



<b><u>Decision Ref:</u></b>	2019-0059
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Maladministration Delayed or inadequate communication Dissatisfaction with customer service Lapse/cancellation of policy
<b><u>Outcome:</u></b>	Upheld

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

**Background**

The complaint relates to the Complainants' inception of a motor insurance policy through the offices of the Provider - an insurance broker. The complaint arises subsequent to the third-party insurer's decision to reject a claim on the policy and to deem the policy void from inception.

**The Complainants' Case**

In **February 2017**, the First-named Complainant contacted the Provider - an insurance broker - with a view to incepting a motor insurance policy. The policy was ultimately incepted on **3 April 2017**.

**On 24 May 2017**, the First-named Complainant contacted the Provider to make a claim on the policy in respect of criminal damage (vandalism) caused to his car, the previous night.

The Provider liaised with the insurer and, following certain interactions between the insurer and the Complainant, the insurer indicated that it was deeming the Complainants' policy null and void from inception, due to non-disclosure of material facts, namely, that the First-

named Complainant had (i) cancelled a previous policy of insurance and (ii) failed to include the correct date of issue of the Second-named Complainant's driving licence.

The Complainants maintain that they disclosed the relevant information to the Provider. In particular, the First-named Complainant maintains that he provided a copy of the Second-named Complainant's driving licence to the Provider, on the date of policy inception.

### **The Provider's Case**

The Provider says that the First-named Complainant is responsible for the provision of inaccurate information, and the consequent voiding of the policy by the insurer, in circumstances where he signed a Statement of Fact as part of his proposal which included the inaccurate information.

### **The Complaint for Adjudication**

The complaint is that the Provider was guilty of maladministration in and about the arrangement of the insurance policy. The Complainant seeks reimbursement of the cost of fixing his damaged vehicle in the amount of €4,500 (as per a quote received) together with "*transport expenses worth roughly 500 EUR*".

### **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 5 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

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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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The conduct of the insurer in these events, is the not the subject of the complaint in this instance. Accordingly, this complaint does not concern the question of whether the insurer was or was not entitled to deem the policy void *ab initio*, as it ultimately did. The fact is that the insurer did deem the policy void *ab initio*. This complaint concerns the conduct of the Provider surrounding that event. It is useful therefore to set out a full account of the reasons relied upon by the insurer, in voiding the policy.

In an email of **26 May 2017**, the Insurer raised the following queries with the Provider:

*The Renewal Date with [the previous insurer] was 16/12/2016. The policy appears to have been cancelled by [the previous insurer] or the policyholder mid-term on 04/03/2017, however the question on the statement of fact relating to the previous policy being cancelled was answered as No. Can you please clarify who cancelled the [the previous insurer's] policy and the reason for it being cancelled mid-term?*

*In relation to the named driver [the Second-named Complainant], ... noted that she received her Full Irish licence on 01/01/2010 however based on her licence, it appears she received it on the 05/09/2016. Can you confirm what driving experience [the Second-named Complainant] has and if she has her own vehicle?*

The question on the Statement of Fact relating to the cancellation of any previous cover, posed the following question, to which an answer of 'No' was provided:

*Have EITHER you or any other person who will drive (including any named drivers):  
...  
ever had a claim declined, motor proposal or renewal declined, terms imposed or have had a policy cancelled, either by you or an insurance company?*

In response to the email of 26 May 2017, the Provider's employee replied on 29 May 2017, having been in contact with the First-named Complainant, indicating that the earlier policy had been cancelled by the First-named Complainant himself, because it had become too expensive. With regard to the date of the Second-named Complainant's licence, the Provider's employee accepted full responsibility for this error indicating that she had put in the incorrect date on a temporary basis, and had failed to update it with the correct information, upon being provided by the First-named Complainant with a copy of the licence.

In response to this communication the Insurer replied querying why the First-named Complainant signed the statement of fact containing the incorrect information. This email also stated that, as the Second-named Complainant had held her licence for less than 1 year, "*this would have resulted in a quote decline should this detail have been input at inception*".

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Thereafter, on 31 May 2017, the insurer wrote to the Provider indicating that the cover would be cancelled from inception as the *“named drivers details were not entered correctly”*.

Subsequent to the foregoing interactions, there followed a series of emails between the Complainant and the Provider in the course of which the Complainant directly queried how the date of 01/01/2010 had come to be entered on the relevant documentation as the date of issue of the Second-named Complainant’s licence. In response to this, a manager of the Provider (engaging in the email thread for the first time) replied focusing on the signed statement of fact/proposal form, thereby seeking to move responsibility to the First-named Complainant. This reply contained no reference to the admission already made by the Provider’s employee to the insurer, that she had input the incorrect date, intending it to be on a temporary basis, and then failed to update/correct same.

In its letter of **7 June 2017** to the First-named Complainant, the insurer stated as follows:

*“Upon investigation, it appears that there was other information that was also not fully accurate aside from the licence information provided in respect of your named driver, [the Second-named Complainant].*

*In particular, I refer to the cancellation of a policy with an Insurance company, which I believe was instigated by you but was not disclosed to [the insurer] at the time of the arrangement of the insurance. Similar to other questions asked, this is a relevant question for the Underwriter and influences acceptance of the proposed risk. This non-disclosure alone would invalidate the cover under the policy.”*

Notwithstanding the content of the second paragraph cited immediately above, from the letter of 7 June 2017, I am satisfied from a review of the entire correspondence on file that the primary and principal reason why the insurer cancelled the policy, was due to the failure to disclose the correct issue date of the Second-named Complainant’s licence. This is reinforced by the insurer’s assertion that it does not extend cover in respect of drivers who hold full licences for less than 1 year. Equally, it is hard to see how as a matter of principle, one could cast a failure to disclose a voluntary cancellation of a policy by a policyholder (as opposed to a cancellation by an insurer) as a fact of such materiality that it would entitle an insurer to void a policy.

Accordingly, I am satisfied that I can examine the conduct of the Provider which is the subject of the complaint, noting that the policy was cancelled by the insurer principally owing to the failure to disclose the correct issue date of the Second-named Complainant’s licence. With regard to this failure to disclose, it has been acknowledged that the inclusion of the incorrect details was the fault of the Provider’s employee, who stated as follows in an email to the insurer:

*“That is totally my own fault.*

*At the time of setting up the policy the client was not sure what date the named driver had received her licence, because of this I put it through for 01/01/2010.*

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*Once I received the documents I did not update the file for the client.*

*I apologise for the inconvenience of this, but this was definitely my error."*

I am satisfied that this acknowledgement by the Provider's employee was appropriate in the circumstances and was the correct action for her to take.

I am entirely unimpressed however that, in response to a direct query on this matter, the manager of the Provider omitted to communicate this detail to the First-named Complainant. Indeed, no equivalent apology was offered to him. I am also somewhat confused as to how the acknowledgement set out in the Provider's employee's email as quoted above, failed to translate into her 4-page typed 'Summary of Events' statement of 8 May 2018, prepared for the purpose of responding to this office.

In my opinion, the contention that the cover was incepted based on the fact that the First-named Complainant "*had signed the Statement of Fact without hesitation and therefore indicating that he was happy with the information which I had inputted [sic]*" is simply not borne out, given that the employee knew at all times that 01/01/2010 was an incorrect date and one that she had simply invented.

In my view, the Provider holds the lion's share of responsibility for the ultimate cancelling of the First Complainant's policy. Had the Provider not included the incorrect information on the proposal documentation, or had the Provider on 3 April 2017 corrected the incorrect information, the likelihood is that the insurer would simply have declined to offer cover. This would have resulted in the Complainant seeking and securing cover from another insurer and, in this regard, I note that the Provider indicated in its email of 1 June 2017 that it had sourced a quote for the Complainants costing €300 more than the annual premium for the cancelled policy (which was €885.86).

In the final reckoning, I am satisfied the Provider is responsible for the loss suffered by the Complainants, who relied on the expertise of the Provider to guide them through the proposal process, but who, in this instance, received a poor level of service, which led to the voiding of the policy by the insurer. Consequently, the First Complainant's loss is ongoing; in that regard, every time he proposes for insurance of any kind, if he is asked to respond to the industry standard question as to whether he ever had a policy of insurance cancelled or voided, he will be obliged to confirm that this policy of motor insurance was voided by the insurer. This will affect his ability to secure cover and indeed it seems likely to potentially affect the cost of such cover into the future, notwithstanding the terms of this decision. Likewise, given that prior to the voiding of the policy the Second Complainant was a named driver covered by the policy, she may also find herself in a similar position when proposing for any future insurance. For those reasons, I am satisfied that the complaint against the Provider must be upheld.

The Complainants indicated that they were provided with a quote for repairing the vehicle in the amount of €4,500. There was a separate reference to €4,306.08, and a copy of that quotation was furnished to this office, after the Preliminary Decision issued to the parties. Though it had been confirmed that "*the car is back on the road*", a recent submission from

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the Complainants confirms that the required repairs have not yet been undertaken; photos of the damaged vehicle were submitted in that regard.

The Provider indeed, by way of reply to the Preliminary Decision of this office pointed out that there was no evidence that such monies for repairs had been expended by the Complainants and it also pointed out that, in the normal course, an invoice or receipt would be required to vouch the relevant expense. The Complainants also referred to “*transport expenses worth roughly 500 EUR*” which I understand relates to the cost of public transport; recent receipts submitted vouch to a level of less than €450.

I am also conscious of the potential cost into the future, certainly over the next few years, caused by the Provider’s errors, giving rise to the First Complainant’s policy and the Second Complainant’s cover, being voided. Consequently, taking all of these losses into account, and having considered the matter at length, I take the view that it is appropriate to direct the Provider to make a compensatory payment to the Complainants.

Accordingly, I direct that the Provider make a compensatory payment to the complainants in the total sum of €12,000, to an account of the Complainants’ choosing, within a period of 35 days of the Complainants’ notifying the Provider of account details. This figure of €12,000 is to include the repair cost for the vehicle, the transport expenses incurred by the Complainants as a result of the conduct complained of, any potential future costs to the Complainants in relation to future insurance premiums and, in particular, compensation to the Complainants for the general inconvenience and upset they have experienced since May/June 2017 in having their policy of insurance voided *ab initio*, as a result of the conduct of the Provider, details of which are outlined above.

I also direct the Provider to provide the Complainants with a letter confirming:

- (i) that it is written by way of compliance with a direction from the Financial Services and Pensions Ombudsman  
and
- (ii) that the policy with the insurer (which should be clearly and specifically identified) was voided owing to the Provider’s failure when completing the proposal documents, to include the correct date of issue of the named driver’s driving licence.

This direction is made, so that this letter will be available to the Complainants for the purpose of any future insurance proposals, whatever the nature of that insurance, with a view to ensuring that the consequences of the conduct of the Provider giving rise to this complaint, are mitigated, insofar as possible.

This office has already advised the Complainants that any records held by the insurer are outside the control of the Provider and, thus, in the context of this particular complaint, it is not possible for the Provider to correct such records.

The Complainants’ complaint as expressed extends into several other areas such as data protection law, which is not a matter for this office, and is instead a matter for the Data

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Protection Commission. In circumstances where this complaint is upheld, I do not consider it necessary or appropriate to embark on any further analysis of these events.

For the reasons outlined above, I take the view that it is reasonable to uphold the Complainants' complaint.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(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 (i) issuing a letter to the Complainants on the terms outlined above, and (ii) making a compensatory payment to the Complainants in the sum of €12,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. 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**.

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**

20 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,

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.