An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0035
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Failure to provide no claims bonus/ inaccurate no claims bonus Failure to provide correct information Lapse/cancellation of policy
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

On **4 October 2017**, the Complainant applied online for a motor insurance policy from the Provider. In the course of filling out the insurance application form, the Complainant represented that he was entitled to a no claims discount. The Provider issued a quotation of €512.12. The Complainant made an initial payment of €128.03.

On **11 October 2017**, the Provider received the Complainant's no claims discount certificate.

On **13 October 2017**, the Provider wrote to the Complainant stating that it was cancelling the Complainant's motor insurance policy, on account of the Complainant failing to properly disclose material facts in his motor insurance application form. The Provider further indicated that it would return the initial payment within 5 business days subject to deduction of a €50.00 administration fee.

In particular, and as set out in the final response letter dated 16 November 2017, the Provider asserted that the Complainant:

1. Failed to disclose a gap in his driving experience;
2. Failed to disclose that his no claims discount certificate had expired more than four weeks prior to the inception of his policy being issued;
3. Could not receive a no claims discount on account of his prior experience being in respect of a motor trade policy;
4. Failed to disclose that the Complainant was previously a member of the motor trade.

On account of the Provider cancelling the motor insurance policy, the Complainant made this complaint in November 2017.

The Complainant's Case

The Complainant's case is set out in his complaint form. In that regard, the Complainant raises various discrete issues, which are set out in 20 grounds. In essence, the Complainant's position is as follows:

1. That the Provider was wrong to cancel his motor insurance policy;
2. That the Provider never informed the Complainant of its requirements in respect of what amounted to a valid no claims discount;
3. That the Provider knew of the particulars of the Complainant's no claims discount, on account of a previous application for insurance that was made in August 2017.
4. That the Provider's underwriting policies are unfair, and that the Provider's decision to cancel the insurance policy, instead of taking a different course of action is also unfair.

The Complainant asserts that he was never informed of the Provider's requirements. The Complainant asserts that neither the documentation furnished by the Provider, nor the online quote generator system, nor a representative of the Provider has ever informed the Complainant that the gap in his insurance or the nature of his no claims discount certificate could ever invalidate a policy issued by the Provider. In particular, the Complainant asserts that the literature published by the Provider does not contain any specific reference to the requirements for a valid no claims discount.

The Complainant asserts that the Provider's insurance underwriting processes are unfair in two regards. Firstly, by comparison with a different insurance provider, the Complainant asserts that the other insurance provider has a longer acceptable gap of non-coverage. Secondly, the Complainant asserts that the Provider ought to have simply increased the Complainant's premium instead of cancelling the policy.

The Complainant asserts that the Provider must have known of the details of his no claims discount certificate, as he had previously applied for a separate insurance policy in August 2017. The Complainant sent in the same no claims discount certificate, which would have indicated that Complainant's period of non-coverage and also the nature of his previous coverage (i.e that it was in respect of a motor trade policy). The Complainant, therefore, asserts that the Provider ought to have known at all times the details of his proposal for cover, and that it is unfair for the Provider to now rely on this, in cancelling the policy that was issued.

The Complainant says that that the policy should be voluntarily cancelled by him, from the date of inception without an administrative charge. He also seeks compensation from the Provider for its failure to properly inform him of its requirements, for abruptly cancelling the Complainant's policy and for not using a less severe option.

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The Provider's Case

The Provider asserts that the Complainant's complaint should be refused. In particular, the Provider asserts that the Complainant's insurance policy was cancelled in accordance with its terms and conditions, and that the Complainant was made aware of its requirements both in its online application form, in its published literature and by way of two recorded phonecalls with the Complainant.

In respect of the insurance application form, the Provider has furnished a screenshot of the windows encountered when using the Provider's online insurance application form. The Provider says that the consumer was asked to complete a number of fields, one of which concerned the no claims discount earned in the consumer's own name.

On **20 July 2018**, the Provider advised this office that a proposer for insurance at the relevant time was met "*under the discounts section*", with a question from the Provider as follows:-

> '*How many years no claim discount have you earned in your own name in Ireland or the UK that can be used on this car. You will need to send us proof of your No Claims Discount. Please read the Help Text for more important information.'*

The Provider's letter to this office dated **12 March 2019** which enclosed a copy of "*Screenshot of the help text displayed under the discounts section*" shows certain details, but does not in fact contain a question in those precise terms. Likewise, I note that the screenshot in question does not identify a "Discounts" section, but rather is headed "About Your Car".

In any event, the Provider notes that there is a '?' symbol beside this field, which when clicked reveals the following text:

> '*Your proof of No Claim Discount must:*
>
> - *Match the number of years declared as part of this quotation;*
> - *Be based on consecutive driving with no gaps in coverage;*
> - *Be from a policy active in the last four weeks.*
> - *Only be used on this vehicle.'*
>
> *Your insurance certificate and schedule will be issued to you when we receive and validate your no claim discount certificate. If we do not receive your no claim discount certificate, or if the information contained within the certificate does not match the criteria above, we may cancel or invalidate your policy. If we cancel your policy a €50 administration fee will apply.'*

I not that in the screenshots sent by the Provider in March 2019, the wording is slightly different.

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The Provider asserts that its published literature requires an applicant to disclose all material facts that are likely to affect either the decision to grant insurance or the amount of the premium. The Provider notes that this literature indicates that a policy may be cancelled in the event of non-disclosure.

The Provider asserts that the no claim discount certificate supplied by the Complainant does not comply with the criteria above, in that it was in respect of a policy that was not active within four weeks prior to the application being made, and that the Complainant's driving experience under a motor trade policy is not applicable.

The Provider's Final Response letter dated 16 November 2017 advised the Complainant, *inter alia*, that;

> *"I note from your email that you have concerns over whether the four week expiry of a no claims bonus was highlighted to you. Our website,* [Provider]*.ie allows customers to "self-service" when completing a quotation and purchasing a policy on line. In order to proceed through the quotation you are asked to tick a box to confirm you agree with our assumptions, terms of business and data protection notice. You cannot proceed if this box is not ticked".*

The Provider further asserts that it was not aware of the details of the no claims discount certificate. In respect of the Complainant's initial application for insurance, the Provider asserts that it received the certificate on 28 August 2017, but that the Complainant cancelled his application on 29 August 2017. The Provider states, therefore, that it did not inspect the certificate in the course of that application, and that it simply returned it to the Complainant.

In respect of phone calls between the Provider's representative and the Complainant, the Provider asserts that its representatives explained that it did not accept no claims discounts in respect of the motor trade or where there was a gap in driving experience.

The Complaint for Adjudication

The complaint is that the Provider wrongfully cancelled the Complainant's policy of insurance on the basis of non-compliance by the Complainant with the Provider's requirements in respect of a No Claims Bonus Certificate.

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.

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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 15 January 2020, 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.

There is no doubt but that the Complainant's no claims discount certificate does not comply with the Provider's requirements. The Provider's conditions require that the no claims discount must relate to an insurance policy that was active within four weeks of the application for insurance. In this case, the Complainant's insurance cover expired on 22 August 2017 and his application was made on 4 October 2017.

I take the view that the Provider did not necessarily know of the details of the Complainant's no claims discount certificate from the Complainant's previous application for insurance made in August 2017. The Complainant initially delivered the certificate on 28 August 2017, and the Provider acknowledged receipt of the document on that same date by stamping it. The Complainant thereafter immediately cancelled that insurance application on the following day, 29 August 2017. The Provider's contention that it did not, therefore, examine that document is reasonable in all of the circumstances. It would make no sense for the Provider to proceed to examine documents submitted with an insurance application, in the event of an applicant immediately cancelling the application.

The Provider's conditions that determine the validity of a no claims discount are ascertainable by using the Provider's online application form. However, as stated above, the Provider's online application form merely invites applicants to click a '?' symbol to reveal *"Help Text for more important information"* which provides extra information in relation to a *"no claims discount or bonus in your own name earned in Ireland."* The Provider relies upon this "pop-up" box to have notified the Complainant of its requirements in respect of a No Claims Bonus Certificate. The labelling of the information contained in the "pop-up" box as *"Help Text"* could easily, in my opinion, lead a Proposer to believe that the information contained therein is not crucial information but instead contains optional information to assist if they are having difficulties with the question asked. Requirements which, if not complied with by a Proposer, could result in a policy of insurance being cancelled by a Provider is however undoubtedly crucial information which should, in my opinion, have been clearly communicated to the Complainant.

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In completing the online application form the Complainant was able to complete the application form without necessarily accessing the text in this pop-up box and without confirming his knowledge of the Provider's requirements in respect of any No Claims Bonus Certificate. The Provider cannot be definitive in relation to whether the Complainant did or did not access the information contained in the pop-up box. It has confirmed that its data analytics simply cannot confirm this.

The Complainant asserts that he was not informed of the Provider's "4 week" requirement, either via the online application form, or via the documentation furnished by the Provider or orally via a representative of the Provider. I take the view in those circumstances that there is insufficient evidence available that the Provider took adequate steps to ensure that the Complainant was made aware of its requirements in respect of the No Claims Bonus Certificate. The *"Help Text"* pop-up box did not need to be accessed by the Complainant, nor did he have to confirm his knowledge of the contents of the *"Help Text"* box, in completing his online application for insurance.

Further, as set out above, the Provider advised the Complainant in its final response letter that;

> *"I note from your email that you have concerns over whether the four week expiry of a no claims bonus was highlighted to you. Our website,* [Provider]*.ie allows customers to "self-service" when completing a quotation and purchasing a policy on line. In order to proceed through the quotation you are asked to tick a box to confirm you agree with our assumptions, terms of business and data protection notice. You cannot proceed if this box is not ticked".*

This response by the Provider to the Complainant's query regarding the "*4 week expiry*" limit would appear to indicate that the Provider's "*assumptions*" set out the requirements in that regard in respect of the No Claims Bonus Certificate. It is unclear why the Provider referred the Complainant to these "*assumptions*" as I note that the Provider's quotation assumptions make no reference to such requirements. When I put this to the Provider, it advised, inter alia, that "*the Provider's response did not direct the Complainant to the assumptions document for clarification on this query*." Bearing in mind the details quoted from the letter in question, I don't accept this.

Whilst of limited relevance for this particular complaint, it should also be noted that the requirement of a Provider to have a Proposer confirm agreement to the Provider's "*assumptions*" for cover, without being required to accept or decline any such assumptions individually, or indeed without being required to access the text containing the assumptions in order to be made aware of exactly what the Provider's assumptions entail, is not in my opinion, an appropriate medium to ensure a Proposer understands the requirements of a policy of insurance.

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It is also disappointing that the Provider's statement in its letter dated 20 July 2018 that "*it advises here that any gap in driving experience must be disclosed*", has more recently been confirmed to have been "*an incorrect direct statement*". The Provider apologises for any inconvenience or confusion caused and has sought to explain what it intended to communicate by this statement. It is notable in that regard that the Provider has confirmed that the words it used to communicate did not in fact mean what it had intended to communicate. Communications between a financial service provider and a customer or potential customer must be clear and unambiguous, so as to avoid confusion. This indeed is one of the fundamental principles of the Central Bank of Ireland's Consumer Protection Code.

Insofar as this particular complaint is concerned however, I am satisfied on the basis of the evidence before me that it was not appropriate for the Provider to void the Complainant's policy in the circumstances which have been outlined. The evidence shows that it was not a mandatory step for the Complainant during the course of his "*self-service*" purchase of the policy, to access the information which confirmed that any no claims discount sought to be utilised, was required to be from a policy which was active "*in the last 4 weeks*".

The voiding of an insurance policy held by a customer, has very significant ramifications for that customer which are ongoing into the future. In my opinion, policies should be voided only where there has been a clear misrepresentation by the customer of the circumstances outlining the risk, and I am not satisfied that such clear misrepresentation on the part of the Complainant, arose in these circumstances.

I believe that there was a misunderstanding in relation to the validity of the Complainant's no claims discount and where such a misunderstanding arose, and in addition, where the Complainant was not required within his "*self –service*" purchase of the policy, to access the details regarding the Provider's requirements for a No Claims Bonus, I do not believe that the Provider's decision to void the Complainant's policy, was a proportionate response. In circumstances where the Provider's own data analytics cannot confirm that the information in question was accessed by the Complainant, I do not believe that it would be appropriate to permit the Provider to record the termination of cover as a voiding of that policy by the Provider.

Accordingly, I am satisfied that the complaint should be upheld and to mark that decision I consider it appropriate to direct the Provider to amend its records in order to reflect the ending of the cover as a voluntary cancellation on the Complainant's part. I also consider it appropriate to direct the Provider to refund the Complainant the sum of €50 charged as an administration fee at the time when the policy was ended, together with an additional sum of €250, making a total of €300 to be paid.

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As no evidence was made available by the Complainant to show that the wrongful voiding of the policy gave rise to any further financial consequence for him in the period after October 2017, I have taken the view that it is not necessary or appropriate for this office to direct any additional compensation.

It is important that both parties understand that once the Provider has implemented the direction of this office, it will not be necessary for the Complainant in any future insurance proposal, to declare that this policy of insurance was voided or cancelled by the Provider as the records will show that the policy was terminated voluntarily by the Complainant.

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of by amending its records in order to reflect the ending of the cover as a voluntary cancellation on the Complainant's part. I also direct the Provider to make a compensatory payment to the Complainant in the total sum of €300, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

- The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

13 February 2020

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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.**