



<b><u>Decision Ref:</u></b>	2020-0257
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues
<b><u>Outcome:</u></b>	Rejected

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

The First Complainant incepted a private motor vehicle insurance policy with the Provider on **30 December 2009**, which he renewed annually. The Second Complainant, his wife, was listed as a named driver on the policy since inception. The policy period in which this complaint falls, is from 30 December 2016 to 29 December 2017.

#### **The Complainants' Case**

The First Complainant was involved in a road traffic accident on **3 November 2017**, however the Provider declined to indemnify the element of his claim relating to the accidental damage to his vehicle, as he was not a holder of an Irish/EU driving licence at the time.

In his email to this Office dated 25 December 2018, the First Complainant advises, as follows:

*"I had a car insurance with [the Provider] since 2009 ...*

*On the 3<sup>rd</sup> of November 2017 I was involved in a car accident where my kids and I suffered from personal injuries, as a result from the car accident my car was damaged and unrepairable. [The Provider] refused to cover the accidental damage to my vehicle due to my driving licence. I had an international driving licence which I applied with for my car insurance and now so many years later when I was involved in this car accident [the Provider] realised that my driving licence is invalid.*

*In 2011 I had a small car accident and without any investigation [the Provider] sent me an email saying that I am liable for that car accident and I had to pay for the damage of the other car. As I didn't know my rights and enough English that time, I was left helpless and I didn't do anything to fight the case and I paid for the car damage of the other car.*

*[The Provider] had no problem with my licence at that time however they have a problem with my licence now, even though it's the same licence".*

The Complainants "want [the Provider] to cover a full and fair compensation for my financial loss".

The Complainants' complaint is that the Provider wrongly or unfairly declined the element of the First Complainant's claim relating to the accidental damage to his vehicle, following a road traffic accident he was involved in on 3 November 2017.

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

Provider records indicate that the First Complainant was involved in a road traffic accident on 3 November 2017. As part of its assessment of the resultant claim, the Provider sought and obtained a copy of the First Complainant's driving licence, which was a Russian licence that had renewed in October 2015. The Provider notes that the National Driving Licence Service guidelines for those persons holding driving licences from non-EU countries state, as follows:

*"If you are not from any of the above countries, (for example The United States), and you hold a national driving licence or an international driving permit from your own country, you may drive in Ireland for the duration of your temporary visit (up to 12 months).*

*On taking up residence you should apply for an Irish driving licence but you will need to go through the full driver licensing procedure. You must first pass a driver theory test, apply for a learner permit, complete a course of Essential Driver Training (EDT) and pass your driving test in Ireland".*

Consequently, a person may hold a non-EU driving licence for their first 12 months of driving in Ireland after which, if they are a full time resident in Ireland, they must obtain an Irish/EU driving licence.

As a result of his furnishing the Provider with a copy of a Russian driving licence, the Provider emailed the First Complainant's Solicitors at 12:58 on 28 November 2017, as follows:

*“We need to clarify whether [the First Complainant] has been continuously resident in Ireland for a period of 12 months or more since policy inception, or whether he has been travelling back and forth since policy inception – in order for us to establish the validity of his licence and in turn, this policy – as [the First Complainant] has submitted a Russian licence even though policy has been on cover since 2009 ...*

*For the avoidance of doubt, if [the First Complainant] has been continuously resident, his Russian Federation licence would only have been valid for the first 12 months of his residency. Therefore, he should have applied for an Irish licence. If this is the case, and as he does not hold a valid Irish licence the accidental damage element of the claim (i.e. the damage to [the First Complainant’s] own vehicle) will not be recoverable under the policy”.*

The Provider then made several attempts through the First Complainant’s Solicitors to ascertain a reason why he had not obtained an Irish/EU driving licence and whether he was travelling internationally throughout the year, which may warrant him holding on to his international driving licence, but to date the Provider has received no response to these specific queries, despite the Solicitors acknowledging receipt of the emails.

In order to progress matters, the Provider emailed the Solicitors on 11 December 2017 to confirm that due to it having received no substantive response to its request for clarification regarding the First Complainant’s driving licence, that it would not be covering the element of his claim relating to the accidental damage to his own vehicle. The Provider asked that the Solicitors urgently inform the First Complainant of this. As a result, the Provider declined to cover the element of the First Complainant’s claim relating to the accidental damage to his vehicle as it concluded that he was not a holder of the legally required Irish/EU driving licence at the time he was involved in a road traffic accident on 3 November 2017.

It is important to note, however, that the Provider is indemnifying the claim in full, except for the accidental damage to the First Complainant’s own vehicle. In this regard, the Provider received several injury claims arising from the road traffic accident on 3 November 2017, which were all processed under claim reference xxxxx/001. Liability was agreed with the third party insurer at a 50/50 split, meaning the Provider will pay 50% of the claims for the injuries to the passengers in both vehicles and the driver of the third party vehicle. For the record, these claims were settled, as follows:

- *The First Complainant (the policyholder):* He is not covered for personal injury costs under the terms of his policy, regardless of the type of driving licence he held, however he can claim personal injuries from the third party insurer on a 50% basis. The third party insurer paid the First Complainant the sum of €14,000, representing 50% of the accidental damage claim to his vehicle. Whilst the Provider declined to pay the other 50% as it concluded that the First Complainant did not hold the legally required Irish/EU driving licence, it did pay the claim costs (removal and storage costs, replacement car hire and assessor and investigation fees).

- *Insured Passenger 1:* A passenger in the First Complainant's vehicle. Following his claim for injuries, the Provider agreed a settlement of €26,000 with the third party insurer, with the cost to be split 50/50. In January 2020, this was subject to ruling by the court.
- *Insured Passenger 2:* A passenger in the First Complainant's vehicle. Following his claim for injuries, the Provider agreed a settlement of €37,000 with the third party insurer, with the cost to be split 50/50. In January 2020, this was subject to ruling by the court.
- *Third Party Driver:* Following this person's personal injury claim, the Provider settled a claim for €11,000 for general and special damages, representing 50% of the total claim settlement for this person.
- *Third Party Passenger 1:* Following this person's personal injury claim, the Provider settled a claim for €10,500 for general and special damages, representing 50% of the total claim settlement for this person.

The Provider had no previous reason to believe that the First Complainant did not hold a valid Irish/EU driving licence prior to the November 2017 claim or that he was not a full time resident in Ireland. When he incepted his private motor vehicle insurance policy with the Provider online in December 2009, the First Complainant confirmed that he held a full Irish driving licence at that time. In this regard, the Provider's website clearly stated that a person must have a valid Irish, UK or EU driving licence in order to incept a policy online, as follows:

***"Eligibility | Car Insurance Online Quote***

***Please read the following carefully***

*To obtain a valid quote from [the Provider] **you and any drivers named on the policy must meet all of the following criteria***

***Driver Requirements***

- ***Must hold a valid Irish, UK or EU driving licence ...***

*By clicking the accept button below I am confirming I have met all the driving and vehicle requirements above and that all information supplied and/or any future information provided will form the basis of the contract between [the Provider] and me."*

If an applicant did not hold an EU driving licence, the website invited them to contact the Provider's call centre. Whilst it would have offered an insurance premium for 2009/2010 if the First Complainant had contacted it directly to advise that he held a non-EU driving licence, the Provider would not have offered a renewal quotation for 2010/2011 without first receiving evidence of an EU driving licence.

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In addition, the Car Insurance Schedule that the Provider posted to the First Complainant on 8 March 2017, this being the most recent schedule issued to him prior to the November 2017 claim, states:

Driver details	
Named drivers:	Licence type:
[The First Complainant]	Full Irish
[The Second Complainant]	Full Irish

The Provider did not receive any communication to advise that the details regarding the First Complainant's driving licence were incorrect.

Finally, the Provider has no record of the First Complainant making a claim in 2011, as he states in his complaint. However, the Provider was notified on 4 November 2010 (claim reference xxxxx/001 that the Second Complainant, a named driver on the policy, was driving when the insured vehicle rolled back and collided with a third party vehicle. The Provider received a claim from the third party. As part of its claim assessment, the Provider obtained a copy of the Second Complainant's non-EU driving licence. As it was within 12 months of the First Complainant incepting the policy, the Provider accepted her licence at that time (she has since obtained an Irish driving licence). The Provider did not seek a copy of the First Complainant's driving licence at that time as he was not driving the vehicle and thus it was not necessary in order to process the claim. As the First Complainant had Third Party & Theft cover when the loss occurred, he was not eligible to claim for any damage caused to his own vehicle, however the Provider settled the third party claim in full.

In addition, the Provider was notified on 6 December 2010 (claim reference xxxxx/002 of an attempted theft of and damage to the First Complainant's vehicle on 5 December 2010. As the First Complainant had Third Party & Theft cover when the loss occurred, he was not eligible to claim for any malicious damage caused to his own vehicle and the claim was declined on 7 December 2010.

In conclusion, the Provider declined to indemnify the element of the First Complainant's claim relating to the accidental damage to his own vehicle following a road traffic accident that he was involved in on 3 November 2017, as it concluded that he did not hold the legally required Irish/EU driving licence at that time. The Provider is satisfied that it acted fairly and provided several opportunities for the First Complainant to present an Irish/EU driving licence. In addition, if there is a genuine reason why the First Complainant was at the time of the claim using his international driving licence and therefore did not require an Irish/EU driving licence, the Provider will be happy to review the matter on receipt of information confirming same.

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## Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties 7 July 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 First Complainant incepted a private motor vehicle insurance policy with the Provider on 30 December 2009. The policy period in which this complaint falls, is from 30 December 2016 to 29 December 2017. The complaint at hand is that the Provider wrongly or unfairly declined the element of the First Complainant's claim relating to the accidental damage to his vehicle, following a road traffic accident he was involved in on 3 November 2017.

I note that the Provider is indemnifying all other elements of the claim on the basis of a 50/50 split with the third party insurer, but not the accidental damage to the First Complainant's own vehicle. In this regard, I note that the third party insurer has paid the First Complainant the sum of €14,000, representing 50% of the accidental damage claim to his own vehicle.

The First Complainant's motor insurance policy, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, the 'General exceptions which apply to the whole policy' section of the applicable Your Private Motor Vehicle Insurance Policy Document provides, *inter alia*, at pg. 11, as follows:

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- “3. We will not cover the driver unless;
- a they hold a valid licence to drive the vehicle; and
  - b they meet the conditions and any limits of the driving licence”

I note that the National Driving Licence Service guidelines for those persons holding driving licences from non-EU countries state at <https://www.ndls.ie/holders-of-foreign-licences.html#holders-of-driving-licences-from-other-countries>, as follows:

*“If you are not from any of the above countries, (for example The United States), and you hold a national driving licence or an international driving permit from your own country, you may drive in Ireland for the duration of your temporary visit (up to 12 months).*

*On taking up residence you should apply for an Irish driving licence but you will need to go through the full driver licensing procedure. You must first pass a driver theory test, apply for a learner permit, complete a course of Essential Driver Training (EDT) and pass your driving test in Ireland”.*

In this regard, a person may hold a non-EU driving licence during any temporary stay in Ireland for up to 12 months after which, if they are a full time resident in Ireland, they must then obtain an Irish/EU driving licence.

I note that during its claim assessment, the Complainant supplied the Provider with a copy of his non-EU driving licence. As a result, the Provider emailed the First Complainant’s Solicitors at 12:58 on **28 November 2017**, as follows:

*“We need to clarify whether [the First Complainant] has been continuously resident in Ireland for a period of 12 months or more since policy inception, or whether he has been travelling back and forth since policy inception – in order for us to establish the validity of his licence and in turn, this policy – as [the First Complainant] has submitted a Russian licence even though policy has been on cover since 2009 ...*

*For the avoidance of doubt, if [the First Complainant] has been continuously resident, his Russian Federation licence would only have been valid for the first 12 months of his residency. Therefore, he should have applied for an Irish licence. If this is the case, and as he does not hold a valid Irish licence the accidental damage element of the claim (i.e. the damage to [the First Complainant’s] own vehicle) will not be recoverable under the policy”.*

As the information sought was not forthcoming, I note that the Provider later emailed the First Complainant’s Solicitors again at 12:38 on **11 December 2017**, as follows:

*“We consider that we have not received a substantive response to our request for clarification as to whether [the First Complainant] has been permanently resident in Republic of Ireland since 2010 ...*

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*As the Policy Holder has not provided evidence to show that he is not permanently resident in Republic of Ireland, we consider that the licence is not valid and the accidental damage to the Policy Holder's own vehicle is not covered under the policy".*

I am satisfied that the onus is on the First Complainant to ensure that he holds a valid driving licence for driving and insurance purposes, in accordance with the National Driving Licence Service guidelines.

I note from the documentary evidence before me that the Provider posted the First Complainant his Car Insurance Schedule on **8 March 2017**, this being the most recent policy schedule issued to him prior to the November 2017 claim. I note that this schedule clearly stated as follows:

Driver details	
Named drivers:	Licence type:
[The First Complainant]	Full Irish
[The Second Complainant]	Full Irish

I am satisfied that the First Complainant was on clear notice from this Car Insurance Schedule that the policy was offered by the Provider, on the basis that he held a full Irish licence. If he did not do so, he should have then contacted the Provider to advise that he was not a holder of an Irish driving licence in order to ensure that whatever action was required could be taken to ensure that cover was properly in place.

I note that the Provider has advised that if there is a genuine reason why the First Complainant at the time of the claim was using his international driving licence and therefore did not require an Irish/EU driving licence, that it will review the matter on receipt of information confirming same. I am satisfied that this is a reasonable approach for the Provider to adopt and that it will be a matter for the First Complainant to clarify the situation pertaining to his driving licence as it was in November 2017, if he now wishes to pursue the matter further.

In the absence however, of this information which the Provider has sought from the First Complainant since its communications with his solicitors, in November and December 2017, I take the view that the Provider is entitled to stand over its position that it holds inadequate information regarding the reason for the First Complainant not holding an Irish/EU licence. Accordingly, it is entitled to decline to admit the First Complainant's claim, relating to the damage to his own vehicle.

It is my Decision therefore, on the evidence before me that this complaint cannot be upheld.

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**Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**MARYROSE MCGOVERN  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

29 July 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.