



| | |
|---|---|
| <u>Decision Ref:</u> | 2018-0135 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Critical & Serious Illness |
| <u>Conduct(s) complained of:</u> | Rejection of claim - non-disclosure & voiding |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants incepted a life insurance policy with the respondent financial service provider (“the Company”) with effect from **5 March 2015**, which provided a lump sum on death, benefit of €100,000 and an accelerated specified illness benefit of €50,000 on both lives, as well as an accident payment, hospitalisation payment and broken bones payment in respect of the First Complainant only. The Complainants applied for this policy through their Broker, an independent intermediary, during a sales meeting on **24 February 2015**. The policy was taken out over a term of 20 years with a monthly premium of €45.93 (excluding the 1% Government levy).

The Complainants’ Case

Following an accident in the workplace on 4 February 2016, the First Complainant submitted an Absence from Work/Accidental Injury claim to the Company detailing the circumstances of the accident as *“stacks of crates fell against my back”*. Following its assessment of this claim, the Company concluded that whilst the First Complainant’s occupation was recorded as *“Team Leader (Admin)”* on the policy application, his employment primarily involved manual duties. The Company expressed the opinion that had such manual duties been indicated during the application process, it would have applied an additional €11.39 per month (excluding the 1% Government levy) to the premium quoted, representing a loading of +50% in respect of accident payment benefit and +100% in respect of the broken bones benefit. The Company at this stage offered the Complainants the opportunity to pay the premiums that should have been charged from the outset, had the Company been provided with full details in relation to the First Complainant’s occupation, that is, an additional

€11.39 per month (excluding the 1% Government levy) for each month since the policy inception in March 2015.

The First Complainant notes that his occupation was recorded as *“Team Leader”* on the Online Data Capture Form but that *“it states “Team Leader (Admin)” on the internal copy which is wrong...It was never stated by me that my duties were of admin nature, however my claim was refused based on the fact that I injured myself...while working on washing crates”*. He is satisfied that his job title is ‘Team Leader’ and that this was what was correctly recorded on the Online Data Capture Form but that a *“mistake was made somewhere along the way in the office leading to my job title being of specific admin in nature”*.

In addition, the First Complainant notes that *“during ongoing correspondence [with the Company] I was requested to sign a new policy and my claim was closed subsequently without my consent and without written explanation”*. In this regard, the Company, on a number of occasions, issued the Complainants with a special terms acceptance letter to sign, representing the revised terms with the premium loading, but they did not sign this and the Company therefore subsequently voided their policy and refunded to the Complainants by cheque, the sum of €973.98, which represented a refund of all premiums they had paid into the voided policy.

The First Complainant notes that following his claim he *“submitted my job description confirming my title on a number of occasions but it wasn’t taken into consideration”* and that *“my title has always been “Team Leader” which was correctly stated by me, false information was never provided but claim was refused on this basis”*. In his correspondence to the Company dated 26 April 2016, the First Complainant submits *“I believe that my position has been misinterpreted at your side, at a time of me joining the policy and you should take the responsibility for not taking down the information correctly and liaise with [the Broker]....I have clearly explained my role and my duties to [the Broker] at a time of joining and not quite sure where the word “Admin” came from in my position”*.

The First Complainant now seeks for the Company to pay him *“€1500 (medical expenses) + ongoing treatment + loss of income (€300) + back injury compensation”* arising from his accident in his workplace.

The Complainants’ complaint is that the Company wrongly issued the Complainants’ insurance policy with an incorrect occupation recorded for the First Complainant, that is, *“Team Leader (Admin)”*, which was different from the one he provided at application to his Broker, namely *“Team Leader”* and that as a result, the Company wrongly or unfairly declined his accident payment claim and voided the Complainants’ policy.

The Company’s Case

Company records indicate that the Complainants met with their Broker on 24 February 2015 and decided to take out a life insurance policy with the Company. The Complainants completed a paper Online Data Capture Form with the Broker to assist in completing an online proposal. The First Complainant’s occupation was recorded as *“Team Leader”* on this

/Cont’d...

Online Data Capture Form and the response to the question *“Does your work involve manual duties?”* was recorded as *“No”*.

The Company notes that when completing an online proposal, a list of occupations is provided to assist a broker and his or her clients to identify the most appropriate occupation. Where it is not possible to identify a suitable occupation from the list, a free text box is provided and the broker and his or her clients are asked to insert the occupation title and provide as many details as possible in relation to this occupation to facilitate the underwriting of the policy. In this regard, the First Complainant's occupation was recorded on the online proposal as *“Team Leader (Admin)”* and no additional details were recorded in the free text box. The Company notes that there were other occupations to choose from on the list, such as *“Warehouse Co-ordinator”*, *“Warehouse manager (manual work)”*, *“Warehouse Person/Operative (over 20% use of Forklift)”* and *“Warehouse Person/Operative (up to 20% use of Forklift)”*, one of which it now understands may have been more suitable to describe the First Complainant's actual occupation.

The Company received the completed proposal from the Complainants' Broker on **4 March 2015** and the information contained therein was accepted by the Company in good faith. It issued the Complainants with a copy of the online proposal the same day, with a covering letter asking them to read the enclosed documents carefully as they contained important information in relation to the proposed policy. This letter also advised that if any information recorded on the proposal form was incorrect or incomplete, the Complainants were obliged to notify the Company within 10 working days. The Company has no record of either of the Complainants contacting it following receipt of this letter and its enclosures. The Company submits that it therefore accepted the accuracy of the information recorded on the proposal form, including details of the First Complainant's occupation as *“Team Leader (Admin)”*, and the proposal was underwritten based on the information set out in this proposal form.

The Complainants' policy came into force on 5 March 2015, as their broker had requested by email on 4 March 2015 for an immediate start date to the policy. The policy pack, containing the Policy Schedule, Policy Documents and an Important Information Notice, was mailed to the Complainants on 5 March 2015. The Policy Schedule confirmed the policy benefits to be a lump sum on death benefit of €100,000, accelerated specified illness benefit of €50,000 on both lives, as well as accident payment, hospitalisation payment and broken bones payment in respect of the First Complainant only. The policy was taken out over a term of 20 years with a monthly premium payable of €45.93 payable (excluding the 1% Government levy). The cover letter of 5 March 2015 recommended that the Complainants study the enclosed documents carefully to ensure that the policy fully met with their requirements. The letter also drew their attention to their cooling off rights, which permitted them to cancel the policy within 30 days and obtain a premium refund if they were dissatisfied with the policy for any reason. Further details of this cooling off provision was set out in the enclosed *“Important Information Notice”*.

Almost a year later, the Company received from the First Complainant an Absence from Work/Accident Injury claim form on 17 February 2016, wherein his GP confirmed details of his injury as *‘lower back strain’* as a result of *“plastic crates fell against his back at work on 4/2/15, fell to ground”*. With a view to fully and fairly assessing the claim, the Company

/Cont'd...

wrote to the Complainants on 2 March 2016 to request a copy of the accident report completed when the First Complainant sustained his back injury as well as additional details of his day to day duties; a copy of this correspondence was sent to their Broker. The First Complainant wrote to the Company on 8 March 2016 to provide additional details of his day to day duties and confirmed that he worked as a team leader and that his duties included driving a forklift, loading and unloading trucks and operating machinery and he contended that the information held by the Company in relation to his occupation, that is, "*Team Leader (Admin)*", was incorrect.

The Company is satisfied that cover was offered to the Complainants in March 2015 based on the information recorded on the paper Online Data Capture Form, which confirmed the First Complainant's occupation to be a "*Team Leader*" and that he did not engage in manual work, and the online proposal, which confirmed his occupation to be "*Team Leader (Admin)*". The Company confirms that, had it been provided with full details of the First Complainant's occupation, it would have applied an additional €11.39 per month (excluding the 1% Government levy) to the premium quoted, representing a loading of +50% in respect of accident payment benefit and +100% in respect of the broken bones benefit.

Rather than voiding the policy for non-disclosure as it could have done in accordance with the policy terms and conditions, the Company instead offered the Complainants the opportunity to pay the premiums that should have been charged from the outset, had the Company been provided with full details in relation to the First Complainant's occupation, that is, an additional €11.39 per month (excluding the 1% Government levy) for each month since the policy inception in March 2015, with the outstanding premium to be deducted from any claim amount payable. The Company considers this to have been very fair in the circumstances and it wrote to the Complainants on **13 April 2016** to confirm this offer and enclosed a special terms acceptance letter which they were asked to sign and return to accept the increase in premium, before the claim could be assessed further, with a copy of this also sent to their Broker.

In his correspondence to the Company dated 26 April 2016, the First Complainant outlined that he had clearly explained his role and duties to his Broker when he applied to take out the policy in February 2015 and that the information recorded on the proposal form did not accurately reflect his discussions with the Broker. The Company submits that it is not in a position to comment on discussions that took place between the First Complainant and his Broker.

The Company reviewed this matter and responded to the Complainants by correspondence dated 19 May 2016 outlining that the policy had been sold to the Complainants by their Broker, a separate entity from the Company, and that if they were unhappy with any of the information recorded on the proposal form, they should raise their concerns directly with the Broker. A further copy of the special terms acceptance letter was enclosed, which the Complainants were invited to sign and return to the Company, to facilitate the assessment of the claim, with a copy also sent to the Broker. Following a telephone call from the First Complainant on 13 June 2016, the Company wrote to the Complainants on 13 June 2016 reiterating its position as previously set out in its correspondence of 19 May 2016, and enclosed a further copy of the special terms acceptance letter.

/Cont'd...

With a view to progressing matters and on the assumption that the special terms acceptance letter would be signed by the Complainants, the Company sent to the Complainants' Broker a cheque in the amount of €300 on 15 July 2016, representing the amount payable to the First Complainant in respect of his accident payment claim. This cheque, together with a letter addressed to the Complainants, were sent to the Broker with a further copy of the special terms acceptance form. The Broker was due to meet with the Complainants around that time and was asked not to release the cheque until the special terms acceptance letter had been signed. However, the Broker advised the Company on 19 July 2016 that the Complainants did not wish to sign the special terms acceptance letter, and subsequently returned the cheque to the Company.

Some weeks later, on 12 August 2016, the Broker forwarded further details of the First Complainant's employment duties and responsibilities. This additional information was assessed by the Company and further information was then requested from the First Complainant's Employer, which responded on 25 August 2016 confirming the manual nature of the First Complainant's employment. Regrettably, based on all of the information obtained, the decision to apply a premium loading to the accident payment and broken bones payment policy benefits remained unchanged. The Company confirmed this to the Complainants and their Broker by way of correspondence dated 30 August 2016. The Company notes that this letter incorrectly made reference to it having paid the First Complainant's accident payment claim in error, and it apologises for any confusion that this may have caused.

The First Complainant wrote to the Company on 7 September 2016 to reiterate that he had disclosed full details of his occupation to his Broker at point of sale. As a result, the Company next wrote to the Complainants on 10 November 2016 to state again that the policy had been sold to them by their Broker and that the proposal form and information recorded therein had been accepted by the Company in good faith. The Company also advised that as the Complainants had failed to sign to accept the special terms to allow the policy continue with the premium loading that would have been applied had it been notified of the exact nature of the First Complainant's occupation during the policy application, an offer that it first made on 13 April 2016 and on a number of occasions since, it had now cancelled the Complainants' policy from inception. The Company enclosed a cheque in the sum of €973.98, which represented a refund of all premiums paid into the policy. The Company understands that this cheque had not been cashed as of 9 October 2017.

In summary, the Company notes that the Complainants had taken out their policy through their independent Broker and it is not in a position to comment on matters discussed between the Complainants and that third party broker. The Company accepted the information set out in the proposal form in good faith and cover was offered to the Complainants at ordinary rates. The Company is satisfied that in signing the declarations associated with the proposal that the Complainants declared that the information recorded was true and complete and would form the basis of their contract with the Company. They were provided with a full copy of the online proposal by letter dated 4 March 2015, which detailed the First Complainant's occupation as "*Team Leader (Admin)*", and they were asked to carefully review the information recorded and to notify the Company within 10 working days if any amendments were required to be made. The Complainants were also provided

/Cont'd...

with a copy of the policy conditions on 5 March 2015, which highlighted the importance of disclosing all material facts to the Company and the consequences of failing to do so.

As a gesture of goodwill, and in full and final settlement of their complaint, the Company would like to offer the Complainants an opportunity to have their policy reinstated. This offer is made on the condition that they agree to pay the higher premium of €55.32 (excluding the 1% Government levy) per month for the remaining term of the policy. This is the premium that would have been charged at the outset had the Company been aware of the exact details of the First Complainant's occupation. As a further gesture of goodwill, the Company confirms that it is willing to pay the outstanding premiums due from December 2016 to October 2017. If the Complainants are willing to accept this offer and the policy is reinstated as set out herein, the Company will then arrange to pay to the First Complainant the sum of €300 in respect of his claim for accident payment benefit. The Company believes this offer to be very fair taking all of the circumstances into account and confirms that this offer to reinstate the policy and pay the outstanding premiums due from December 2016 to October 2017 will remain open to the Complainants until this office has adjudicated on the complaint at hand.

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 on 25 June 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.

Although the first Complainant indicated that he wished to make verbal submissions, he received confirmation in writing that it would be necessary to make any submissions in writing. The time was extended for the Complainants to do so until close of business on 22

/Cont'd...

July 2018, but no further submissions in writing were received from either party. In the absence of any such additional submissions, the final determination of this office is set out below.

The complaint at hand is that the Company wrongly issued the Complainants' insurance policy with an incorrect occupation recorded for the First Complainant, that is, "*Team Leader (Admin)*", which was different from the one he provided via his broker at application, namely "*Team Leader*" and that as a result, the Company wrongly or unfairly declined his later accident payment claim and ultimately voided the Complainants' policy. It should be noted that the Complainants' complaint which is the subject of this investigation, is a complaint about the conduct of the Company in voiding the policy. This investigation is not about the conduct of the Complainants' broker. Any such complaint would require a separate investigation by the FSPO against that separately regulated entity, as the broker is not, and was not at the time of policy inception, a tied agent of the Company. Any failures by or errors alleged to have been made by that broker, are not therefore the responsibility of the Respondent Company.

It is noted that, the Complainants incepted a life insurance policy with the Company with effect from 5 March 2015, which provided a lump sum on death benefit of €100,000 and an accelerated specified illness benefit of €50,000 on both lives, as well as an accident payment, hospitalisation payment and broken bones payment in respect of the First Complainant only. The Complainants applied for this policy through their Independent Broker during a sales meeting on 24 February 2015. The Complainants completed a paper Online Data Capture Form with their Broker on 24 February 2015 wherein the First Complainant's occupation was recorded as "*Team Leader*", however the crux of this complaint is that the Company subsequently issued the policy with the First Complainant's occupation incorrectly recorded as "*Team Leader (Admin)*".

Following an accident in the workplace on 4 February 2016, the First Complainant submitted an Absence from Work/Accidental Injury claim to the Company detailing the circumstances of the accident as "*stacks of crates fell against my back*". Following its assessment of this claim, the Company concluded that whilst the First Complainant's occupation was recorded as "*Team Leader (Admin)*" on the policy application, his employment primarily involved manual duties. As a result, the Company determined that had the First Complainant indicated that his occupation primarily involved manual duties during the policy application, it would have applied an additional €11.39 per month (excluding the 1% Government levy) to the premium quoted, representing a loading of +50% in respect of accident payment benefit and +100% in respect of the broken bones benefit.

The Company at this stage offered the Complainants the opportunity to pay the premiums that should have been charged at the outset had the Company been provided with full and correct details in relation to the First Complainant's occupation, that is, an additional €11.39 per month (not including the 1% Government levy) for each month since the policy inception in March 2015. However, as the Complainants did not wish to sign to accept this, the Company subsequently voided the policy on 10 November 2016 and refunded the Complainants the sum of €973.98, which represented a refund of all premium paid into the policy.

/Cont'd...

I note from the documentary evidence before me that the 'Online Data Capture Form – Broker', which was later furnished to the Company by the Broker by email on 9 May 2016, records the First Complainant's occupation as "Team Leader".

The following questions,

"Is your occupation 100% administration/supervisory/managerial?"

and

"Does your work involve any manual duties?"

are both answered "No" on this form.

The stated purpose of completing an 'Online Data Capture Form – Broker' is so as to assist the Broker in completing an online proposal for the policy. I am satisfied that the information recorded on this 'Online Data Capture Form – Broker' clearly indicated to the Company that the First Complainant's employment did not involve manual duties.

I note that Section 8, 'Declarations/Data Protection consent', of the 'Online Declaration Form – Broker' provides, as follows:

"I declare that:

- I have read and understand the replies to all the questions in the data capture form and declare that all statements therein, all the information recorded in my online application and any statement written at my request or in any questionnaire completed by me or a medical examiner in connection with this application and signed by me are true and complete and shall be the basis of the proposed contract.*
- I have read and understand...that if I fail to disclose all material facts in this application, in any questionnaire signed by me...the contract with [the Company] could be void. [The Company] will retain all premiums paid and no benefits will be provided by the policy.*

I understand that:

- I will receive a printed record of the information recorded in this online application within 10 days of submission and agree to notify [the Company] if I do not receive the printed record within this time. Following receipt of the record I understand that I must ensure the information set out on the record of my application details is true and complete and that I must notify [the Company] of any changes required within 10 working days of receipt of the record".*

/Cont'd...

The First Complainant signed this declaration on 24 February 2015, indicating that he had read and understood all the responses to the questions posed in the 'Online Data Capture Form – Broker', which recorded his occupation as "Team Leader" and which answered "No" to the questions "Is your occupation 100% administration/supervisory/managerial?" and "Does your work involve any manual duties?"

In addition, I note that the Company wrote to the Complainants on 4 March 2015, as follows:

"I enclose your application details as provided to us and a notice setting out some important details. Please read these documents carefully as they contain important information regarding your proposed policy.

*If any of the information is incorrect or incomplete, you must notify us in writing **within 10 working days of the date of this letter**. If you are satisfied that the information is correct and complete then there is no further action required from you at this time".*

The enclosed 'IMPORTANT DETAILS' notice advised the Complainants, as follows:

"It is very much in your interest that we have been provided with all the legally required information to ensure the proposed policy will be valid. We have enclosed a record of the application details for the policy provided in the application process to date. You should check the information on the enclosed form to insure it is true and complete.

It is important to understand that you, the policy owner(s) and the person(s) to be covered (if different), are legally required to disclose all material facts. Failure to do so could result in the proposed policy being voided. This would mean no benefit being payable under the policy in the event of a claim. Material facts are those that an Insurer would regard as likely to influence the assessment or acceptance of an application for insurance. If you are in any doubt as to whether certain facts are material you should bring these facts to our attention".

In this regard, the enclosed Application Details recorded the First Complainant's occupation as "Team Leader (Admin)". Having availed of the opportunity presented to review the policy documents as requested by the Company, particularly the Application Details, if the First Complainant did not then consider "Team Leader (Admin)" to be the appropriate descriptor for his occupation, the onus was on him to contact the Company to advise it accordingly.

The Company next wrote to the Complainants on the following day, 5 March 2015, enclosing a copy of their Policy Schedule and Policy Documents, advising that "You should study these documents carefully to ensure that the [policy] meets with your requirements and is to your satisfaction".

Section A, 'General Conditions', of the enclosed Policy Conditions booklet provides at pg. 6, as follows:

/Cont'd...

“Legal Basis ...

For the policy to be valid, we require full and true disclosure in the Application and in any medical or other statements made by the Policyholder or Life Assured or intermediary in connection with the Application ...

The Company will, subject to the payment of Premiums and the policy terms, pay the benefits provided by the policy. If there is any misrepresentation of or failure to disclose material facts by or on behalf of the Policyholder, or a Life Assured, the policy is void and all Premiums paid will be retained by us”.

I am satisfied from the documentary evidence before me, that the First Complainant signed the ‘Online Declaration Form – Broker’ on 24 February 2015 indicating that he had read and understood all the responses contained in the ‘Online Data Capture Form – Broker’, wherein his occupation was recorded as *“Team Leader”* and the questions *“Is your occupation 100% administration/supervisory/managerial?”* and *“Does your work involve any manual duties?”* were both answered *“No”*. Furthermore, I am satisfied that the Company provided the Complainants with a copy of the online proposal on 4 March 2015, wherein the First Complainant’s occupation was recorded as *“Team Leader (Admin)”* and that it advised the Complainants to read this document carefully to ensure that the information contained therein was accurate and complete and to contact the Company within 10 working days if it was not. I note that in his later correspondence to the Company dated 8 March 2016, the First Complainant advises, *“The form that you sent me has incorrect details as to what my actual duties are”*. However, there is no evidence before me to indicate that the First Complainant had advised the Company of this, prior to his correspondence of 8 March 2016, a year after the policy had come into being.

Following an accident in the workplace on 4 February 2016, the First Complainant submitted an Absence from Work/Accidental Injury claim to the Company detailing the circumstances of the accident as *“stacks of crates fell against my back”*. As part of its assessment of this claim, the Company sought further details of the First Complainant’s employment duties. In this regard, the First Complainant wrote to the Company on 8 March 2016 to advise:

“I work in warehouse as a Team leader ...

As a Team Leader my duties involve both warehouse and office work.

Duties involve:

- *Forklift driver*
- *PPT driver.*
- *Loading and unloading trucks.*
- *Machinery operator.*
- *Office”.*

/Cont’d...

In addition, the First Complainant's Employer later wrote to the Company on 25 August 2016 to advise, as follows:

"As Team Leader [the First Complainant]'s duties across the operation are varied and include areas such as:-

- *Monitoring productivity*
- *Monitoring stocks*
- *Crate, pallet and dolly sorting*
- *Cleaning*
- *Checking stock for repairs*
- *Machine duties*
- *Dealing with customers*
- *Forklift driving ...*

He is involved in these tasks daily, and, depending on the week, his time on each can vary considerably.

As you can see from the above list of duties [he] has a good mix of manual and administrative work. Manual work would account for approximately 60% of his working hours each day but again this can vary from week to week".

I am thus satisfied that it was reasonable for the Company to conclude that although the First Complainant's occupation was recorded on the policy application as *"Team Leader (Admin)"*, that his employment did in fact involve manual duties. As a result, I am satisfied that during the policy application there was a failure (whether by the Complainants or their broker) to advise the Company of a material fact, namely that the First Complainant's employment involved manual duties.

Insurance contracts are contracts of utmost good faith. The failure to disclose information which is material to the risk to be insured, allows the Insurer to void the policy from the outset and refuse or cancel cover. Once non disclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, refuse or cancel cover. As the Company was unaware of the fact that the First Complainant's employment required manual duties at the time when it agreed to incept the policy, I am satisfied that the policy came into being on the basis of a false premise.

This office is aware that the courts have long considered the issues surrounding non-disclosure of material facts. For example, in *Aro Road and Land Vehicles Limited v. Insurance Corporation of Ireland Limited* [1986] I.R. 403, where the Court determined that representations made in the course of an insurance proposal should be construed objectively, Henchy J said *"[a] person must answer to the best of his knowledge any question put to him in a proposal form"*.

/Cont'd...

I am also cognisant of the views of the High Court in *Earls v. The Financial Services Ombudsman [2014/506 MCA]*, when it indicated that *“The duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources”*.

In my opinion, for the reasons outlined above, I am not satisfied that it would be reasonable to conclude that the Company was provided with an accurate description of the First Complainant's occupation (whether that was as a result of the actions of the Complainants or their broker). Accordingly, I am satisfied that the Company, in strict accordance with the terms and conditions of the insurance arrangement in place, was entitled to decline the First Complainant's claim and cancel the Complainants' policy from inception.

However, rather than cancelling the policy, I note that the Company wrote to the Complainants on 13 April 2016, as follows:

“I note on [the First Complainant]'s original application form dated 24 February 2015 his occupation was stated as a Team Leader with administration work only. Having reviewed the information [the First Complainant] supplied regarding his occupation, had we been aware of his exact occupational details when he applied for this policy, a higher premium would have been charged in respect of his Accident Payment and Broken Bones Payment benefits.

Please find attached a special terms acceptance letter which needs to be completed and returned to us within 14 working days. On receipt of your signed special terms letter we can review your claim further.

We understand that these terms may be very disappointing to you but we hope you will appreciate that our decision is merely a reflection of the one we would have made in March 2015 if, at the time, we had been afforded the opportunity to make a true assessment of your occupation”.

The enclosed special terms acceptance letter provided, as follows:

“We wish to accept the special terms, outlined below, and also stated in your letter dated 13 April 2016.

- *We wish to pay an increased premium of €55.32 per month, which excludes the 1% government levy. This will maintain our benefits at their current level.*
- *We understand that we will have to pay an extra €11.39, excluding the government levy, to cover the cost of the occupational ratings.*
- *We understand that the outstanding premium will be deducted from any claim amount payable”.*

Rather than voiding the Complainants' policy for the non-disclosure of a material fact which I am satisfied it could have done in strict accordance with the policy terms and conditions,

/Cont'd...

the Company instead offered the Complainants the opportunity to pay the higher premiums that should have been charged from the outset, had the Company been provided with full details in relation the First Complainant's occupation, that is, an additional €11.39 per month (excluding the 1% Government levy) for each month since the policy inception in March 2015, with the outstanding premium to be deducted from any claim amount payable. I am satisfied that this was a more than reasonable approach for the Company to take in this matter.

Having listened to a recording of the telephone calls made by the First Complainant to the Company in relation to this matter, I note that the Company Agent presented this position most succinctly during the telephone call on 16 June 2016 at 1.46pm, when she advised the First Complainant, as follows:

"The premium that you're paying, the €45 odd, is based on TEAM LEADER ADMIN ...based on your correct occupation, your premium would need to increase to €55.32 ...because your true occupation requires an additional premium based on the risk involved. Obviously a person who works at ADMIN is at a less risk of accidents than a person who does a more manual job".

In this regard, I also note that a different Agent had previously advised the First Complainant during the telephone call on 4 March 2016 at 9.41am that the Company "need[s] to reassess your occupation and we'll come back to you...we can set the policy correct from the start". I am satisfied that this is what the Company sought to do by issuing the Complainants with the aforementioned special terms acceptance letter.

I note that the Company re-issued the special terms acceptance letter to the Complainants on 19 May 2015, to their Broker on 15 July 2016 and once again to the Complainants on 30 August 2016, when the Company further advised, as follows:

"We have also agreed to waive the arrears accruing on your policy of €202.02 (€11.39 per month from March 2015 to August 2016). However, please note that with immediate effect the monthly premium of €55.32 is due.

We require you to sign and return the attached special terms acceptance sheet".

The Complainants did not sign and return this special terms acceptance letter to the Company. As a result, the Company wrote to the Complainants on 10 November 2016 to advise that as they had failed to sign to accept the special terms to allow the policy continue with the premium loading that would have been applied had the Company been correctly notified of the manual nature of the First Complainant's occupation during the policy application process (an offer that the Company first made on 13 April 2016 and on a number of occasions since) that it had now cancelled the Complainants' policy from inception. The Company enclosed a cheque in the sum of €973.98, which represented a refund of all premium paid into the policy.

In this regard, I note that the First Complainant submits that the Company closed the Complainants' policy "without my consent and without written explanation". The documentary evidence before me does not however bear out the First Complainant's

/Cont'd...

recollection of events. I am satisfied that the Company clearly explained its position to the Complainants in its correspondence of 13 April 2016, 19 May 2016, 13 June 2016, 30 August 2016 and 10 November 2016. In any event, I am satisfied that the Company, in strict accordance with the policy terms and conditions, was entitled to cancel the Complainants' policy from inception due to the non-disclosure of a material fact during the policy application process, namely the exact nature of the First Complainant's employment, and that it did not require the consent of the Complainants to do so.

Finally, I note that in its correspondence to this office dated 9 October 2017, the Company has advised that as a gesture of goodwill, and in full and final settlement of their complaint, it would like to offer the Complainants an opportunity to have the policy reinstated. This offer is made on the condition that they agree to pay the higher premium of €55.32 (excluding the 1% Government levy) per month for the remaining term of the policy. This is the premium that would have been charged from the outset had the Company been aware of the manual nature of the First Complainant's occupation. As a further gesture of goodwill, the Company confirmed that it was willing to pay the then outstanding premiums due from December 2016 to October 2017. If the Complainants are willing to accept this offer and the policy is reinstated, the Company will then arrange to pay to the First Complainant the sum of €300 in respect of his claim for accident payment benefit. The Company has confirmed that this offer will remain open to the Complainants to accept until such time as this office has finalised the adjudication of the complaint. In my opinion, this offer is more than reasonable, but it is a matter between the Complainants and the Company and it is for the Complainants to now advise the Company if they now want to accept this offer and if they wish to do so, they should proceed as soon as possible as I note that the Company has indicated that that the offer remains open, only until this adjudication has been completed.

Whatever the Complainants decide to do in relation to that offer, I am satisfied for the reasons outlined above, that there is no evidence of wrongdoing on the part of the Company and that there is no reasonable basis upon which it would be appropriate to uphold this complaint.

Conclusion

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

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

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

27 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.