



<u>Decision Ref:</u>	2019-0308
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Van
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure
<u>Outcome:</u>	Rejected

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

Background

The Complainant incepted, via a Broker, a commercial motor insurance policy with an Insurer on **12 September 2013**. At renewal in **September 2016**, this Insurer had exited the Irish market and the policy was transferred to the Provider, against which this complaint is made, with an effective date of **12 September 2016**. This Provider later cancelled the Complainant's policy from **12 September 2016**, the date upon which the policy had transferred to it, due to the nondisclosure of a material fact when the Complainant incepted his policy with the previous Insurer in 2013, namely that he had two previous claims earlier in 2013.

The Complainant's Case

The Provider was notified of a Third Party claim event against the Complainant's commercial motor insurance policy, wherein it was advised that on **29 March 2017** his van had reversed into a parked car at a shopping centre. When investigating this claim, the Provider learnt that the Complainant had two previous claims that he had failed to disclose when he first incepted his policy in **September 2013**, these involved a claim settlement of €8,815.23 relating to an incident on **20 May 2013** and a claim settlement of €2,416.87 relating to an incident on **22 July 2013**. As a result of this nondisclosure, the Provider cancelled the Complainant's policy from 12 September 2016, the date upon which the policy transferred to it.

In this regard, the Complainant sets out his complaint, as follows:

“My policy was voided on the 28th of July 2017 because it was alleged by [the Provider] that I failed to disclose two previous claims to them when the policy was incepted. This is untrue”.

In its email to the Provider dated **6 July 2017**, the Complainant’s Broker advised, as follows:

“In relation to the claims, the 2 incidents occurred on [the Complainant’s] private car policy and therefore, [the Complainant] didn’t realise he had to disclose for his van policy.

The first claim happened roughly 4 years ago. He swerved to avoid a dog and went into a ditch. Roughly €8,000 worth of own damage was paid out.

The second was roughly 9 years ago. He hit a [Third Party] vehicle when doing the school run. There was no personal injury and roughly €2,000 paid out to repair both vehicles”.

In addition, the Complainant’s Solicitors note that in cancelling the Complainant’s policy, the Provider relied upon the Statement of Fact document that the previous Insurer issued to the Complainant and in this regard, in correspondence dated **24 August 2017**, the Solicitors submit, as follows:

“[The Statement of Fact] which you have furnished to us is dated 2013 and was completed when [the Complainant] was taking out a policy with [the previous Insurer].

[The Complainant’s] current policy is with [the Provider].

It is self-evident that [the Provider] are not entitled to void a policy utilising a statement provided to a different insurer at the commencement of a different policy”.

As a result, the Complainant seeks to have *“my policy reinstated and compensated for the extra expense incurred in taking out a much more expensive policy”*. In this regard, in its submission to this Office dated **27 September 2018**, the Complainant’s Solicitors note, *“Rise in Premium from the premium set as at September 2016 of €750 with [the Provider] to €4,200 / €4,300 secured by the declined cases committee [with another Insurer]. [The Complainant] suffered a further loss of his commercial van/work vehicle being off the road for approximately three months due to no insurance (from the start of August 2017 to 28th November 2017)”*.

The Complainant’s complaint is that the Provider wrongly or unfairly cancelled his commercial vehicle insurance policy.

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The Provider's Case

Provider records indicate that the Complainant incepted, via a Broker, a commercial motor insurance policy with an Insurer on **12 September 2013**. At renewal in **September 2016**, this Insurer had exited the Irish market and the policy was transferred to the Provider with an effective date of **12 September 2016**. The previous Insurer issued the Complainant with a renewal notice on **4 August 2016** ahead of the September 2016 renewal date notifying him that from renewal his policy would be transferred to the Provider. The Provider notes that this renewal notice clearly advised the Complainant at page 2, as follows:

"[Previous Insurer] Van Plan Customer Notice

Important Changes

[The Previous Insurer] wish to advise you that, with effect from the renewal date of our Van Insurance policy as shown in the attached schedule, your policy will be underwritten by [the Provider] ("the Underwriter").

The Proposal Form and Declaration previously completed and signed by you forms the basis of contract of insurance between you and [the Provider] which has been arranged through [the Previous Insurer].

Renewal has been invited as per the details set out in the attached schedule and is subject to the terms and conditions in the Van insurance policy document accompanying this notice. It is essential that you advise your Insurance Broker of any alteration or changes to your details. Please note that you are obliged to disclose any change to your circumstances or any material facts which might influence the Underwriter's assessment of the risk. If you are in doubt as to whether a fact is material you should disclose it".

The Provider had agreed to enter into the insurance contract with the Complainant on the grounds of the information previously advised by the Complainant when first taking out his commercial motor insurance policy with the previous Insurer in 2013, which included information that the Complainant had no previous claims or losses.

In this regard, the Provider notes that the Statement of Fact document provided by the previous Insurer to the Complainant when he was incepting his policy in September 2013 asked, as follows:

"PLEASE GIVE DETAILS OF ANY PREVIOUS AND CURRENT ACCIDENTS, CLAIMS OR LOSSES AND OF ANY CONVICTIONS OR PENDING PROSECUTION/GARDA/POLICE ENQUIRIES IN CONNECTION WITH EVERY MOTOR VEHICLE (INCLUDING MOTOR CYCLES) EVER OWNED OR DRIVEN BY YOU OR ANY PERSON WHO WILL DRIVE".

No claims were detailed on this Statement of Fact document, despite that it has since transpired that the Complainant had two previous claims earlier in 2013, namely a claim settlement of €8,815.23 relating to an incident on **20 May 2013** and a claim settlement of €2,416.87 relating to an incident on **22 July 2013**.

Whilst the Complainant's Broker advises in its email to the Provider, dated **6 July 2017**, that *"the 2 incidents occurred on [the Complainant's] private car policy and therefore, [he] didn't realise he had to disclose for his van policy"*, the Provider states that it is satisfied that the wording of the notice on the Statement of Fact document is clear and unambiguous as to what information is sought, and that it requested information on *"every motor vehicle...ever owned or driven"* by the Complainant. In addition, the Provider notes that the Complainant had a Broker acting on his behalf when arranging his insurance policy with the previous Insurer and as advised in the Statement of Fact document, if he had any doubt as to whether he needed to disclose any information then the Complainant should have discussed this with his Broker, who could have advised him accordingly.

As the Complainant did not disclose his claims history to the previous Insurer in 2013, this information was not then available to the Provider when it agreed to accept the transfer of his policy from the renewal date in September 2016. The Provider considers that the Complainant's nondisclosure of a material fact was a clear misrepresentation of the risk and a breach of his contractual obligations in entering into the contract of insurance. As a result of this nondisclosure, the Provider cancelled the Complainant's policy from **12 September 2016**, the date upon which the policy transferred to it, and returned all premiums paid.

The Provider notes that the duty of disclosure lies with the policyholder at inception and throughout the life of the insurance policy. At the renewal of his policy in September 2016, the Provider issued the Complainant with the applicable Van Insurance Policy Document, which set out clearly his duty of disclosure. The Complainant's policy was renewed each year on the basis of the information that he provided at inception and the Provider cancelled this policy due to the nondisclosure of a material fact. The Provider is satisfied that in cancelling the Complainant's policy due to the nondisclosure of a material fact, namely his previous claims history, that it acted in accordance with the terms and conditions of his policy.

Preliminary Decision

A Preliminary Decision was issued to the parties 17 July 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 issue of my Preliminary Decision, the following submissions were received from the parties:

1. Letter from the Complainant's solicitor to this Office dated 31 July 2019.
2. Letter from the Provider to this Office dated 16 August 2019.
3. Letter from the Complainant's solicitor to this Office dated 21 August 2019.

Legally Binding 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 all of the evidence and submissions put forward by the parties to the complaint, including the post Preliminary Decision submissions.

The Complainant's solicitor under cover of his letter to this Office dated **21 August 2019** stated "*it is my view that an oral hearing is necessary in this case*".

He supports his request for an Oral Hearing as follows:

"It is self-evident that [Provider], and their representatives need to be cross examined in relation to what information was received, and what their underwriting policy was. They also need to be cross examined as to why they did receive a Certificate that the Complainant had three years no claims bonus and were prepared to accept him on that basis but now say that a claim which fell outside that period, put him outside their underwriting criteria.

It is our respectful view that Ms. B needs to be cross examined as to why 10 months after the policy was voided, an investigation was been [sic] undertaken to find out why it was voided and 'what information came to light that put him outside our acceptance criteria' ...

In all the circumstances it appears that the only way to have a full and proper investigation of all relevant facts is to have an oral hearing and we would ask you to consider one at this stage".

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However, 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.

I cannot agree with the Complainant's solicitor that an Oral Hearing would in any way advance the understanding of what happened in respect of this complaint. It is not disputed that the Complainant had two previous claims that he failed to disclose when he first incepted this policy in September 2013, nor is there a conflict in relation to any of the actions which the Provider took when it discovered these non-disclosures. I accept that the Complainant's solicitor disagrees with the actions taken by the Provider when it became aware of the non-disclosures but there is clearly no conflict of fact around this complaint that could be resolved through an Oral Hearing.

The complaint at hand is that the Provider wrongly or unfairly cancelled the Complainant's commercial vehicle insurance policy.

I note that the Complainant had two previous claims that he had failed to disclose when he first incepted his policy in September 2013, namely a claim settlement of €8,815.23 relating to an incident on **20 May 2013** and a claim settlement of €2,416.87 relating to an incident on **22 July 2013**. In this regard, the Complainant's Broker submits that *"the 2 incidents occurred on [the Complainant's] private car policy and therefore, [he] didn't realise he had to disclose for his van policy"*.

I note from the documentary evidence before me that the Statement of Fact document provided by the previous Insurer to the Complainant when he was incepting his policy in September 2013 asked, as follows:

"PLEASE GIVE DETAILS OF ANY PREVIOUS AND CURRENT ACCIDENTS, CLAIMS OR LOSSES AND OF ANY CONVICTIONS OR PENDING PROSECUTION/GARDA/POLICE ENQUIRES IN CONNECTION WITH EVERY MOTOR VEHICLE (INCLUDING MOTOR CYCLES) EVER OWNED OR DRIVEN BY YOU OR ANY PERSON WHO WILL DRIVE"

I am satisfied that this wording is clear and unambiguous as to what information was sought, and that it requested information on ***"EVERY MOTOR VEHICLE...EVER OWNED OR DRIVEN"*** by the Complainant. The Complainant failed to disclose when he was incepting his policy in September 2013 that he had had two previous claims earlier in 2013, which I accept constitutes the nondisclosure of a material fact.

I note that the 'Important Notes' section of the Statement of Fact document provides, as follows:

"Important Notes – please read the following information carefully."

1. *Failure to disclose all material information (i.e. information likely to influence the assessment and acceptance of this risk could invalidate the insurance. If you are in any doubt whether any information is material it should be disclosed).*
2. *Any false information you provide could invalidate your insurance.*
3. *Check the following information carefully as it is a record of statements you have given and constitutes the basis of your contract of insurance.*

This is an important document. Please keep it in a safe place along with your policy documents. Only return this form if any of the detail appears to be incomplete or incorrect. Please advise any amendments within 7 days of receipt of this statement. We will advise you of any changes to the premium terms and conditions of the insurance that may result from the amendments you make and send a new statement.

4. *Please ensure that you read the Declaration at the end of this statement of facts as failure to comply could invalidate this insurance”.*

In this regard, the ‘Declaration’ at the end of this Statement of Fact provides, as follows:

“You must read this Statement of facts together with your terms and conditions, endorsements and policy documents as one contract. You must tell us immediately if any of the information on which this insurance is based changes or is incorrect. Failure to do so may result in your insurance no longer being valid and claims not met”.

I accept that the Complainant was provided with appropriate notice of the necessity to disclose material facts and the possible and severe consequences of any failure to do so.

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 nondisclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, refuse cover, as the Provider has done in this instance. As the Provider was unaware of the Complainant’s previous claims history when it agreed to accept the transfer of his policy, I accept that the policy was in place on the basis of a false premise.

This Office is aware that the courts have long considered the issues surrounding non-disclosure of material facts. In this regard, 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, with Henchy J stating that a person “*must answer to the best of his knowledge any question put to him in a proposal form*”. In *Coleman v. New Ireland Assurance plc t/a Bank of Ireland Life* [2009] IEHC 273, Clarke J held that a party could only be subject to having his or her policy of insurance voided because of the manner in which they answer a proposal form if he or

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she failed to answer “such questions to the best of the party’s ability and truthfully”. I am also cognisant of the views of the High Court in *Earls v. The Financial Services Ombudsman* [2014/506 MCA], when it indicated, “The duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources”.

I cannot reasonably conclude that the Complainant answered the question put to him on the Statement of Fact document regarding previous claims or losses for “**EVERY MOTOR VEHICLE...EVER OWNED OR DRIVEN**” by him, to the best of his ability.

I note that the Complainant’s Solicitors submit that the Provider, in cancelling the policy due to the nondisclosure of a material fact, is relying upon the Statement of Fact document that the previous Insurer issued and advises that, “It is self-evident that [the Provider] are not entitled to void a policy utilising a statement provided to a different insurer at the commencement of a different policy”. Similarly, in its representations to this Office dated 27 September 2018, the Complainant’s Solicitors submit, among other things, as follows:

“In a bid to justify the decision to void the policy, [the Provider] have sought to rely upon the “[Previous Insurer] Van Plan Statement of Fact” addressed to [the previous Insurer] issued in September 2013. [The Provider] are not a party to the Statement of Fact and therefore prevented from relying upon same”.

The previous Insurer issued the Complainant with a renewal notice on 4 August 2016 ahead of his September 2016 renewal date notifying him that from renewal his policy would be transferred to the Provider.

In this regard, I note that this renewal notice clearly advised the Complainant at pg. 2, as follows:

***“[Previous Insurer] Van Plan Customer Notice
Important Changes***

[The Previous Insurer] wish to advise you that, with effect from the renewal date of our Van Insurance policy as shown in the attached schedule, your policy will be underwritten by [the Provider] (“the Underwriter”).

The Proposal Form and Declaration previously completed and signed by you forms the basis of contract of insurance between you and [the Provider] which has been arranged through [the Previous Insurer].

Renewal has been invited as per the details set out in the attached schedule and is subject to the terms and conditions in the Van insurance policy document accompanying this notice. It is essential that you advise your Insurance Broker of any alteration or changes to your details. Please note that you are obliged to disclose any change to your circumstances or any material facts which might influence the Underwriter’s assessment of the risk. If you are in doubt as to whether a fact is material you should disclose it”.

[Emphasis added]

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As a result, I accept that the Complainant was provided with appropriate notice that his policy was to be transferred from renewal to the Provider. In paying his renewal premium, the Complainant agreed to the renewal terms, which included this transfer. I therefore accept that the Complainant's contract of insurance was continuous and based on the information that he provided to the previous Insurer when he incepted his policy on 12 September 2013.

In addition, I note that the duty of disclosure lies with the policyholder not only at inception but also throughout the life of an insurance policy. In this regard, at the renewal of his policy in September 2016, I note that the Provider issued the Complainant with the applicable Van Insurance Policy Document, which provides, among other things, at page 19:

"10. Policyholder's Duty of Disclosure

The following are conditions precedent to the liability of the Insurer:

- *The truth of any information in connection with this insurance supplied by or on behalf of the Insured which shall be the basis of and incorporated in this contract.*

Cover may not operate if any material fact has been withheld or is inaccurate or misleading. Material facts are those which might influence the acceptance or assessment of a proposal by the Insurer. If the Insured is in doubt as to whether a fact is material they should disclose it to the Insurer.

Failure to disclose material facts could result in your contract being invalidated/cancelled, a claim not being paid or difficulty in obtaining insurance in the future.

The Insurer reserve the right to reassess cover and premium following notification of any material facts".

I accept that in cancelling the Complainant's policy due to his nondisclosure of a material fact from **12 September 2016**, the date upon which the policy had transferred to it, the Provider acted in accordance with the terms and conditions of his commercial motor insurance policy. In addition, I note from its internal emails on file that the Provider was considering contacting the previous Insurer in order to advise it of the nondisclosure that has since materialised and whilst there is no evidence before me at this time indicating that it has so notified the previous Insurer, I am satisfied that it would have been reasonable for the Provider to have done 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**

13 September 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.