



<u>Decision Ref:</u>	2019-0072
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Rejection of claim - non-disclosure
<u>Outcome:</u>	Rejected

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

Background

The Complainant incepted a motor insurance policy with the Company at 15:59 on 20 June 2014, via a named Broker. The Company voided this policy on 22 September 2014 due to the non-disclosure of material facts.

The Complainant's Case

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

The Complainant sets out his complaint, as follows:

"Took out motor policy with [the Company] through their Agents [the Broker] - disclosed everything to [the Broker]...I am a non-English speaker and all documents were prepared on my behalf by [the Broker] acting on behalf of [the Company]. In the past, I had a small material damage claim however I had been furnished with a cert of no claims by my previous insurance company who clearly thought my small material damage claim was not relevant...I was involved in an accident on the 17th of August 2014 for which I was responsible. Immediately [the Company], took the opportunity to avoid the policy for nondisclosure of relevant information".

The Complainant had two previous small claims, namely, he collided with a signpost on 6 June 2011 and received a claim settlement of €510, and he reversed into a third party vehicle on 1 August 2012 and the third party received a claim settlement of €1,526.25.

The Company voided the Complainant's motor insurance policy on 22 September 2014 due to the non-disclosure of material facts insofar as the Complainant failed to advise it of this claims history when applying for the policy.

In its correspondence to the Company dated 2 October 2014, the Complainant's Solicitors advise, as follows:

"Please note that our client does not accept your decision on the grounds inter alia that your representative (that is, the Broker) completed the proposal form based on the Certificate of No Claims Bonus from [the Complainant's previous insurer] ...

The incident to which you appear to be referring to was a small material damage incident that did not affect his policy".

The Complainant did not advise the Company of his claims history when applying for his motor insurance policy as *"I had been furnished with a cert of no claims by my previous insurance company who clearly thought my small material damage claim was not relevant".* In addition, the Complainant states that the Broker, who he submits was *"acting on behalf of [the Company]"*, did not ask him about his previous claims history.

In this regard, 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 Broker'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".

The 'PROOF OF NO CLAIMS BONUS' from the Complainant's previous insurer, dated 20 May 2014, states, as follows:

"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*

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****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".

The Complainant seeks for the Company to reinstate his motor insurance policy and admit his claim arising from his accident on 17 August 2014.

The Complainant's complaint is that the Company wrongly or unfairly voided his motor insurance policy due to the nondisclosure of his previous claims history.

The Provider's Case

Company records indicate that the Complainant incepted a motor insurance policy with the Company at 15:59 on 20 June 2014, via a named Broker. The Company notes that the Complainant contacted his Broker in June 2014 to obtain motor insurance quotations. He decided to purchase a motor insurance policy with the Company on 20 June 2014, and a Proposal Form was completed with the Broker. As an intermediary, the Broker has delegated authority from the Company to quote for its products, confirm cover, issue policy documentation and collect premiums. Part of the responsibility that goes with this delegated authority, is that the Broker must collect relevant supporting documentation for each new policy. In the case of motor insurance, this includes copies of driving licences, proof of No Claims Bonus, Gap in Cover letters etc.

The Complainant's new motor insurance policy with the Company was set up by his Broker on 20 June 2014. A Proposal Form was completed electronically, printed off and then given to the Complainant to read, and this was then signed by him. The Company notes that the declaration at the top of this Motor Proposal Form conveys the serious consequences of failing to disclose all relevant material facts, 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".

A copy of the Proposal Form and the Certificate of No Claims Bonus that the Complainant provided at inception were obtained by the Company from the electronic file generated when the policy went on cover. In this regard, the quotation was electronically generated and when cover was required, the quotation information was transferred electronically onto the Proposal Form, which was then used to generate the new Policy, with the policy documents generated electronically by the [IT] system. The Complainant's motor insurance policy with the Company commenced at 15:59 on 20 June 2014.

The Complainant was involved in a motor accident on 17 August 2014. This accident was notified to the Company on 18 August 2014 by the Complainant, over the telephone from his Broker's branch office. The Company arranged for a Motor Engineer Assessor to examine the Complainant's vehicle on 20 August 2014, who determined a pre-accident value of the vehicle as *"circa 750.00 inc. vat which reflects 166889 miles, current NCT, poor condition, previous poor quality repairs and previous Category C status...Highest salvage offer of 150.00 inc vat"*.

During the claim validation process, the Claim Handler became aware on 22 August 2014 of a previous claim in the Complainant's name recorded on Insurance Link, an insurance claims database, and contacted his previous insurer for details. This information was requested in accordance with the Code of Practice on Data Protection for the Insurance Sector (approved by the Data Protection Commissioner under Section 13(2) of the Data Protection Acts, 1988 and 2003). The Complainant's previous insurer advised the Company on 15 September 2014 that there were in fact two claims recorded under the Complainant's previous motor insurance policy with them, namely, the Complainant had collided with a signpost on 6 June 2011 and received a claim settlement of €510, and he had reversed into a third party vehicle on 1 August 2012 and the third party received a claim settlement of €1,526.25.

The Complainant had not disclosed either of these claims on the Proposal Form he signed with his Broker on 20 June 2014. The Claims Handler contacted the underwriters on 19 September 2014 for guidance on how to proceed, and whether the Company should deal with the claim at hand. As there was nondisclosure of a material fact on the Proposal Form, the underwriters confirmed that the Complainant's motor insurance policy was to be cancelled ab initio.

As a result, the underwriters sent a registered letter to the Complainant on 22 September 2014 confirming that due to the non-disclosure of a material fact when applying for his policy, the Company was cancelling the policy ab initio. This letter confirmed that all cover under the policy would cease in 10 days, at midnight on 2 October 2014. The underwriters confirmed to the Claims Handler on 23 September 2014 that it has sent this registered letter to the Complainant the previous day. A refund of all premium paid by the Complainant was processed by the Company on 29 September 2014 and, as the policy had been transacted through his Broker, this refund was credited to the Broker's account. Separately, the Claims Department wrote to the Complainant on 3 October 2014 to advise that as his policy was now null and void from inception, it was not in a position to provide indemnity in respect of his claim arising from his accident on 17 August 2014.

Whilst the Complainant states that *"all documents prepared on my behalf by [the Broker] acting on behalf of [the Company]"*, the Company notes that the Broker acted as the Complainant's Agent in the policy application process, not as agents of the Company.

In this regard, Section 3, 'SCOPE', of the Terms of Business Agreement between the Company and the Broker, dated 13 February 2013, provides, among other things, at pg. 3, as follows:

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“3.1 ...the Broker shall act as agent of the Policyholder or prospective Policyholder and the Insurer acknowledges that nothing in this Agreement overrides the Broker’s duty to act in the best interests of the Policyholder or prospective Policyholder.

As a result the Broker does not, and did not act on behalf of the Company.

The Company notes from the Electronic Data Interface sent by the Complainant’s Broker that the Complainant signed a Confirmation for his Broker, confirming the following:

- ***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 Company states that the Complainant failed to disclose his previous claims history on the Company’s Motor Proposal Form that he signed, despite the Proposal Form clearly asking him to do so and containing a specific section where he was to provide such details and advising him of the importance of providing all material information and the serious consequences of any failure to do so. As he failed to disclose his previous claims history to the Company as requested and required, the Company cancelled the Complainant’s motor insurance policy ab initio due to the nondisclosure of a material fact, as it is permitted to do.

The Company notes that the complaint is that it did not provide indemnity to the Complainant in respect of the damage to his vehicle following an accident on 17 August 2014 as it instead cancelled his motor insurance policy ab initio due to the non-disclosure of a material fact on the Proposal Form, which was completed by the Complainant and his Broker. The Company notes that the Complainant’s Broker was acting as his agent at the time the Proposal Form was prepared and does not and did not act as an agent of the Company. As a result, the Company position is that the origins of this dispute lie in the completion of the Proposal Form between the Complainant and his Broker and thus his complaint is with his Broker, not against the Company.

The Company is satisfied that it voided the Complainant’s motor insurance policy due to the nondisclosure of his previous claims history in accordance with its terms and conditions.

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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 the Company on 20 June 2014, through a named Broker. The Company voided this policy on 22 September 2014 due to the non-disclosure of material facts. The Complainant sets out his complaint, as follows:

"Took out motor policy with [the Company] through their Agents [the Broker] - disclosed everything to [the Broker]...I am a non-English speaker and all documents were prepared on my behalf by [the Broker] acting on behalf of [the Company]. In the past, I had a small material damage claim however I had been furnished with a cert of no claims by my previous insurance company who clearly thought my small material damage claim was not relevant...I was involved in an accident on the 17th of August 2014 for which I was responsible. Immediately [the Company], took the opportunity to avoid the policy for nondisclosure of relevant information".

The Complainant had two previous small claims, €510, and €1,526.25. The Complainant did not enter details of this claims history on the Motor Proposal Form, nor did he advise the Broker of them. In its correspondence to this Office dated 4 October 2016, the Complainant's solicitors advise, among other things, as follows:

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"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 Broker'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".

The complaint is that the Company wrongly or unfairly voided the Complainant's motor insurance policy due to the nondisclosure of his previous claims history.

I note from the documentary evidence before me that the relevant 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 present insurer is [named]*

*The expiry date of the policy is 20 Jun 14
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, *inter alia*, 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”.

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.

In addition, I note that the Complainant signed a Confirmation for the Broker, which confirmed, 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”.***

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 Broker when seeking motor insurance quotations and 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.

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”.

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However, I accept that this exact question was asked on the Proposal Form, as follows:

“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: ...

Have been involved in ANY motor accidents or claims in the last 5 years”.

The answer recorded on the Proposal Form is “No” and that the section directly below this, where the Complainant was afforded the opportunity to set out any motor accidents or claims he had had in the last 5 years, was left blank. 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 provide all material information, including information on previous claims, when applying for insurance.

Motor insurance contracts, like all insurance contracts, are contracts of utmost good faith, wherein the failure to disclose information 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 non-disclosure can operate harshly, and it entitles an Insurer to, amongst other things, cancel cover, as the Company has done in this instance. As the Company was unaware of the Complainant’s claims history at the time when it agreed to incept the policy, I accept that the policy came into being on the basis of a false premise.

The courts have long considered the issues surrounding the nondisclosure of material facts. In *Aro Road and Land Vehicles Limited v. Insurance Corporation of Ireland Limited* [1986] I.R. 403, the Court determined that representations made in the course of an insurance proposal form should be construed objectively, Henchy J said that “a person must answer to the best of his knowledge any question put to him in a proposal form”. In *Earls v The Financial Services Ombudsman* [2014/506 MCA], the High Court indicated, “The duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources”.

The Complainant was aware of his previous claims but did not disclose these on the Proposal Form where it specifically asked whether he had been involved in any motor accidents or claims in the last 5 years. In then signing the Proposal Form, the Complainant confirmed that he had no motor accidents or claims in the previous 5 years, which was incorrect. I accept that when it voided the Complainant’s motor insurance policy due to the nondisclosure of his claims history when applying for the policy, the Company was acting in accordance with the terms and conditions of the insurance arrangement in place. Accordingly, I am of the opinion that, given the evidence made available by the parties, there is no reasonable basis upon which it would be appropriate to uphold this complaint.

Finally, whilst I note that the Complainant considers that the Broker in question was acting on behalf of the Company as he submits that “all documents prepared on my behalf by [the

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Broker] *acting on behalf of* [the Company]”, I accept the Company position that the Broker was acting as the Complainant’s Agent in the policy application process, not as agents of the Company. In this regard, I note from the documentary evidence before me Section 3, ‘SCOPE’, of the Terms of Business Agreement between the Company and the Broker, dated 13 February 2013, which provides, among other things, at pg. 3, as follows:

“3.1 ...*the Broker shall act as agent of the Policyholder or prospective Policyholder and the Insurer acknowledges that nothing in this Agreement overrides the Broker’s duty to act in the best interests of the Policyholder or prospective Policyholder.*

As a result, I accept that the Broker in question did not act on behalf of the Company.

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.