



<u>Decision Ref:</u>	2019-0324
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Motor
<u>Conduct(s) complained of:</u>	Refusal to insure - failure to renew policy Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant received correspondence on **20 July of 2015** from a third party insurance intermediary reminding her that her motor vehicle insurance policy was due for renewal on **1 August 2015**.

The underwriter of the policy is the Provider, against which this complaint is made. The Complainant had been involved in a road traffic accident on **5 July 2014** and had subsequently been sanctioned by a court and had received five penalty points.

The collision also resulted in civil litigation by way of personal injuries claims being taken against the Complainant under the terms of her insurance policy which had not yet been settled when the policy came up for renewal.

Following correspondence between the Complainant, the Intermediary and the Provider, she was unable to obtain a policy and sought the assistance of Insurance Ireland and the Declined Cases Committee. It directed the Provider provide the Complainant with a quote for insurance.

A second issue then arose as the Intermediary and Provider requested the Complainant to furnish a full or Provisional Irish driving licence or UK / European licence as a precondition to offering insurance.

The Complainant's Case

The Complainant's case is that the Provider was acting unreasonably and in an arbitrary fashion by not offering her a quotation in circumstances where she was unable to obtain a quote from other Insurers and had previously been insured by the Provider.

The Complainant also contends that the Provider was incorrect in the assertion that the Complainant needed an Irish Driving Licence / EU/ UK licence to be eligible for a policy of insurance. She had taken out the original policy with her American licence and the Complainant contends that American licences are valid to drive in Ireland as long as the duration of any one trip to Ireland does not exceed twelve months. (The Provider has subsequently accepted it was incorrect to request such a licence)

The Complainant has outlined what she seeks as redress as follows:

"I would like the Financial Service Provider to put things right by:

1. *Ensuring that [the Provider] pay me the difference between their quote 1,864.68 Euro and what I Paid to [Another Insurance Provider], 3000.00 Euro for car insurance for this year. The amount is 1,135.32 Euro.*
2. *In addition, I want [the Provider] to remove the "condition" on their insurance quote, i.e., I obtain an Irish Provisional/Full/EU license. I am allowed to drive on an American licence in Ireland for one year from my last date of entry into Ireland.*
3. *I want [the Provider] not to be able to repeat this debacle when it comes to getting insurance next year in the event that [the Provider] has still not settled the personal injury claims stemming from my car accident on July 5, 2014 while I was insured by [the Provider].*
4. *I want [the Provider] to pay my legal fees for consultation with my solicitor, [the Solicitor], on this matter in the amount of €1,537.50 while I was insured by [the Provider].*
5. *In a phone conversation with my solicitor, [the Solicitor], on August 28th. 2015 [an agent for the Provider] slandered my good name by stating [the Provider] believed I lied on my application to gain car insurance with [the Provider]. I want to receive appropriate compensation for this slander.*
6. *There is, unfortunately, no way to gain reimbursement from [the Provider] for the many taxi fares and kindness of neighbours and*

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friends during the (thus far) 28 days [the Provider] has deprived me of my right to drive in Ireland.

... I live alone in a remote, rural area of the country, and my time here in Ireland in my holiday home has been greatly affected by the despicable mechanisms of [the Provider].”

The Provider has offered a sum of €6,000 in compensation to the Complainant.

The Complainant, through her solicitor (by letter dated 6 July 2017) rejected an offer of €6,000 by the Provider in compensation and seeks the sum of €12,000. The Provider is not prepared to increase the offer.

The Provider’s Case

The Provider has accepted fault on their behalf in the handling of the Complainant’s policy and has offered a sum to redress this. The Provider accepts by e-mail dated **19 June 2017** that on review of the Complainant’s case, the Provider accepts the condition of requiring an Irish/EU licence was not appropriate given the Complainant’s particular circumstances.

The Provider has offered an apology for this error for the difficulties that the Provider’s actions caused to the Complainant and have offered the sum of €6,000 by way of redress. The Provider also undertook that any further requests for motor insurance by the Complainant would not include the precondition in relation to the type of licence held.

The Complainant, by way of her Solicitor, countered this offer seeking the sum of €12,000. The Provider indicated by e mail dated **12 July 2017** that €6,000 was the final offer.

The Complaints for Adjudication

The complaints for adjudication are;

That the Provider delayed and acted unreasonably when dealing with the Complainant’s request to renew her policy of insurance.

That the Provider was wrong to refuse to renew the Complainant’s policy.

That the Provider was incorrect in seeking as a precondition to the policy that the Complainant furnish an Irish driving licence/Learner permit/EU Licence.

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 on 27 September 2019, outlining my preliminary determination 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 Complainant, under cover of her solicitor's letter to this Office dated 15 October 2019, advised that "*she wished to accept the amount of €6,000 in final settlement of her claim*".

A copy of the Complainant's solicitor's letter of 15 October 2019 was transmitted to the Provider for its consideration.

The Provider, under cover of its e-mail to this Office dated 18 October 2019 advised that it did not have any further submission to make.

Having considered all of the submissions and evidence furnished to this Office, I set out below my final determination.

On **20 July 2015** the Complainant received an email from the Insurance Intermediary informing her that her policy was due to expire and advising her to renew her policy. The Policy was due to expire on **1 August 2015**.

Recordings of telephone calls have been furnished to this Office and I have considered their content. The Complainant called the Intermediary on **20 July 2015** and informed it that she

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had been convicted of careless driving and had received five penalty points on her licence as a result.

During that call, an agent of the Intermediary Company stated that it would be unable to accept a customer who had convictions for careless or dangerous driving and offered to put the Complainant in contact with agents of a different intermediary who has specialised in such cases. During that call the Complainant asked, *"That means I will not be insured by [The Intermediary]?"* To which the response was, *"Technically, No."*

On **22 July 2015**, the Complainant spoke to a different agent of the Intermediary by telephone. She stated that she *"Needed a quote"* and described that she had been convicted on **22 April 2015** for careless driving and her licence had been endorsed with five penalty points. During the conversation, the agent of the Intermediary informed her that she was outside their acceptance criteria both because of the conviction and because the resulting claims had not yet been settled.

The Intermediary's agent said, when told that the Complainant had consulted her broker and a solicitor, *"If you just had an open claim on your policy we would have to take you on, if it was a just an accident we would take you on. However, it is because you have been convicted of dangerous driving."*

The Complainant goes on to say, *"Here's what I don't understand, if I am outside your criteria and you won't take me on, no other insurance company will take me on because I have an ongoing claim. What you're telling me is I cannot drive in Ireland?"* The Intermediary's agent said, *"We cannot offer you a renewal. Your home insurance broker has made a very general comment that no other company will take you on because of the claim"*. The Complainant replied, *"No, that is what the guy at [The Provider] said [name given]. Your underwriter. He is the one who said you need to get on to [The Intermediary Company] because nobody else is going to take you with an open claim"*.

The Intermediary informed the Complainant during that call of the role of the Declined Cases Committee and this Office and recorded the fact that she wished to register a complaint.

On **28 July**, the Insurance Intermediary informed the Complainant formally that it had revoked its invitation to renew the policy following a review by the Underwriter which had declined to cover her.

The Complainant sought insurance from other Providers between **28 and 29 July 2015** but was rejected. On **30 July** her solicitor made a further complaint to the intermediary on her behalf and the Complainant wrote to Insurance Ireland seeking their assistance in compelling the Intermediary to provide her with an insurance quote and seeking clarity on her position. On the same day, **30 July**, the Provider wrote a Final Response Letter to the solicitor stating it had conducted a 'thorough review' of all aspects of the case. It stated, *"We were informed on the 25 July 2015, that [The Complainant] had received a conviction for careless driving and also received five penalty points for this offence. Based on this information we are not providing a 2015 renewal offer and our decision remains unchanged."*

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The policy of insurance lapsed on **1 August 2015**.

The Insurance Intermediary also furnished a Final Response Letter to the Complainant on **4 August 2015**. The Intermediary apologised for the failure to call the Complainant back and accepted that, *“At this stage, our agent should have requested written confirmation that we were revoking the renewal offer”*, in reference to the preceding telephone call. In recognition of poor customer service the Intermediary offered a customer service award of €75 for the delay and frustration caused.

On **5 August 2015**, Insurance Ireland directed the Provider to provide a quote to the Complainant ‘under the DCA regulations as last known insurer’. This was actioned by the Provider on **7 August**. In an internal e-mail furnished to this Office, while the author refers to the right of US citizens to drive in the Republic for up to twelve months, they go on to ask, *“In order to provide a quote, please request a copy of an Irish Provisional or full licence or a full European licence.”*

On **14 August**, the Complainant’s solicitor wrote to the Underwriter seeking that they provide a quote to her client on the basis of advice received from Insurance Ireland.

On **17 August**, the Complainant’s solicitor wrote to the Provider stating, *“You appeared to be under the impression that our client had advised [the Intermediary] that she had an EU drivers licence.”* The solicitor questioned that assumption since the Complainant had provided a colour copy of her US licence to the Intermediary which had been stamped and returned on **2 August 2013**. The solicitor pointed out that initially cover had been provided on the basis of the Complainant’s US driving licence and it appeared perverse that an EU licence was now being requested.

On **18 August 2015**, the Provider wrote to the Complainant stating that it would provide cover but that the cover would not take effect until it received a valid licence from the Complainant: specifically a Full or Provisional Irish Licence, a full UK, or full EU licence. On **19 August** the Provider offered a quote for €1,864.68 but retained the pre-condition of the full / EU / Irish licence. Since that was not possible for the Complainant to furnish as she would not be eligible for an Irish driving licence without a PPS number, which is a required field in the application form, she purchased a policy from an alternative Provider on **1 September 2015** for the sum of €2,967.22.

On **15 December 2016** the Provider wrote to the Complainant informing her of the costs of settling the claims arising from the road traffic accident. It also informed her that the settlement may affect the cost of future insurance premiums.

In its response to this Office of **11 January 2017**, the Provider wrote, *“I confirm that based on our investigations, when we were advised of the Insured’s driving conviction, the risk fell outside our acceptance criteria and as a result we could not offer the renewal of the [Intermediary’s] policy. When the case was submitted under the Declined Cases Agreement, we did offer a quotation with the pre-condition regarding the requirement to hold an Irish*

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driving licence. As is normal practice, the application of pre-conditions is admissible when providing quotations."

It would appear that there has not been an unreasonable delay in dealing with the Complainant's insurance renewal. The material facts in relation to the penalty points and conviction were made available to the Intermediary on **22 July 2015**. By **30 July**, the Provider had informed the Complainant's solicitor of the reason for its revocation of the invitation to renew the policy of insurance and the Intermediary had furnished a Final Response Letter to the formal complaint by **4 August**. While there may have been an error in its interpretation of law in relation to which licences were acceptable, I do not accept that there was any delay in responding to the Complainant's concerns.

With reference to the refusal to offer terms of insurance, it is not for this Office to determine the terms upon which a Provider must conduct business nor to interfere with its commercial discretion to do so. It would appear that the Provider has assessed the information furnished to it against its own criteria and found that the application lay outside its terms for acceptance. Once the Complainant had been refused cover by other providers, it was incumbent upon the Provider to quote as the 'last insurer' under the Declined Cases regulations. However, it required the direction of Insurance Ireland for the Provider to do so, which it did on **19 August 2015**. I do not find that delay acceptable since it caused considerable inconvenience to the Complainant.

The Consumer Protection Code, 4.39 states, "*Where an insurance undertaking refuses to quote a customer for motor or property insurance, it must, within five working days of the refusal (a) in the case of motor insurance, provide the consumer with its refusal and its reasons for refusing cover, on paper or another durable medium and notify the consumer of their right to refer the matter to the declined Cases Committee and the method of doing so.*"

It is not clear from the submissions to this Office that such a letter was sent to the Complainant. Instead, a letter dated **19 August** was sent which gave a quote for insurance cover, but also contained the pre-condition for the type of acceptable driving licence. An internal e-mail furnished to this Office and dated **17 August 2015**, between agents of the Provider states, "*We will not be offering a quote for [the Complainant] as she does not hold a valid licence to drive as a resident of Ireland. She holds a full USA licence. I spoke to [the Complainant]'s solicitor and explained same to her, we can only offer a quote as soon as she acquires a valid licence, i.e. Irish provisional, Full Irish, UK or EU licence.*"

In an e-mail of **19 June 2017**, the Provider accepted that the pre-condition was inappropriate, given the Complainant's circumstances. The Provider apologised for the difficulty their actions had caused and made a customer service offer of €6,000 in an effort to settle the dispute. It also confirmed that there would be no such future stipulation in requests for motor insurance.

I note that the Complainant rejected this offer through her solicitor on **6 July 2017** as insufficient compensation including '*being accused of lying on her insurance form*'. I have not been provided with any evidence to support the assertion that the Complainant was accused of lying.

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It appears to have come about during a conversation between an agent of the Provider and the solicitor in August 2015, where the agent had expressed the opinion that the Provider thought the Complainant had an EU licence. This was in error, since the Complainant had previously furnished a copy of her US licence to the Intermediary.

The offer of €6,000 in compensation for the inconvenience and expense appears to be reasonable in all of the circumstances and I note that since I issued my Preliminary Decision to the parties, the Complainant has now advised this Office that “*she wishes to accept the amount of €6,000 in final settlement of her claim*”.

For the above reasons, 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 October 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.