



<b><u>Decision Ref:</u></b>	2019-0147
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - non-disclosure & voiding Refusal to insure - failure to renew policy
<b><u>Outcome:</u></b>	Rejected

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

**Background**

This Complaint relates to the voiding of the Complainant's motor insurance policy which is underwritten by the Provider.

**The Complainants' Case**

The Complainant held a policy of motor insurance with a third party provider, which was due to expire on the **8<sup>th</sup> of September 2017**. The Complainant states that she contacted the Provider on the **16<sup>th</sup> of August 2017** to obtain a quote for a new private motor insurance policy with a policy start date of the **8<sup>th</sup> of September 2017**; the Complainant accepted the quote and made a payment on **22<sup>nd</sup> of August 2017**.

The Complainant states she was involved in a single vehicle collision on the **7<sup>th</sup> of September 2017** and her vehicle sustained some damage, The Complainant states that she registered a claim with her previous insurance company at that time. The claim was settled by her previous insurance company and paid out on the **3<sup>rd</sup> of November 2017**. The Complainant states she contacted the Provider on the **22<sup>nd</sup> of November 2017** to advise them of this.

The Complainant states that the Provider voided her insurance from inception and told her she had 10 days to find another insurer. The Complainant states that during subsequent calls with the Provider it remained unclear to her as to why her policy had been voided.

The Complainant states the Provider incorrectly voided the new policy when she informed the Provider that she had been involved in a road traffic collision for which she made a claim to her previous Insurer.

The Complainant states the Provider gave her conflicting information regarding the reasons for the voiding of the policy through correspondence and communication with Agents of the Provider.

The Complainant believes that the Provider treated her like she had committed a crime and she is dissatisfied with the attitude the Provider took in handling the situation.

The Complainant wants the Provider to;

1. Apologise for the poor service she says she received through the Provider's agents.
2. Restore her previous driving history prior to the inception of the policy with the Provider.
3. Pay compensation of €3,500 which she says equates to the financial cost to her in order to obtain a new insurance policy after the policy was deemed void by the Provider.

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

The Provider contends that the Complainant would not have been quoted for the policy of insurance she incepted, had the Provider known of a previous accident prior to the commencement of the policy, in which a claim was made by the Complainant to her previous Insurer, relating to a single vehicle collision on the **7<sup>th</sup> of September 2017**.

The Provider contends that the policy was correctly voided. It acknowledges that the Complainant was claims free when she sought to incept the initial insurance quote and when she subsequently purchased the policy on 22 August 2017, with a start date of 8 September 2017. It points out however, that the Complainant was involved in an accident on 7 September 2017, and a claim was submitted to her previous insurer. In those circumstances, the Complainant was not claims free at the time of the inception of the new policy.

The Provider points that the premium quoted to the Complainant was generated based on answers to the questions she had given, which included a 50% discount for having earned at least 5 years no claims discount with her previous insurance companies.

The Provider points out that on **22 August 2017** the Complainant was issued with a temporary cover statement of fact, temporary cover policy schedule and a temporary certificate and disc. The Complainant was advised that the Provider awaited a copy of her no claims bonus certificate and licence details for the named driver.

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On **8 September 2017**, the Complainant's policy of insurance became active. The no claims bonus certificate and licence details remained outstanding but on 15 September 2017 the Provider received the Complainant's no claims bonus certificate from the Complainant, which was dated 10 August 2017 and stated:-

*"This is to confirm that the above policy has been in force with [previous insurer] since 08/09/2016. The policy will be due for renewal on 08/09/2017. Assuming no claim(s) occur prior to renewal date you will earn the following no claim bonus for each vehicle.*

*Vehicle Registration  
12X\*\*\*\**

*No. of years No Claims Bonus  
6".*

The Provider points out that as the document appeared to be correct and valid, the annual certificate and disc were then issued to the Complainant along with the annual policy schedule.

The Provider points out that as the Complainant had been involved in an accident on 7 September 2017, and a claim to her previous insurer ensued, she was not in fact claims free and accordingly the no claims bonus that she submitted to the Provider on 15 September 2017 was no longer valid.

The Provider refutes allegations that the Complainant was treated as if she had committed a crime. The Provider has offered to note the cancellation as voluntary, due to the accepted failings of its agents to communicate properly with the Complainant.

### **The Complaint for Adjudication**

The complaint for is that in November 2017 the Provider incorrectly voided the policy of insurance incepted by the Complainant in August 2017. This resulted in the Complainant finding it very difficult to secure motor insurance and led to her financial detriment as she found it necessary to arrange insurance with her previous insurer which she says was on the basis of her buying back the claim on the previous policy, at a cost to her of €3,500. The Complainant is further dissatisfied with conflicting information communicated by the Provider regarding the reason for the cancellation of the policy.

### **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.

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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 29 April 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.

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

The Complainant obtained a quotation for a policy of insurance from the Provider on the **16<sup>th</sup> of August 2017**. The quote was based on information made available by the Complainant, one such particular of information being that the Complainant had had no claims in the previous 3 years. This information was correct at the time and this is not in dispute.

On the **22<sup>nd</sup> of August 2017** the Complainant incepted the policy of insurance which was to commence on the 8<sup>th</sup> of September 2017.

According to the quote schedule supplied by the Provider:

*"Your quote is valid from 16/08/2017 until 08/09/2017, provided the cover required date, 08/09/2017, remains unchanged and is based on the information you have provided. If you change your cover required date or quotation information you will be required to obtain a revised quotation from us."*

I have underlined the relevant portions above, as it pertains specifically to the circumstances giving rise to this complaint. It is clear in this instance that the quotation information had changed by 8 September 2017, which was the policy inception date, as the Complainant had been involved in a single vehicle collision on the **7<sup>th</sup> of September 2017**.

This issue was further reinforced in the policy statement of facts, sent by the Provider to the Complainant on **16 August 2017**, which she was asked to carefully read, and which specified that:-

“ [The Provider] is the underwriter of your car insurance policy. If any of the information shown on this Statement of Fact is incorrect please call us immediately on [telephone number] as any changes may affect the premium quoted and/or the cover offered to you. ”

Under the “Schedule” section of the Statement of Fact, the Complainant was also advised as follows:-

*“Your quote is valid from 16/08/2017 until 08/09/2017, provided the cover required to date, 08/09/2017, remains unchanged and is based on the information you have provided. If you change your cover required date or quotation information, you will be required to obtain a revised quotation from us.”*

[underlined for emphasis]

The Complainant was under a duty to inform the Provider if, before the start date of cover, there was any change in the quotation information she had made available at the time of proposing for the policy in August, or any other material changes which had arisen, that would affect her policy of insurance. In the event, the Complainant was involved in a single vehicle collision which occurred on 7 September 2017. The Statement of Fact, with which the Complainant was furnished by the Provider in August 2017, made it clear that the policy was proposed on the basis of, amongst other details:

- Having earned 5+ years no claims discount
- Having no accident claims or convictions since the expiry date of her previous insurance

The occurrence of the single vehicle collision on 7 September 2017 was a change in the information which the Complainant had made available for the purpose of the quotation, and represented a material change, that would affect her policy of insurance. The Complainant however, did not notify the Provider of this material fact at that time and consequently, her new policy of insurance came into effect on the following day, on the basis of information which by then, was incorrect.

The Complainant informed the Provider on the **22<sup>nd</sup> of November 2017** that she had been involved in this collision, some two and a half months earlier. The Complainant’s policy was deemed void on the **22<sup>nd</sup> of November 2017** and the Complainant was told she would not be covered from 10 days after this date.

Another letter was sent on the **4<sup>th</sup> of December 2017** confirming the policy cancellation. The Complainant was then refunded the premium in full on the **5<sup>th</sup> of December 2017**.

An offer was made of €300 to the Complainant by the Provider in recognition of the poor handling of the Complainant’s complaints through different agents of the Provider. This offer still remains available to the Complainant. Significantly, the Provider has also offered

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the Complainant the opportunity to have the cancellation of the policy recorded as voluntary, so that the Complainant will not then be obliged to disclose the voiding/cancellation of the policy, in the future, in the course of making any other insurance proposals. The Provider further offered the Complainant a new quote allowing a 50% no claims bonus discount; these offers were rejected by the Complainant. Indeed, such an offer is no longer of any significant value to the complainant in circumstances where she has already made the full history of the events available to her former insurer which ultimately arranged to make insurance available to her, but only on the basis that the claim against eh policy was bought back.

The Provider has indicated that the offer of €300 remains available to the Complainant as does the offer to note the policy cancellation as a voluntary cancellation.

I have had sight of the final response letter from the Provider dated the **13<sup>th</sup> of December 2017**. It is clear from its contents along with the audio recordings furnished in evidence that the Provider did not adequately deal with the queries and issues raised by the Complainant. The customer service in some of these instances was of a poor standard and it is reasonable to expect that it further elevated the stress of the Complainant.

I am satisfied nevertheless, that the Provider acted within its entitlement in voiding the Complainant's policy of insurance. The Complainant bound herself to a contract on the basis of a certain period of no accidents and no claims, and then failed to disclose an accident (which gave rise to a claim to her previous insurer) and did not bring it to the attention of the Provider until 10 weeks after the inception of the policy.

The Complainant has recently indicated that she believed that the claim in question "*was protected i.e. WAS SEEN AS NOT HAVING HAPPENED*". This was not the position however. Whatever protection the Complainant believed was available in respect of a claim, it is clear that the road traffic accident had arisen and, at that point in time, with the commencement date of cover due to begin on the following day, I take the view that it would have been reasonable to have made immediate contact with the Provider, in order for the Complainant to ensure that her understanding was correct, and to deal with any situation which arose if, for any reason, her understanding was not correct. Regrettably however, she did not do so at that time and a period of 10 weeks elapsed before the true situation was made know to the Provider.

I am satisfied in those circumstances that the Provider was entitled to cancel the policy of insurance on the basis that it had come into being on the basis of information which was not in fact correct. The Complainant paid for her insurance prior to the accident so it is not the position that the Complainant provided the Provider with incorrect information at the time it was requested. However, as the new policy had not yet come into effect, on the date of the single vehicle collision, the Complainant was under a duty to inform the Provider of the accident and the pending claim, as it altered the information upon which her new policy of insurance was based and due to come into effect, the following day. The Complainant was not pro-active in this regard and did delay in informing the Provider of the occurrence of the single vehicle collision and the ensuing claim which arose.

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The timing was unfortunate for the Complainant as it occurred after arranging the policy but prior to the start date however, I cannot find the Provider to be at fault for this, in circumstances where the Provider was not informed of the situation and the contract of insurance was incepted on the basis that the Complainant had no claims.

Accordingly, I am satisfied for the reasons outlined above, that the Provider was entitled to void the policy for non-disclosure of the accident and claim, and I do not consider that it would be reasonable to uphold the substantive element of this complaint.

The Complainant deserved however, for the situation to be resolved in a clear and unambiguous manner. Although the terms of the contract entered into by the Complainant were clear, the information supplied by agents of the Provider was not. The Complainant acknowledges that she did not inform the Provider about the claim until the **22<sup>nd</sup> of November** via a phone call. However, subsequently, she was not informed clearly of the position the Provider was taking in relation to the situation, during a series of phone calls made available in evidence. The Complainant needed to know the reason for the cancellation of the policy, in order to proceed to put another policy of insurance in place.

The Provider has long since offered €300 in compensation for the inconvenience caused to the Complainant due to the manner in which the Complainant's concerns were handled. The Provider has also offered to note the policy cancellation as a voluntary cancellation though the potential value of such an amendment to its records is questionable.

In circumstances where I take the view that the Provider was entitled to cancel the policy, and the substantive element of this complaint cannot be upheld, the only remaining aspect of the complaint is the Complainant's dissatisfaction with the service she received from the Provider after she alerted it to the correct situation in November 2017. I agree with the Provider that its handling of the complainant's grievance through different agents of the Provider, fell below an appropriate standard. Nevertheless I take the view that the Provider's offer of compensation to the Complainant in the sum of €300 is an appropriate remedy which was made by the Provider in early course and I take the view that this is a reasonable offer, to redress the customer service issues that arose and accordingly, on the basis that this offer remains open to the Complainant for acceptance, I do not consider it necessary to uphold this complaint. It will be a matter for the Complainant to make contact directly with the Provider if she wishes to accept the settlement proposal in question and, in that event, I would suggest that the Complainant should do so in the short-term, if she wishes to conclude the matter on that basis, as the Provider cannot be expected to hold this offer open indefinitely.

**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**

28 May 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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