An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0163
Sector:	Insurance
Product / Service:	Car
Conduct(s) complained of:	Lapse/cancellation of policy
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a motor insurance policy with the Provider on **19 April 2018**. The Provider later cancelled this policy *ab initio*, notifying the Complainant by way of letter dated **25 July 2018**, as follows:

> *"When you were applying for insurance you declared that you don't own, insure or have full time use of any other vehicle. It has come to our attention that this is not the case.*
>
> *The Proof of Bonus submitted for this policy is already in use on another policy and therefore isn't valid for use on this policy.*
>
> *In view of the above I must inform you that we have no option but to cancel your policy with effect from inception. Therefore as far as we are concerned the policy is void and no cover was ever in force"*.

The complaint is that the Provider wrongfully cancelled the Complainant's motor insurance policy from inception.

The Complainant's Case

The Complainant submits that the Provider's correspondence of **25 July 2018** gives two reasons as to why it cancelled her motor insurance policy; firstly, that the Complainant did not declare to the Provider when purchasing her motor insurance policy that at that time she owned, had insured or had fulltime use of another vehicle and, secondly, that she had submitted a proof of no claims bonus that was already in use on a different active motor insurance policy and thus was not valid for use on another policy at the same time.

In relation to the first reason, that is, that the Complainant did not declare to the Provider when purchasing her motor insurance that at that time she owned, had insured or had fulltime use of another vehicle, the Complainant's husband states in his email to this Office dated **2 August 2018** that this *"is erroneous as my wife never made such declaration. She just failed to pay attention to the Statement of Fact which states such in size 8 font"*. He submits in his email dated **26 July 2018** that as *"such a car was insured with* [the Provider] *at the time of inception of this policy"* that the Provider ought to have known of this fact. In this regard, when she incepted the motor insurance policy with the Provider on **19 April 2018**, at that time the Complainant already held a motor insurance policy with the Provider's Northern Ireland division in respect of a different vehicle that she owned in Northern Ireland.

In relation to the second reason, that the proof of no claims bonus submitted for the motor insurance in question was already in use on a different active motor insurance policy and thus was not valid for use on another policy at the same time, the Complainant submits as follows:

> *"*[The Provider] *has unilaterally cancel*[led] *the policy with effect from inception on the basis that a no claims bonus could not be used on 2 different policies in Ireland, ignoring the fact that one of the two contracts* [of insurance] *was not in the Republic of Ireland jurisdiction & that such practice contravenes international actuary principles"*.

In this regard, whilst the Complainant had already used the proof of no claims bonus for the motor insurance policy she held with the Provider's Northern Ireland division in respect of a different vehicle she owned in Northern Ireland, the Complainant submits that a no claims bonus should be associated to the individual who is insured, rather than to a particular vehicle, as is the practice in other jurisdictions.

The conduct complained of is that the Provider wrongfully cancelled the Complainant's motor insurance policy from inception.

The Complainant wants the Provider to reinstate her cancelled motor insurance policy with effect from **19 April 2018** and to compensate her for its handling of this matter.

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The Provider's Case

The Provider submits that the Complainant incepted her motor insurance policy with the Provider on **19 April 2018** through a Broker who is authorised to sell insurance policies on its behalf. It submits that the Complainant had previously held a policy with the Provider arranged by the same broker, and the broker advised the Provider that in this instance the Complainant "*insisted*" that the broker had all the information and that nothing had changed from the previous policy.

The Provider details that, by way of its correspondence dated **25 July 2018**, it cancelled the Complainant's policy with effect from the date of inception on **19 April 2018**, because it transpired that the no claims bonus supplied for the policy was already being used on another active insurance policy set up in **January 2018**.

The Provider submits that it is not normal practice to validate every proof of no claims bonus that is received when setting up a policy. It states that in this case, as the Complainant's policy had been purchased through a broker, the Provider would not have been aware at inception that the proof of no claims bonus was in use at the time on another policy with the Provider, as the proof of no claims bonus is collected by the broker and held on its file and is not sent to the Provider. The Provider states that if the Broker was not advised by the Complainant that she held another policy with the Provider, then the Broker would not have known this as it does not have access to the Provider's internal systems.

The Provider acknowledges that no terms and conditions were outlined to the Complainant in relation to the use of the no claims bonus elsewhere, however, it refers to the **Private Motor Statement of Fact** sent to the Complainant in **April 2018** which provides as follows:

> *"**Drivers/Claims History***
>
> *Other than as specified below, neither I, my spouse nor any driver who will drive to the best of my knowledge or belief: …*
>
> *6. own, insure or have full time use of any other vehicle"*.

The Provider also relies on the **Material Facts Declaration** in the **Statement of Fact** document. It states that in this section of the Statement of Fact document, the customer agreed that the information supplied was true and complete and no material fact had been misrepresented.

The Provider states that no details of an additional vehicle were noted and neither the Provider nor the Broker were advised by the Complainant that any information contained in this **Statement of Fact** was incorrect.

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The Provider states that by way of further explanation, it wrote to the Complainant on **2 August 2018** to advise, as follows:

> *"The* [Complainant's] *policy was voided because it became apparent that the no claims bonus submitted, was already in use under another policy set up in* [the Complainant's] *name.*
>
> *In Ireland, it is not possible to use one 'no claims bonus' on multiple policies. I appreciate the fact that it works differently in France but it is a standard practice in Ireland that you earn one 'no claims bonus' per vehicle and you cannot use this bonus on a second or subsequent vehicle. We are satisfied that we have not contravened any Irish or EU laws in doing so.*
>
> *Our decision to void the policy remains as we would not have been in a position to provide a quotation on 8 years no claims bonus, had it been disclosed the bonus was already in use on another motor policy.*
>
> *However, we are in a position to offer* [the Complainant] *a new quotation based on zero no claims bonus"*.

The Complainant proceeded to incept a new policy with the Provider as offered.

In its later correspondence to this Office dated **27 March 2019**, the Provider offered *"to reinstate the previously voided policy and we will cancel the newer policy we set up for* [the Complainant]. *She will not have to pay any premium and by means of compensation, we will refund any premium she has paid under the new policy. Therefore there will be no gap in cover for* [the Complainant]*"*. Whilst it is willing to reinstate the policy for the Complainant, the Provider's position remains that a proof of no claims bonus cannot be used for more than one policy.

In this regard, the Provider has advised that if the Complainant wishes to have her cancelled policy reinstated with effect from **19 April 2018**, it can arrange to have her existing policy cancelled as it covers the same vehicle, and that any premium paid to date on that existing policy will be refunded to her. In addition to refunding the Complainant all premium paid to date on that existing policy, the Provider will not seek to collect premium arrears that would be due from **19 April 2018** to date for the reinstated policy. The Provider confirms that this offer remains open to the Complainant to accept.

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.

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The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 3 February 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Provider to this Office dated 21 February 2020.

2. Letter from the Complainant to this Office dated 25 February 2020.

3. Letter from the Provider to this Office dated 11 March 2020.

4. E-mails from the Complainant to this Office dated 15 March 2020 and 24 March 2020.

Copies of these submissions were exchanged between the parties. Having considered the above additional submissions, and all of the submissions and evidence furnished to this Office, I set out below my final determination.

At the outset, I am most disappointed to note that in their post Preliminary Decision submissions, both the Provider and the Complainant have introduced allegations of fraudulent activity on the part of the other party.

I would point out that I have no jurisdiction to investigate any allegation of fraudulent activity. Fraud is a criminal offence and this Office is not in a position to investigate or to give the appropriate sanctions in relation to such instances.

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This office was not established for that purpose of investigating fraud and is not equipped to deal with situations involving fraudulent accusations. Consequently I do not propose to consider these allegations in making my Decision.

The complaint at hand is that the Provider wrongfully cancelled the Complainant's motor insurance policy from inception.

The Complainant incepted a motor insurance policy with the Provider on **19 April 2018.** The Provider later cancelled this policy *ab initio*, notifying the Complainant by way of letter dated **25 July 2018** as follows:

> *"When you were applying for insurance you declared that you don't own, insure or have full time use of any other vehicle. It has come to our attention that this is not the case.*
>
> *The Proof of Bonus submitted for this policy is already in use on another policy and therefore isn't valid for use on this policy.*
>
> *In view of the above I must inform you that we have no option but to cancel your policy with effect from inception. Therefore as far as we are concerned the policy is void and no cover was ever in force"*.

The Complainant's husband states in his email to this Office dated **2 August 2018** that this *"is erroneous as my wife never made such declaration. She just failed to pay attention to the Statement of Fact which states such in size 8 font"* and that in any event, as the policy that the Complainant held in respect of a different vehicle that she owned in Northern Ireland was with the Provider's Northern Ireland division, that the Provider ought to have known this fact.

I note that following the inception of her motor insurance policy, the Provider wrote to the Complainant on **30 April 2018** enclosing, among other things, the **Private Motor Statement of Fact**, which the cover letter advised was the contract between the Complainant and the insurers. I note that this Statement of Fact provided, among other things, as follows:

> *"The following document sets out confirmation of your material facts declaration and your data protection consent. You should read this document carefully and ensure the information recorded is accurate and understood by you. If this document contains any inaccurate or incomplete information you must notify your Intermediary immediately. You should note that you have a continuing duty to disclose all information that might influence our assessment of your risk, and failure to do so may entitle us to void this policy.*
>
> *…*

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Drivers/Claims History

Other than as specified below, neither I, my spouse nor any driver who will drive to the best of my knowledge or belief:

…

6. own, insure or have full time use of any other vehicle.

…

MATERIAL FACTS DECLARATION – CONTINUING OBLIGATION

You agree that the information supplied by you, or by a relevant party on your behalf is, to the best of your knowledge, true and complete and that no material fact has been misrepresented or withheld by you.

You acknowledge that failure to disclose all material information may result in the voidance or cancellation of your policy …

Material information is that which [the Provider] *would regard as likely to influence its assessment or acceptance of this insurance. You have a continuing obligation to immediately disclose to* [the Provider] *any information that may affect this insurance or increase the risk of loss or damage or injury to others. You agree that if you are in any doubt you will disclose it to us.*

Please note that this document, in conjunction with any other information supplied by you or on your behalf will form the basis of your contract with [the Provider]*.*

If any answer has been provided by a person other than you, you agree that such person shall be your agent and not an agent of [the Provider]*.*

Please read this document carefully and check that all the details in it are accurate. If any information is inaccurate or incomplete you must notify [the Provider] *or your insurance intermediary immediately"*.

Page 2 of the Insurance Policy document details as follows;

"We will only provide the insurance described in this Policy if

1. *The information detailed on Your Proposal Form or Your Statement of Fact is to the best of Your knowledge and belief correct and complete*

…

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Obligations and Rights

Basis of contract

We will only provide the insurance described in this policy if:

a) The information detailed on Your Proposal Form and Material Facts Declaration which You have signed or Your Statement of Facts is to the best of Your Knowledge and belief correct and complete in every respect and You or those entitled to be covered under this Policy have not withheld or misrepresented any material fact. Such facts are those which We would regard as likely to influence Our assessment and / or acceptance of this insurance.

If You are in any doubt as to whether a fact is material, it should be disclosed. This duty of disclosure also applies before renewal of the Policy."

In considering whether the Provider was entitled to treat the policy as void *ab initio* for non-disclosure of a material fact, I must first assess whether the contract of insurance is of the "over the counter" type referred to by McCarthy J in *Aro Road and Land Vehicles Limited v. Insurance Corporation of Ireland Limited* [1986] I.R. 403, whereby if no questions are asked of the proposer then, in the absence of fraud the insurer is *"not entitled to repudiate on grounds of non-disclosure".*

While I note that the **Statement of Fact** did not ask questions of the Complainant it did require her confirmation that the information contained therein was accurate and complete. In this regard, I find that the contract of insurance in this matter is not of the "over the counter" type and consequently I must assess whether the Complainant's failure to notify the Provider firstly that at that time she owned, had insured or had fulltime use of another vehicle and, secondly, that she had submitted a proof of no claims bonus that was already in use on a different active motor insurance policy, are considered to be material facts.

In this regard, I am mindful of the decision in *Chariot Inns Ltd v Assicurazioni Generali spa* [1981] IR 99 wherein the Supreme Court stated that the test for materiality is:

> *"…a matter or circumstances which would reasonably influence the judgment of a prudent insurer in deciding whether he would take the risk, and if so, in determining the premium which he would demand. The standard by which materiality is to be determined is objective and not subjective."*

I am further mindful of the well accepted principle that a contract of insurance is a *"contract of utmost good faith on both sides"* and I note the dicta of Mr Justice Barrett in *Earls v The Financial Services Ombudsman & Anor* [2015] IEHC 536 in relation to this duty wherein he outlined;

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> *"The duty of utmost good faith requires a genuine effort to achieve accuracy using all available sources; to require disclosure of all material facts which are known to an insured may well require an impossible level of performance."*

With regard to my assessment of whether the fact that was not disclosed was a material fact, the High Court in *Earls* (cited above) decided that this office should not proceed on the basis that if a material fact was not disclosed then, by that very fact, there has been a breach of the duty of disclosure. Rather in the Court's opinion, this may not always be the case, as the duty arising for an insured in this regard, is to exercise a *"genuine effort to achieve accuracy using all reasonably available sources"* and on the facts of the case in *Earls* it was noted the proposer's *"memory and experience"* in the characterisation of the event was relevant.

Consequently, it is evident that the test for materiality is an objective one and the proposer is required to disclose every matter which a reasonable person would consider to be material to the risk against which indemnity is being sought.

Furthermore, I note that this general duty may be limited in particular circumstances by reference to the form of questions asked in the proposal form.

I am further mindful of the dicta of Clarke J in *Coleman v New Ireland Assurance plc trading as Bank of Ireland Life [2009[IEHC 273* wherein in relation to the Supreme Court decision in *Keating v New Ireland Insurance Company[1990] 2 IR 383* he noted as follows;

> *"So far as a failure to disclose is concerned it seems clear, therefore, that a party can only be subject to having his or her policy of insurance voided by an insurance company if there is a failure to disclose a material fact of which the proposer was aware (or perhaps in certain circumstances might not have been aware by virtue of wilful ignorance)".*

It is important that I again point out that no questions were actually put to the Complainant in the **Motor Provider Statement of Fact.** Rather the Complainant was asked to confirm to the best of her knowledge and belief, whether the information contained in the **Statement of Fact** was accurate and complete. Consequently I must consider whether the form of the **Motor Provider Statement of Fact** is so limiting of the general duty.

I note that in the particular circumstances the Complainant was required to confirm among other things, the following information;

> *"Other than as specified below, neither I, my spouse nor any driver who will drive to the best of my knowledge or belief:*
> *…*
>
> *6. own, insure or have full time use of any other vehicle."*

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In this regard, it is recognised by Finlay CJ in *Kelleher v Irish Life Assurance Company [1993] 3 IR 393* that the test is as follows;

> *"whether a reasonable man reading the proposal form would conclude that information over and above it which is an issue was not required".*

With regard to answers to questions in a proposal form, Clarke J in *Coleman v New Ireland Assurance plc trading as Bank of Ireland Life* [2009] IEHC 273 noted that the risk of an insurance policy being voided, only arises in circumstances where;

> *"a party fails to answer such questions to the best of the party's ability and truthfully. This would be so even where an answer is inaccurate as a result of ignorance or, in the words of McCarthy J. [in Keating], the obtuseness which may be sometimes due to a mental block on matters affecting ones health…..*
>
> *It is clear, therefore that any material non-disclosure or any materially inaccurate answer to a question on the proposal form are to be judged by reference to the knowledge of the proposer, and whether answers given were to the best of the proposer's ability and truthful".*

I note that Mr Justice Hunt in *Janet Richardson v The Financial Services Ombudsman and Irish Life Assurance PLC* (unreported 2016) comments in relation to the *Coleman* decision outlined above;

> *"That case is not authority for the proposition that the subjective attitude of the proposer in disclosing information is always relevant when assessing the materiality of an undisclosed fact. The subjective state of mind of the proposer was relevant in that case because of the manner in which the proposal form was drafted, which limited the obligation on the proposer to answering the questions posed to the best of her ability".*

I further note that Mr Justice Hunt noted that in the circumstances of that case that a material fact was carefully and correctly defined in the proposal form, the obligation placed on the proposer was to answer questions *"fully, correctly and truly"* and the questions on the form *"were not ambiguous or open ended"* therefore the obligation of the proposer was not limited and the general test of objective materiality applied.

I must consider whether the Complainant read and confirmed the accuracy of the information contained within the **Statement of Fact** truthfully and to the best of her ability. I do not accept the Complainant's submission that the omission to declare whether she owned, insured or had full time use of another vehicle was a result of a failure *"to pay attention to the Statement of Fact which states such in size 8 font".* In my view the *"DRIVER/CLAIMS HISTORY"* section of the **Statement of Fact** document can be clearly read in full without difficulty.

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It is not in dispute that the Complainant had another vehicle insured in Northern Ireland, with the Provider's Northern Irish division, at the time she incepted the motor insurance policy at issue. I am mindful that the Complainant may have believed that the Provider would have been aware of this fact already from its own records. Notwithstanding this, I am of the view that it would have been reasonable for the Complainant to conclude on reading the **Statement of Fact**, that she ought to disclose that she held a second policy with the same Provider entity through its Northern Ireland branch.

I note however that in the particular circumstances there was no question or statement directed towards disclosure of the use of the no claims bonus on another policy in the **Statement of Fact**, however the proposal does contain an omnibus type statement in the **Material Facts Declaration** in relation to the disclosure of all matters that are material.

In this regard, I note the dicta of McCarthy J in *Aro Road and Land Vehicles Limited v The Insurance Corporation of Ireland* [1986] IR 403 wherein it was held;

> *"In my view, if the judgment of an insurer is such as to require disclosure of what he thinks is relevant but which a reasonable insured, if he thought of it at all, would not think relevant, then, in the absence of a question directed towards the disclosure of such a fact, the insurer, albeit prudent cannot properly be held to be acting reasonably".*

Consequently in the absence of a question directed towards the disclosure of a particular fact that an insurer would think relevant, I must consider what a reasonable insured person would have thought to be relevant in the context of the question relating to all material facts.

The Provider has submitted that *"In Ireland, it is not possible to use one 'no claims bonus' on multiple policies. I appreciate the fact that it works differently in France but it is standard practice in Ireland that you earn one 'no claims bonus' per vehicle and you cannot use this bonus on a second or subsequent vehicle. We are satisfied that we have not contravened any Irish or EU laws in doing so."*

I note the Provider's statement in this regard as follows:

> "*The Proof of Bonus submitted for this policy is already in use on another policy and therefore isn't valid for use on this policy", and*
>
> *"In Ireland, it is not possible to use one 'no claims bonus' on multiple policies*".

The Complainant submitted that a no claims bonus should be associated with the individual who is insured, rather than to a particular vehicle.

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In my Preliminary Decision, I stated:

> *"The Complainant's logic makes absolute sense to me. I would have thought that a no claims bonus is an indication of the claims history and possibly an indication of risk of the individual driver. I see no reason as to why once it has been accepted by an insurance company for one insurance policy, it is "no longer valid".*

In its post Preliminary Decision submission dated 11 March 2020 the Provider has submitted as follows;

> *"We also note your own personal view regarding the use of a 'no claims' bonus as follows:*
>
> > *"I see no reason as to why once it has been accepted by an insurance company for one insurance policy, it is no longer valid."*
>
> *We appreciate that this represents your own personal view. However we note that your personal view should not influence your decision in respect of a Complaint with the scope and remit of the FSPO being clearly set out in the relevant legislation. We also note that the business reasons for our acceptance rules being what they are falls outside the scope of the Complaint and the FSPO remit."*

I would remind the Provider that my role is to act as an impartial adjudicator of complaints. The purpose of this Office and my role is to investigate complaints against financial service providers, in a fair and impartial manner, based on the evidence before me. That is how I have conducted this investigation and arrived at my decision.

The ***Financial Services and Pensions Ombudsman Act 2017*** provides as follows:

> Section 60 (1) On completing an investigation of a complaint relating to a financial service provider that has not been settled or withdrawn, the Ombudsman shall make a decision in writing that the complaint—
>
> > (a) is upheld,
> > (b) is substantially upheld,
> > (c) is partially upheld, or
> > (d) is rejected.
>
> (2) A complaint may be found to be upheld, substantially upheld or partially upheld only on one or more of the following grounds:
>
> > (a) the conduct complained of was contrary to law;
> >
> > (b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;

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(c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;

(d) the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration;

(e) the conduct complained of was based wholly or partly on a mistake of law or fact;

(f) an explanation for the conduct complained of was not given when it should have been given;

(g) the conduct complained of was otherwise improper.

For the avoidance of doubt, my Decision in respect of this matter is not influenced by my *"own personal view regarding the use of a 'no' claims bonus"* as suggested by the Provider. My view regarding this matter and my decision in relation to this complaint is based on my objective analysis of the evidence and submissions supplied to this Office by both parties.

In the post Preliminary Decision submission dated 25 February 2020, the Complainant has submitted as follows:

> *"…the provider has failed to demonstrate how [the Complainant's] alleged failure to disclose to the provider a fact already known to the provider could be regarded as a fraud … but for the continuous application of the illegal rule of no claim bonus to be attached to a vehicle rather tha[n] to an individual."*

I make no judgement on the Complainant's submission that the Provider's position that it is not possible to use one 'no claims bonus' on more than one policy, is "*illegal*" as that is not within my jurisdiction.

However, despite many opportunities to do so, including in response to my Preliminary Decision, the fact remains that the Provider has not furnished any evidence to support its submission that "In Ireland, it is not possible to use one 'no claims bonus' on multiple policies." More importantly, it has provided no evidence to demonstrate that it informed the Complainant that this was the case. Equally, it has not demonstrated how it believes the Complainant should have been aware that this was something she should declare or that it was a matter that could lead to her policy of insurance being voided.

In arriving at my decision, I have to arrive a view based on the evidence and submissions available to me. It was in that context that I expressed the view that I believed, as I still do, that the Complainant's understanding of how she would expect a no claims bonus to operate is a logical one.

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The Complainant submits that a no claims bonus should be associated to the individual who is insured, rather than to a particular vehicle. I believe it was completely reasonable for the Complainant to be of this view. The Provider has furnished no evidence that it informed her otherwise or to show how she could have known otherwise or been expected to know that her no claims bonus was "no longer valid" as described by the Provider.

Furthermore I believe it is important to point out that the Complainant was not in fact using "one 'no claims bonus' on multiple policies" in Ireland. It has been clearly pointed out by the Complainant that she used the no claims bonus on one policy in Ireland, one policy in a different jurisdiction, Northern Ireland.

Cancelling an insurance policy in such circumstances had very serious consequences for the Complainant. Firstly, it meant that the Complainant was not in fact insured when she thought she was and secondly it causes difficulty and increased cost in procuring insurance in the future.

I am deeply concerned that the Provider believes it is appropriate to void an insurance policy, even in part, because it believes the Complainant ought to have known that as it states, *"In Ireland, it is not possible to use one 'no claims bonus' on multiple policies".*

The Provider argues that this is some sort of industry practice. If this is the case I find that even if the conduct of the Provider that is complained of was in accordance with some established practice I find that practice, as it was applied to the Complainant, unreasonable and unjust.

The Complainant has sought the:

> *" …banning [of the] the practice by motor insurance company in Ireland to consider the no claim bonus as acquired by vehicle rather than by individual unlike other jurisdiction, based on true Actuarial Sciences".*

The application of such practice on an industry wide basis, as asserted by the Provider, is not something which falls within my jurisdiction. Nor can I provide the remedy sought by the Complainant.

That said, Section 18 of the ***Financial Services and Pensions ombudsman Act 2017***, provides that I:

> *…shall co-operate with the regulatory authorities with a view to ensuring that this Act operates in a way that contributes to promoting the best interests of consumers and actual or potential beneficiaries of financial or pension services…*
>
> *And that*
>
> *"information held by the Ombudsman may be transferred by the Ombudsman to the regulatory authorities".*

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In accordance with my responsibility under the Act, I believe this is a practice which should be brought to the attention of the Central Bank of Ireland and the Competition and Consumer Protection Commission.

I am of the view that if it was *"not possible"* for the Complainant to use her no claims bonus on more than one vehicle, and if her no claims bonus was no longer "*valid*" this should have been explicitly detailed in the **Statement of Fact**. It was not. In my view, in the circumstances of the potentially very serious consequences of a policy being declared void *ab initio*, the **Statement of Fact** should be explicitly clear that it requires disclosure of the use of a no claims bonus on another policy.

Due to the form of the **Statement of Fact**, I accept that it was reasonable for the Complainant to believe that she was not required to disclose this.

In the Provider's Post Preliminary Decision submission dated **21 February 2020**, the Provider has submitted as follows;

> *"We consider the Complainant's non-disclosure of the fact that their 'proof of bonus' was already in use to constitute the non-disclosure of a material fact. In addition, the Complainant, upon reading the 'Statement of Fact' should have disclosed that they held a second motor insurance policy with [the Provider] and their failure to do this constitutes misrepresentation on the part of the Complainant.*
>
> *We also wish to appeal the decision under the aforementioned points given that failure to disclose such information is supported in law by the 'Road Traffic Act 1961', Section 64 which states:*
>
> ***64.**—(1) A person shall not, for the purpose of in the course of obtaining the issue of an approved policy of insurance or an approved guarantee to himself or to another person, or for the purpose of securing his or another person's participation in the cover afforded by an approved policy of insurance or an approved guarantee, commit any fraud or make any representation or statement (whether in writing or verbally or by conduct) which is to his knowledge false or misleading in any material respect.*
>
> *(2) A person who contravenes subsection (1) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds or, at the discretion of the court, to imprisonment for any term not exceeding six months or to both such fine and such imprisonment.*
> *…"*

As detailed above, I have considered whether the Provider was entitled to treat the policy as void *ab initio* for non-disclosure of a material fact, in arriving at my decision.

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I remain of the view that the Provider was not entitled to do so in the particular circumstances as there was no question or statement directed towards disclosure of the use of the no claims bonus on another policy in the **Statement of Fact.**

As I have already stated, I find it most disappointing that the Provider in its post Preliminary Decision submission is now, at this very late stage in the investigation of this complaint, alleging that the Complainant, by not disclosing that the 'no claims bonus' was in use on another policy, has committed a "*fraud*". For the reasons outlined above I will not consider or make a finding in relation to such an allegation.

What I do find, based on the evidence before me, is that the Complainant, by not disclosing that the 'no claims bonus' was in use on another policy, has not made any "*representation or statement*" which to her knowledge was false or misleading in any material respect, in circumstances where she made no such statement or no such question was asked.

I note that in its correspondence to this Office dated 27 March 2019, the Provider offered *"to reinstate the previously voided policy and we will cancel the newer policy we set up for* [the Complainant]*. She will not have to pay any premium and by means of compensation, we will refund any premium she has paid under the new policy. Therefore there will be no gap in cover for* [the Complainant]*"*. In this regard, the Provider advised that if the Complainant wished to have her cancelled policy reinstated with effect from **19 April 2018**, it would arrange to have her existing policy cancelled as it covers the same vehicle, and that any premium paid to date on that existing policy would be refunded to her. In addition to refunding the Complainant all premiums paid to date on that existing policy, the Provider will not seek to collect premium arrears that would be due from **19 April 2018** to date for the reinstated policy. In this regard, it was a matter for the Complainant to advise the Provider whether she wished to accept this offer.

In a post Preliminary Decision submission dated 25 February 2020, the Complainant's representative has submitted as follows;

> *"…it is to be noted that the complainant has not accepted such offer since the preliminary ruling was issued but before hand, more exactly on the 15th March 2019 in my email to your Office which was copied to the Provider and stated as below:*
>
> > *"We will be glad to accept the reinstatement of the policy offered by [the Provider] with effect from 19 April 2018 as an interim measure for the resolution of this matter.*
> >
> > *Such would have to be construed as an acceptance that my wife did not make any wrong declaration. Such would also have to be considered as a cancellation of a cancellation.*

/Cont'd…

> *In addition, we would need clarification on the financial conditions attached to this reinstated policy with due regards to my emails of the 1st August 2018."*

As the provider had not acted on same, we had considered such offer to be withdrawn. Mr. Deering, following on your preliminary decision, I advised [the Complainant] to confirm her earlier acceptance of same, as the core of the matter was to cancel the cancellation of her initial insurance policy. The initial policy has now been reinstated and a refund for €2,145.60 is now expected.

…

It is clear that [the Complainant] accepted the Provider's offer based solely on the terms defined in the above-mentioned email".

In its post Preliminary Decision submission dated 11 March 2020, the Provider has submitted as follows;

> *"We also dispute the Complainant's assertion that our offer to reinstate and refund premium constitutes an acknowledgement by us that the Complainant did not make any wrong declaration. We made that offer in an attempt to resolve the complaint".*

I am satisfied that the previously voided policy has now been reinstated. I accept the Provider's submission that by reinstating the policy it was not making any acknowledgement that the Complainant "*did not make any wrong declaration",* as submitted by the Complainant.

In the post Preliminary Decision submission of 25 February 2020, the Complainant's representative has submitted as follows;

> *"While not being familiar with Section 60(4) of the Financial Services and Pensions Ombudsman Act 2017 in relation to compensatory payment, I know that damages could be particularised as general damages (stress & distress caused, loss of reputation), specific damages (loss of business specified as gross margin minus variable expenses) and punitive damages.*
> *…*
>
> *Our employee added on the [Irish] car policy was our full-time sales leader. She was being trained to pass her full driving licence. She left the company within a year of the incident as we had not been in a position to help her passing same.*
> *…*
>
> *a) The loss of this key employee, who has not been replaced to date, still has negative repercussions in our sales & margin;*

/Cont'd…

b) *For the period circa 25 July to 16 September 2017, the [Irish] car was not insured. As a result, we had to reduce[d] the number of trade shows and events we attended over that period."*

The Complainant has not submitted any evidence to support her submission that the employee referred to above left the Complainant's employment, or that the number of work-related events the Complainant attended between **July** and **September 2017** were reduced, because of the matter that is the subject of this Decision. There is no evidence before me which links these events to the matters at issue here.

Voiding a policy of insurance has very serious consequences for the insured person. I believe that the decision of the Provider to void the policy *ab initio,* in part because the Complainant's no claims bonus was no longer "*valid"* because she had used it on another policy in another jurisdiction, was unreasonable for the reasons I have outlined above and went beyond what was necessary or appropriate.

I believe that where an insurance policy is cancelled unreasonably, a substantial amount of compensation is merited. However, as the Complainant contributed to the cancellation by not admitting she owned and insured another car, I believe she must bear some responsibility.

In my Preliminary Decision, I indicated my intention to partially uphold this complaint and direct the Provider to pay a sum of €8,000 in compensation.

In its post Preliminary Decision Submission, dated 21 February 2020, the Provider states that it considers compensation of €8,000 to be "disproportionate to the outcome of the investigation, considering that the Ombudsman has acknowledged that, *"the Complainant contributed to the cancellation of the policy by not admitting she owned and insured another car."* I find the comments by the Provider in this regard demonstrate a lack of understanding by the Provider of the seriousness and impact of cancelling a policy of insurance. I believe the cancelling of an insurance policy should not be done lightly. I have already outlined why I believe the Provider's conduct was unreasonable. If I did not believe the Complainant had contributed in part, to the cancellation of the policy, I would have directed the Provider to pay considerably more to the Complainant. I therefore do not accept the compensation to be disproportionate.

For the reasons outlined above, I partially uphold this complaint and direct the Provider to pay a sum of €8,000 to the Complainant.

Because of the Provider's contention that there is an industry practice that *"In Ireland, it is not possible to use one 'no claims bonus' on multiple policies"*, I am referring this Decision to the Central Bank of Ireland and the Competition and Consumer Protection Commission for any action either of those bodies may deem necessary.

/Cont'd…

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (c) and (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 make a compensatory payment to the Complainant in the sum of €8,000, 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

29 April 2020

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,

/Cont'd…

(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.