



<u>Decision Ref:</u>	2019-0056
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Motor
<u>Conduct(s) complained of:</u>	Failure to provide product/service information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant incepted a motor insurance policy with a named third party Insurer on 20 June 2014, via the Company, a Broker against which this complaint is made. The Insurer voided this policy on 22 September 2014 due to the nondisclosure of material facts.

The Complainant's Case

The Complainant incepted a motor insurance policy with a named Insurer on 20 June 2014, via the Company, a Broker.

The Complainant sets out his complaint, as follows:

"Took out motor policy through [the Company] - disclosed everything to [the Company]...I am a non-English speaker and all documents were prepared on my behalf by [the Broker]. In the past, I had two small material damage claims, however, I had been advised by my previous insurance company that they were not relevant, and [my previous insurance company] furnished a Certificate of No Claims. I was involved in an accident on the 17th of August 2014 for which I was responsible. [The Insurer] state, they voided the policy for non-disclosure of relevant information".

In its correspondence to the Company dated 27 November 2015, the Complainant's solicitors submit, as follows:

"[The Company] arranged a policy of insurance for [the Complainant's] vehicle with [the Insurer], and documents as furnished by [the Company Agent] were signed by him.

He provided to [the Company Agent] a no claims certificate received from his previous insurers...which they issued notwithstanding they were aware of the existence of two small material damage claims which they dealt with and, which in [the Complainant's] view were therefore not relevant...[The Complainant] is Polish and a non-English speaker.

[The Company] prepared the documentation on his behalf...[the Insurer] now have taken steps to avoid the policy on the grounds of non-disclosure which in the circumstances is unreasonable.

In addition, in its correspondence to this Office dated 4 October 2016, the Complainant's solicitors advise, among other things, as follows:

"It has always been [the Complainant's] case that yes he did rely on the No Claims Bonus from [his previous insurer] but at no stage was he asked by [the Company's] Agent about previous claim and the Agent herself relied on the Certificate of No Claims Bonus ...

[The Complainant] was reasonable at all times in relying on this Certificate of No Claims Bonus. However, if the question was put to [the Complainant] 'Have [you] been involved in ANY motor accidents or claims in the last 5 years' [the Complainant] would have answered in the affirmative".

In this regard, the 'PROOF OF NO CLAIMS BONUS' certificate from the Complainant's previous insurer, dated 20 May 2014, states:

"This is to confirm that the above policy has been in force with [the insurer] since 21st June 2013 and that the policy falls due for renewal on 21st June 2014. At renewal date this policy will be rated as earning the following No Claims Bonus: ...

*No. of Years No Claims Bonus: *** 04***

****The years quoted may include introductory years discounts which we allow at the inception of some policies***

*Number of years this policy is in force without claim(s) (with the exception of windscreen claims): **1"***

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The Complainant *“is not in a position to state who is responsible and accordingly we would ask [the Company] to confirm that [it] will indemnify [the Complainant] in full in respect of the policy avoidance as at all times he relied on the expertise of [the Company]”*.

The Complainant’s complaint is that the Company mis-sold him his motor insurance policy with an Insurer insofar that the Company Agent did not, as part of the policy application process, ask the Complainant about his previous claims history and that if she had, he would have advised of two small claims with a previous insurer.

The Complainant complains that the failure of the Company to ask him this question resulted in the Insurer later voiding his motor insurance policy due to the nondisclosure of material facts.

The Provider’s Case

Company records indicate that the Complainant called to the Company’s branch office on 16 June 2014 seeking quotations for motor insurance, as his then current motor insurance policy was due for renewal on 21 June 2014. As he had not previously been a customer of the Company, its Agent asked the Complainant the requisite questions in order to create a profile for him on its customer information system, which would then enable it to obtain motor insurance quotations for him. In this regard, all the questions would have been asked question by question as they appear on the system, that is, name, address, vehicle model, client details, accident and claims history, convictions. The Complainant did not disclose his involvement in two previous accidents giving rise to claims with his then current insurer. Two quotations were secured for the Complainant, who then asked about the payment of the premium by way of instalments. Details of these two quotations were recorded at the time by the Agent in her handwritten memo. The Complainant furnished the Agent with a Certificate of No Claims Bonus from his then insurer and, the Company notes, by his own admission, the Complainant did not mention the previous claims as he considered that they were *“not relevant”*.

The Complainant called to the Company’s branch office again on 20 June 2014 to proceed with cover with the Insurer. The Agent completed the Motor Proposal Form electronically with the Complainant, which was then printed off. Following this, the Complainant reviewed and signed the following documents:

- the Motor Proposal Form
- a Confirmation Form in which he confirmed among other things that:
 - (i) all questions on the Proposal Form were fully answered;
 - (ii) he understood that the Proposal Form formed the basis of the contract with the insurer; and
 - (iii) he had not withheld any material facts and was aware of his ongoing duty of disclosure.

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- the Company's Terms of Business
- a Finance Credit Agreement.

The Company notes from the "CLAIMS HISTORY" section of the Proposal Form that the Complainant confirmed that neither he nor his spouse nor any other driver who will drive his vehicle had been in any motor accident or claim in the preceding five years. In the "DECLARATION" section of this Proposal Form the Complainant then signed indicating that *"all statements and particulars, above, which I have read and checked, are true and complete and...I have not suppressed, misrepresented or mis-stated any material fact"*.

In addition, in signing the Confirmation Form, the Complainant confirmed that all questions on the Proposal Form were fully answered, that he understood that the Proposal Form formed the basis of the contract with the Insurer and that he had not withheld any material facts and was aware of his ongoing duty of disclosure.

The Company notes that the Complainant has not complained that he did not understand the contents of the Proposal Form or the Confirmation Form, rather he has advised that he did not disclose the existence of the two previous claims having decided himself that they were not relevant. In this regard, the Complainant signed the Proposal Form confirming that he had had no motor accidents or claims in the previous 5 years.

The Company is satisfied that the Complainant made his own informed decision not to disclose the existence of the two previous claims having decided himself, and/or having been advised by his previous insurer, that they were not relevant. This information was solely in the knowledge of the Complainant and should have been disclosed by him when applying for motor insurance with the Insurer. In this regard, the Company submits that the Complainant's complaint is with the Insurer as he considers that it should not have voided his policy on the basis of the nondisclosure of material facts, presumably because he does not consider the two previous claims to be relevant. In this regard, the Company notes that in its correspondence dated 27 November 2015, the Complainant's solicitors assert, as follows:

""[The Complainant] provided to you a no claims certificate received from his previous insurers...which they issued notwithstanding they were aware of the existence of two small damage claims which they dealt with and, which in [the Complainant's] view were therefore not relevant." (Emphasis added)"

As a result, the Company submits that it is clear that the Complainant made an informed decision not to disclose the existence of his previous claims to the Company as he believed that they were *"not relevant"* and instead sought to rely on the Certificate of No Claims Bonus from his previous insurer. The Company thus submits that the Complainant himself took the decision not to advise either the Company or the Insurer of his previous claims history and it is this act of nondisclosure alone which resulted in the later decision of the Insurer to void cover.

In this regard, the Insurer voided the Complainant's motor insurance policy due to the non-disclosure of a material fact and not as a result of any act of the Company. It is not for the Company to offer a view as to whether or not the Insurer's decision to void cover was correct in the circumstances.

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.

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 25 February 2019, 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, I set out below my final determination.

The Complainant incepted a motor insurance policy with a named Insurer on 20 June 2014, through the Company, a Broker. The Insurer later voided this policy due to the non-disclosure of material facts. The complaint at hand is that the Company mis-sold the Complainant his motor insurance policy with an Insurer insofar as the Company Agent did not, as part of the policy application process, ask the Complainant about his previous claims history and that if she had, he would have advised of two small claims with a previous insurer. The Complainant complains that the failure of the Company to ask him this question resulted in the Insurer later voiding his motor insurance policy due to the non-disclosure of material facts.

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I note from the documentary evidence before me that the Company Agent completed the Proposal Form electronically, which was then printed off and given to the Complainant to sign. This single page Motor Proposal Form provides, among other things, as follows:

“IMPORTANT: *It is an offence under the Road Traffic Act to make a false statement or withhold any material information for the purpose of obtaining a Certificate of Insurance. Furthermore, such action could invalidate your insurance cover. Material information means any information likely to influence our acceptance or assessment of this proposal. If you are in doubt as to whether or not the information is material, then it should be declared ...*

CLAIMS HISTORY

Other than those specified below, neither I, my spouse nor any other 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 NO ...*

*I have earned 4 year(s) bonus The expiry date of the policy is 20 Jun 14
The present insurer is [named] The policy number is tbc”.*

I note that the ‘ACCIDENTS/CLAIMS DETAILS’ section directly below this, where the person seeking insurance should provide details of any motor accidents or claims in the last 5 years, is left blank.

The ‘DECLARATION’ section at the bottom of this Proposal Form provides, as follows:

“I, the undersigned...hereby declare that the vehicle described is in good condition and that all the statements and particulars, above, which I have read and checked, are true and complete and that I have not suppressed, misrepresented or mis-stated any material fact. If any answer has been completed by any other person other than the undersigned, such person shall, for that purpose be deemed to be my agent and not the agent of the Insurer and I agree that this proposal and declaration shall be the basis of the contract between the Insurer and myself”.

The Complainant signed beneath this Declaration, which is dated 20 June 2014, thereby confirming that he had no motor accidents or claims in the previous 5 years. The onus was on the Complainant to read this document before signing and if having done so, and in light of the claims history question asked on the Proposal Form, it would have been prudent of him to have advised the Company Agent of his two previous claims.

I note that the Complainant states *“I am a non-English speaker”*. Be that as it may, it would appear that the Complainant was able to sufficiently communicate with the Company Agent on 16 June 2014 when seeking motor insurance quotations and on 20 June 2014 when applying for his motor insurance policy. Given the significance of a motor insurance contract,

if the Complainant could not understand fully the application process it would have been prudent of him to have sought assistance in that regard.

Further, it would appear from the submissions made on his behalf that he did know he was being asked if he had had any accidents or claims and decided that the claims he had were not relevant.

In addition, I note from the documentation before me what the Company has referred to throughout as a Confirmation Document, which provides, as follows:

"INSURED NAMED [The Complainant]

INSURANCE COMPANY [The Insurer] ...

PROPSAL FORM/STATEMENT OF FACT (SOF) DATED

- ***The Insurer's notice(s) on this Proposal/SOF as regards the duty of disclosure has/have been brought to my attention***
- ***I confirm that I have read all the questions and understand them and I confirm that all answers, whether inserted by me or on my behalf are true and complete.***
- ***I confirm that all questions on this Proposal Form/SOF have been fully answered.***
- ***I understand that the Proposal Form/SOF forms the basis of the contract with the Insurer.***
- ***I confirm that I have not withheld any material facts and I am aware of the ongoing duty of disclosure".***

The Complainant's solicitors correctly note that this Confirmation Document was not dated, however I accept the Company position that the Document is signed by the Complainant immediately following the word "Signed" and that the Document itself does not call for the signatory's signature to be witnessed. In any event, the Complainant himself acknowledges that he did in fact sign this Confirmation Document and whilst it would have been prudent of him to have inserted the date with his signature, his failure to do so does not negate the fact that he signed the Confirmation Document, indicating that he agreed with the declarations contained therein. In addition, whilst the Complainant's solicitors also correctly note that an asterisk was inserted by pen where the Complainant was to sign this Confirmation Form, I consider that officials regularly place such asterisks on forms to indicate where applicants are to sign but that the onus remains on the applicant to read all documentation before signing.

I note that in its correspondence to this Office dated 4 October 2016, the Complainant's solicitors advise, among other things, as follows:

"It has always been [the Complainant's] case that yes he did rely on the No Claims Bonus from [his previous insurer] but at no stage was he asked by [the Company's]

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Agent about previous claim and the Agent herself relied on the Certificate of No Claims Bonus ...

[The Complainant] was reasonable at all times in relying on this Certificate of No Claims Bonus. However, if the question was put to [the Complainant] 'Have [you] been involved in ANY motor accidents or claims in the last 5 years' [the Complainant] would have answered in the affirmative".

The Complainant's solicitors submit that the Company Agent did not ask the Complainant about previous claims but simply relied on the Certificate of No Claims Bonus that he had presented to her and that if she had asked him about any previous claims he would have "answered in the affirmative". The Company however submits that its Agent asked the Complainant about, among other things, his previous claims history when setting up his profile on its customer information system, as it is one of the questions listed to be asked on the system when doing so.

I note from the documentary evidence before me that the single page Motor Proposal Form clearly contains an 'ACCIDENTS/CLAIMS DETAILS' section, where the person seeking insurance was to insert details of any motor accidents or claims in the last 5 years. This afforded the Complainant the opportunity to provide details of his previous two claims, however he did not do so. In this regard, I note that in its correspondence to this Office dated 4 October 2016 the Complainant's solicitors advises that "yes [the Complainant] *did rely on the No Claims Bonus from [his previous insurer]*" and in its earlier correspondence to the Company dated 27 November 2015 advised that it was the Complainant's view that the previous two claims were "not relevant".

Nevertheless, it would have been prudent of the Complainant to have inserted the details of his previous two claims on this Proposal Form where it specifically asked for this information.

In this regard, I note that the Motor Proposal Form provided the following important warning at the very top of the page:

"IMPORTANT: It is an offence under the Road Traffic Act to make a false statement or withhold any material information for the purpose of obtaining a Certificate of Insurance. Furthermore, such action could invalidate your insurance cover. Material information means any information likely to influence our acceptance or assessment of this proposal. If you are in doubt as to whether or not the information is material, then it should be declared".

In addition, the 'DECLARATION' at the bottom of this Proposal Form stated, as follows:

"I, the undersigned...hereby declare that the vehicle described is in good condition and that all the statements and particulars, above, which I have read and checked, are true and complete and that I have not suppressed, misrepresented or mis-stated any material fact. If any answer has been completed by any other person other than the undersigned, such person shall, for that purpose be deemed to be my agent and

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not the agent of the Insurer and I agree that this proposal and declaration shall be the basis of the contract between the Insurer and myself”.

I accept from the documentary evidence before me that the Complainant signed this Proposal Form, thereby confirming that he had no motor accidents or claims in the previous 5 years. The onus was on the Complainant to read this Proposal Form before signing it and if having done so, and in light of the claims history question asked therein, it would have been prudent of him to have entered the details of his claims history and/or to have advised the Company Agent of same. The onus was on the Complainant to provide all material information when applying for his motor insurance policy and I am satisfied that the Proposal Form that he signed afforded him the opportunity to do so and advised him of the importance of providing all material information and the serious consequences of any failure to do so.

For the reasons set out above, I do not 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 March 2019

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.

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