An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0231
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Rejection of claim - non-disclosure Failure to advise on key product/service features
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Provider's refusal to admit and pay a claim made by the Complainant on her motor insurance policy. The Complainant was involved in a road traffic accident on **22 August 2016**. The reason for the declinature of the claim is the suggested non-disclosure by the Complainant of the commercial use being made of the car.

The Complainant's Case

In a letter of complaint dated **4 April 2017** and a supplemental letter dated **5 April 2017**, the Complainant states a road traffic accident occurred when she was driving her own private vehicle, and her vehicle collided into a vehicle in front of her, which may have already collided into a van in front of that. This van is also owned by the Complainant and was being driven by a friend of hers. The Complainant is a self-employed curtain fitter by occupation.

The Complainant made a statement to the Provider which reviewed the issue and declined the claim made against her comprehensive motor insurance policy. The Complainant states that the basis for the refusal to accept the claim was the observations made by a representative of the Provider in a letter to the Complainant dated **7 October 2016**. This letter states, amongst other things, that:

> *"Having reviewed the circumstances we* [the Provider] *note that at the time of the accident you* [the Complainant] *were using the vehicle to travel to a curtain fitting, which is classed as business use. Based on your cover relating specifically to Social Domestic & Pleasure Purposes Only, we are not in a position to proceed further with the claim."*

The Complainant responded to the Provider's letter dated **7 October 2016**, in a letter dated **11 October 2016**. In that letter the Complainant clarified the series of events that took place on the date of the incident in question. The Complainant states that she attended a neighbour of her father, to assist her with hanging some curtains. This took place between 10am and 11am. The Complainant states that once she had completed this job, she went into Dublin city centre to meet some friends for lunch and to do some shopping. The Complainant states that the incident occurred at approximately 6.25pm, at which time it had been approximately seven hours since she had finished work for the day. The Complainant also encloses a letter from a client of hers which confirms that she left the client's home at 11am on the morning of the incident and wherein the client states that the Complainant had said to her that it was her only job of the day. The Complainant made this same point to the Provider on several occasions during her telephone conversation with the Provider on **11 October 2016**.

The Complainant complains that the Provider has failed in its responsibilities to make provision for her in respect of the indemnity she is lawfully entitled to, on foot of a comprehensive claim on her motor policy which she says has been properly brought.

The Complainant states that the manner in which the Provider has interpreted her policy is incorrect, narrow, designed to suit the Provider and not in keeping with industry norms.

Ultimately, the Complainant wants the Provider to pay out on foot of the claim she has made for accidental damage to her own vehicle.

<u>The Provider's Case</u>

The Provider states that the Complainant's claim was declined due to non-disclosure by the Complainant of her commercial use of the vehicle. The Provider states that the client runs her own business and on the day of the accident was using the vehicle to travel to a place of work.

The Provider states that because the Complainant's cover is specifically for social, domestic & pleasure purposes only, it is not in a position to cover the Complainant's claim. The Provider points to page 60 of the policy booklet under general exceptions which states:

> *"**1. Excluded Uses and Excluded Drivers***
> *We will not cover any liability, loss or damage arising while any vehicle covered by this insurance is:*
> *(a) Being used for a purpose which is not permitted or is excluded by your Certificate of Motor Insurance"*

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The Provider confirms that at the time of the incident, there was a contract in place between the Complainant and the Provider for the Provider to provide comprehensive private motor insurance to cover accidental damage of the vehicle along with third party, fire and theft cover.

This cover and contract were subject to the Complainant's circumstances being within the acceptance criteria. The Provider states that for this contract come into force, the Provider required (i) the completion of a proposal form by the Complainant, declaring that all material facts therein were true and correct and (ii) payment of the premium.

The Provider asserts that the Complainant's employment status was described as "employed" rather than "self-employed" on her insurance application, which the Provider states is material to its acceptance or declinature of a risk. The Provider states that if the Complainant had disclosed that she was self-employed and was using the vehicle occasionally for business use, it would have declined the application for insurance as the risk was outside of its acceptance criteria.

During telephone conversations between the Complainant and the Provider, the Provider pointed to the statement of the Complainant made to a claims investigator on **21 September 2016** which the Provider asserts demonstrates that the Complainant was using her vehicle for commercial purposes.

The Provider believes that repudiating the accidental damage part of the claim, but deciding not to invalidate the insurance policy in its entirety, was a fair and balanced response to the situation. It says that the Complainant did not disclose her business use of the vehicle to the Provider and that as a result of this it is currently handling two personal injuries claims resulting from the incident. The Provider states that the option of voiding the insurance policy from inception was open to it and that, instead, it chose not to do this and even offered renewal terms on the policy.

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined the Complainant's own claim on foot of her motor insurance 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, through her nominated legal representative, 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 13 June 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, within the period permitted, the final determination of this office is set out below.

The proposal form for the Complainant's policy applying in the period from **9 April 2016** to **8 April 2017** notes that the Complainant's occupation is a "tailor", her employer's business is "tailor and outfitter" and her employment status is "employed". This proposal form confirms the "*class of use*" i.e. the nature of the cover which was sought, as "*Social, Domestic and Pleasure*". In addition, under the heading of "*Vehicle Use*" the following details are also noted:-

"Estimated personal miles:	*5,000*
Estimated business miles:	*0*
Estimated total miles:	*5,000"*

The certificate of insurance dated 9 April 2016, notes the following "*Limitations as to Use*"

> *"Use for social domestic and pleasure purposes and use necessitated by the overhaul, upkeep and/or repair of the vehicle for the insured*

The policy does not cover:

> *"Use for hire or reward…commercial travelling or the carriage of goods or samples in connection with any trade or business"*.

I have also examined the policy terms and conditions and I note that under the heading "General Exceptions", it is clearly stated that:

> ***"1. Excluded Uses and Excluded Drivers***

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> *We will not cover any liability, loss or damage arising while any vehicle covered by this insurance is:*
>
> *a. Being used for a purpose which is not permitted or is excluded by your Certificate of Motor Insurance"*

Furthermore, in the section entitled "General Conditions" the policy provides an accuracy and honesty warning wherein it states:

> *"We will only provide the cover described in this insurance policy if in entering into this contract you have taken all reasonable care to answer the questions asked honestly, accurately and to the best of your knowledge"*

The Complainant had not informed the Provider that she was self-employed. I further note that the Complainant in the course of her complaint, has admitted to driving the vehicle to a client's home to fit curtains on the day of the incident. There are however, a number of versions of the events of that day.

I note that the road traffic accident occurred on 22 August 2016 and Mr. D. on behalf of the Provider, made contact with the Complainant and ultimately took her statement. It is unclear to me why Mr. D's report is dated 23 August 2016, the day after the accident, in circumstances where it refers to his discussions with the Complainant on 21 September 2016, approximately a month later. In any event, the report in question records the information made available by the Complainant to him on 21 September 2016 and includes the following:-

> "*On Monday morning August 22 2016, the* [Complainant] *loaded her … van … with curtains, which were for fitting in a house close to her father's home at* [address]. *She asked a neighbour of hers*, [Mr. B.] *to drive the van into town, and park it at her father's house. She took her* [private vehicle] *with her herself. She worked on the curtain fitting for most of that day.*
>
> *On the same evening, when she finished her work, she again contacted [Mr. B.] to come and drive the empty van back out to* [location]. *He arrived at approx. 6.15 pm and drove out towards … followed by the insured in her* [private vehicle]".

I am conscious that in a phone call to the Provider on 11 October 2016, the Complainant pointed out that she had had her statement read back to her and that there was nothing in that statement to suggest that at the time of the accident, she was driving to a curtain fitting. It seems that the Complainant was otherwise satisfied with the contents of her statement, as she did not indicate to the Provider during the phone call on 11 October 2016, that she took issue with any of the content, or that the statement was in any way incorrect.

I also note that the statement of the Complainant submitted to this office by her representative includes the following description:

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> "*I was at my father's that day*. *I was driving my* [private vehicle] *I had asked a neighbour [Mr. B.] to collect curtains that morning and to leave it at* my father's. I wanted the van back home to [location] *that evening. At about 6.15 pm by arrangement, [Mr. B.] came to my father's to bring home the van. I was already at my father's. I was hanging curtains for a neighbour of my father's. [Mr. B.] drove the van back towards home. I followed in my* [private vehicle]."

Subsequently, in October 2016 the Complainant wrote to the Provider setting out a different version of events. She indicated that she "*attended the neighbour of my father to assist her with handing some curtains on the morning of the 22 August 2016. This took place between 10 am and 11 am on that morning. Once I completed this, I left the lady's home and went to Dublin city centre to meet some friends for lunch and do some shopping. I stayed in Dublin city for approximately 6 hours when I began my journey home. The accident happened at approximately 6:25 pm… [over 7 hours having finished work on that day]."*

It is unclear as to why the Complainant left Mr. D. under the impression that she had been working on the curtain fitting for most of the day, if in fact, the business in question which she was conducting on that day took only 1 hour. The outcome of this complaint does not however turn on the period of time taken by the Complainant to fit the curtains.

Motor insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. Insurance contracts are contracts of utmost good faith, so if there is a failure to disclose information which is relevant to the assessment of the risk, this allows the insurer to void the policy from the outset and refuse or cancel cover.

When the Complainant's insurance policy documentation is read, including the certificate of insurance and the terms of the policy document, it is clear that the Complainant's vehicle is insured only for social, domestic and pleasure use and not for use in connection with the insured's self-employed business. It is further clear that this self-employed business venture was never disclosed to the Provider. Therefore, the Complainant's cover is limited to the use agreed, in that context.

Although the Complainant may not have been aware of the significant increase in risk for the Provider when the Complainant's vehicle was being used for a commercial purpose, in my view, the documentation provided to the Complainant in relation to her policy made it clear to her, that the insurance being provided to her contained a limitation of use. This use was confined to social, domestic and pleasure use.

It is clear from the contents of the Complainant's telephone call to the Provider on 11 October 2016 that she was adamant that "*I do not use that car for business*" and she pointed out that she clearly didn't need to, because she had the van for that very purpose. Equally she was adamant that she was not going to a curtain fitting at the time of the accident and she pointed out that she was in fact driving out of town towards home. Whilst it seems that the Complainant was quite conscious of the requirement to ensure that the curtains were transported in the van which she owns for business purposes, she did not realise that using

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her private vehicle to travel to and from a curtain fitting appointment, was a use which is considered to be a business use and this did not fall within the limits of the insurance cover which she had agreed with the Provider for "*social, domestic and pleasure*".

It is unfortunate that in April 2016 when the Complainant was proposing for cover, the details made available to the Provider for the purpose of incepting the motor insurance policy, identified the Complainant as an employee. If the Complainant had made it clear at that time that she was self-employed, running a curtain fitting business, it seems likely that a more comprehensive discussion about the use of the car, would then have taken place, and the difficulties which subsequently arose, leading to this complaint, might have been avoided.

There is no evidence that there was deliberate concealment on the part of the Complainant with regard to her use of the vehicle in the course of her curtain fitting business, but it is clear to me that the Provider made cover available to the Complainant on the basis of a certain limited use.

It is further relevant, in my view, that the Provider concerned, deems occasional business use to be an unacceptable risk which it would refuse to cover. There is no suggestion that this information was disclosed specifically to the Complainant but in the absence of the Complainant's disclosure to the Provider about her self employed status, or about the occasional commercial use of her vehicle, in connection with her curtain-fitting business, it seems likely that no discussion concerning this would have arisen in the normal course.

In light of the above and given that the Complainant was using the vehicle on the day, in the course of her curtain fitting business, I accept that the Provider was entitled to decline the claim. I further accept that clear information in the policy documentation was provided to the Complainant which ought to have alerted her to the fact that a failure to inform the Provider of relevant use could lead to refusal of her claim.

It is unclear if the Complainant was using the vehicle for occasional business use from the inception date of the policy, or whether this commenced at some stage post-inception, but in any event, the Complainant was under a continuing obligation to inform the Provider of any change of use in accordance with the terms and conditions of policy and she failed to do so. I am satisfied that by not making the relevant disclosure to the Provider in relation to the commercial use of her vehicle, the Complainant did not meet her disclosure obligation to the Provider and left it open to the Provider to decline the claim and even cancel the policy, an option which the Provider has not exercised in this instance.

In coming to this conclusion, I am mindful of the decision in *Chariot Inns Ltd v Assicurazione Generali spa* [1981] IR 199. The Supreme Court stated that the test for materiality is:

> *". . . a matter or circumstance which would reasonably influence the judgment of a prudent insurer in deciding whether he would take the risk, and if so, in determining the premium which he would demand. The standard by which materiality is to be determined is objective and not subjective."*

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It is not therefore determinative that the Complainant failed to appreciate the significance of the commercial use of the vehicle; it is enough that it is a matter or circumstance that would reasonably influence the judgment of a prudent insurer in relation to accepting the risk or determining the premium. It ought to have been clear to the Complainant that using the vehicle for a commercial purpose would at the very least, impact on the level of the premium.

Furthermore, the Provider has asserted that it would not have provided insurance to the Complainant, if it had known the use to which the vehicle was being put.

In light of these facts, and all of the circumstances, I conclude that the commercial use of the vehicle was a material fact or circumstance and one which was not disclosed to the Provider in advance of the accident.

The Provider was entitled to full disclosure from the outset, and if relevant after a subsequent change in use, so that it could make a fully informed decision as to whether to then offer cover on such a changed basis. This information was, in my view, not made available to the Provider in this instance, with the result that the Provider entered into a contract for motor insurance under terms that it would not otherwise have agreed.

Therefore, in the circumstances of the matter, and pursuant to the relevant policy terms and conditions, I am satisfied that the Provider was entitled to decline the Complainant's claim. Accordingly, while I understand the loss and frustration the Complainant feels, I must accept that the Provider was entitled, under the terms and conditions of the Policy, to decline the claim and accordingly the complaint cannot be upheld.

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

5 July 2019

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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.