



<b><u>Decision Ref:</u></b>	2019-0336
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant held a motor insurance policy with the Provider.

**The Complainant's Case**

The Complainant's Broker notified the Provider on [Date Redacted] of an incident on [Date Redacted] where the Complainant's wife, a named driver on his policy, was driving the insured vehicle down the driveway of their home when a friend of her son jumped out from behind a tree and was hit by the vehicle, sustaining [Injuries Redacted].

The Broker later notified the Provider on Friday **10 February 2017** that it had actually been the Complainant's son, who is also a named driver on the policy, who had been driving the vehicle at the time of the incident on [Date Redacted] and not his wife, as previously advised.

The Provider declined to indemnify the Complainant in relation to this incident as it concluded that the circumstances surrounding the incident were knowingly misrepresented to it and also that it was a policy condition that the Complainant's son must be accompanied by the Complainant himself, whilst driving the vehicle in question.

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

*“On [Date Redacted], my son...was involved in an accident while driving my car in the driveway of our home. He struck one of his friends with the car, resulting in injuries to [his friend]. [He] was brought to Hospital immediately following the accident ...*

*The accident was notified to [the Provider] on [Date Redacted], and followed up with an email the following day.*

*The initial notification at this time referred incorrectly to my wife as driving the vehicle at the time of the accident. It was an error of judgment on our part to give that initial incorrect account. The initial notification was made at a time when [my wife] (who was on the premises at the time the accident occurred) was extremely shocked and upset by it. The incorrect notification arose from discussions with [my son's friend's] parents, so as to avoid either boy getting in any trouble in relation to the accident.*

*The incorrect account was voluntarily retracted and corrected by [my wife] in February 2017 ...*

*[The Provider] are declining indemnity cover to myself and [my son]. They are also declining cover on a similar basis to my wife ... We are concerned that we may be personally liable for any assessment of damages to [my son's friend]. Because of the failure of [the Provider] to confirm indemnity cover on foot of the policy.*

*[The Provider] say they do so on the basis of the initial incorrect notification, and also be reference to a Condition and Exclusion which applied to the policy which makes reference to [my son] being accompanied by myself while driving the relevant vehicle ...*

*My solicitors wrote to [the Provider] on the 7 March 2018 disputing [the Provider's] decision to decline indemnity cover...a number of points are made in that letter, including the following:-*

- We paid a significant gross premium to [the Provider] over the period from March 2011 when we first placed [our] insurance policies with [the Provider].*
- While we accept that the giving of the initial incorrect account was an error of judgment, it was voluntarily retracted and corrected. This was done in such a way, and at a time, as to leave [the Provider] at no prejudice in relation to the claim being made on behalf of [my son's friend]. [The Provider] is in no worse a position to deal with the claim on behalf of [my son's friend] than it would have been in any other circumstances.*
- In relation to the condition and exclusion in the policy, firstly the vehicle was being driven on private property (on the driveway of my residence). The requirement which arises under Road Traffic legislation for a learner driver to be accompanied by a fully licensed driver did not therefore arise. [My son] was using the vehicle in anticipation of his driving test on private property, at*

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*a time when my wife...was also present at the premises and was aware that he was using the vehicle in our driveway.*

- *Furthermore, it was not properly or adequately drawn to my attention that it was a specific requirement that [my son] must be accompanied by me personally, and that he must be accompanied by me in any context, including when the vehicle was being used on private property. I am advised that this is an unusual and onerous condition and one which ought to have been properly and adequately brought to my attention in order to now use it as a basis to decline cover on foot of the policy. I can state clearly that I was genuinely not aware that [my son] must be accompanied by me at all times whilst driving the vehicle, including on private property.*

*Over a number of years, we entered into, and paid for, insurance policies with [the Provider] to cover the eventuality of any motor accident. Such an accident occurred on [Date Redacted] when my son...was using the vehicle in our driveway in anticipation of his driving test. We made an error in judgment in initially notifying [the Provider] that my wife...was driving at the time...The incorrect account was voluntarily retracted and corrected by us. We do not accept that [the Provider] is at any prejudice in dealing with the claim being made by [my son's friend] in these circumstances.*

*We are concerned that if [the Provider] maintain their position to decline indemnity cover, we will be personally liable for any assessment which might be made by PIAB [Personal Injuries Assessment Board] in relation to the claim being taken by [my son's friend]. In the circumstances, we think that it neither fair nor valid".*

In addition, in his email to this Office dated **22 March 2019**, the Complainant also submits, *inter alia*, as follows:

*"[My son's friend] has submitted his claim for assessment to the Personal Injuries Assessment Board PIAB. The PIAB have declined assessing his claim. At present I am not in receipt of any court proceedings however it is my understanding that post the PIAB decision from October 2018 [my son's friend] has a further 2 years to recommence proceedings ...*

*Accident occurred on private property...the driveway of our home. The driveway is some 2/300 metres in length. At the time of the accident [my son] was practicing his driving pre-test. His Mother was in attendance and on the property at the time of the accident. I was never made aware that there was anything in the insurance requirements which meant that [my son] was precluded from practicing driving unaccompanied whilst in the driveway of our home.*

*Within a few days post the accident [my son] undertook and passed his test.*

*At NO time had [my son] ever been unaccompanied on a public road whilst practicing driving.*

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*Initial notification to [the Provider] was undertaken after discussion with both sets of parents solely in the interest of 'protecting' both young lads involved ...*

*The actual version of events followed in a very short timeframe to subsequently correct the record. This in my opinion could not have prejudiced [the Provider's] position in dealing with a claim".*

As a result, the Complainant submits that the Provider "*should provide cover on foot of the insurance policy to us*".

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

Provider records indicate that the Complainant's Broker notified the Provider on [Date Redacted] of an incident on [Date Redacted] where the Complainant's wife, a named driver on his policy, was driving the insured vehicle down the driveway of their home when a friend of her son jumped out from behind a tree and was hit by the vehicle, sustaining a broken collarbone and three broken vertebrae.

The Provider-appointed Loss Assessor conducted an interview with the Complainant's wife at the property on **28 November 2016** in order to determine the full circumstances surrounding the incident and she signed a statement wherein she maintained that she was driving the vehicle at the time of the incident. By the end of 2016, no formal claim had been made by the injured party and so the claim file was left open, pending any further developments. In this regard, the Provider notes that had the Complainant's wife been driving the vehicle at the time of the incident, the cover under the policy would have been effective.

The Broker later advised the Provider in its email dated **10 February 2017** that it had actually been the Complainant's son, who is also a named driver on the policy, who had been driving the vehicle at the time of the incident on [Date Redacted] and not his wife, as previously advised, as follows:

*"With reference to the above claim number can you please note the following in relation to a change in the incident notification details as advised to our office on the 7<sup>th</sup> Feb, 2017.*

*On [Date Redacted] we understood [the Complainant's wife] was driving the vehicle at the time of the incident; however, while she was at the house with her son...she was not in fact driving. We have now been advised that in fact her son...was driving the vehicle at the time of the incident for the purposes of practising for his driving test.*

*[The Complainant's wife] did not disclose this in the original notification in an effort to protect her son from any additional stress following the injury to his good friend and that he also had his driving test in two weeks, which he subsequently passed.*

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*In conjunction with the injured boy's parents, it was agreed that this basis of events would be advised in an effort to protect the boys. Which is rightly or wrongly what any parent would do".*

Following its resultant re-examination of the incident, the Provider advised the Complainant by way of correspondence dated **5 May 2017** that it had declined indemnity on the basis that the policy conditions had not been adhered to.

First of all, the Complainant's son had been driving the insured vehicle without the Complainant present, which breached the accompanied driver policy condition. In this regard, the Provider is satisfied that it is clear from the Contract Modification listed on the applicable Policy Schedule that in order for the Complainant's vehicle to be insured by the Provider at the time of the incident, his son would need to have been accompanied by the Complainant himself. The terms and conditions of the Complainant's policy made it clear that a failure to comply with this policy condition may invalidate any claim made under the policy. As the Complainant was not accompanying his son at the time of the incident, this policy condition was clearly not adhered to.

In addition, it is also the case that the Complainant knowingly misrepresented the circumstances of the claim, which breached the fraudulent claims policy clause. In this regard, the Complainant, via his Broker, [Date Redacted] knowingly misrepresented to the Provider the true position regarding who was driving the vehicle at the time of the incident. As part of this complaint process, the Provider has had sight of a letter from the Complainant's solicitors to his Broker dated **7 February 2017** that confirmed that not only was his son driving the vehicle without the Complainant's accompaniment, but that he also had two other friends in the vehicle at the time of the incident. This information was not relayed by the Broker in its correspondence to the Provider dated 10 February 2017.

In light of the aforementioned, the Provider is satisfied that it was entitled, amongst other things, to treat the Complainant's motor insurance policy as if it had never existed from the date of such misrepresentation, in accordance with the policy wording and Irish law. The Provider did not, however, cancel the cover as it was up for renewal on 15 March 2017, and as a courtesy to the Complainant it extended the cover until his Broker was able to source alternative cover.

The Provider notes that the Complainant has suggested that he was not made aware of the Contract Modification for the accompanied driver and that *"this is an unusual and onerous condition"*, but the Provider does not agree. In this regard, when the Complainant's Broker sought to have the Complainant's son put on cover on **6 October 2016** as a named driver of the insured vehicle, the Provider confirmed that this addition was subject to the specified Contract Modification. In addition, prior to adding the Complainant's son to the policy as a named driver, the Complainant previously had his daughter (who was also on a provisional licence at that time) on cover with the same Contract Modification already in place.

Furthermore, the Policy Schedule clearly and unambiguously confirmed the Contract Modification to the policy wording and was issued to the Complainant's Broker on 6 October

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2016. The Provider is satisfied that the Policy Schedule clearly confirmed that the Provider would not cover the Complainant's daughter or son while driving the vehicle, unless they were accompanied by the Complainant (the policyholder) himself. As the policy documents had been provided to the Complainant's Broker, the Provider is satisfied that the terms of the Policy Schedule (including the Contract Modification) were adequately brought to the Complainant's attention and that the Policy Schedule was in plain and clear English and could not, on any reading, be deemed unusual or onerous.

The Provider also notes that the Complainant has suggested that, since the incident took place on private property and not a public road, the usual requirement under road traffic legislation for a learner driver to be accompanied by a fully licenced driver should not apply, but the Provider does not agree. The Contract Modification applies whether or not the vehicle is being driven on private property or on public roads. The purpose of this Contract Modification was not to ensure that the Complainant would adhere to road traffic legislation, but to limit the risk the Provider was prepared to accept under the insurance policy.

Accordingly, the Provider is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of his motor insurance policy.

### **The Complaint for Adjudication**

The Complainant's complaint is that the Provider wrongly or unfairly declined indemnity in relation to an incident on [Date Redacted].

### **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.

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A Preliminary Decision was issued to the parties 9 September 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 complaint at hand is that the Provider wrongly or unfairly declined indemnity under the Complainant's motor insurance policy in relation to an incident on [Date Redacted].

In this regard, the Complainant's Broker notified the Provider on [Date Redacted] of an incident on [Date Redacted] advising that the Complainant's wife, a named driver on his policy, was driving the insured vehicle down the driveway of their home when a friend of her son jumped out from behind a tree and was hit by the vehicle, sustaining [Injury details redacted].

The Broker later notified the Provider some 16 weeks later, on **10 February 2017**, that it had actually been the Complainant's son, who was also a named driver on the policy, who had been driving the vehicle at the time of the incident on [Date Redacted] and not his wife, as previously advised. The Provider declined to indemnify the Complainant in relation to this incident as it concluded that both the circumstances surrounding the incident were knowingly misrepresented to it and also that it was a policy condition that the Complainant's son, as a then holder of a provisional driving licence, must be accompanied at all times by the Complainant himself whilst driving the insured vehicle.

I note from the documentary evidence before me that the Provider-appointed Assessor conducted an interview with the Complainant's wife at her home on **28 November 2016**, in order to determine the circumstances of the incident. In this regard, **Section 6, 'Investigations'**, of the **Motor Liability – Preliminary Report** dated 30 November 2016 provides, *inter alia*, as follows:

**“6.2** [The Complainant's wife] *explained that on the evening of [Date Redacted], at approximately 6.00pm she was leaving the property to go to the shop. She had driven down the lane when she realised she had forgotten her purse. The insured driver stated that she turned in the lay-by on the right hand side of the lane before proceeding to travel back up towards her house.*

**6.3** *The insured driver stated that she was travelling at approximately 5 kmph.*

**6.4** *The insured driver advised that as it was 6.00pm in the evening, it was dark.*

**6.5** *The insured driver stated that just as she was proceeding to drive up her lane, the Injured Party jumped out from behind a tree and onto her path thus colliding with the vehicle.*

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**6.6** *The insured driver stated “the front of the vehicle hit him and he fell to the ground. I jumped out and went around to the front. He was lying on the ground directly in front of the jeep”.*

I note, however, that the Complainant’s Broker later advised the Provider in its email dated 10 February 2017 that it had in fact been the Complainant’s son, who is also a named driver on the policy, who had been driving the vehicle at the time of the incident on [Date Redacted] and not his wife, as previously advised, as follows:

*“With reference to the above claim number can you please note the following in relation to a change in the incident notification details as advised to our office on the 7<sup>th</sup> Feb, 2017.*

*On [Date Redacted] we understood [the Complainant’s wife] was driving the vehicle at the time of the incident; however, while she was at the house with her son...she was not in fact driving. We have now been advised that in fact her son...was driving the vehicle at the time of the incident for the purposes of practising for his driving test.*

*[The Complainant’s wife] did not disclose this in the original notification in an effort to protect her son from any additional stress following the injury to his good friend and that he also had his driving test in two weeks, which he subsequently passed.*

*In conjunction with the injured boy’s parents, it was agreed that this basis of events would be advised in an effort to protect the boys”.*

Motor insurance policies, like all insurance policies, are subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, the ‘Policy conditions’ section of the applicable Motor Policy booklet provides, *inter alia*, at pgs. 14-15, as follows:

*“This part of Your Policy details the terms and conditions which form part of Your Policy...Failure to comply with the Policy Conditions may invalidate Your claim ...*

***Fraudulent claims***

*If you, a Family Member or any Covered Person, or anyone acting on Your, a Family Member’s or a Covered Person’s behalf:*

- *knowingly makes a dishonest, fraudulent or exaggerated claim under Your Policy;*
- *knowingly makes a false statement in support of a claim;*
- *knowingly provides a false or forged document in support of a claim; and/or*



- *makes a claim for any loss or damage caused by Your or their wilful act or caused with Your agreement, knowledge or collusion, then We may give You notice that Your Policy will be treated as terminated from the date of any such act, We will not pay any fraudulent claims, We will be entitled to recover from You the amount of any fraudulent claim already paid under Your Policy, legal action may be taken against You and We may inform the Policy and any other law enforcement agencies about the claim”.*

In initially advising that she herself had been driving the insured vehicle at the time of the incident, it is clear to me that the Complainant’s wife knowingly misrepresented the circumstances of the incident to the Provider by way of providing a false statement to the Assessor.

In this regard, I note that the Complainant advises, as follows:

*“The initial notification at this time referred incorrectly to my wife as driving the vehicle at the time of the accident. It was an error of judgment on our part to give that initial incorrect account. The initial notification was made at a time when [my wife] (who was on the premises at the time the accident occurred) was extremely shocked and upset by it. The incorrect notification arose from discussions with [my son’s friend’s] parents, so as to avoid either boy getting in any trouble in relation to the accident.*

*The incorrect account was voluntarily retracted and corrected by [my wife] in February 2017”.*

Nevertheless, as the circumstances surrounding the incident were initially knowingly misrepresented to the Provider, and this misrepresentation was indeed repeated during the interview with the assessor on 28 November, I am satisfied that the Provider was permitted to decline indemnity in respect of the incident, in accordance with the terms and conditions of the Complainant’s motor insurance policy.

In addition, I note that the Complainant also submits, *inter alia*, as follows:

*“It was not properly or adequately drawn to my attention that it was a specific requirement that [my son] must be accompanied by me personally, and that he must be accompanied by me in any context, including when the vehicle was being used on private property. I am advised that this is an unusual and onerous condition and one which ought to have been properly and adequately brought to my attention in order to now use it as a basis to decline cover on foot of the policy. I can state clearly that I was genuinely not aware that [my son] must be accompanied by me at all times whilst driving the vehicle, including on private property”.*

In this regard, I note from the documentary evidence before me that the Policy Schedule dated 6 October 2016 sets out the following Policy Condition at pg. 2:

### ***“Contract Modifications***

*The following condition is added to the Policy Conditions part of Your Policy.*

***Accompanied driver*** [The Complainant’s daughter], [the Complainant’s son] *must be accompanied by* [the Complainant] *whilst driving* [the insured vehicle].

*The following exclusion is added to the Policy Exclusions part of Your Policy.*

***Accompanied driver*** *We do not cover* [the Complainant’s daughter], [the Complainant’s son] *who uses* [the insured vehicle] *without being accompanied by* [the Complainant] *at the time of the covered loss”.*

I am satisfied that this modification is clear and unambiguous and given that the Complainant’s son was the holder of a provisional driving licence at the time, I am satisfied that this was neither an unusual nor onerous condition, as contended by the Complainant.

I take the view that on the evidence before me, the Provider was entitled to maintain the position which it did, and it is my Decision therefore, that this 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**

1 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.