



<u>Decision Ref:</u>	2020-0401
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a motor insurance policy online with the Provider on **11 December 2018**, which the Provider cancelled on 6 March 2019 with effect from the inception date.

The Complainant's Case

The Complainant incepted a motor insurance policy online with the Provider on 11 December 2018, in respect of vehicle 151D that she had recently purchased.

The Complainant parked this vehicle on the road directly outside her girlfriend's house in Northern Ireland as they were flying from Belfast to a European country for a short break on 26 December 2018. The Complainant and her girlfriend returned to the house on 29 December 2018 to discover that the vehicle had been stolen.

Following its assessment of her ensuing claim, the Provider declined the claim and voided the Complainant's motor insurance policy as it concluded that the Proof of No Claims Bonus that she had presented when incepting the policy, was already in use under another motor insurance policy that she had set up in her name with the Provider in Northern Ireland and that she had failed to disclose at the policy application that she also had the full time use of another vehicle.

In this regard, the Complainant sets out her complaint in the Complaint Form she completed, *inter alia*, as follows:

“My car was stolen over Christmas period I bought the car on the 11th of December and took my policy out on that day. I had no other car in the Republic of Ireland driven or owned by me. I purchased the policy online and [the Provider] was asking [me] to submit my [No Claims Bonus] from my previous policy which I cancelled earlier in the year as I was working on projects in the UK and didn’t need a car at the time for Republic of Ireland.

[My car] was stolen [outside] my girlfriend’s house on 28th/29th December [2018]...in ...The local PSNI officers took statements and confirmed that the car was stolen and the keys were taken from the letter box. All of the documents I had belonging to the car was taken with car. All of the car’s service history was in the glovebox of the car ...

I do have a car in UK in my name shared between my partner and myself. We co-bought [that car] last year and I gave the insurance a copy of my No Claims Bonus. [The Provider] at the time never asked did I have a car abroad, only did I have one in the Republic of Ireland at the time and to which I did not have a car in Ireland prior to buying [the car that was stolen] on 11th December 2018.

[The Provider] are now using the fact I have a car abroad as to not paying for the theft of my car in December [2018]”.

The Complainant seeks for the Provider to reinstate her motor insurance policy and admit her claim, as follows:

“The car cost me €18,500 and contents was €400 – a training belt worth €250 and €150 worth of Knee sleeves and Elbow sleeves. I am looking for the cost of the loss of the car to be covered along with the contents”.

The complaint is that the Provider wrongly or unfairly declined the Complainant’s motor insurance claim and voided her motor insurance policy.

The Provider’s Case

Provider records indicate that the Complainant incepted motor insurance policy DNDMR7675950 online with the Provider on 11 December 2018 in respect of vehicle 151D, using a residential address in [named location].

The Complainant notified the Provider on 29 December 2018 of the theft of vehicle 151D, advising that the vehicle had been parked on the road directly outside her girlfriend’s house in Northern Ireland. The Complainant and her girlfriend had returned from a short break abroad on 29 December 2018 to discover the vehicle stolen and she advised that the perpetrators had used a tool to take the keys from the hall out through the letterbox. As part of its claim assessment, the Provider learnt that the Complainant had set up in her own name, motor insurance policy xxxxx182 with the Provider in Northern Ireland, through

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a named intermediary. This policy was incepted on 4 September 2018 in respect of vehicle B and the Complainant had submitted proof of her address in [location] (the same address from which vehicle 151D was stolen). The Proof of No Claims Bonus presented on policy xxxxx182 was the same one that the Complainant had used to incept policy xxxxx950 online with the Provider on 11 December 2018 in respect of vehicle 151D.

As policy xxxxx182 was taken out through a named intermediary, this intermediary received the Proof of No Claims Bonus and accepted this in line with normal procedure. Given that the time elapsed between the expiry of the Complainant's previous insurance policy on 24 August 2018 and the commencement of policy xxxxx182 on 4 September 2018, was less than 30 days, no further questions were necessary or asked by the intermediary on receipt of the Proof of No Claims Bonus.

The Provider does not have oversight of all of the Proof of No Claims Bonuses that are received through its broker partners as they have been given delegated authority by the Provider to accept these and, in any event, there are Chinese walls in place so the same Proof of No Claims Bonus through the two different channels would never have been received or reviewed by the same department. The only time that a Proof of No Claims Bonus is reviewed by the Provider for a policy set up through a broker, is when a claim occurs on the policy or if there are any other underwriting concerns.

The Provider says that in this case, a claim on 31 January 2019 on policy xxxxx182 gave rise to the Provider requesting a copy of the Proof of No Claims Bonus. The Provider notes that there was a further claim on this policy on 8 August 2019 and that as of 2 April 2020, this policy remained in force and in the name of the Complainant.

The Provider says that as regards policy xxxxx950, the policy taken out in the Republic of Ireland, the quotation was originally completed on 7 December 2018 and cover incepted on 11 December 2018. The Provider received a copy of the Proof of No Claims Bonus by email on 18 December 2018. As there was a gap in cover since the cancellation of that policy on 24 August 2018 and given that the Proof of No Claims Bonus was in respect of a different registered vehicle 08D, the Provider wrote to the Complainant to request confirmation that she did not hold insurance and had no accidents, claims or convictions since the expiry of the previous policy on 24 August 2018, along with confirmation of whether or not she still owned vehicle 08D.

The Provider says that the Complainant emailed the following reply to it on 18 December:

"I sold my car in September and cancelled my policy [with the previous insurer]. I have been working in the UK for work and I'm back in Ireland now for good.

That's the reason why I have no car as I had no need for one while working in the UK".

The Provider says that it is now aware that this statement was incorrect and not accurate at the time and it deems this to be a misrepresentation of a material fact. Had the Provider been furnished with the correct information at inception, it would have declined to offer the

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Complainant a quotation. In addition, the Provider says that if it had become aware of this, on emailing the Complainant on 18 December 2018, the policy would have been voided *ab initio* for the same reason.

In this regard, the Provider says that it did not provide policies through its direct channel on 0 years No Claims Discount nor where the Proof of No Claims Bonus is in use elsewhere, as it was in this instance, as the Complainant had presented it to the intermediary when incepting policy xxxxx182 with the Provider in Northern Ireland in September 2018.

The Provider notes that the Complainant obtained the quotation for policy xxxxx950 online and that she also took the policy out online. In doing so, the Complainant agreed to the Assumptions stated under '**Your Insurance History**', as follows:

"1. You have at least 1 years No Claims Bonus in your own name earned within the last 2 years or You have 2 years consecutive Named Driving Experience with a Full licence within the last six months

2. This No Claims Bonus was earned on your private motor policy

3. Your previous insurer must be an EU insurer

4. This No Claims Bonus is not in use on any other active policy (you earn the no-claims bonus on each car separately if you insure more than one car and the same No Claim Bonus cannot be in use at the same time on more than one policy)".

The Provider says that the Complainant would have to have agreed to having read and accepted the Assumptions, Terms and Conditions/Terms of Business, Data Protection Policy and use of Cookies associated with the policy before proceeding to click the "Get Quote" button. Before clicking the "Buy Now" button, the Complainant would also have to have ticked the box beside the following text, "I have read and understood the documents".

The Provider sent the Complainant the new business documentation on 11 December 2018 and the cover letter advised, amongst other things, as follows:

"Please read your statement of fact document carefully as this form the basis of your contract with [the Provider]. If this document contains any inaccurate or incomplete information you must notify us immediately".

In this regard, the enclosed 'Statement of Fact' provided, *inter alia*, as follows:

*"Do you own or have the use of any other car other than the car noted above? **No**"*

The Provider says that the Complainant did not contact it to amend any information on the Statement of Fact.

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The Provider notes that at no point do the questions or Assumptions that form part of its online quotation process or on the 'Statement of Fact', ask if the Complainant had full time use of another car in the Republic of Ireland only and the Provider does not specify that each car owned by the insured must be based in the Republic of Ireland only. In any event, had the Complainant any doubts regarding the questions posed, she ought to have queried these with the Provider, on receipt of the 'Statement of Fact'.

The Provider also considers that the Complainant made a number of misrepresentations to it, in breach of the Road Traffic Act 1961. For example, the Complainant furnished the Provider with a false declaration regarding her last policy of insurance by stating that she did not hold any motor insurance cover since the cessation of her policy in respect of vehicle O8D on 24 August 2018, when in fact she had on 4 September 2018 incepted policy xxxxx182 in respect of vehicle B, using a residential address in Northern Ireland.

In addition, the Provider notes that the Complainant gave it conflicting information insofar as she advised at claim notification by telephone on 29 December 2018 that the address in Northern Ireland where her vehicle 151D had been located at the time of the theft, was her girlfriend's house and not her own place of residence, but she also incepted policy xxxxx182 in respect of vehicle B in September 2018, using that address as her residential address.

The Provider, as an insurer, relies upon the principle of utmost good faith of all proposers and policyholders regarding the contract of insurance. It strongly believes that this was not abided by in this case insofar as the Complainant did not reveal all important information and was not honest in her communications with the Provider. As a result of her failure to advise that her Proof of No Claims Bonus was already in use on another policy in her name in respect of another vehicle that she owned and used, the Provider voided the Complainant's motor insurance policy xxxxx950 from date of inception, due to her non-disclosure and misrepresentation of material facts.

Accordingly, the Provider is satisfied that it correctly declined the Complainant's motor insurance claim and voided her motor insurance policy in strict accordance with the policy terms and conditions.

The Complaint for Adjudication

The complaint at hand is that the Provider wrongly or unfairly declined the Complainant's motor insurance claim and voided her motor insurance policy.

Decision

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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 **12 October 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 Complainant incepted a motor insurance policy online with the Provider on 11 December 2018, in respect of vehicle 151D that she had at that time recently purchased, using a residential address in Leinster.

The Complainant states that she had parked this vehicle on the road directly outside her girlfriend's house in Northern Ireland as they were flying from Belfast to a European Country for a short break on 26 December 2018 and that when they returned on 29 December 2018 they discovered that the vehicle had been stolen.

Following its assessment of her ensuing claim, I note that the Provider wrote to the Complainant on **6 March 2019** to advise as follows:

"[Motor insurance policy xxxxx950] was bought online and incepted on 11th December 2018. When you were applying for insurance you declared that your No Claims Bonus was not in use on any other active policy.

It has now come to our attention that this is not the case.

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

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void and no cover was ever in force. I would like to inform you that [the Provider] will not be providing indemnity in respect of the claim”.

In this regard, in addition to sending her No Claims Bonus to the Provider to inception motor insurance policy xxxxx5950 on 11 December 2018 in respect of her vehicle 151D using a residential address in Leinster, I note that the Complainant had previously presented the same No Claims Bonus in order to inception motor insurance policy xxxxx on 4 September 2018 in respect of vehicle B, using a residential address in Northern Ireland.

The Complainant submits in her Complaint Form as follows:

“[The Provider] at the time never asked did I have a car abroad, only did I have one in the Republic of Ireland at the time and to which I did not have a car in Ireland prior to buying [the car that was stolen] on 11th December 2018.

[The Provider] are now using the fact I have a car abroad as to not paying for the theft of my car in December [2018]”.

I note, however, that in order to obtain the online quotation for policy xxxxx950 from the Provider, the Complainant first had to confirm that she agreed to a number of Assumptions stated under ‘Your Insurance History’, including, as follows:

“This No Claims Bonus is not in use on any other active policy (you earn the no-claims bonus on each separately car if you insure more than one car and the same No Claim Bonus cannot be in use at the same time on more than one policy)”.

It seems in that respect that to accept this assumption, and others, the Complainant was required to click on a declaration that she had read and understood “*the documents*”. Whatever the Complainant’s understanding at that time when she confirmed that she understood the documents, I note that the Provider emailed the Complainant at 14:47 on 18 December 2018, as follows:

“Thank you for the proof of no claims bonus that you provided to us recently.

We just need to confirm some further details before your certificate of insurance and disc are issued:

Can you confirm that since the expiry of your previous policy with [a named insurer] on 24.08.18 that you have not held motor insurance nor had any accidents, claims or convictions and none are pending?

[My emphasis]

Can you also confirm the reason you were not driving your car from then until now?

Can you confirm that you no longer own or have in your possession vehicle registered as [08D] and you wish to use your no claims bonus from that vehicle on your new policy?”

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In this regard, whilst the Complainant contends that the Provider only asked about motor insurance within the Republic of Ireland, I am satisfied that the following question was not limited to motor insurance in the Republic of Ireland.

“Can you confirm that since the expiry of your previous policy with [a named insurer] on 24.08.18 that you have not held motor insurance ?”

I am satisfied that even if the Complainant had somehow misunderstood the assumptions which she had confirmed, when seeking the quotation online, nevertheless at this subsequent point, the Complainant ought to have disclosed to the Provider the fact that, at that point in time, she did in fact hold a motor insurance policy in Northern Ireland, in respect of a different vehicle owned by her. She did not however do so, and I am satisfied that her response neglected to make the correct information available to the Provider.

In addition, I note that the Provider issued the Complainant with her policy documentation by post on **11 December 2018**. The cover letter stated, amongst other things, as follows:

“Please read your statement of fact document carefully as this forms the basis of your contract with [the Provider]. If this document contains any inaccurate or incomplete information you must notify us immediately”.

I note that the enclosed ‘**Your Car Insurance Statement of Fact**’ provides, *inter alia*, as follows:

“The following document sets out confirmation of your material facts...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 us immediately ...

[My emphasis]

Use

A. *Do you own or have the use of any other car other than the car noted above? **No***

...

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, a claim not being paid or partly paid, you encountering difficulty obtaining insurance elsewhere or, in the case of property insurance, you breaching the terms and conditions of any loan on the property.

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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] ...

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”.

The Complainant’s motor insurance policy, like all insurance policies, does not provide cover for all eventualities, instead the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, the **‘Introduction – Your Policy’** section of the applicable Motor Insurance policy booklet provides, *inter alia*, at pg. 2, as follows:

“The Proposal form and Material Facts Declaration which You have signed, or Your Statement of Fact, is the basis of Your contract with Us and from which Your Policy has been prepared ...

We will provide the insurance described in this Policy if:

- 1. The information detailed on Your Proposal Form and Material Facts Declaration or Your Statement of Fact is, to the best of Your knowledge and belief, correct and complete.*
- 2. Any person claiming to be insured has complied with all terms, conditions, Exceptions and General Exceptions of this Policy ...*

Your Policy is made up of the following documents

- 1. This Policy Document.*
- 2. The Schedule.*
- 3. Certificate of Motor Insurance and Insurance Disc.*
- 4. Any Endorsement which We may issue to You.*

You should fully read these documents and contact Us if any information is not correct, or if You have any queries”.

In addition, the **‘General Policy Conditions’** of this policy booklet provides, *inter alia*, at pg. 5, as follows:

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“Duty of Disclosure of Material Facts

A material fact is anything which affects this insurance.

Duty of disclosure of a material fact continues throughout the life of the Policy. We will void the Policy if cover has been obtained by any misrepresentation, mis-description, use of a fraudulent document or non-disclosure of any material fact.

If You are in any doubt as to whether a fact is material or not, You should contact Us for clarification.

You must tell Us immediately about any change which could affect Your Policy.

You must tell Us if:

- 1. You change Your Car.*
- 2. You buy or take ownership of another Car ...*

This list of possible examples is neither complete nor exhaustive

...

Failure to advise Us of a change may result in cancellation / voidance of the Policy or refusal to pay a claim”.

Insurance contracts are contracts of utmost good faith. The failure to disclose information allows the Insurer to void the policy from the outset and to refuse or cancel cover. Once nondisclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, void cover from the start date, as the Provider has done in this instance.

As the Complainant did not make the Provider aware that her Proof of No Claims Bonus was already in use on motor insurance policy xxxxx182, that she had previously incepted in her name in respect of a different vehicle that she owned and used in another jurisdiction, and also failed to accurately answer the Provider’s question as to whether she had held any motor insurance since 24 August 2018, at the time when the Provider agreed to incept motor insurance policy xxxxx950, I am satisfied that that policy came into being on the basis of a false premise.

This Office is aware that the courts have long considered the issues surrounding nondisclosure of material facts. In *Aro Road and Land Vehicles Limited v. Insurance Corporation of Ireland Limited* [1986] I.R. 403, the Court determined that representations made in the course of an insurance proposal form should be construed objectively, with Henchy J. stating

“a person must answer to the best of his knowledge any question put to him in a proposal form.”

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In *Coleman v. New Ireland Assurance plc t/a Bank of Ireland Life* [2009] IEHC 273, Clarke J. held that a party could only be subject to having his policy of insurance voided because of the manner in which he or she answers a proposal form if he or she failed to answer

“such questions to the best of the party’s ability and truthfully.”

I am also cognisant of the views of the High Court in *Earls v. The Financial Services Ombudsman* [2014/506 MCA], where it indicated that

“the duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources.”

In my opinion, for the reasons outlined above, I am not satisfied that it would be reasonable to find that the Complainant answered the questions put to her in the application process, to the best of her ability. As a result, I am satisfied that the Provider was entitled to decline the Complainant’s motor insurance claim and to void her motor insurance policy, in strict accordance with the terms and conditions of the insurance arrangement in place. Accordingly, I am of the opinion, given the evidence made available by the parties, that there is no reasonable basis upon which it would be appropriate to uphold this complaint.

Conclusion

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

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



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

4 November 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.