An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0366
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	No claim bonus issues Delayed or inadequate communication Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint arises from the information given to the Complainant by the Provider insurance broker (the Provider) in **July 2013**, in respect of commercial and private motor insurance.

The Complainant's Case

The Complainant states that in **July 2013**, he had a 5 years No Claims Bonus (NCB) on his own private vehicle. The Complainant submits that at this time, his business looked promising and his company purchased a commercial van. The Complainant states that he traded in his private vehicle for the commercial van and that he switched from having a private motor insurance policy to a commercial motor insurance policy in July 2013. The Complainant continued to access commercial insurance from July 2013 to July 2016 with three different insurance companies (changing insurance companies at each renewal). The initial commercial policy and each renewal policy was administered through the Provider. The Complainant was the only named driver on these commercial policies. The Complainant submits that he did not have a separate private vehicle during this time. The Complainant also submits that his 5 years NCB (in respect of his private motor vehicle) was used to calculate the premium cost in respect of each commercial insurance policy.

The Complainant submits that between February and May 2016, his business "*took a nose dive"* and therefore the Complainant traded in the commercial van for a private vehicle. He submits that he was then quoted higher premiums for private insurance in light of a reduced NCB.

The Complainant states that upon returning to private motor insurance, the Provider was "*unable to find a single insurer prepared to allow my pre 2013 status to be considered".* He states that "*all prospective insurers contacted by both [the Provider] and by myself stuck to the line that I had not been privately insured for more than two years. All insurers contacted were happy to take me on as a client BUT the premium would be calculated without status".* He submits that his 5 year NCB (earned pre 2013) was not accepted by any insurance providers.

The Complainant submits that when he switched to commercial insurance in July 2013 (and at the renewal stages) the Provider did not inform him of the consequences of not having a motor insurance policy in his own name for more than 2 years, and about the *"possible mitigation against suffering a loss of the NCB*".

By email to this office dated 10 May 2018, the Complainant states that "*nowhere in their promotional literature is the issue of the two year time lapse mentioned. Therefore there was, in my view a failure on the part of [the Provider] to notify me prior to the renewal on the 24th month that such a costly risk was imminent".*

In a letter to the Provider dated 19 July 2016, the Complainant sought for the Provider to have his full 5 years NCB reinstated and to provide him with a rebate of €311.00 (which he submits represents the difference in insurance premium with the NCB recognised and with the NCB not recognised). In his complaint to this office, the Complainant has sought for his full NCB to be reinstated and for the Provider to fully compensate him for the difference of the higher costs.

The Provider's Case

The Provider submits that it is not in a position to obtain the reinstatement of the Complainant's 5 years NCB, as this is not within its remit as an insurance broker. It states that this is solely within the remit of the insurance company.

The Provider notes that in July 2013, the Complainant held a private motor insurance policy in his name and that he was insured directly (without the Provider's involvement). It states that in July 2013, the Complainant contacted the Provider seeking a motor insurance quotation in respect of a commercial vehicle and that the vehicle was to be insured in the name of the company. The Provider states that it duly provided a quotation to the Complainant and that a commercial insurance policy was arranged in the company's name. It states that the commercial policy was arranged on the basis of an introductory 50% NCB discount which recognised the Complainant's driving experience under his private car policy. The Provider outlines that the Complainant's 5 years NCB from his private motor policy was not transferred across to the commercial vehicle policy in July 2013.

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The Provider states that when the Complainant sought private motor insurance in July 2016, that it "*obtained private car insurance for him on the best possible terms that it could, in accordance with underwriting criteria set down by Insurance Underwriters operating in the Irish market*".
The Provider submits that the private car insurance obtained was the best combination of NCB and premium that it could obtain. It further states that some insurers were willing to offer a 50% NCB but at premiums that were not competitive. The Provider notes that the granting of any form of NCB (introductory or otherwise) is entirely at the discretion of an Insurer and is outside the remit of an insurance intermediary, such as the Provider, as a broker.

The Provider submits that when the commercial policy was incepted on **15 July 2013**, it was not reasonably foreseeable that the Complainant would change back to private insurance within a number of years. It further submits that

> "*insurer underwriting criteria are shifting constantly and it simply isn't possible to anticipate every possible permutation and how it may affect a specific individual client in the future*".

The Provider states that in 2013, there was no suggestion made or indication provided at that time that any subsequent commercial vehicle policy would be on a temporary basis only.

The Provider submits that in relation to insurers, the actuarial calculations and underwriting decisions are an internal matter, which are not discussed with the Provider. It states that

> "*the situation regarding No Claims Bonus rules and regulations, and the inconsistencies in the industry are a matter for the Central Bank of Ireland and the Government*".

The Provider notes that it has been aware of the "two year time lapse" rule for some time. It submits however, that the Complainant gave no indication of a likely change in the circumstances of the company and that, as a broker, it should not have been expected to inform the Complainant about this rule. The Provider states in that respect that:

> "*unless specifically raised or indicated by a Client at a particular point in time it is impossible for any Provider…to predict a future change in the circumstances of any individual(s) and how this might impact his/her insurance requirements (including cost and availability of cover) at a later date*".

It further states that it

> "*could not reasonably have been expected to predict in July 2013 (or at each subsequent renewal date) that the Complainant's business would….subsequently cease trading in 2016 thus resulting in the cancellation of the commercial vehicle policy.*"

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The Provider does not accept that there was a failure on its part to notify the Complainant

"*prior to the renewal on the 24th month that such a costly risk was imminent*".

The Complaint for Adjudication

The Complaint is that the Provider failed to inform the Complainant at the inception of a commercial motor insurance policy (on which the Complainant was a named driver) in July 2013 (and at each renewal stage) that as a result of this change in basis of insurance that any NCB earned during the period of commercial insurance would not be transferable to the Complainant personally, in the event of him requiring personal insurance in the future.

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 17 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.

At the outset there are a number of points that I must address.

Firstly, the jurisdiction of this office to consider complaints is governed by the provisions of the **Financial Services and Pensions Ombudsman Act 2017 (the "2017 Act")**. The jurisdiction

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of this office is limited to the investigation of complaints as set out in section 44 of the 2017 Act. This investigation will only consider the actions of the Provider in the context of the complaint. It is not appropriate for this office to conduct an investigation surrounding the practice of the insurance industry to not transfer NCB benefits between commercial and personal policies. Any such issue is a matter for the Central Bank of Ireland.
Secondly, this complaint has been raised against the Provider in its capacity as a broker and therefore the investigation and adjudication of this complaint deals only with the conduct of the Provider in its capacity as a broker.

The issue to be determined is whether or not the Provider was under any legal duty or obligation to inform the Complainant about potential future consequences of the loss of his personal NCB in 2013, when the commercial policy was taken out. The Complainant throughout his complaint has submitted that this duty or obligation arises by virtue of a number reasons, each of which are addressed below.

The Complainant submits that the Provider was aware that he was *"switching"* from private motor insurance to commercial insurance in 2013. He submits that he was not advised when he *"switched"* to the commercial insurance in 2013, that if he applied for personal insurance in the future, that he would be required to have an insurance policy in his name for 2 years prior to this. He submits that the first time he became aware of the loss of his NCB was when he applied for personal motor insurance in 2016 and that he had not been advised of the NCB issue by the Provider between 2013 and 2015 (i.e. at inception of the commercial policy and at each renewal stage). The Complainant outlines that when *"switching"* from a personal to commercial policy, that the Provider sought the status of his NCB from his personal policy and therefore, it was clear that the commercial policy was not independent of previous no claims driving experience. The Complainant states that it was not the case that the Provider was dealing with continual commercial insurance, but that it was a *"switch*" from personal to commercial insurance. It is on this basis that the Complainant argues that the Provider should have informed him (in the circumstances set out in the complaint) and states that "*[the Provider] did not – from the outset – provide any warning that I would be in danger of incurring higher costs and future loss of the NCB"*.

The Provider submits that it was contacted by the Complainant in July 2013 seeking a motor insurance quotation in respect of a commercial vehicle. The Provider states that the vehicle was to be insured in the name of the company and not in the Complainant's name. The Provider submits that there was no suggestion made or indication provided that this was on a temporary basis. The Provider submits that the Complainant was not a client of the Provider's until July 2013, and that prior to this the Complainant had arranged his private motor insurance directly with insurers. The Provider also submits that the Complainant did not *"switch"* to commercial insurance in July 2013, but instead he sought a commercial insurance quotation for a new policy in a company name.

It is clear that the Complainant in his capacity as a Co-Director of a company, contacted the Provider in July 2013 seeking a commercial motor insurance policy. I note that neither the Complainant in his private capacity, nor the Company, were clients of the Provider prior to this. I accept that the Provider accordingly arranged for a commercial insurance policy to be

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set up, in the name of the Company with the Complainant as a named driver on the policy which was in line with the instructions given to the Provider at that time.

It appears to me that at this time, it was the Company which became the client of the Provider, as it was the Company which was taking out the policy and it was the Company which was subsequently issued with the Provider's terms of business. I am therefore of the view that there was no duty on the part of the Provider to advise the Complainant in his personal capacity, on scenarios which might potentially impact the Complainant's personal NCB discount, at the time when the commercial policy was taken out by the Company.

The Complainant states that on *"switching"* from a private to a commercial vehicle, that the Provider sought the status of his NCB as a personal policy holder and that this was used to price the premium of the commercial policy. He argues that this gives a "*clear signal and impression that the commercial policy was not independent of previous no claims driving experience"*.

The Provider states that when the Complainant incepted a policy with the Provider in 2013, there would have been no issue *in "combining a mixture of personal driving history and company driving history"* to retain maximum no discount. It states that most insurance companies have now changed their attitude in this respect. In addition, the Provider states that the commercial policy in 2013 was underwritten by the relevant insurance company and arranged on the basis of an introductory 50% NCB discount, which recognised the Complainant's driving experience under his own private car policy, which had been held with the same insurer. It states however, that the NCB discount was "not transferred" from his private insurance to his commercial policy.

The Provider has submitted the proposal form and policy schedule, which notes the Proposer/Policy Holder as the Company. The Complainant is the named main driver on the vehicle and a 50% NCD discount was applied to the insurance cover. At the time the policy was incepted, the Complainant submitted a letter from the private insurance company to him confirming that the Complainant was entitled to 50% NCB discount on his private policy held at that time, which represented "*5+ number of years claims free*".

The Complainant has made a handwritten note on the letter and dated it 27 July 2013, which states as follows:

> "*To whom it may concern*
>
> *The above no claims discount on vehicle registration…..is to be transferred to [commercial vehicle]."*

It is unclear whether the Provider explained to the Complainant, in his capacity of Director of the Company in 2013 (upon receipt of this letter) that the NCB discount that was applied to the company policy was introductory, and that his personal NCB was not in effect *"transferred"* from his personal policy. The Complainant nevertheless should have been aware that when the commercial policy was being incepted via the Provider, that the new

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policy was being incepted in the Company's name, which is a separate legal entity from him personally.

The Complainant, in his capacity as Director was required to complete and sign new documentation under the contract. It could never be the case that a policy could be "switched" between two separate legal entities, in the manner contended by the Complainant.

Furthermore, in my view, it was not unreasonable for the insurance company to have asked questions with respect to the proposed named driver's history, when the commercial policy was being incepted or for it to offer a discount on this basis, for the commercial policy. It cannot be said that this amounted to a representation by the Provider, as broker, that there was some ongoing connection between the previous policy held by the Complainant in his personal capacity and the new commercial policy incepted, as has been suggested by the Complainant.

The Complainant submits that the Provider has a duty of care to clients to reduce the client's risk of unnecessary future costs. In this regard the Complainant submits that the Provider ought to have been aware of the industry practice in respect of the "*two year time lapse*" rule and it ought to have alerted the Complainant to these consequences in July 2013 and at the renewal stages. In this regard, the Complainant submits that the Provider must have been aware of the high failure rate of small enterprises.

The Provider submits that the Central Bank of Ireland and the Department of Finance do not require insurance companies to adopt specific rules regarding NCB recognition/transfer (apart from the basic requirement to issue a NCB letter at renewal time) nor to specifically advise customers on the 'expiry' of their NCB entitlement after 2 years.

I note that whilst the "two year time lapse" rule was common practice in the industry in 2013, it appears that not all insurance companies applied this practice. This is accepted by the Complainant and the Provider.

Quite apart from the fact that the Complainant, in his personal capacity, was not the client of the Provider, it is also difficult to see how the Provider could have advised the Complainant definitively about the effects of any potential future industry practice (in respect of NCB discounts) in 2013, when differing approaches were adopted at that time by insurance companies and, in addition, underwriting decisions are at all times subject to change.

It is clear that underwriting decisions and criteria in respect of the application of NCB discount are not within the remit of the Provider and such decisions are solely within the remit of the insurance companies, when considering a proposal for cover. Therefore, I do not consider that it is appropriate to attribute an obligation to the Provider in 2013 to have advised the Complainant about information that was potentially relevant to his personal situation, that was not under its remit or control. Further, it was not possible for the Provider to anticipate whether or not the Complainant would at some stage wish to incept personal motor insurance again and to provide advice accordingly.

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It appears to me that the Provider carried out its role of putting in place commercial insurance for the Complainant's Company and it was not incumbent upon it to go further than that. I appreciate that it was upsetting for the Complainant to lose his personal NCB record after many years. However, I do not consider that there was any wrongdoing on the part of the Provider. I accept that the granting of any NCB discount is within the remit of the insurance company and not the Provider as a broker. I note from the telephone calls received, that the Provider made attempts to persuade the insurance company to accept the Complainant's 5 years NCB when the Complainant was seeking to again incept a personal policy. The Complainant also states in his complaint to his office that in respect of the two year rule, that the Provider's *"staff did search diligently and press several insurers to positively consider the matter"*.

In those circumstances, I do not accept that the evidence discloses wrongdoing on the part of the Provider, in respect of the conduct complained of and therefore I do not believe that it is appropriate to 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

9 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.