



<u>Decision Ref:</u>	2020-0224
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted his motor insurance policy on **11 February 2016**. The Provider is the underwriter of this policy, which was managed and administered by a named Insurance Intermediary.

The policy was co-branded in the names of the Provider and the Intermediary. As part of this policy, the Complainant agreed to the fitting of a telematics device to his car, which recorded data on its usage, like the distance and speed travelled. This device was fitted by a third party telematics supplier, which supplied both the telematics device itself and the vehicle behavioural data, to the Insurance Intermediary.

The Complainant's Case

The Complainant renewed his motor insurance policy on **11 February 2017**.

The Insurance Intermediary notified the Complainant on **26 April 2017** that it was cancelling his policy on **9 May 2017** as the telematics device had recorded that his vehicle had been driven at a speed in excess of 160kph, in breach of the policy terms.

The Complainant spoke to an Insurance Intermediary on 27 April 2017, which advised that the telematics device had recorded that his vehicle had been driven at a speed of 167kph at 11:00am on 23 April 2017. As the Complainant asserted that he had not driven his vehicle at the speed contended, the Advisor informed him that it would defer the policy cancellation pending further investigation of the matter.

The Insurance Intermediary later advised the Complainant that the telematics supplier had confirmed that the speeding event had occurred as contended. For that reason, it notified the Complainant on **2 May 2017** that it was cancelling his policy on **15 May 2017**.

In his letter to the Insurance Intermediary dated **9 June 2017**, the Complainant submitted:

"I am sure there is something wrong with the box, it might have flaw while obtaining the DATA or...while operator download the DATA".

Similarly, the Complainant submitted in his Complaint Form to this office that the Insurance Intermediary *"cancelled my policy on absolute wrong information"*.

In this regard, the Complainant complains that the Insurance Intermediary, acting on behalf of the Provider, wrongfully cancelled his motor insurance policy on **15 May 2017**, on the basis of an excessive speeding event stated to have occurred on 23 April 2017. He disputes that this speeding event happened and submits that it was not possible for a car such as his to achieve such a speed at the location in question as it was a 2002 model with a 1.3 litre engine. In addition, as a result of this cancellation, the Complainant encountered difficulty in securing alternative motor insurance.

Following the cancellation of his policy and in order to incept motor insurance elsewhere, the Complainant sought from the Insurance Intermediary proof of his no claims bonus for the period 11 February 2016 to 10 February 2017, however it refused to make this available until such time as the Complainant paid the outstanding premium balance owing for the policy renewal from 11 February 2017 to its cancellation on 15 May 2017. The Insurance Intermediary has advised in some correspondence, that this outstanding balance was €189.11 and elsewhere it has confirmed the figure as €180.11. In any event, the Complainant disputes that there was an outstanding balance.

The Complainant incepted a new motor insurance policy with a different insurer, which in his Complaint Form he advises he had *"to pay around €500 more for"*. As the Insurance Intermediary continued to refuse to provide him with proof of his no claims bonus, the Complainant was unable to furnish this to his new insurer and that insurer then cancelled his new policy on **14 July 2017**.

In this regard, the Complainant also complains that the Insurance Intermediary, acting on behalf of the Provider, failed to issue him with proof of his no claims bonus, as a result of which a policy of motor insurance which he had secured elsewhere, was ultimately cancelled because of his failure to submit proof of his no claims bonus, to his new insurer.

In addition, the Complainant states that he has lost almost two years off his no claims bonus as a result of the wrongful cancellation of his policy. He says he lost one year in respect of the policy term from 11 February 2016 to 10 February 2017, which the Insurance Intermediary did not issue proof of to him. He also says that he lost out on the period for the policy term commencing 11 February 2017 that was wrongfully cancelled on 15 May 2017, as well as the months thereafter because he had no insurance or then had his new insurance cover cancelled, as he was unable to furnish proof of his no claims bonus.

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In his email to this Office dated **29 July 2019**, the Complainant noted as follows:

“My family and I had to travel on bus, and after that all hassle it took around 7 months to get new insurance which I had to pay almost double because of low number of years [no claim bonus]”.

As a result, in his Complaint Form, the Complainant submits that he wants the Provider to

“give my car policy back and remove any wrong record related to that overspeed incident and from my No Claims Certificate. If they do that, they also have to give me all the expense which I have to pay other insurance during this period.”

The Provider’s Case

Provider records indicate that the Complainant incepted a motor insurance policy on **11 February 2016**. The Provider is the underwriter of this policy, which was managed and administered by a named Insurance Intermediary. The policy was co-branded in the names of both the Provider and the Intermediary.

As part of this policy, the Complainant agreed to the fitting of a telematics device to his car, which recorded data on its usage, like the distance and speed travelled. This device was fitted by a third party telematics supplier which provided both the telematics device itself and the vehicle behavioural data to the Insurance Intermediary. The Provider has liaised with the Intermediary in setting out its position to the Complainant’s complaint to this office.

The Complainant renewed his motor insurance policy online on 11 February 2017 and was sent a renewal confirmation letter by post, along with the certificate of motor insurance and a display disc. In addition, an email was sent confirming the renewal and attaching the policy schedule and statement of fact. The Complainant also had (and has) access to an online portal to view his account and this provided him with access to, amongst other things, the policy schedule and its terms and conditions, the statement of fact, the terms of business and the certificate of motor insurance. The Insurance Intermediary has confirmed that this online account has been accessed on 34 occasions since the Complainant incepted his policy.

The ‘**Important Terms of your Policy in relation to Telematics**’ section of the applicable Policy Document advises at pg. 11, as follows:

“13. Speed

IMPORTANT – Speeding

- a) If the box detects that your car has been driven at 160kph or over on a public road, your policy will be cancelled under the terms shown in General Conditions 4 ‘Cancellation’.***

In this regard, the **'General Conditions'** section of this Policy Document advises at pg. 14, as follows:

"4. We will cancel this policy: ...

b) If the box detects that your car has been driven at 160kph or over on a public road".

The Provider notes that the Insurance Intermediary first notified the Complainant on 26 April 2017 that his policy would be cancelled on 9 May 2017 as the telematics device had recorded his car travelling at a speed of more than 160 kilometres per hour. The telematics supplier had advised the Insurance Intermediary of a 167 kilometres per hour reading from the Complainant's telematics device at 11:00:03 on 23 April 2017 on a road in Dublin [XX].

As the Complainant contacted the Insurance Intermediary to query the basis on which his policy was to be cancelled, the Intermediary removed the proposed cancellation in order to investigate the matter further. In this regard, the telematics supplier confirmed to the Insurance Intermediary on 2 May 2017, the accuracy of the data and the Intermediary sent a new cancellation notice to the Complainant the same day advising that his policy would be cancelled on 15 May 2017.

The Insurance Intermediary, acting on behalf of the Provider, cancelled the Complainant's motor insurance policy on **15 May 2017**. In doing so, the Provider notes that the Insurance Intermediary relied on the accuracy of the data made available by the telematics supplier. However, having looked at the GPS co-ordinates and the road on Google Maps, the Provider acknowledges that it would seem unlikely that the speeds reported, could in fact have occurred at the time of day and on the road type indicated. The Provider is therefore of the view that the data may not have been accurate though, to date, this has not been verified by the telematics supplier.

The Provider has since changed the supplier of its telematics boxes and data for all new policies underwritten since **September 2016** onwards, due to improved data access and improved data quality. It has also been exchanging all telematics boxes fitted by the previous supplier, with boxes from its new supplier, a process that was due to be completed by the end of 2019. This new telematics supplier offered improved service levels and ease of access to a more detailed level of telematics data, insofar as it provides full direct access to its system, so that Insurance Intermediary staff can check the data at any time, resulting in a faster and more efficient service on telematics events.

The Provider also accepts that the Insurance Intermediary was wrong to refuse to issue the Complainant with proof of his no claims bonus. The Intermediary believed that it was within its rights to withhold this, as it took the view that the Complainant had an outstanding balance following the policy cancellation. The Provider does not however consider that the Intermediary had any legal basis on which to refuse the Complainant proof of his no claim bonus, and it has expressed its concern to the Insurance Intermediary and sought its assurance to cease this practice.

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That said, the Provider notes that the renewal pack which the Insurance Intermediary sent to the Complainant on 21 January 2017, included a Certificate of No Claims Bonus. The Provider says that the Intermediary is an independent insurance intermediary authorised to carry out insurance distribution services. In this regard, the Provider gave authority to the Insurance Intermediary to issue cancellation notices on its behalf, to facilitate policy administration, but in all other respects, including complaint handling, the Intermediary had no authority to act on the Provider's behalf. Regrettably, the Insurance Intermediary did not make the Provider aware of the Complainant's complaint at the time it was made. Indeed, the Provider was not made aware of this complaint until such time as the Office of the Financial Services and Pensions Ombudsman instructed the Insurance Intermediary to do so.

The Provider says that it is unfortunate that in this instance the Insurance Intermediary did not refer the complaint to the Provider when it was first made, as it would have sought to resolve the matter with the Complainant at that earlier stage. When the Provider was made aware of the complaint, it immediately contacted the Office of the FSPO to check if the Complainant at that time, had a policy of motor insurance in place, which he did.

The Provider says that having fully reviewed the Complainant's complaint, it notes that the contents of the Final Response Letter the Insurance Intermediary sent to the Complainant on **8 August 2017**, does not in fact represent the response it wishes to make in this matter. In this regard, the Provider acknowledges that the speeding event data, which the Insurance Intermediary relied upon in cancelling the Complainant's motor insurance policy may not have been accurate. In addition, the Provider also accepts that the Insurance Intermediary was wrong to refuse to issue the Complainant with proof of his no claims bonus upon request.

For this reason, the Provider has advised that it will *"inform the Department that the Cancellation of [the Complainant's motor insurance policy] has been rescinded and will furnish the Complainant with a letter to this effect."* The Provider says that it understands that the Complainant incurred some unnecessary expenses as a result of this matter and it would like to reimburse him, together with a customer service payment of €1,000 for the inconvenience and distress that the cancellation of his motor insurance policy caused. In order to calculate these expenses, the Provider has asked that the Complainant submit an estimate of costs in order for it to make a suitable offer.

The Complaint For Adjudication

The Complainant's complaint is that the Provider, through the Insurance Intermediary, wrongfully cancelled his motor insurance policy in **May 2017**, and then refused to provide him with proof of his no claims bonus, ultimately leading to the further cancellation of his new insurance policy in **July 2017**.

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 on **19 May 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The complaint at hand is that the Provider, through its agent, the Insurance Intermediary, wrongfully cancelled the Complainant's motor insurance policy and in addition, then refused to provide the Complainant with proof of his no claims bonus.

In this regard, the Complainant incepted his motor insurance policy on **11 February 2016**, which he renewed on **11 February 2017**. The Provider was the underwriter of this policy, which was managed and administered by a named Insurance Intermediary. The policy was co-branded in the names of both the Provider and the Insurance Intermediary. I have noted that, as part of this policy, the Complainant agreed to the fitting of a telematics device to his car, which recorded data on its usage, like the distance and speed travelled. This device was fitted by a third party telematics supplier which provided both the telematics device itself and the vehicle behavioural data to the Insurance Intermediary.

The Insurance Intermediary notified the Complainant on **26 April 2017** that it was cancelling his policy on 9 May 2017 as the telematics device had recorded that his vehicle had been driven at a speed in excess of 160kph, in breach of the policy terms. The Complainant contacted the Insurance Intermediary on 27 April 2017 to advise that he had not driven his vehicle at the speed contended and it agreed to defer the policy cancellation pending further investigation.

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I note from the documentary evidence before me that the telematics supplier then confirmed to the Insurance Intermediary, the accuracy of the 167 kilometres per hour reading from the Complainant's telematics device at 11:00:03 on 23 April 2017 on a road in Dublin [XX] and as a result, the Insurance Intermediary notified the Complainant on 2 May 2017 that it was now cancelling his policy on 15 May 2017.

I note that the Insurance Intermediary, acting on behalf of the Provider in the context of the arrangements which both financial service providers had put in place, cancelled the Complainant's motor insurance policy on **15 May 2017**. In doing so, the Provider notes that the Insurance Intermediary relied on the apparent accuracy of the data made available by the telematics supplier. However, having looked at the GPS co-ordinates and the road on Google Maps, the Provider acknowledges that it would seem unlikely that the speeds reported could have occurred at the time of day, and on the road type indicated, and consequently it is of the view that the data may not have been accurate.

In addition, I note that the Provider advises that the Insurance Intermediary ought to have referred the Complainant's resultant complaint to it, given that the Intermediary had no authority to handle such complaints. The Provider says that it may well then have resolved the matter for the Complainant in a more favourable and efficient manner. In this regard, I am of the opinion that it is a matter for the Provider to ensure that when services are outsourced in any way, that its agents are clear as to the precise authority, the Provider has made available and any associated functions. The Provider should also ensure that it has clear procedures in place for its agents, when receiving and progressing complaints.

The Complainant also complains that the Insurance Intermediary, acting on behalf of the Provider, refused to issue him with proof of his no claims bonus for the period 11 February 2016 to 10 February 2017, as a result of which a subsequent policy of motor insurance which he had secured with a different insurer, was cancelled on 14 July 2017 because of his failure to submit such proof to this insurer. I note that the Complainant has furnished supporting evidence of this cancellation.

In this regard, I note that the Insurance Intermediary refused to issue the Complainant with proof of his no claims bonus until such time as he paid an outstanding premium balance which it advised him was owing for the policy renewal period of 3 months from 11 February 2017 to 15 May 2017. I note from the documentary evidence before me that the renewal pack the Insurance Intermediary sent to the Complainant on 21 January 2017 included a Certificate of No Claims Bonus dated 21 January 2017, as follows:

"TO WHOM IT MAY CONCERN

This is to confirm that [the Complainant] has been insured with [the Provider] from 11/02/2016 to 11/02/2017...and has earned a No Claims Discount of 52.5%...representing 3 years "claims free driving" ...

The number of years in respect of which no claims has been made against this policy is 1".

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It is not clear from the evidence why the Complainant did not submit this document to his new insurer. It is unclear whether he had access to it by way of the Insurance Intermediary's online portal, or whether it may have been "stale" by May 2017, when the Complainant was seeking new insurance cover. In any event, I note that the Provider accepts that the Insurance Intermediary was wrong to refuse to furnish the Complainant with proof of his no claims bonus upon his request, regardless of whether or not there was an outstanding premium balance. This doubtless caused the Complainant tremendous aggravation, and ultimately led to him having a second policy of insurance with another insurer, cancelled.

In acknowledging that the speeding event data, which the Insurance Intermediary relied upon in cancelling the Complainant's motor insurance policy, may not have been accurate, the Provider is accepting that the policy cancellation carried out by the Insurance Intermediary on its behalf was wrongful, and unfair. For this reason, the Provider has advised that it will inform the Department that its cancellation of the Complainant's motor insurance policy has been rescinded and will also furnish the Complainant with a letter to this effect.

I note that the Provider has advised that it understands that the Complainant incurred some unnecessary expenses as a result of this matter and it would like to reimburse him, together with a customer service payment of €1,000, for the inconvenience and distress that the cancellation of his motor insurance policy caused. In order to calculate these expenses, I note that the Provider asked for the Complainant to submit an estimate of costs in order for it to make a suitable offer.

The consequences for a policyholder when a motor insurance policy is cancelled, are severe. I accept the Complainant's submission that having been placed in such a position, he found it both difficult and expensive to obtain alternative motor insurance with another insurer. In addition, the Insurance Intermediary was wrong to refuse to furnish the Complainant with proof of his no claims bonus after it had cancelled his policy, which left the Complainant in a position where he was unable to provide proof of his no claims bonus to his new insurer resulting in that insurer then cancelling his new motor insurance policy.

The Provider has indicated a willingness to make a letter available to the Complainant confirming that its cancellation of his policy of insurance has been rescinded. I am nevertheless conscious that the Provider's other wrongful behaviour, through its agent, the Insurance Intermediary, in refusing to make the no claims bonus available to the Complainant, ultimately led to a second policy of insurance being cancelled and appearing on the Complainant's record.

Accordingly, I am satisfied that in this instance the Provider has a very significant case to answer to the Complainant for the position in which its actions, via the Insurance Intermediary, have left him and I therefore consider it appropriate to uphold this complaint. Although the Provider has indicated a willingness to make a compensatory payment of €1,000 to the Complainant and to also assess the losses he has referred to, arising from the additional higher cost of the insurance which he ultimately procured, I do not consider such a process to be necessary or appropriate.

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Instead, in marking my decision to uphold this complaint, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant in the sum of **€15,000**. I also consider it appropriate to direct the Provider to issue a letter to the Complainant, confirming that:-

- The letter is issued, by way of compliance with a direction of the FSPO
- The cancellation of the Complainant's policy with the Provider, in **May 2017**, came into effect as a result of the Provider's error, and
- As a result of additional failures on the part of the Provider, it was also responsible for the subsequent cancellation of the Complainant's subsequent policy of motor insurance with [the identified insurer] in **July 2017**.

It will be a matter for the Complainant, once he receives the letter from the Provider, which has been directed by this office, to himself follow up with that other insurer to explore whether he can achieve the rescission of that record, regarding cancellation of the policy in July 2017.

Whether or not he is able to do so, I take the view that the compensatory figure directed by this office should adequately redress the ongoing increased cost of insurance cover to the Complainant in the coming years.

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) (b) (e) 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 rectify the conduct complained of by issuing the complainant with a letter in the terms which I have specified above, and, in addition, to make a compensatory payment to the Complainant in the sum of €15,000, 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.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

12 June 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,

(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.