that took into account the own damage incident.

The Complainant submits that the online proposal form is patently seriously faulty and he is seeking, by way of redress, to have the cancellation reversed and would like an apology from the Provider for the way he has been treated.

The Provider's Case

The Provider submits that the Complainant's policy was cancelled as he did not disclose a previous claim. It says that it considers the claim which was not disclosed to be a material fact which would have affected the risk that its underwriters take on. It submits that the undisclosed claim fell outside of its underwriting acceptance criteria.

The Provider submits that the Complainant received a quotation online on **24th March 2016** and, subsequent to this, he agreed to its terms and conditions and on **30th March 2016** the premium was paid in full and cover commenced on **1st April 2016**.

The Provider submits that during the proposal process, the Complainant declared that he had been claims free for the past three years which was not, in fact, the case as the Complainant had made a previous claim on **30th September 2014**, in which the amount of €1,1163.78 was paid out.

The Provider submits that the duty of utmost good faith is at the heart of all insurance contracts and that the claim which was not disclosed to it was material and it should have been declared.

The Provider has set out the following the sequence of events:

07 April 2016 - Certificate of No Claims Discount received from the Complainant, identifying an Accidental Damage claim, for the amount of €1,163.78, which occurred on 30 September 2014.

07 April 2016: The Provider telephoned the Complainant to get more information on the claim. The Complainant advised that it was an at fault claim for accidental damage and that he had told the Provider about the claim. The Provider said that it advised the Complainant that it could not cover anyone who has had an at fault claim within the last three years and that its underwriters would review same. It says that the Complainant said he would check and phone it back to confirm where he advised on the claim on the proposal form.

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07 April 2016: The Complainant telephoned back to discuss the matter. It says that it advised him that it could not continue with cover as the Complainant had a claim in 2014 and this claim falls outside its underwriting acceptance criteria. It says that it advised him where the 'Assumptions' are located online.

The Complainant requested a copy of the form that he had completed online. The Provider says that it explained to him that once a policy is set up, that the details in the quotation automatically transfer to the new policy documents.

It submits that it referred the Complainant to the 'Statement of Fact' which provides the details of what he agreed to.

07 April 2016: The Provider says that a manager phoned the Complainant as requested. The Provider says that it explained that in order to get a quotation, the Complainant must have agreed to its 'Assumptions'. It submits that the information that was input by the Complainant, was issued to the Complainant, on the 'Statement of Fact'.

08 April 2016: The Complainant emailed the Provider to advise that he was making a complaint in relation to the cancellation of the policy.

11 April 2016: The Provider issued a resolution letter to the Complainant by way of email, addressing his issues and outlining the reason for its decision. It submits that it maintained its position on the cancellation of the policy.

11 April 2016: The Provider submits that the Complainant responded to the resolution letter by email, again asking that it provide him with the form he had completed.

12 April 2016: The Provider issued a Warning of Cancellation Letter by registered post to the Complainant.

14 April 2016: The Provider responded to the Complainant's email of the 11 April 2016. It says that it advised again that it was unable to provide the transcript of the form which he completed online but that it attached the 'Statement of Fact' which contains all the information that was entered on the quotation.

17 April 2016: An automated letter was issued in error to the Complainant requesting outstanding documents.

21 April 2016: A second automated letter was sent in error with a Warning of Cancellation regarding the outstanding documents.

24 April 2016: A letter issued to the Complainant confirming that the policy was cancelled from inception date, being 01 April 2016. A letter was also issued to the Department of Environment.

26 April 2016: A letter was sent to the Complainant confirming the premium refund amount that would be returned to him

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09 May 2016: The Provider issued a letter to the Complainant confirming its position in relation to the policy cancellation and a brief summary of the letters/dates that it had issued.

The Provider submits that the quotation would only be valid once the Complainant was within its new business underwriting acceptance criteria and that the onus is on a Proposer to provide it with all of the correct information in order for it to decide if it wishes to underwrite the risk, or not.

The Provider submits that when seeking an online quotation, under the heading 'Basic Details', a pop up icon appears under the heading;

'Your Discounts

Your latest driving experience'

This box contains the following information;

To get a quote online you must not:

- > Have any unsettled claims at present*
- > Have had more than 1 Windscreen, Fire or Theft claim in the past 3 years*
- > Have had any other type of claim in the last 3 years*

If any of the above applies to you please call us in xxxxxx on 1890 xxxxxx

Failure to provide the evidence of the number of years quoted on may result in a higher premium or we may be unable to offer cover at all. '

The Provider submits that, following on from this, its Motor Insurance Quotation is based on certain assumptions, which the Complainant must have read and accepted before proceeding with the quotation. The Provider submits that the following message appears:

Your Quote is based on certain assumptions we make about your driving history, your insurance history and the type of car you drive. In the absence of your correct and valid vehicle registration number, your quotation or policy cover is not guaranteed. Please tick to confirm you have read and accepted our assumptions, data protection statement and terms and conditions before proceeding.

The Provider submits that the underlined link, when clicked on, contains the following information:

"Important Information

Business assumptions, data protection and terms & conditions

Please read and accept these details on how we'll treat your private data, our terms and conditions and the business assumptions we make about your online car insurance quote

About your quote

/Cont'd...

Your Quote is based on certain assumptions we make about your driving history, your insurance history and the type of car you drive. These assumptions, and the information you provide, are the basis of the contract between you and [the Provider], so you must agree to them, our data protection statement and our terms and conditions before completing your quote.

If you cannot agree to these assumptions, we will not be able to offer you an online car insurance quote today

Our assumptions

*In offering you an online car insurance quote, **we assume the following:***

You (your named drivers or any person who may drive your car)

- *Have had no claims made against you in the last three years, have no outstanding claims, nor been involved in any accident or loss*

...

The Provider submits that in order to proceed with the quotation, a Proposer is required to have fully read and agreed with these assumptions and that these assumptions form the basis of the contract with the Proposer. It says that by "ticking", as requested the Complainant confirmed to it that he had read, and agreed that he had no claims in the previous three years.

The Provider also refers to the '**Car Insurance Temporary cover**' pack which was issued to the Complainant on **30th March 2016**. It submits that within the cover letter of this pack it stated:

'What to do next

Please check the information on the statement of fact and policy schedule then send the following by email to [direct@\[Provider\].ie](mailto:direct@[Provider].ie) or alternatively post it in the enclosed prepaid envelope:

A copy of your No Claims Discount/Bonus statement. This should have been issued to you at renewal by your previous insurer

The Provider refers to the 'Policy Statement of Fact' which states:

'THIS IS AN IMPORTANT DOCUMENT SO PLEASE READ IT IN FULL

The details on this 'Statement of Fact' are a record of the information supplied by you to us on 24/03/2016. This information is used to calculate your premium and the terms and conditions on which your quotation is based.

This Statement of Fact should be read in conjunction with your Schedule, Policy booklet and Certificate of Motor Insurance as together they form the basis of your contract with [the Provider] who is the underwriter of your car insurance policy. If any of the information

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shown on this Statement of Fact is incorrect please call us immediately on 1890 xxxxxx as any changes may affect the premium quoted and/or the cover offered to you.

Your Duty to Tell Us All Material Facts

In relation to you or any driver who will drive the car, you must tell us any facts which are likely to affect whether we agree to provide cover, or how we assess the risks proposed for insurance, including but not limited to:

...

b) previous insurance claims

If you are not sure whether you should tell us about something please tell us anyway. This is for your own protection because if you do not give us all the information we need, your policy may not provide you with the cover you need, a claim may not be paid, the policy may be declared invalid and void or may be cancelled and you may encounter difficulty trying to purchase insurance elsewhere.

If there have been any changes in circumstances that have arisen since this insurance was taken out or your last renewal please call us on 1890 xxxxxx.

Any changes to this Statement of Fact take precedence over the information contained within it. '

The Provider submits that by agreeing to this 'Statement of Fact' the Complainant confirmed that:

*'You have told us that you or any driver who will drive your car:
Have not been involved in an accident or suffered any losses in the past 3 years. '*

The Provider submits that it was also clearly highlighted that:

'IF YOU DO NOT FULLY UNDERSTAND OR HAVE NOT MET ALL OF THE ABOVE REQUIREMENTS, PLEASE CONTACT US IMMEDIATELY.

DECLARATION

I have examined the details, answers and information recorded in this Statement of Fact and confirm that they are true, accurate and complete. I acknowledge that this Statement of Fact, together with the Policy Booklet and Schedule will form the basis of my/our contract with [Provider]... '

The Provider submits that on **07th April 2016**, it received a Certificate of No Claims Discount from the Complainant and that this No Claims Discount confirmed that the Complainant had an Accidental Damage at fault claim on 30th September 2014, in which €1,163.78 was paid out. It confirmed that the Complainant was 1 year claim free.

It submits that it then telephoned the Complainant to query the claim, as this would have an impact on its underwriting acceptance criteria and whether it would take on the risk. As the claim was an accidental damage claim and fell outside its underwriting acceptance

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criteria, the Complainant was advised that this risk would need to be reviewed by its underwriters as it doesn't offer cover if a customer has a claim within the past three years.

The Provider submits that the Complainant advised it that he had told it about this claim. He said he would review his documentation to confirm what information he provided and he would then revert.

The Provider submits that when the Complainant telephoned back to discuss the issue the Provider advised that no history of this claim been declared on the quote. Furthermore, it says that it told the Complainant that when he completed his quotation, before he could proceed with his quote, the quote would be based on certain 'Assumptions'. It submits that the 'Assumptions' that are on the website confirm that a proposer has had no claims in the past three years, as follows:

'In offering you an online car insurance quote, we assume the following:

*You (your named drivers or any person who may drive your car)
Have had no claims made against you in the last three years, have no outstanding claims
nor been involved in any accident or loss'*

It submits that if a proposer cannot agree with its 'Assumptions' then it is not in a position to offer a quote:

'If you cannot agree to these assumptions, we will not be able to offer you an online car insurance quote today'.

It submits that all of the information it receives at quotation stage is reflected in the documents which are issued when cover commences and that this is reflected in the document entitled 'Car Insurance Temporary Cover'. The Provider says that if there are any details that the proposer disagrees with in these documents, then they should contact it immediately to discuss.

The Provider says that, in summary, the Policy was declared null and void from inception and that utmost good faith is a fundamental principle of an insurance contract. It says that the Insured has a duty to disclose all relevant facts to it and that all material information should have been disclosed but that the Complainant failed to disclose his previous claim. The Provider says that in a case where there is nondisclosure/misrepresentation it is entitled to cancel the policy Ab Initio, and this is the position it has taken.

The Provider submits that, in all of the circumstance, its determination to cancel the Complainant's policy from inception date was not unjust or unreasonable.

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

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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 18th January 2018, 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.

Taking into account all of the correspondence received from the parties, following the issuance of the Preliminary Decision, the final determination of this office is set out below.

I will examine the issue of whether the determination of the Provider to cancel this policy from the inception date was unjust or unreasonable, in circumstances where the Complainant contends that this occurred due to the fact that the Provider's online proposal form is fundamentally flawed and misleading.

On the 24th March 2016 the Complainant filled in an online proposal form on the Provider's website and received a quotation for a car insurance policy. The Provider's position is that due to the omission by the Complainant to disclose a claim which he made to his previous insurer in 2014, this constituted a failure to disclose a material fact. The Provider says that had such a claim been disclosed, that this would have placed the Complainant outside of the Underwriter's underwriting criteria.

I note the Complainant's position that he was not asked about this claim when he was filling out the form and that had he been asked about the claim which he made in 2014, then he would have disclosed it. He has submitted that the duty is on the Insurer to pose questions which it requires information in respect of and that if it wanted to know about previous claims, then it ought have asked about this.

The Provider has submitted that prior to acquiring a quote, a proposer is required to tick a box confirming that the proposer has read the assumptions which apply.

The Online Application Process

The Provider has however furnished screenshots of the online application process and the questions which it asked of the Complainant, in April 2016. The Complainant has submitted that it is unacceptable that the details which he supplied are no longer available to view. The Provider has explained that the details which are supplied during the online process are translated into the Statement of Fact.

I am aware that the Complainant is dissatisfied with the fact that the actual screenshots which he completed online are not available to him now. However, I do not understand the Complainant to be pointing to any discrepancies between that information which appears in the Statement of Fact and that which he believes he submitted online. Rather, the position of the Complainant is that it is inherently wrong of the Provider to be unable to produce the screenshots themselves so that he can see precisely what was asked/how he responded to the precise questions posed.

The Provider has, however, furnished a copy of the uncompleted screenshots of the online questions, proposers were required to complete, in April 2016, in order to obtain a quotation.

It has also, by email dated 11th September 2017, submitted screen shots from its "HiPlus" system which evinces the information supplied by the Complainant when seeking a quotation. It submits that this system captures transactions of the policy and also includes the quotation history. The Provider says that the information that the Complainant input on the website, feeds directly into this system and is converted over to the "HiPlus" system.

It submits that when the Complainant's quotation was converted into new business (a new insurance policy) a Statement of Fact was automatically created and issued based on the information that had been furnished by the Complainant in the course of the online process. The Provider says that this Statement of Fact was issued to the Complainant.

I appreciate that the Complainant believes it is a failure on the part of the Provider that it is unable to provide a copy of the 'form' which he filled in online. However, I understand the Provider's explanation that this is not saved in a durable format but rather that the information input by a proposer is 'translated' into and recorded within another format. I do not believe that there is anything inherently flawed in this procedure, once:

- (i) the information furnished by the proposer is validly captured and preserved; and
- (ii) the actual queries put to that proposer by way of online screenshots (as distinct from a proposal form) are also captured and preserved.

I will turn now to look at the questions which were asked of the Complainant when he was seeking a quotation. The Provider has furnished a series of screenshots in this regard, which I have set out below:

/Cont'd...

File Edit View Favorites Tools Help

1 Basic Details 2 Quote 3 Proceed To Purchase 4 Payment

Already have a quote? [Retrieve your quote](#) >

Your Details

Title

First name

Surname

Date of birth

Contact number
 ⓘ

Email address
 ⓘ

Occupation

Call us
Monday to Friday
9:00am - 5:00pm

Further information
[Our assumptions](#) >

Your documents Feedback
We strongly advise that you read these documents before continuing with your quote
[Terms of Business](#) ⓘ
[Our Privacy Statement](#) ⓘ



Your Discounts

Your latest driving experience
 ⓘ

Years of no claims bonus
 ⓘ

How many penalty points do you have?
 ⓘ

Who is your current insurer?
 ⓘ

ⓘ

Does any other member of your household currently have a Private Car policy
 ⓘ

Your Cover

When do you want your cover to start?
 ⓘ

What is your preferred Cover Type?

How many years' claims free driving have you earned in your own name? Your No Claims Bonus (NCB) cannot be used on more than one policy and must have been earned in the last two years.

We may ask you to send us proof of your NCB before we issue your policy documents.



Your Cover

When do you want your cover to start?



What is your preferred Cover Type?

Before you receive your quote

Learn more about

music tickets at the / competitions for holidays and sports events (for up to 12 months from now or where you take out a policy, for up to 12 months after your policy has ceased)

Would you like to receive such information?

Your Quote is based on certain assumptions we make about your driving history, your insurance history and the type of car you drive. In the absence of your correct and valid vehicle registration number your quotation or policy cover is not guaranteed. Please tick to confirm you have read and accepted our assumptions, data protection statement and terms and conditions before proceeding.



[Get your quote >](#)

Compro

Before

Learn more which which would like or where y

Would you

Your Quote insurance vehicle re confirms y and condi

About Us

Aviva Direct Ins

Aviva Insurance Branch C&C

Important information

Business assumptions, data protection and terms & conditions

Please read and accept these details on how we'll treat your private data, our terms and conditions and the business assumptions we make about your online car insurance quote

About your quote

Your Quote is based on certain assumptions we make about your driving history, your insurance history and the type of car you drive. These assumptions, and the information you provide, are the basis of the contract between you and us. Please read and accept these details on how we'll treat your private data, our terms and conditions and the business assumptions we make about your online car insurance quote before completing your quote.

From time to time we may contact you to discuss the renewal of an existing policy, to discuss a quotation of any provided to ask for your feedback/knows as part of a customer service survey or in connection with a claim.

If you cannot agree to these assumptions, we will not be able to offer you an online car insurance quote today.

Closepage 48

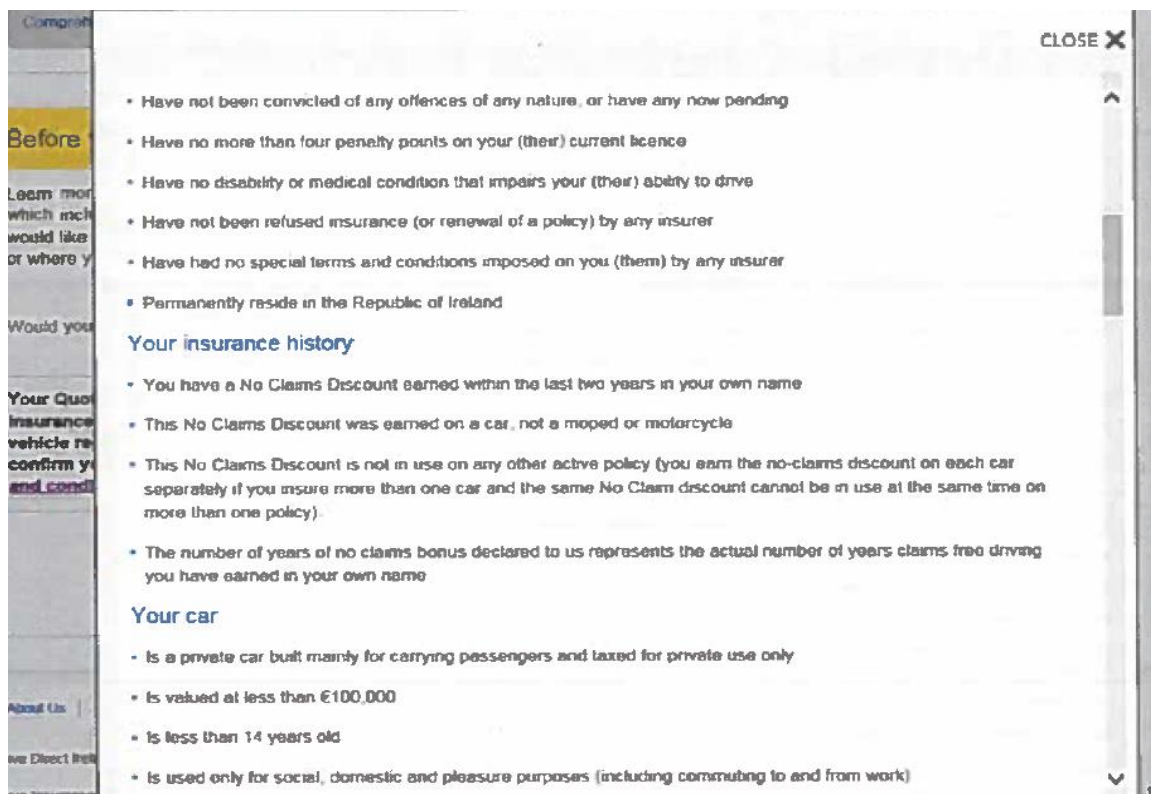
Our assumptions

In offering you an online car insurance quote, we assume the following:

You (your named drivers or any person who may drive your car) driving history

- Have never been disqualified from driving
- Have never had any endorsement on your licence
- Have had no claims made against you in the last three years, have no outstanding claims, not been involved in any accident or loss

CLOSE X



There are two issues which strike me, from an examination of the screenshots furnished. Firstly, I consider that there is an issue with the way in which the question regarding a No Claims Bonus is presented and secondly, I consider that there are problems in relation to the Provider's use of "Assumptions".

1. "Years of No Claims Bonus"

As can be seen from the screen shots set out, above, under the section entitled "Your Discounts", there is a drop down box headed "Years of no claims bonus". However, in providing an answer, the proposer is invited to choose an answer which speaks to the number of years of "claims free driving" they have, as distinct from "years of no claims bonus".

Whilst at first glance, these may appear to address the same issue, I am of the view that there is, in fact, a significant disjunct between the question phrased and the options made available by the Provider which a proposer may choose as an answer. The number of "years of no claims bonus" and years of "claims free driving" a person may have may be two entirely distinct things. The Provider, in my opinion, is in the more expert position to understand the difference between each of these separate matters. The Complainant herein, at the time of completing the online application, held a no Claims Bonus showing a period of 4 years, but in fact he only held one year claims free driving, as demonstrated from the extracted document on the next page, which he submitted to the Provider:

/Cont'd...

CERTIFICATE OF NO CLAIM DISCOUNT



Policy Type: **MOTOR**

Date: 24th February 2016

TO WHOM IT MAY CONCERN

This is to confirm that the above policy has been in force since 1/04/2009 and that the policy falls due for renewal on 1/04/2016.

The No Claim Discount earned for each vehicle under this policy at renewal date is outlined below:

No Claims Discount/Amount	No. of Years	Point on No Claim Discount Scale
45% e 704.56	4 Yrs	4

The following is a list of all claims against this policy within the last 5 years:

Claim Number	Date of Accident	Third Party	PAYMENTS			Status
			Fire & Theft	Accidental Damage	Other	
000668657	30/09/2014	e 00.00	e 00.00	e 1163.78	e 123.00	Finalised

Number of years for which no claim has been made on this policy:	1 year
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Note : This certificate is based on the information known to us at the date of issue.

I am satisfied that there was a failure by the Provider in this regard, in seeking to elicit information, to frame the question in a clear and unambiguous manner. There was no question which simply asked "Have you had any claims in the past 3 years?" to which a proposer could respond with a yes/no answer and if appropriate, additional information. It is not apparent to me why this, or an equivalent clearly worded query, was not included as a question, given that it formed part of the Provider's assumptions.

Nonetheless, despite the fact that this was not directly asked of a proposer, the Assumptions section contained an expressed assumption that the proposer "had no claims made against you in the last three years, have no outstanding claims, nor been involved in any accident or loss".

The Complainant submits that he inadvertently clicked on this box. Upon ticking this box, this information was subsequently translated into the Statement of Fact which issued to the Complainant on the 30th March 2016.

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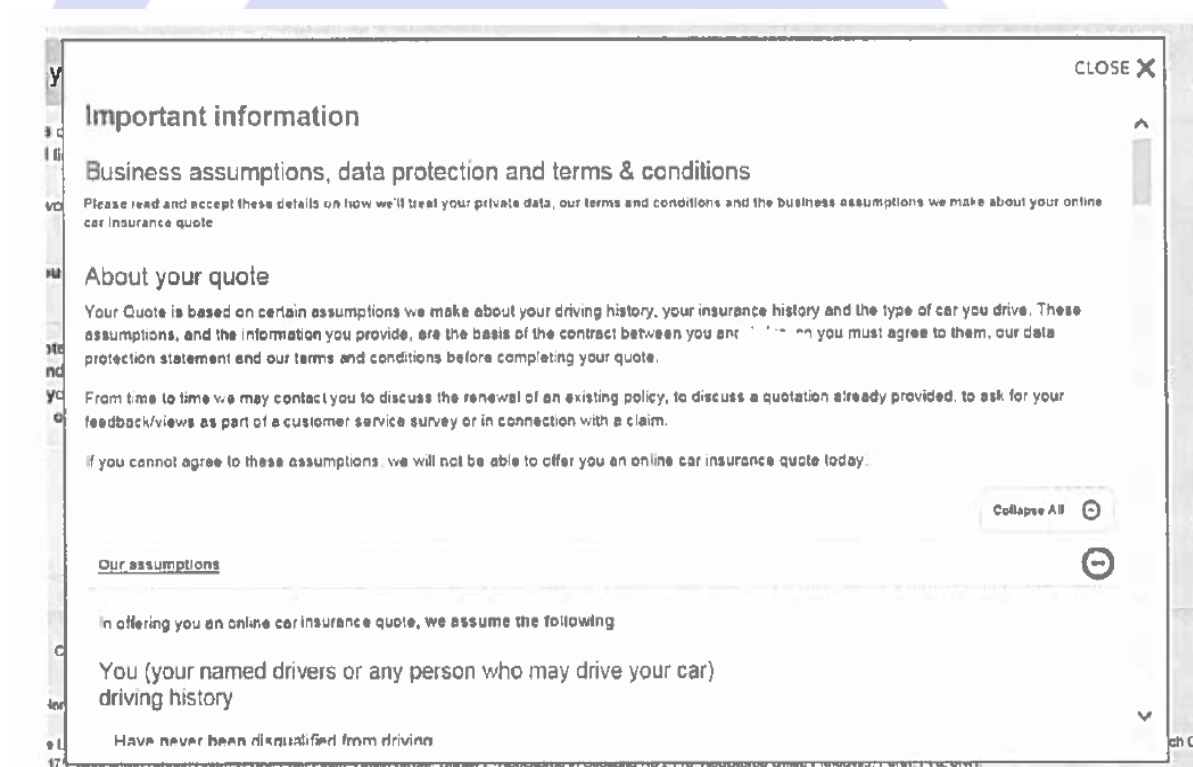
2. Assumptions

Towards the bottom of the online form, “*Before you receive your quote...*” a box appears containing the following text:

Your Quote is based on certain assumptions we make about your driving history, your insurance history and the type of car you drive. In the absence of your correct and valid vehicle registration number, your quotation or policy cover is not guaranteed. Please tick to confirm you have read and accepted our assumptions, data protection statement and terms and conditions before proceeding.

There is nothing in the evidence made available to this office to suggest that there was any impediment to the Complainant clicking the box confirming acceptance and proceeding, without having firstly clicked on the underlined link to gain access to the content.

However, upon clicking into the underlined link the following information appears:



Our assumptions

In offering you an online car insurance quote, we assume the following:

You (your named drivers or any person who may drive your car) driving history

- Have never been disqualified from driving
- Have never had any endorsement on your licence
- Have had no claims made against you in the last three years, have no outstanding claims, nor been involved in any accident or loss
- Have not been convicted of any offences of any nature, or have any now pending
- Have no more than four penalty points on your (their) current licence
- Have no disability or medical condition that impairs your (their) ability to drive
- Have not been refused insurance (or renewal of a policy) by any insurer
- Have had no special terms and conditions imposed on you (them) by any insurer
- Have never had a policy of motor insurance cancelled on you (them) by any insurer
- Permanently reside in the Republic of Ireland

Your insurance history

You have a No Claims Discount earned within the last two years in your own name.

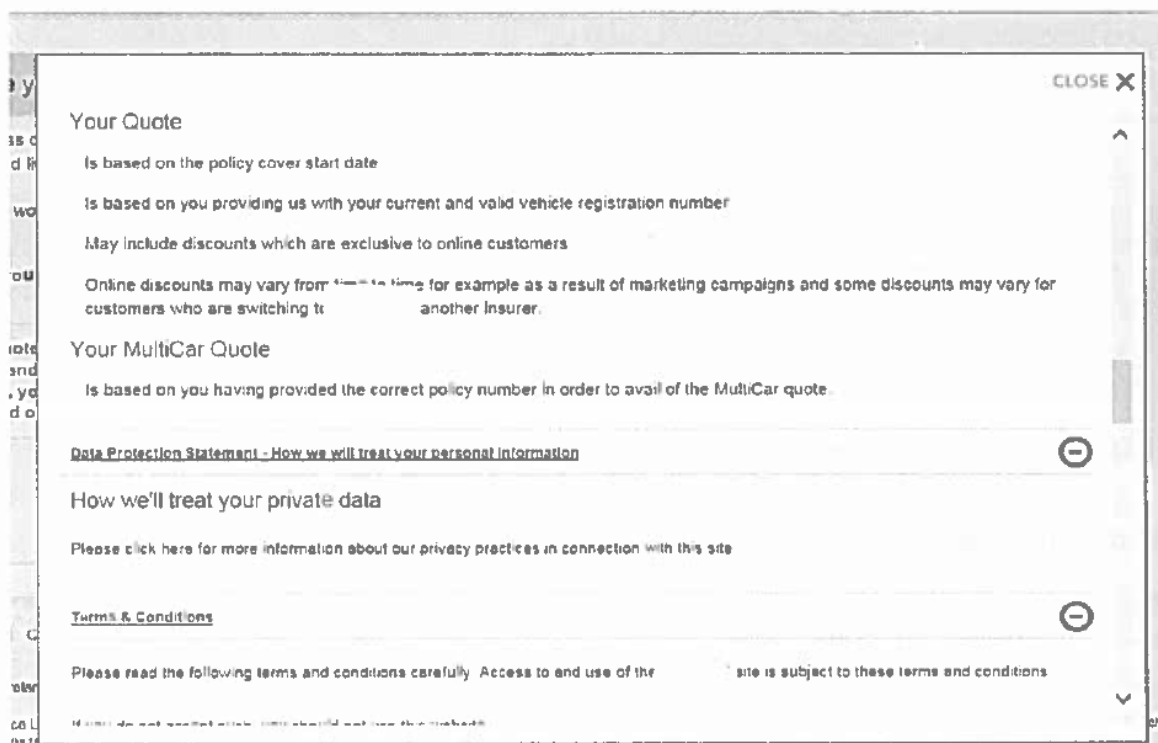
This No Claims Discount was earned on a car, not a moped or motorcycle

This No Claims Discount is not in use on any other active policy (you earn the no-claims discount on each car separately if you insure more than one car and the same No Claim discount cannot be in use at the same time on more than one policy).

The number of years of no claims bonus declared to us represents the actual number of years claims free driving you have earned in your own name

Your car

- Is a private car built mainly for carrying passengers and taxed for private use only
- Is valued at less than €100,000
- Is less than 14 years old
- Is used only for social, domestic and pleasure purposes (including commuting to and from work)



From an examination of the content of this link, I am not satisfied that the insurer explained, on the face of the questionnaire/screenshot queries the importance of providing the correct information and/or the potentially serious consequences of providing information that was not correct or that it would not be checking the information for accuracy.

I find it striking that the Provider makes assumptions about very significant issues such as the fact that the proposer had not been convicted of any offences of any nature, nor had any pending; had no disability or medical condition impairing the ability to drive, and did so without having specifically asked the proposer for the relevant information or without requiring the proposer to accept each such individual assumption in clear terms. I consider this wholly unsatisfactory and consider that these are questions which should be posed directly, in a clear, transparent and unambiguous fashion.

3. Statement of Fact

The Complainant was furnished with a copy of the Statement of Fact by cover of letter dated 30th March 2016. This letter also enclosing other items including, Certificate and disc; Policy Schedule; Product Suitability Statement; Policy Booklet (stated to be available online if that option was chosen.)

The cover letter stated as follows:

Thank you for choosing to place your car insurance with us.

We are committed to providing you with the highest levels of service at all times and have pleasure in enclosing your:

- Statement of fact
- Certificate and disc
- Policy schedule
- Product Suitability Statement
- Policy booklet or available online if you have chosen that option

Your Policy Schedule shows the sections of your Car Insurance policy which apply, the details of your vehicle and what events and items are insured under this policy.

What to do next

Please check the information on the statement of fact and policy schedule then send the following by email to car@paulbarnes.co.uk alternatively post it in the enclosed prepaid envelope.

- A copy of your No Claims Discount/Bonus statement. This should have been issued to you at renewal by your previous insurer

We have enclosed a prepaid envelope for your convenience and look forward to providing your annual insurance on receipt of the above.

Please note that you are on temporary cover for 30 days pending the receipt of the documents listed above.

I accept that this letter makes it clear that the recipient is required to check the information on the Statement of Fact and to email a copy of the No Claims Bonus, within the 30 day period referred to.

The Statement of Fact also includes the following content, which I have reproduced on the following page:

Car Insurance Temporary cover

THIS IS AN IMPORTANT DOCUMENT SO PLEASE READ IT IN FULL

The details on this 'Statement of Fact' are a record of the information supplied by you to us on 24/03/2016. This information is used to calculate your premium and the terms and conditions on which your quotation is based.

This Statement of Fact should be read in conjunction with your Schedule, Policy booklet and Certificate of Motor Insurance as together they form the basis of your contract with us. We are Limited who is the underwriter of your car insurance policy. If any of the information shown on this Statement of Fact is incorrect please call us immediately or 01223 312345. If there are any changes may affect the premium quoted and/or the cover offered to you.

Your Duty to Tell Us All Material Facts

In relation to you or any driver who will drive the car, you must tell us any facts which are likely to affect whether we agree to provide cover, or how we assess the risks proposed for insurance, including but not limited to

- a) medical details or history,
- b) previous insurance claims
- c) any convictions, offences or prosecutions pending of any nature (for example, but not limited to, fraud, theft, handling stolen goods, motor convictions, penalty points or driving disqualifications), and
- d) the main user of the vehicle or any vehicle modifications.

If you are not sure whether you should tell us about something please tell us anyway. This is for your own protection because if you do not give us all the information we need, your policy may not provide you with the cover you need, a claim may not be paid, the policy may be declared invalid and void or may be cancelled and you may encounter difficulty trying to purchase insurance elsewhere.

If there have been any changes in circumstances that have arisen since this insurance was taken out or your last renewal please call us on 1891

Any changes to this Statement of Fact take precedence over the information contained within it.

You the Proposer

You have told us the following

Drivers of Your Vehicle

You have told us that you or any driver who will drive your car:

- 1 Have not been involved in an accident or suffered any losses in the past 3 years
- 2 Have not been convicted of any offence of any nature or have a prosecution pending
- 3 Have not been disqualified from driving

/Cont'd...

On the last page of the document, it states:

IF YOU DO NOT FULLY UNDERSTAND OR HAVE NOT MET ALL OF THE ABOVE REQUIREMENTS, PLEASE CONTACT US IMMEDIATELY.

DECLARATION

I have examined the details, answers and information recorded in this Statement of Fact and confirm that they are true, accurate and complete. I acknowledge that this Statement of Fact, together with the Policy Booklet and Schedule will form the basis of my/our contract with . ed. I confirm that I am giving my permission for the information provided in relation to this policy to be used for the purposes set out in the Data Protection section above.

It is the case that the Complainant did not do as advised/requested within this Declaration; he says that he did not read it.

The Complainant says that he did not do so as he believed the contract to have been concluded at this point. He has submitted that it was too late to expect a policy holder to peruse in detail a statement of fact regarding a contract already completed. I believe that this approach was incorrect and unwise and it is difficult to understand, given the clear instructions as to “*what to do next*”. I am surprised however to note that no request was made to sign the declaration.

Even if the Provider did not require a signature, the request to review the document was not bullet pointed, in the manner in which the request to send in the No Claims Bonus Certificate was bullet-pointed under the “*What to do next*” section. The Complainant responded to the bullet-pointed action, by submitting the No Claims Bonus to the Provider and it was at that point that the issue arose.

Whilst the Provider’s letter asked the Complainant to review this documentation and to revert with any comment or clarification as to the information as understood by the Provider and he did not do so, in fact, his timely response in submitting the No Claims Bonus to the Provider had the same effect and resulted in the Policy being voided *ab initio* by the Provider, as the existence of the claim made, in 2014, was sufficient to place the Complainant outside of the Provider’s underwriting criteria and this was only apparent, on examination of the No Claims Discount Certificate, which the Complainant submitted as requested.

I note that the Complainant had agreed to the Provider’s terms and conditions, and on 30th March 2016 the premium was paid in full and cover commenced on 1st April 2016.

Therefore, although I accept that there was a responsibility on the Complainant to have read the Statement of Fact and to have reverted to the Provider, if any detail was incorrect, his action in forwarding the No Claims Bonus Certificate, as requested, was the event which

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triggered the decision of the Provider, in any event, to void the Policy from the 01st April 2016.

Effect of the Provider's Decision

The Complainant seeks to have the Provider reverse its decision to cancel the Policy. The Provider states that it cannot do this.

I am cognisant of the fact that the Complainant may, in the future, if applying for insurance, have to answer a question as to whether he has ever had a motor insurance policy cancelled or voided by an insurer.

I am of the view that the manner in which the non-disclosure occurred was because of the confusing and unclear way in which the information relating to previous claims was requested of the Complainant. I do not consider that it was at all appropriate, acceptable or consumer-friendly, to incorporate swathes of fundamental information, in 'Assumptions', which (i) could only be accessed by clicking on the link and (ii) could seemingly be by-passed without the system requiring those assumptions to be accessed, before the policy was incepted. Any such fundamental information should, in my opinion, have been clearly visible, ideally without leaving the original page, and, more importantly, each "assumption" or requirement should have been required to be specifically accepted by the proposer for cover.

I am of the view that it was not made sufficiently clear to the Complainant what the terms and conditions regarding previous claims were, prior to his purchase of the Policy. Had such details been made clear, I believe that the Policy may never have been incepted and, accordingly would never have resulted in the Complainant having had that policy of insurance cancelled.

Having determined, above, that there are frailties and flaws with the manner in which information was "assumed" from the Complainant, I am satisfied, in the first instance, that it would not be fair or equitable that the Complainant should now find himself prejudiced in this way, by, in the future, having to answer in the affirmative a question as to whether he has ever had a policy cancelled or voided by an insurer, or a query of that nature.

For the reasons outlined above, I am satisfied that the complaint should be upheld, in the particular circumstances of this matter, to mark the Provider's failure to frame the question/answers regarding no claims discounts/claims free driving in a clear and unambiguous manner, thereby failing to alert the Complainant, prior to the purchase of the policy, to exactly what was required by the Provider as regards claims history.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(c) and (g)**.
- Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider, within a period of 30 days of the date of this Decision, take such steps, as required, to ensure that its decision to cancel the Policy, is recorded as a voluntary cancellation by the Complainant, such as will enable the Complainant to not be obliged to disclose these events in the future, in the course of any insurance applications which he makes.
- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the period specified above for the implementation of the direction pursuant to Section 60(4), to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction outlined above.

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
DIRECTOR OF ADJUDICATION AND LEGAL SERVICES**

14 February 2018

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) in accordance with the Data Protection Acts 1988 and 2003.**