



<u>Decision Ref:</u>	2018-0052
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Failure to provide correct information Premium rate increases
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant holds a motor insurance policy with the Company.

The Complainant's Case

The Complainant received a motor insurance renewal quote from the Company dated **22 December 2014** in the amount of €607.71, as his policy was due for renewal on 19 January 2015.

The Complainant telephoned the Company on **13 January 2015** to request a new renewal quote based on a change of vehicle and during this telephone call he provided details of an open claim against a third party where *"someone ran into me on 20 May last year, they accepted liability"*. The Company Agent advised that as this claim was non-fault that it did not have to be disclosed and quoted the Complainant a premium of €596.89, who advised that he would consider the offer and telephone back.

The Complainant telephoned the Company on 16 January 2015 and spoke with a different Agent and again he provided details of the open claim but this time the Agent advised that the open claim had to be added to the policy, which resulted in a premium of €927.64 being quoted. The Agent advised the Complainant that this increase was due to the open claim having been added to his policy but that once the claim was settled as a non-fault claim he would receive a refund. After applying a discretionary discount, the Agent quoted the Complainant a premium of €852.62, which he accepted and his policy was renewed.

The Complainant was, however, later informed by the Company that no refund was due as a loading in respect of the open claim had not been applied to his policy at the time of renewal on 16 January 2015, instead the increase in premium had been due to a change in the rates of insurance.

In his email to this Office dated 14 February 2018, the Complainant states *“that the [Company] rep clearly states my insurance went up because I had an open claim”*. The Complainant considers that a claim loading was applied to the renewal offer he received on 16 January 2015 which should now be refunded, as he was so advised at that time that it would be.

The complaint is that the Company provided the Complainant with incorrect information insofar as he was incorrectly advised by telephone at the time of his policy renewal on 16 January 2015 that the increase in premium was due to a loading in respect of an open claim having been added to his policy and that once this claim was settled as a non-fault claim, he would receive a refund. The Company later advised the Complainant that no such refund was due as a loading in respect of the open claim had not been applied to his policy at the time of renewal; instead the increase in premium had been due to a change in the rates of insurance.

The Provider’s Case

Company records indicate that the Company issued the Complainant with a motor insurance renewal quote in the amount of €607.71 on 22 December 2014, as his policy was due for renewal on 19 January 2015.

The Complainant telephoned the Company on 13 January 2015 to request a new renewal quote based on a change of vehicle and during this telephone call he provided details of an open claim against a third party relating to a road traffic incident in May 2014 where the third party had accepted full liability. The Company Agent did not note this claim on the policy but instead explained that as the claim was non-fault that it did not need to be disclosed. The request for a new renewal quote based on a change of vehicle was then completed with the open claim excluded and a premium of €652.21 was quoted by an underwriter. After applying a discretionary discount, the Agent quoted the Complainant a premium of €596.89. The Complainant advised that he would consider the offer and telephone back.

The Complainant telephoned the Company on 16 January 2015 and spoke with a different Agent. During this call, the Complainant once again provided details of the open claim but the Agent this time added the claim to the policy, which resulted in an updated premium of €927.64 being quoted. The Company acknowledges that its Agent incorrectly explained to the Complainant that this increase in premium was due to the open claim having been added to the policy. The Agent then contacted the underwriter that was quoting this premium of €927.64 to find out if the open claim could be left off the Complainant’s policy as a third party had admitted full liability. Having spoken to the underwriter, the Agent told the Complainant that the claim had to be added to the policy but that the no claims bonus would be reinstated and cover backdated once the open claim was settled. The Agent explained to

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the Complainant that this meant that the underwriter would refund the difference but that there would be no way of knowing at that time how much that refund would be. After applying a discretionary discount, the Agent then quoted the Complainant a premium of €852.62, which he accepted and his policy was renewed with effect from 19 January 2015.

The Complainant's solicitor telephoned the Company on 27 January 2015 to query the renewal premium and any loading which may have been applied as a result of the open claim and asked if the Complainant would be due a refund once the claim was settled. The Agent advised that the Company would be unable to guarantee any refund as it would depend on the rates of insurance at that time. An Agent later telephoned the Complainant's solicitor on 16 February 2015 to confirm that there had been no loading applied to the Complainant's renewal premium. The Complainant himself was then advised by telephone on 26 February 2015 that the adding of the open claim to his policy did not result in the increase in the premium but that the Agent would look into the matter further and contact him back.

The Agent then telephoned the Complainant on 9 March 2015 to advise that having spoken with the underwriter, it was clear that the Complainant had previously been incorrectly advised that the premium had increased due to the adding of the open claim to his policy. The Agent apologised for this error and advised that once the claim was settled, the policy will be updated to reflect same. The Complainant asked if there would be a refund due and the Agent replied no, but that the next renewal would be based on the correct and updated information.

The Complainant later telephoned the Company on 4 November 2016 to advise that the claim in question was now settled and he wanted to have his policy adjusted accordingly and check what refund would be due. The Agent advised that no refund would be made mid-year but rather that it would be reflected at the time of renewal when the new premium is generated. The Complainant disputed this and the Agent contacted the underwriter to get clarity on the situation. The underwriter explained to the Agent that the Complainant's policy was not affected by the open claim and no loading was applied to the quote provided on 16 January 2015 and consequently, the policy was incepted with a full no claims bonus and thus no refund was due. The Complainant was dissatisfied as this differed from the information he had previously been provided with, and he asked that the telephone calls be reviewed as he was told the premium increase included a claim loading and that a refund would be due once the claim was settled.

The Complainant next telephoned the Company on 22 November 2016 as he had had a missed call from the Company. The Agent advised that the telephone calls had been reviewed and that the Company had been told by the underwriter that no refund would be due when the claim was settled. The Complainant stated that the wrong telephone calls had been reviewed and that he wanted the calls where the Agent had advised him that the price increase was due to claim loading to be reviewed, that is, the call on 16 January 2015. The Agent agreed to have these telephone calls reviewed.

The Company notes that its Assistant Supervisor left voicemails for the Complainant on 1 December 2016, 13 December 2016 and 15 December 2016 regarding this matter. The

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Assistant Supervisor then spoke with the Complainant on 23 December 2016 and explained that the Agent had been informed incorrectly at the time of renewal about the claim loading and that the Complainant had been later made aware there was no loading applied as the open claim did not affect the policy. In this regard, the Company notes that the Complainant considered that the Agent had overcharged him at renewal, but the Assistant Supervisor explained that the premium increase was due to an increase in the rates of insurance.

The Company acts as an insurance intermediary and it refers to the underwriter for any question or query regarding a premium. When the Complainant raised his complaint, the Company immediately followed up with the relevant underwriter to resolve the situation. The underwriter has verified on a number of occasions that no loading was applied to the Complainant's policy, nor was the policy affected by an open claim in any way. In this regard, the Company notes an email from the underwriter dated 18 January 2017, which states, *"This policy was on cover from 19/01/2015 to date. There was no claims loading on the policy"*.

Having reviewed the telephone calls in question, the Company acknowledges that the Complainant was incorrectly advised that there was a loading for an open claim at the time of his policy renewal in January 2015. However, when his complaint was escalated into its formal process, the Company discussed the matter closely with the underwriter with a view to resolving this in the best interests of the insured. The Company submits that at no point was the Complainant misled in his decision to renew his motor insurance policy. The Agents were clear and helpful at all times and acted in the best interests of the Complainant and that while completing reviews of the motor insurance policy, the Agents, at all times, requested all relevant information in order to provide an accurate offer.

Unfortunately incorrect information was provided to the Complainant at the point of renewal, relating to an open claim that he had at that time. When this came to light, the Company provided the Complainant with accurate information. The Company acknowledges that prior to his renewing cover, an Agent was incorrect in telling the Complainant that the quote had increased due to the addition of an open claim to his policy. The offer provided was the correct amount and the premium was rated correctly, however the Company does acknowledge that the information provided explaining the change in premium was incorrect. As a result, in January 2017 the Company offered the Complainant compensation for its poor customer service in the amount of €200, which the Complainant declined.

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 10 May 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.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

The complaint at hand is, in essence, that the Company provided the Complainant with incorrect information insofar as he was incorrectly advised by telephone at the time of his policy renewal on 16 January 2015 that the increase in premium was due to a loading in respect of an open claim having been added to his policy and that once this claim was settled as a non-fault claim, he would receive a refund. The Company later advised the Complainant that no such refund was due as a loading in respect of the open claim had not been applied to his policy at the time of renewal, and instead the increase in premium had been due to a change in the rates of insurance.

I am satisfied from the documentary evidence before me that the increase in the premium quoted to the Complainant on 16 January 2015 was not as a result of a loading due to the adding of an open claim to his policy at that time. In this regard, I note the email from the underwriter to the Company dated 18 January 2017 which states, *"This policy was on cover from 19/01/2015 to date. There was no claims loading on the policy"*.

I also note that the Company acknowledges that it provided the Complainant with incorrect information on 16 January 2015 as to the reason why the premium quoted had increased at that time. In addition, I also note from the evidence before me that the Company later advised the Complainant's solicitor by telephone on 16 February 2015 that there had been no loading applied to the Complainant's renewal premium. I also note that the Company advised the Complainant himself by telephone on 26 February 2015 that there had been no loading applied to his renewal premium.

I note too that the Company then advised the Complainant on a number of occasions that the increase in the premium quoted to him on 16 January 2015 was due to an increase in the rates of insurance. For example, I note from the documentary evidence before me that the Company's Assistant Supervisor spoke with the Complainant on 23 December 2016 and

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explained that the price increase was due to an increase in the rates of insurance. In addition, the Company wrote to the Complainant on 20 January 2017, as follows:

“When you contacted the [Company] on 13th of January 2015, my colleague completed a policy review with you. During this call, you confirmed that you had been involved in an accident in May 2014 and asked if this would affect your policy as the third party had accepted complete liability. At that time the agent did not note the open claim on the policy and offered you a quote of €596.89.

Following this call you contacted us on 16th of January to query the price. My colleague then added the open claim to our system and returned a quote of €852.64. The agent did say that once the claim was settled there may be a refund due for any loading imposed by the insurer. Unfortunately as this was a non-fault claim, [the underwriter] were not notified, the claim was just noted on our system ...

As my colleague informed you when you contacted us on the 09th of March 2015, the information my colleague gave you on the 16th of January was incorrect, your increase was due to rate increases at the time. I apologise for the incorrect information you were given and the confusion it caused, this has been passed on to the relevant management to ensure correct training is carried out with all agents to ensure this doesn't happen again.

I understand the Head of Customer Experience has been in contact with you regarding this and has offered you a goodwill gesture of €200, should you wish to accept the offer please contact me as your earliest convenience”.

However, more recently, in its correspondence to this office dated 12 February 2018, the Company advised, as follows:

“The cause of this complaint has since come to light. At the time of renewal the Complainant's policy was underwritten by [a named insurer]. As [that named insurer] were no longer on [the Company's] panel of insurers a renewal offer was provided by our three remaining underwriters. The claim was not noted on the file at this time and all three [underwriters] provided an offer based on there being no claim. On the 16th of January 2015 the open claim was added to the offer but as this fell outside of the acceptance criteria for two of the three underwriters, only one offer was available. This offer had stayed the same since before the claim was added and which supports the underwriter's statement that no loading had been applied at the time of renewal. The [Company] Agent was incorrect to say that the premium had increased as it was in fact a case where the original offer was no longer available due to the open claim being added. At no point was this renewal offer affected in anyway by the claim ...

The offer which was provided to the Complainant which was purchased, was the correct offer and was not affected by the claim in anyway. Unfortunately the agent at the time did not realise the change in premium was a result of a change in the acceptance criteria for two of our three panel of insurers. This is what resulted in the

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original offer not being available anymore and the more expensive offer being left in place. It should have been explained that the offer provided was still the same before the claim was added but the other companies were no longer able to provide an offer.

This did not come to light during the initial investigation of the complaint as the complaint raised was regarding a claims loading being applied to the renewal offer. The [Company] were correct in seeking clarity for the underwriter as any premium would have been generated through the underwriter. During the entirety of this complaint, a number of different agents investigated this complaint which resulted in the actual cause not being discovered until now”.

I note from the documentary evidence before me the screenshot taken of the quotes available to the Complainant when he telephoned the Company on 13 January 2015 at 3.47pm. In this regard, there were three different quotes available to him at that time, namely, €596.89 from underwriter A, €606.72 from underwriter B and €852.64 from underwriter C. These quotes included the Company discretionary discount and the open claim was not noted by the Agent.

I also note the screenshot taken of the quotes available to the Complainant when he telephoned the Company on 16 January 2015 at 1.03pm and the open claim was added to his policy. In this regard, the screenshot details “*Change of historical claim (add)*”, which the Company states indicates that additional claim information had been added. Once this claim was added, the screenshot confirms that underwriter A and underwriter B were no longer offering a quote, whilst underwriter C was still offering a quote of €927.64, which was reduced further by a discretionary discount to €852.64, as follows:

<i>This Policy is underwritten by:</i>	[Named Underwriter]
<i>Scheme:</i>	Standard
<i>This Reasons Why Statement is valid from:</i>	16/01/2015
<i>Total Due:</i>	€852.64
<i>Premium Inclusive of 5% government levy:</i>	€998.30
<i>Discretionary Discount:</i>	-€150.12
<i>Personal Accident Cover*:</i>	€12.23
<i>Legal Expenses Cover*:</i>	€12.23
<i>[Breakdown] Fee:</i>	€55.00
<i>No Claims Discount:</i>	-€1,493.73
<i>Penalty Points Discount:</i>	-€468.28

In summary, when the Complainant telephoned the Company on 13 January 2015, the open claim was not added to his policy and the best available quote was with underwriter A. However, when he telephoned the Company on 16 January 2015 and the open claim was added to his policy, two of the three underwriters, underwriter A and underwriter B, no longer quoted and the remaining quote, now the only quote, was provided to the Complainant.

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I am therefore satisfied that the Company was incorrect to tell the Complainant on 16 January 2015 that the premium had increased due to a loading on his policy as a result of the adding of the open claim and that it was also incorrect when it later advised him on a number of occasions that the premium had increased due to an increase in the rates of insurance. Instead, after a further and more complete investigation, the Company finally identified that underwriter A and underwriter B were no longer willing to quote when the open claim was added, but that underwriter C was still quoting the same amount on 16 January 2015 as it had quoted previously on 13 January 2015. The Company acknowledges that it should have been noticed on 16 January 2015 that two of the three underwriters on its panel were no longer quoting.

As I have noted previously, the Company, in its correspondence to this office dated 12 February 2018, stated, as follows:

"The cause of this complaint has since come to light ...

This did not come to light during the initial investigation of the complaint as the complaint raised was regarding a claims loading being applied to the renewal offer...During the entirety of this complaint, a number of different agents investigated this complaint which resulted in the actual cause not being discovered until now".

Administrative errors of this nature are unsatisfactory and can cause considerable confusion, as it has done in this instance. The Complainant ought to be able to rely on the expertise of the Company with regard to information concerning his policy. It is clear however, that the information made available to him on 13 January 2015 and on 16 January 2015 was very different, and indeed further confusion abounded during his discussion with the Company in early March 2015. In addition, it is unsatisfactory that the actual cause of the complaint did not come to light during the Company's initial investigation into the Complainant's complaint. In this regard, a policyholder should expect that a complaint made to a Company will be investigated thoroughly in order to identify the cause or causes of the complaint at hand.

I note that in January 2017 the Company offered the Complainant a goodwill gesture of €200, which the Complainant declined. This offer was made prior to its correspondence to this office dated 12 February 2018 wherein the Company advises that *"The cause of this complaint has since come to light"*, namely, that two of the three underwriters that had previously provided a quote when the open claim was not noted did not quote when the open claim was noted, and that the third underwriter was then the only underwriter willing to provide the Complainant with a quote, albeit the same quote it had provided when the open claim was not noted.

Having examined the documentary evidence before me in full, I am satisfied that the Company's actions constituted very poor customer service, insofar as it repeatedly furnished the Complainant with incorrect information, including a failure to identify the exact cause of the mis-communication leading to the complaint. As a result of this poor

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customer service, I direct that the Company pay the Complainant a compensatory payment in the amount of €500 to an account of his choosing.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)f** and **Section 60(2)g**.
- Pursuant to **Section 60(4)d** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider pay the Complainant a compensatory payment in the amount of €500 to an account of his choosing.
- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I 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**, where the amount is not paid within 21 days of the Complainant's nomination of an account to the Provider
- 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 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 INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

7 June 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.