



<u>Decision Ref:</u>	2018-0207
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<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' complaint relates to the withdrawal of car insurance cover "*ab initio*" by the Provider several years after the initial inception of the policy. The Provider maintains that it was entitled to take this course of action on the basis of a material non-disclosure by the Complainants at the time of inception.

The Complainants' Case

The Complainants purchased car insurance with the Provider via an independent intermediary in **November 2011** in the name of the First-named Complainant with the Second-named Complainant listed as a named additional driver. This insurance was renewed throughout the following years up to and including 2015. In May 2015, in the course of considering a claim on the policy, the Provider withdrew the insurance "*ab initio*" citing the failure on the part of the Complainants, at the point of inception, to disclose the criminal convictions of the Second-named Complainant.

The Complainants, who are not native English speakers, maintain that the Second-named Complainant "*did not know the import of the declaration with regard to non road traffic offences*". The Complainants highlight that the relevant convictions were recorded in 2009 and 2010 and they stress that the Second-named Complainant has never come to the attention of An Garda Síochána in the intervening years.

The complaint is that the Provider has unreasonably withdrawn car insurance cover in respect of the Complainants. The Complainants seek that the insurance be reinstated. In

email correspondence, the Complainants have also clarified that they are not seeking monetary compensation, but they do seek the “*same specifications car*”.

The Provider’s Case

The Provider maintains that at the time of the inception of the policy in 2011, the Complainants failed to disclose a material fact, namely the Second-named Complainant’s prior convictions for theft in 2009 and burglary in 2010 and, as a result, it was entitled to withdraw cover “*ab initio*”. The Provider relies on the terms of the policy and the detail provided in the application for insurance.

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 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 17 October 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.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

Policy Terms and Conditions

The Statement of Fact which issued to the Complainants after inception provided as follows:

/Cont’d...

Important Notes

1. *Failure to disclose all material information (ie information likely to influence the assessment and acceptance of your Proposal) or providing false information could mean that you do not get the cover you need or could invalidate your insurance. If you are in doubt whether any information is material, it should be disclosed.*
2. ...
3. *Please ensure that you read the Assumptions at the end of the Statement of Facts as failure to comply could invalidate insurance.*

The Provider has identified the following "Assumption" from the Statement of Fact in support of its decision to cancel the insurance:

You declare that the following statements and particulars are accurate, true and complete:

You and Your Named Drivers:

...

8. Have never been convicted of any Non-Road Traffic Act offence or have any convictions pending

...

The aforementioned Statement of Fact was produced following the inception of the policy on the basis of a telephone conversation in November 2011, a recording of which I have been furnished with. In the course of this phone conversation, the following exchange occurred:

Agent: *And do you have any penalty points or convictions?*

Second-named Complainant *No penalty points or convictions, no.*

...

A: *So all of our quotes are offered based on qualifying assumptions. We'll get you the price first but we need to go through these to ensure you qualify before taking payment. Is that Ok*

S-n C: *That's alright yeah.*

...

A: *[You] have never been convicted of any non Road Traffic Act offence or have any convictions pending?*

S-n C: *No.*

/Cont'd...

Analysis

The Provider has sought to rely on a material non-disclosure as the basis for withdrawing cover. I am satisfied, on the basis of the terms and conditions set out in the Policy Document and on the basis of the various warnings included in the application procedures, that this is a course of action that is open to the Provider, if it can establish that there was indeed a non-disclosure of a material fact.

I am satisfied that, and indeed the Complainants have acknowledged that, the Complainants failed to disclose the fact that the Second-named Complainant had been the subject of convictions for offences other than convictions under the Road Traffic Act. This non-disclosure occurred notwithstanding the clear requirement to disclose such information.

The Complainants have stated that the Second-named Complainant did not know or appreciate the import or significance of the disclosure requirement. I do not believe that this is an adequate explanation. In addition, insofar as there is any suggestion that the Complainants' proficiency in English may have contributed to this, I have listened to the phone conversation, parts of which I have reproduced above, and I do not accept that the Second-named Complainant misunderstood the question in any way.

It was the responsibility of the Complainants to ensure that they completed the application for insurance accurately and it was their responsibility to seek assistance if they didn't understand any provision, or its importance, entirely. At no point did they seek any further assistance or explanation or clarification from the Provider. Indeed, the Complainants originally secured the insurance cover via an independent intermediary, but they make no complaint against that entity.

I must consider also whether the non-disclosure related to a 'material fact'. A material fact is one which would have influenced a reasonable insurer, had it been disclosed. Accordingly, it is not sufficient merely to establish that the particular insurer or underwriter involved would have declined cover; it is also necessary to show that such a course of action would have been reasonable, or that a reasonable insurer would have been influenced by the information had it been disclosed.

The Provider's Final Response letter states as follows:

This conviction is a material fact and would have influenced our decision in providing a quote to you in 2011. We consider this to be a non disclosure of a material fact. Had it been disclosed, we would have declined to provide a quotation and subsequent insurance cover to the insured.

Accordingly, the Provider has confirmed that it would not have provided cover to the Complainants had full disclosure been made. Additionally, I am satisfied that this was a reasonable attitude for the Provider to adopt insofar as I accept that a reasonable insurer would have been influenced by the information which was not disclosed regarding the Second Complainant's convictions, had that information been disclosed.

/Cont'd...

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a decision in favour of the Complainants, I am not in a position 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**

8 November 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.