



<b><u>Decision Ref:</u></b>	2018-0076
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Mis-selling Lapse/cancellation of policy
<b><u>Outcome:</u></b>	Substantially upheld

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

#### **Background**

The First Complainant incepted a motor insurance policy with a named Insurer on 31 May 2017. The Second Complainant, her husband, applied and paid for this cover on the Provider's website on 30 May 2017, the Provider being a Broker. The Insurer subsequently cancelled this motor insurance policy from inception on 24 July 2017 due to the non-disclosure of a previous claim on the First Complainant's insurance policy with a previous insurer, when the Second Complainant was driving as a named driver.

This complaint deals with the sale of the policy by the Broker (the Provider).

#### **The Complainants' Case**

The First Complainant incepted a motor insurance policy with a named Insurer on 31 May 2017. The Second Complainant, her husband, applied and paid for this cover on the Provider's website on 30 May 2017, the Provider being a Broker. The Insurer subsequently cancelled this motor insurance policy from inception on 24 July 2017 due to the non-disclosure of a previous claim on the First Complainant's insurance policy with a previous insurer, when the Second Complainant was driving as a named driver, with a date of loss of 24 July 2016.

The First Complainant considers that the Provider is at fault as in her email to this Office dated 18 September 2017 she notes that "*there was no place to fill in an accident on the [Provider] web site*" when the Second Complainant was applying for the cover online.

In this regard, the Second Complainant states *“As there was no place to fill a previous claim on [the Provider] website I tried to call but no one answered so I continued on the web site. We got quote and took it. When the forms were sent out, my wife filled them out and signed them. We were contacted by [the Provider] telling us the quote was invalid as we didn’t tell [the Provider] about the claim and that our policy might be cancelled. We were asked not to drive the car at this time – this went on for a week or so...but last Fri we said we would cancel the policy and rang many times at 10-12 when I left a message to be contacted urgently as we were going to cancel, no one returned my call and yesterday we were told [the Insurer] has cancel our policy”*.

In her email to this Office dated 18 September 2017, the First Complainant states *“We tried to cancel the policy but no call was returned in time to me [from the Provider] so I could cancel it before [the Insurers] did and was advised not to do so until [the Insurer] got back to us which I believe was bad advice”*.

The First Complainant notes in her email to this Office dated 8 May 2018 that *“my husband has had a transplant and needs to travel from Cork to Dublin regularly. We are coming up to renew our insurance and as we paid over 4,000e we would be unable to do this again”*.

The Complainants state that the Provider was at fault for the cancellation of the First Complainant’s motor insurance policy as there was no place on its website for the Second Complainant to insert details of the claim with a previous Insurer when applying for the cover online and they seek for the Provider to ensure that the *“insurance cancellation [is] removed ...as we are now unable to get quotes...at least not within reason”*.

This complaint relates to the conduct of the Provider in the sale of the policy.

### **The Provider’s Case**

The Provider is an insurance broker. Provider records indicate that the First Complainant incepted a motor insurance policy with a named Insurer on 31 May 2017. The Complainants state that the Second Complainant, her husband, applied and paid for this cover on the Provider’s website on 30 May 2017. The Insurer subsequently cancelled this motor insurance policy from inception on 24 July 2017 due to the non-disclosure of a previous claim on the First Complainant’s insurance policy with a previous Insurer, when the Second Complainant was driving as a named driver, with a date of loss of 24 July 2016.

The Provider notes that the Complainants purchased the cover on its website on 30 May 2017 by completing the online quote facility, which had a number of assumptions connected to the quote. In order to proceed to a quote, the customer had to tick a box to say that he or she agreed to those details. The Provider notes that the quote webpage outlines a summary of the details of the quote, and this noted that there were no previous accidents or convictions. Having arranged cover for the First Complainant as applied for online, the Provider sent a text message on 31 May 2017 at 9.21am confirming cover and posted the

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policy documentation to the First Complainant to read and sign if all the information was correct.

The Provider received these signed documents on 7 June 2017, namely, the Proposal Form, the Direct Debit Mandate, the Statement of Suitability, a Signed Terms of Business Confirmation, a Signed Charge Declaration, a copy of NCT disc, a copy of the front of the First Complainant's driver licence as the policyholder and a copy of the front of the Second Complainant's drivers licence as a named driver and an in force No Claims Bonus from the previous Insurer. The Provider telephoned the Second Complainant on 8 June 2017 to query the fact that the No Claims Bonus provided was live and in respect of a different vehicle.

It then transpired on 10 July 2017 when the Insurer contacted the Provider that there was a previous claim on the First Complainant's policy with a previous Insurer, when the Second Complainant was driving as a named driver, with a date of loss of 24 July 2016, settled in the amount of €3,522.86. This claim had not been disclosed during the policy application and was therefore not taken into consideration when obtaining the quote or incepting the cover. As a result, the Insurer cancelled the First Complainant's policy from inception on 24 July 2017 due to the non-disclosure of this previous claim.

On 11 August 2017, the Provider telephoned the Insurer to advise that the Second Complainant is a transplant patient and needed transport and requested that the Insurer review its decision on this basis. The Insurer confirmed that it would not, as even if the Complainants had missed the place on the website to input information in relation to the previous claim, the proposal form was still signed and returned with the incorrect information on in.

The Second Complainant states *"As there was no place to fill a previous claim on [the Provider] website I tried to call but no one answered so I continued on the web site"* with the online quote on 30 May 2017. However, the Provider notes that it telephoned the Second Complainant on 8 June 2017 to query the fact that the No Claims Bonus was live and on a different vehicle and that he did not during the course of this telephone call disclose details of the previous claim.

The Provider notes that it has been incepting cover online for customers in excess of 10 years, but this is the first time that a customer has taken this stance in relation to the website being unclear as to previous claim details being required for a quote. The Provider considers that the outline of its online quotes process is not so different to other providers as to cause confusion. Before proceeding to buy the quote online, the Provider is satisfied that the cover is outlined noting no accidents or claims on this risk. It also states that the quote is based on the assumptions that the customer must read and agree to before ticking the box to proceed with cover. If a customer is unable to agree with all of the assumptions, the Provider requests further information in order to obtain the correct price and there is a button marked *"PROVIDE MORE INFORMATION"* on this webpage to click and supply the additional information.

As a result, the Provider does not consider that it is at fault for the cancellation of the Complainants' motor insurance policy. In this regard, it notes that had the Proposal Form

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been amended to note the previous claim, it is a very obvious section of the Proposal Form, this error would have been dealt with at that stage and the Provider may have been in a position to cancel the policy with agreement from the Insurer, thus avoiding the unfortunate situation the Complainants now find themselves in.

The Provider notes that during its telephone call with the Second Complainant on 25 July 2017, he advised that he had tried to telephone the Provider the previous Friday, that is, 21 July 2017, to request for the policy to be cancelled and that if he had made contact with the Provider on that day he considers that he would have cancelled the policy himself before the Insurer cancelled it on 24 July 2017, thereby removing a cancelled insurance policy from the Complainants' record. However, the Provider submits that even had the Complainants requested the policy to be cancelled on that day, 21 July 2017, it would not have altered the outcome as the underwriters had cancelled the policy ab initio due to the non-disclosure of a previous claim.

### **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 Complainants were 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 12 July 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 Provider provided the Complainants with poor customer service, leading to the cancellation of their insurance policy. In this regard, the First Complainant incepted a motor insurance policy with a named Insurer on 31 May 2017.

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The Second Complainant, her husband, applied and paid for this cover on the Provider's website on 30 May 2017, the Provider being a Broker. The Insurer subsequently cancelled this motor insurance policy from inception on 24 July 2017 due to the non-disclosure of a previous claim on the First Complainant's insurance policy with a previous Insurer, when the Second Complainant was driving as a named driver.

The Complainants state that the Provider are at fault for the cancellation of the First Complainant's motor insurance policy as there was no place on its website for the Second Complainant to insert details of the claim with a previous Insurer when applying for the cover online and they seek for the Provider to ensure that the *"insurance cancellation [is] removed...as we are now unable to get quotes...at least not within reason"*. In addition, the Complainants submit that they telephoned the Provider and left a message for it to return their call, and that had the Provider done so the Complainants could have cancelled the First Complainant's policy before the Insurer did so.

The Complainants applied for motor insurance cover with the Provider on its website. In this regard, I note from the documentary evidence before me a sample screenshot of the **"Your Quote"** webpage that forms part of online quote process. The **"TERMS & CONDITIONS"** section of this screenshot states, as follows:

*"All quotations and cover are subject to acceptance by the insurer concerned.*

*This quote is based on the following Assumptions.*

*Please tick the box to confirm you have read and agree to them.*

*If you are unable to agree with the assumptions you need to provide us with more information. We will then be able to offer you another quote in line with your requirements.*

**PROVIDE MORE INFORMATION** *"*.

The Provider advises that if a customer clicks on this **"PROVIDE MORE INFORMATION"** box, they will be directed to a box to insert the additional information.

I note that the **"TERMS & CONDITIONS"** section of this **"Your Quote"** page screenshot states that *"This quote is based on the following Assumptions"* and that the screenshot includes the following:

The Provider takes issue with the suggestion that its website is unclear.

I cannot agree with the Provider in this regard. I find the assumptions to be anything but clear.

I have re-produced them below as the Provider purports they are set out on line.

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## **“Assumptions**

*You and your Named Drivers:*

- *Currently resident in the Republic of Ireland have been for the past 3 years*
- *Have not been convicted of any offences of any nature and have no convictions pending*
- *Have never been disqualified from driving or had any endorsement on your licence*
- *Have not been refused insurance or renewal of insurance*
- *Have never had a policy cancelled by an Insurer*

*The NCB/DE has been earned in respect of a private motor policy and not a motorcycle or moped and you can provide proof of same from the Insurer (not broker) and it is not being used on any other policy*

- *Have not had any more than 3 non-fault claims against your policy in the past 5 years*
- *Don't have any DVLA notifiable disabilities*
- *Are not employed in the following occupation Categories Motor Trade Industry, Carriage of people for Hire & Reward – taxi or hackney or chauffeur or vehicle hire, carriage of trade goods or samples or soliciting*
- *Your Permanent place of work is in the same region as your home address*

*The occupation you have entered is your only occupation you do not have a part time occupation*

- *Have had no Fault Accidents or Claims in the last 5 years*
- *Hold a current Provisional Irish Licence or Full Irish or EC driving licence*

*Your Car*

- *Is not imported, has not been modified and is registered in your name in the republic of Ireland (IT IS NOT POSSIBLE TO INSURE A VEHICLE YOU DO NOT OWN)*
- *You are the main driver of the vehicle and the vehicle is a private car taxed on a private basis and not used for any commercial purposes or business-related activities*
- *Is used for social domestic and pleasure purposes including travel to and from work only*
- *Has more than 2 seats (unless a sports car with a standard specification of 2 seats only) but has less than 8 seats”*

As can be seen from the above, the Assumptions state at one bullet point:

“

- You and your Named Drivers:

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“Have not had more than 5 non-fault claims against your policy in the past 5 years”

and at another point:

“Have had no Fault Accidents or Claims in the last 5 years”

In my view, one of the most important questions or matters to be established when seeking an insurance quote or when seeking to incept an insurance policy is any history of previous claims. Previous claims history plays a major role in determining risk and associated premium costs or indeed may influence whether an insurer will in fact provide insurance cover at all. Given that this is so, I fail to understand why the Provider did not ask the very straightforward question in its on-line quote system – have you had previous claims? Instead, the Provider relegated this very important matter to a set of confusing assumptions. This is the case despite the fact that there appears to be over 30 questions asked of the proposer before a quotation is given. Further, given the importance of providing information on previous claims, I do not accept that a general box to “*provide more information*” is sufficient.

With regard to the provision of information to a consumer the Consumer Protection Codes state that a regulated entity must ensure that all information it provides to a consumer is clear and accurate, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

Provision 4.1 of the Consumer Protection Code 2012 states that:

*4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.*

I believe that by not asking if the Complainant had any previous claims and by relying no assumptions, the Provider did not comply with this provision of the CPC.

Having an insurance policy cancelled has very serious implications for an insured. The Provider, like all financial service providers, has a responsibility to deal with consumers in a manner that is clear and in no way contributory to such an outcome.

I note that the Second Complainant states “*As there was no place to fill a previous claim on [the Provider] website I tried to call but no one answered so I continued on the web site. We got quote and took it*”. I accept that if the Complainants were unsure how to insert details of the previous claim on the Provider website, it would have been prudent of them not to have proceeded with the quote until such time that they had made contact with the Provider in order to advise them of the previous claim.

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I note that the Provider wrote to the First Complainant the next day on 31 May 2017, as follows:

*“Please read over the Proposal Form to ensure all information is correct before signing. If you have any queries regarding the above please do not hesitate to contact our office”.*

Pg. 1 of the enclosed Proposal Form stated, as follows:

**“DRIVERS/CLAIMS HISTORY**

***Other than as specified below, neither I, my spouse nor any driver who will drive to the best of my knowledge or belief: ...***

***2. have been involved in ANY motor accidents or claims in the last 5 years”.***

I note that the **“ACCIDENT/CLAIMS DETAILS”** section directly below this is blank.

In addition, the **“ACCURACY AND HONESTY WARNING”** section at the top of pg. 1 of this Proposal Form provided, as follows:

***“You have applied for a contract of insurance between you and [the Insurer]. The information you have given us is the basis of this contract. Please read this information carefully and make sure it is correct. If the information is incorrect, [the Insurer] may declare the contract void, cancel your policy or refuse to pay any claim in addition to any other rights [the Insurer] may have under the policy. As a result you may also find it difficult to arrange this type of insurance in the future. If you are in doubt whether certain facts are important and should be notified to [the Insurer], please ask us or your insurance broker”.***

The First Complainant signed this page of the Proposal Form, which is dated 31 May 2017.

I note that the Second Complainant states that *“When the forms were sent out, my wife filled them out and signed them”*. The Provider’s correspondence of 31 May 2017 clearly advised the First Complainant to *“Please read over the Proposal Form to ensure all information is correct before signing. If you have any queries regarding the above please do not hesitate to contact our office”*. If having read the enclosed Proposal Form before signing, as the Provider had instructed her do, the First Complainant would have seen on pg. 1, i.e. the page she signed, the warning declaration regarding claims history and seen that the **“ACCIDENT/CLAIMS DETAILS”** section was blank. The First Complainant should have contacted the Provider or the Insurer to advise of the previous claim or to have at least inserted details of this claim in the appropriate section before signing and returning the form.

That said, I believe this situation could have been avoided by the Provider asking, in a clear and straightforward manner before providing the insurance quote, whether there were any

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previous claims and not relying on assumptions on its website or included in the policy of insurance.

I note that in her email to this Office dated 18 September 2017, the First Complainant states:

*"We tried to cancel the policy but no call was returned in time to me [from the Provider] so I could cancel it before [the Insurers] did". In addition, the Second Complainant states that "last Fri [that is, 21 July 2017] we said we would cancel the policy and rang many times at 10-12 when I left a message to be contacted urgently as we were going to cancel, no one returned my call and yesterday we were told [the Insurer] has cancelled our policy".*

In this regard, the Second Complainant contends that if he had made contact with the Provider on that day, that is, 21 July 2017, that he would have cancelled the policy himself before the Insurer cancelled it on 24 July 2017, thereby removing a cancelled insurance policy from the Complainants' record.

The recordings of these calls have been provided in evidence. The telephone call the Provider made to the Second Complainant on 25 July 2017, included the following exchange:

Second Complainant: *It's because of ye now that we're in this bloody mess like -*

Provider Agent: *How is it because of us?*

Second Complainant: *Well I rang on Friday to cancel the policy before [the Insurer] cancelled it -*

Provider Agent: *Right -*

Second Complainant: *And I couldn't get through to ye, all I got was answering machines all day and eventually [indecipherable word] no-one rang me back -*

Provider Agent: *Right -*

Second Complainant: *And I wanted to cancel that policy before [the Insurers] cancelled it which would mean they we wouldn't have a cancelled policy on our, on our record and on your website I clicked terms and conditions, I didn't read the 50,000 words or whatever it was on the terms and conditions thoroughly, I didn't read it at all. I just clicked it, which is now landed us in the situation where we are now in finding it difficult to get quotes*

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Provider Agent: *Like at any stage you could have rang in after you purchased the policy and let us know as well, you see -*

Second Complainant: *Yeah, well at the time of purchasing the policy I did ring ye and yet again phones wasn't answered, that's why I completed it on the website -*

Provider Agent: *I think we spoke to you on the 8<sup>th</sup> June -*

Second Complainant: *That was after the policy was taken out, wasn't it?*

Provider Agent: *Yeah, but you never mentioned to us there'd been an accident that day either -*

Second Complainant: *No -*

Provider Agent: *The claim wasn't disclosed -*

Second Complainant: *No I didn't, I suppose.*

I note from the recording of the telephone call between the Provider and the Second Complainant on 8 June 2017 wherein the Provider's Agent queried the First Complainant's no claims bonus with the previous Insurer insofar that it was live and in respect of a different vehicle and I note that the Second Complainant did not disclose during this telephone call that there was a previous claim.

In any event, the Provider states that even had the Complainants requested the policy to be cancelled at that time, it would not have altered the outcome as the Insurers had cancelled the policy *ab initio* due to the non-disclosure of a previous claim.

It is my view that both parties bear responsibilities for the circumstances that have given rise to this complaint.

The Provider should, in my view, have asked in a clearer manner if the Complainant had any previous claims and made provision for the claims history to be included on the request for quotations, and not simply relied on a dialogue box entitled "*provide more information*" and a confusing set of assumptions.

The Complainant should have read the policy document and notified the Provider or the Insurance Company to inform either or both that the policy had been incepted based on incorrect information. The Complainant did not point this out in the subsequent telephone calls with the Provider either.

Having contributed to this problem, I believe there was an onus on the Provider to provide greater assistance to the Complainant in trying to have the matter rectified.

I do not accept the Provider's contention that it would not have made any difference if it had responded to the Complainant's telephone calls of 21 July 2017. I would have expected the Provider to have made a better effort to try to resolve at that stage by contacting the insurer and intervening on behalf of the Complainant.

Even at this late stage, I believe the Provider has a responsibility to intervene with the insurer to seek to have this matter resolved.

Therefore, I substantially uphold this complaint.

In saying this, I accept that the decision of the insurer to cancel the policy is entirely a matter for the insurer and does not form any part of this complaint.

Therefore, I direct the Provider to intervene with the insurer to establish if it is possible to reverse the cancellation of the policy *ab initio* and allow the Complainant to voluntarily cancel the policy.

I further direct that in the event that the Provider is unable to achieve a voluntary cancellation of the policy that the Provider shall pay a sum of €5,000 in compensation to the Complainant.

For the avoidance of doubt, the direction I am making is that the Provider either assist the Complainant in having the policy cancelled on a voluntary basis or in the event that the Provider is unwilling or unable to achieve this, the Provider is then to pay €5,000 compensation to the Complainant.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by either assisting the Complainant in having the policy cancelled on a voluntary basis OR in the event that the Provider is unwilling or unable to achieve this, the Provider is then to pay €5,000 compensation to the Complainant, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

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

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

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

7 August 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) ensures compliance with the Data Protection Regulation and *the Data Protection Act 2018*.