



<b><u>Decision Ref:</u></b>	2019-0357
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Failure to advise on key product/service features No claim bonus issues Mis-selling (motor)
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The First Complainant incepted a motor insurance policy with the Provider on **29 March 2017**. Her husband, the Second Complainant, is a named driver on this policy.

**The Complainants' Case**

The First Complainant incepted a motor insurance policy with the Provider on **29 March 2017**. The Complainants state that the Provider advised them in and around that time that the same no claims discount protection cover that applied to the Second Complainant's motor insurance policy with the Provider, which the First Complainant had been listed as a named driver on for a number of years, would apply to the First Complainant's new motor insurance policy. They say that it was on this basis that the Complainants incepted the First Complainant's policy with the Provider.

In this regard, the Complainants submit, as follows:

*"When we went to insure our new car on 29/3/17 we wanted the same insurance we had for 20 odd years. We were assertive in detailing this to the lady who handled our policy. We bought the policy on these grounds. It's only when we reinsured our car in 29/3/2018 that this came to light. We noticed a considerable drop in price and we*

*queried it. We were then told there was a step back policy in [the First Complainant]'s name. This is easy understand that we would not have taken out this policy in the first place with [the Provider] if we were told about a step back as [the Provider] were dearer than the other [insurers] we tried".*

In addition, the Second Complainant sets out the Complainants' complaint, as follows:

*"I...hold an insurance policy with [the Provider] for 25 odd years. Therefore I have what's known as a no claims bonus without step back.*

*Therefore I was wise to this when [the First Complainant] was taking out a new policy with [the Provider] in her name. There is lots of phone calls detailing this in early 2017...I was told during one phone conversation that because [the First Complainant] was so long with me as a named driver that she would qualify for the same policy as me.*

*We then reinforced this on 29.3.2017 when we visited the [location] branch to pay for this policy. Why would we bother with [the Provider] for this policy knowing they were more expensive than their [competitors] only we were led to believe we were getting the same policy that I held previous. And that [was] a policy with no STEP BACK".*

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

Provider records indicate that the First Complainant incepted a motor insurance policy with the Provider on 29 March 2017 in respect of a new vehicle, which lists her husband, the Second Complainant, as a named driver. The Second Complainant himself has held a motor insurance policy with the Provider since May 1991, which lists the First Complainant as a named driver.

The Provider notes the following timeline and sales process that resulted in the inception of the First Complainant's motor insurance policy with the Provider in March 2017:

**13 March 2017:** The Second Complainant telephoned the Provider at 14:57 to advise that he was currently insured with the Provider and was purchasing a second car and wanted a quote for himself and his wife, the First Complainant, fully comprehensive. He confirmed that the second vehicle was for his wife, a named driver on his policy who did not have a vehicle in her own name at that time and who he had authorisation from, to obtain a quotation for her. The Agent requested the vehicle registration number but the Second Complainant advised that he did not know it, as it was a new vehicle that the Complainants intended to buy later in the week and that he just wanted to find out how much it would be to insure before they bought it. The Agent explained that she required the registration number in order to provide an insurance quotation, at which point the Second Complainant became frustrated and ended the call.

The Second Complainant telephoned the Provider at 15:32 the same day. The Agent advised that as he could not be the main driver of two vehicles, the Provider could quote in the First Complainant's name for the second vehicle and have him listed as a named driver. In this way, the Second Complainant would be the main driver of his own vehicle under his existing motor policy, whilst his wife would be the main driver of the new vehicle, and they could both drive each other's vehicle.

The Second Complainant advised that his wife never had motor insurance in her own name but had been a named driver on his policy for the past 17 or 18 years. He advised that he did not have the registration number of the vehicle but that it would be a brand new vehicle and what he needed now was a ballpark figure to know if they could buy the car and afford the insurance. The Agent took details of the new vehicle and confirmed that until the Provider had the registration number of this vehicle, the premium quoted would only be indicative.

The Second Complainant confirmed that his wife had no years of a No Claims Discount as she had only ever been a named driver on his policy but that there had never been a claim involving his wife on that policy, and that she had never been named on any other motor policy. The Agent advised of some of the benefits of the Provider's Comprehensive car cover, including that the policy would protect the No Claims Discount after fire, theft and glass claims but that he could also upgrade to the Provider's Stepback or Bonus Protection Extra, advising that these were optional extras which did not need to be purchased as part of the policy. The Agent enquired if the Second Complainant would like these optional extras explained to him but he declined, advising that they could do that "*maybe next week*" and what he required right now was a quote.

In this regard, the Agent advised that the price based on a 50% No Claims Bonus was €910.67. The Second Complainant advised that he would not dream of going with that sort of a price and enquired if it would be cheaper if he placed his wife as the main driver of his car on his existing policy and listed himself as the main driver of the new vehicle on the new policy. He enquired where the loading was coming from, and asked if the fact that his wife did not have a policy in her own name was the issue. The Agent confirmed that the Provider had allowed his wife a 50% No Claims Discount in her own name, as if she held five or more years of a motor policy in her own name, but that the premium was based on the level of cover for and value of the vehicle. The Second Complainant enquired again if it would be cheaper if he reversed the cars and asked that the Agent have a look at this and ring him back and ended the call.

14 March 2017: The Provider posted to the First Complainant a quotation pack (reference P2001267388-01) in the amount of €910.67 for a new jeep vehicle valued at €32,000, with the Second Complainant listed as a named driver, along with the policy booklet and the Provider's terms of business.

24 March 2017: The Second Complainant telephoned the Provider at 10:01 and confirmed that he had received the quotation. He advised that he had moved his house insurance from the Provider a few years ago and enquired if the Agent could provide him with a quote for this and "*trim something down*". The Agent proceeded to take details of the house for the purpose of providing a quotation but the Second Complainant became a little frustrated

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with this process. Having received a quotation for house insurance, the Second Complainant referred back to the motor policy in his wife's name and advised that the Provider had quoted €1,821 but were "*knocking it down*" to €910. He advised that an alternative insurer had been quoting €850. The Agent attempted to discuss the cover and premium but the Second Complainant cut him off, advising that he did not want to get into this, he just wanted to know why there was a price difference between the two insurers.

He requested that the Agent speak with his supervisor and see what could be done on the quote and also enquired if he would be better to go into the counter in the Provider's branch. The Second Complainant commented that "*there is always something to come off*", to which the Agent confirmed that €910.69 was the Provider's best price. The Second Complainant advised that he would speak with "*the girls*" in the branch about it and ended the call.

28 March 2017: The Second Complainant telephoned the Provider at 15:36 and confirmed that he had received a quote from the Provider in the amount of €910.69. He had just got the number plate for the car and was intending to call to the branch the following day to pay this amount. The Agent confirmed the value of the vehicle as €32,000 but the Second Complainant advised that it was €33,000. As a result, the Agent advised that the increase in value was amending the premium to €930. After a discussion, the Second Complainant advised that €32,000 was the correct value and the Agent confirmed that she would leave the premium at €900 and that he could pay this in the branch the next day but that the First Complainant would be required to sign a proposal form.

29 March 2017: The Provider posted to the First Complainant a quotation pack (reference xxxx388-03) in the agreed premium amount of €900 for a new hatchback vehicle valued at €32,000, with the Second Complainant listed as a named driver, along with the policy booklet and the Provider's terms of business. The Second Complainant called to the Provider's branch, where he incepted a new motor insurance policy in the First Complainant's name for a premium of €1,000, based on a 50% No Claims Discount and which included the optional 'No claim discount protector extra' cover, for a new jeep valued at €32,000, with himself listed as a named driver. The policy documents were printed that day, including the policy schedule and certificate of insurance.

The Provider has reviewed all telephone conversations had with the Second Complainant in relation to quoting for a motor policy in the name of the First Complainant, his wife, and it is satisfied that during none of these calls was he advised that as his wife had been listed as a named driver on his policy for so long that she would qualify for "*the same policy as him*". Instead, the Agent checked the First Complainant's driving history on the Second Complainant's policy and confirmed that the Provider had allowed his wife a 50% No Claims Discount in her own name, as if she had five or more years in her own name. This is the same level of No Claims Discount as held by the Second Complainant himself.

A No Claims Discount is earned by a motor policyholder and can only be used on one motor policy at a time. It allows a reduction of a stated percentage from the policy base premium. A No Claims Discount entitlement is earned for each year a policyholder has been claims free driving. A person taking out a motor insurance policy for the first time in their own

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name, or a second policy, would not have a No Claims Discount entitlement. At renewal of their policy the following year, once no claims had been notified during the insurance period, the policyholder will have earned one year claims free driving.

A full No Claims Discount is normally earned over a five year period. At this point the maximum discount available to earn has been achieved, though this may vary from insurer to insurer. A percentage discount is allowed for each year of claims free driving, for example 1 year may be equal to 10%, 2 years may be equal to 20%, etc. The percentage discount allowed for each year of claims free driving is at the discretion of each individual insurer. The maximum percentage discount allowed by the Provider is 50%, which is earned on five years or more claims free driving.

Whilst the First Complainant had never held a motor policy in her own name and therefore had not earned a No Claims Discount, the Provider took into account her named driving experience on her husband's policy and allowed the maximum benefit of a 50% No Claims Discount, the same level of discount that the Second Complainant holds with the Provider.

Where a policyholder has a claim during an insurance period, this may impact their No Claims Discount entitlement, as they have not then been claims free. Whilst claims for fire, theft and windscreen reported to the Provider will not affect a No Claims Bonus entitlement, other claim types will. Unless a customer has optional Bonus Protection cover included on their policy, they will lose their full No Claims Bonus entitlement following a claim outside of fire, theft and windscreen. In the event of a claim, if a policyholder has Bonus Protection cover they will not, depending on the level of cover they have selected, lose all of their earned No Claims Bonus entitlement.

As with all insurance companies, the Provider reviews its policy cover and options that it provides from time to time. There are different forms of Bonus Protection cover a customer can purchase and the customer is advised of optional additional covers available to them at the quotation stage and at policy renewal. In this regard, the Second Complainant inceptioned his motor policy with the Provider in **May 1991**. At renewal of his policy in May 2000, he opted to include the Bonus Protection cover that the Provider provided at that time. The Provider ceased selling this particular cover in June 2008, however customers who had purchased this cover prior to June 2008 and still had their policies in force could retain this cover, as the Second Complainant has. Any new customers or existing customers wishing to include Bonus Protection cover cannot avail of the particular Bonus Protection cover that the Second Complainant has as the Provider no longer sells it. Instead, the Provider now offers two forms of Bonus Protection cover, namely, 'No Claims Discount Protector Extra' and 'Step-back No Claims Discount Protection'. The Agent did advise the Second Complainant of these during the telephone conversation on **13 March 2017**, but he did not want any further information.

On 28 March 2017, the Second Complainant was advised that the premium for the motor policy in his wife's name, including a 50% no claims discount was €900. This quotation did not include any form of Bonus Protection cover as the Second Complainant had declined to discuss this cover with the Agent. The Second Complainant called to the Provider's branch

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on 29 March 2017. The local office sales staff are trained to check with a customer if they require Bonus Protection cover and to explain the cover it provides.

The Provider does not record conversations had at the counters in its local offices, however a conversation obviously did take place with regard to Bonus Protection cover as the Second Complainant paid the Provider €1,000 premium that day; an additional €100.

As regards the premium reduction to the First Complainant's motor insurance policy at renewal in **March 2018**, the Provider notes that her policy was incepted in March 2017 with a premium of €1,000 attaching, and was renewed in March 2018 with a premium of €800 attaching. These premium rates were calculated, as follows:

	Mar-17	Mar-18
Gross Premium	€1,821.36	€1,475.16
less No Claims Discount 50%	<u>€910.69</u>	<u>€737.59</u>
	€910.67	€737.57
<i>plus Optional Extra</i>		
NCD Protection Extra	<u>€122.94</u>	<u>€99.57</u>
	€1,033.61	€837.14
<i>less Discretionary Sales Discount</i>	<u>€33.61</u>	<u>€37.14</u>
<b>Agreed Net Premium</b>	<b>€1,000.00</b>	<b>€800.00</b>
<i>including 5% Government Levy</i>	€47.62	€38.09

The Provider notes that when the policy was incepted in March 2017, the premium was based on a vehicle value of €32,000, as requested by the Second Complainant on 28 March 2017. At renewal in March 2018, the Provider invited renewal on a vehicle value of €22,036, which was the market value of the vehicle based on its vehicle look-up data. This change in the value of the risk covered combined with rate changes resulted in the premium reduction for the new insurance period that was due to commence in March 2018.

Accordingly, the Provider is satisfied that it correctly sold the First Complainant her motor insurance policy.

### **The Complaint for Adjudication**

The Complainants' complaint is that in March 2017, the Provider mis-sold the First Complainant her motor insurance policy, insofar as this policy did not provide her with the same no claims discount protection cover that applied to the Second Complainant's already existing motor insurance policy with the Provider, despite the Provider advising the Second Complainant that the First Complainant "would qualify for the same policy as me".

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## 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 Complainants were 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 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.

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

The complaint is that the Provider mis-sold the First Complainant her motor insurance policy, insofar as this policy did not provide her with the same no claims discount protection cover that applied to the Second Complainant's already existing motor insurance policy with the Provider, despite the Provider advising the Second Complainant that the First Complainant "*would qualify for the same policy as me*".

In this regard, the First Complainant incepted a motor insurance policy with the Provider on 29 March 2017. Her husband, the Second Complainant, is a named driver on this policy. The Second Complainant himself has held a motor insurance policy with the Provider since May 1991, which lists the First Complainant as a named driver.

The Complainants state that the Provider advised them in and around March 2017 that the same no claims discount protection cover that applied to the Second Complainant's motor insurance policy with the Provider, which the First Complainant had been listed as a named driver on for a number of years, would apply to the First Complainant's new motor insurance policy and that it was on this basis that the Complainants incepted the First Complainant's policy with the Provider.

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I note from the documentary evidence before me that the Second Complainant's Policy Schedule dated 24 May 2016 provides, *inter alia*, as follows:

***"Endorsement Number(s) attaching to and forming part of this Policy ...***

***71. No claim discount protection cover".***

In this regard, the 'Endorsements' section of the applicable Car Insurance Policy Document provides, *inter alia*, at pg. 18, as follows:

***"71. No claim discount protection cover***

*You can make a claim without it affecting your no claim discount. If your no claim discount is*

- *50% it remains at 50%*
- *45% it remains at 45%*
- *40% it remains at 40%*
- *30% it remains at 30%*
- *20% it remains at 20%".*

*If you have a third claim in this period you will lose your entire no claim discount".*

I note that the Provider has advised that it ceased selling this particular 'No claim discount protection cover' in June 2008, though customers who had purchased this type of cover prior to June 2008 and still had their policies in force could retain this particular cover, as the Second Complainant has done. In this regard, I accept the Provider's position that it was not possible for it to sell the First Complainant the same no claims bonus discount protection cover that the Second Complainant has on his policy, as it ceased selling that particular type of cover to new customers in June 2008.

Whilst the Complainants submit that the Provider advised the Second Complainant in and around March 2017 that the First Complainant "*would qualify for the same policy as me*", I am satisfied that the Second Complainant's recollection of any such comment is not borne out by either the audio evidence or the documentary evidence before me.

Having listened to a recording of the telephone calls between the Second Complainant and the Provider in relation to the sale of the First Complainant's policy, whilst the Provider was quoting for the same level of cover as the Second Complainant's policy (comprehensive) and whilst it was allowing the First Complainant the same level of no claims discount as the Second Complainant enjoyed (50%), it is clear to me that the quotes provided did not include any optional no claims discount protection cover.



In addition, having listened to a recording of the telephone call the Second Complainant made to the Provider at 15:32 on 13 March 2017, I note the following exchange:

Agent: *This policy will protect her bonus against fire, theft and glass claims, now she can upgrade her no claims bonus protection to [Provider] Stepback or Bonus Protection Extra, these are optional extras that do not have to be purchased as part of the policy, but would you like me to explain them to you and give you the –*

Second Complainant: *No, I would like you, you can do that maybe next week, I would like you to get me a quote ASAP ...*

Agent: *Based on the information you have just provided, for comprehensive cover including a 50% no claims bonus and the 5% government levy, the premium is coming in there at 910.57.*

I am thus satisfied that the Agent offered to advise the Second Complainant as to the type of optional no claims bonus discount protection cover that was available to the First Complainant to add to her policy, but it is clear that the Second Complainant did not at that time want this information.

Furthermore, I am satisfied from the documentary evidence before me that the quotation (xxxx388-01) that the Provider posted to the First Complainant on 14 March 2017 in the amount of €910.67 and the quotation (xxxx388-03) that it posted to her on 29 March 2017 in the amount of €900 did not include any no claims bonus discount protection cover.

In this regard, I am satisfied that the optional no claims bonus discount protection cover that was added to the First Complainant's policy was added when the Second Complainant called to the Provider's branch on 29 March 2017 and incepted the First Complainant's policy, paying the higher than previously quoted premium amount of €1,000. It is clear from the First Complainant's policy schedule dated 29 March 2017 and printed on that day at the Provider's branch that the Second Complainant opted to add 'No claims discount protector extra' to the First Complainant's policy, as follows:

***"No claim discount (NCD)***

NCD allowed            50% ...

***Summary of cover ...***

*The cover options which form part of your policy are*

*No claims discount protector extra ...*

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***Endorsements which form part of your policy***

*Endorsement details are outlined in your policy document ...*

85 *No claim discount protector extra*".

In this regard, I note that the 'Endorsements' section of the applicable Car Insurance Policy Document provides, *inter alia*, at pg. 21, as follows:

***"85. No claim discount protector extra***

*Where cover is provided under your policy for fire, theft or windscreen damage, any claim made under these covers will not affect your no claim discount.*

*All other claims including liability to third parties and damage to the insured car will have an impact on your no claim discount.*

*With No claim discount protector extra the level of no claim discount granted under your policy will not be reduced as a result of a single claim within a two year period of insurance (24 months) under this policy.*

*If you have a second claim in this period your no claim discount will be reduced as follows:*

- *50% back to 40%*
- *45% back to 40%*
- *40% back to 40%*

*If you have a third claim in this period you will lose your entire no claim discount".*

I am satisfied that the First Complainant's policy schedule clearly provided that she had the optional extra 'No claim discount protector extra' added to her policy, whilst the Second Complainant's policy schedule clearly provided that he had the optional extra 'No claim discount protection cover' added to his policy. In this regard, I am also satisfied that the applicable policy booklet clearly sets out the difference between the two.

In those circumstances, I am satisfied that the evidence before me does not disclose any wrongdoing on the part of the Provider and accordingly, it is my Preliminary Decision that this complaint cannot be upheld.

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**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**

7 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.**