An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0114
Sector:	Insurance
Product / Service:	Other
Conduct(s) complained of:	Dissatisfaction with customer service Delayed or inadequate communication Failure to provide correct information Failure to provide no claims bonus/ inaccurate no claims bonus Premium rate increases
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's refusal to renew the Complainant's commercial motor vehicle insurance policy, the alternative terms offered by the Provider to the Complainant and the quality of the service provided to the Complainant by the Provider.

The Complainant's Case

The Complainant had a commercial motor vehicle insurance policy with the Provider. Coming up to renewal time, the Provider requested that the Complainant supply it with particular documents in respect of the vehicles covered under the policy. The Complainant provided all of the documents requested, however two of the documents, Commercial Vehicle Roadworthiness Test (CVRT) certificates in relation to two different vehicles, were invalid because they had expired. As a result, the policy was not renewed.

The Complainant was instead offered a new motor fleet policy, with the two vehicles concerned excluded pending receipt of valid CVRT certificates. The policy had different terms to the lapsed policy.

The Complainant states that the Provider failed to give him the minimum renewal notice period as required under statute. He also complains about the refusal to renew the policy and the alternative new policy offered.

The Complainant further complains that the Provider provided piecemeal, contradictory and unclear information in relation to the changes and additions to the policy. He also complains about the driver restrictions applicable to the new policy.

Further, he states that the premium for the new policy he was offered represented an increase of over 200% from the previous year. In addition, he complains that a flat fee is offered for additional vehicles added to the policy, irrespective of the date they are added. Finally, he complains that the Provider refuses to issue premium refunds for the removal of third party cover during periods when the vehicles are not in use.
The Complainant seeks the removal of the driver restrictions on the new policy. He also seeks a reduction in the cost of insuring each additional vehicle, pro rata depending on the time of year the vehicle is added.

In addition, the Complainant seeks compensation for the breaches of the statute for the actions of the Provider which, he says, made it unviable for him to operate his business as intended, thereby reducing his profit. Finally, the Complainant seeks compensation for the *"deplorable and unacceptable customer service"*.

The Provider's Case

The Provider states that the claims history of the policy as set out in the Schedule of Evidence submitted to this Office shows a total claims amount (paid and outstanding estimates) of €736,995 over the policy life.

The Provider states that, due to the type of risk and the claims history on the policy, the Complainant's existing policy was automatically flagged for review. That is why it requested the provision of information and documentation prior to renewal. As two of the requested documents were not provided to it in time (up to date CVRT certificates), it did not renew the existing policy. However, it states that it extended the period of the existing policy multiple times to allow the Complainant to consider the new policy offered or find an alternative provider.

The Provider explains that, when it considered a new policy, it was deemed more suitable and appropriate to put the risk on a motor fleet policy and the Complainant was provided with a quote and new terms and conditions for that product. It states that, regardless of the product type, the premium and terms and conditions were always going to change at renewal as the previous premiums charged were unsustainable. It further states that the Complainant was free to reject the Provider's offer.

The Provider denies that it breached its statutory requirements in terms of advance notice of renewal terms and points to the many extensions of cover granted. The Provider does, however, accept that its customer service did not meet expectations. In particular, it regrets that it did not make clear that, while the requested documents were received, two of them

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were invalid. It states that it attempted to rectify this situation by granting multiple extensions and reducing the premium for the new policy from what was initially offered by approximately 25%. It further states that it will agree to maintain the current premium level for the next renewal, assuming there is no material change to the risk.

In terms of the driver restrictions on the new policy, the Provider states that it constantly reviews the performance of its policies and adjusts rates, acceptance criteria and restrictions accordingly. It identified that driver selection was a vital aspect of controlling and reducing the potential risk in this case and offered to support the Complainant in that regard by providing at cost driver assessments to help him manage the risk. In addition, the Provider is now offering two free assessments per vehicle per year as part of a risk control programme for the Complainant, as well as a risk management programme with a risk surveyor who will meet the Complainant to further evaluate the exposure faced by the Complainant and advise him on how to manage such risks.

The Provider is not prepared to provide the option of open driving on the policy, as requested by the Complainant. It states that the driver selection process is extremely important on this risk, given the transient and casual nature of short term drivers being employed by the Complainant. The Provider does, however, acknowledge that it mistakenly told the Complainant's broker that the drivers had to have held an EU driving licence for a minimum of 13 years. Eleven days later, it informed the broker that such requirement did not apply.

As regards the premium, the Provider states that the premium reflects the risk. It states that the sustainable level of premium based upon the current risk information is €4,600 per vehicle, but it reduced the premium to €3,500 per vehicle to take account of the difficult position in which the Complainant finds himself and the failings in its customer service. The Provider explains that over the previous three years a total premium of €26,253 was collected but the total estimated claim amount for that period is €101,799.

The Provider states that, regardless of whether or not the previous policy had been renewed, the existence of a suspension and rebate facility on vehicles during periods in which they were not in use would have been withdrawn. It explains that such facility was no longer sustainable or viable given the claims and underwriting experience.

Decision

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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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 9 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.

Request for documentation

It is, in my view, reasonable for a Provider, coming up to renewal time, to review a policy, particularly a policy with a claims history such as the Complainant's, to request that the insured provides documentation for the purpose of that review. The request was sent by letter to the Complainant's broker on the 7th February 2017. It informed the Complainant that the policy was due for renewal on the 11th March 2017 and gave a period of 8 days from the date of the letter to furnish the documentation required or renewal terms would not issue. It sought, among other things, *"copy of all CVRT in respect of all vehicles"*. The Complainant replied within time but submitted two CVRT certificates which had expired. This is understandable in circumstances where the Complainant's seasonal business was not operating at that time, the vehicles were not in use and the deadline was very tight. Further, the request did not state that the certificates had to be current, unexpired or in-date.

When the Provider did not receive up-to-date Value CVRT Certificates in respect of all the value, it could have dealt with this issue by placing a condition on the policy requiring submission of up to date certificates before the vehicles concerned were used. Alternatively, it could have invited the Complainant to remove the vehicles from the policy. Instead, it used this to refuse to offer renewal terms. This lack of flexibility on the part of the Provider was, in my view, unreasonable.

Refusal to renew

Once the decision had been made to not offer a renewal of the policy, the Provider was obliged, under reg. 5(1)(b) of the Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007 (S.I. No. 74 of 2007), *"not less than 15 working days prior to the date of expiry… issue to the client in writing a notification that it does not wish to invite a renewal"*. The Provider claims to have complied with this provision by sending a letter to the Complainant's broker, 22 days before expiry, stating that, as it had not received the requested documentation, it would not be inviting renewal of the policy. It has provided

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a copy of this letter. The Complainant and his broker deny ever receiving this letter. I cannot resolve the issue of whether that letter was sent, however, regardless, it would not have complied with the legislation as there were less than 15 working days left before expiry.

Thus, the Provider's conduct did not comply with the regulations. It should be noted, however, that the Regulations of 2007 do not provide for any penalty for failure to comply. Further, reg. 10 makes clear that a *"a policy of motor insurance shall not be extended solely by reason of the failure of an insurer… to comply"*. It should also be noted that, as emphasised by the Provider, it ended up granting a number of extensions of cover under the policy, while it engaged with the Complainant in relation to a new policy. While the extension of cover goes some way to mitigating the impact of the breach, I find this conduct to be unacceptable.

New policy

The Provider is entitled to refuse to renew cover on the same terms as previously applied. It is within the commercial discretion of the Provider to measure and evaluate the risk and set the premium. Furthermore, the Complainant is entitled to reject the Provider's offer of alternative cover and to seek insurance elsewhere.

It is not within the remit of this Office to interfere with the commercial discretion of the Provider or to direct it to include or exclude certain terms and conditions of a policy of insurance unless they are found to be unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant. I don't find the conduct of the Provider to be so in regard to the offer of a new policy.

Customer service

The Provider rightly acknowledges that its handling of the Complainant was not up to the appropriate standard. In particular, it was extremely unclear as to the reason it would not be offering renewal of the previous policy. However, I note the flexibility it went on to offer the Complainant, in terms of extending time periods of the existing insurance policy and reductions in premiums, in recognition of such failings. I also note the assistance it offered in relation to managing risk and I note that the Provider has offered a sum of €5,000 in compensation for its failings. I deem these measures to be sufficient compensation and I therefore do not uphold this complaint.

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Conclusion

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

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

31 July 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.