



<u>Decision Ref:</u>	2020-0451
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Claim handling delays or issues Misrepresentation (at point of sale or after) Premium rate increases No claim bonus issues Mis-selling (motor) Misrepresentation (motor)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a motor insurance policy which the Complainant purchased from the Provider in **February 2018**, when she elected to refuse the option of No Claims Bonus Protection. She says that the financial implications of that decision were not adequately explained to her by the Provider at that time.

The Complainant's Case

The Complainant says that she *“does not accept that the No Claims Bonus Protection (“NCBP”) in the insurance industry should be optional”* and that the Provider *“did not act in good faith when providing [her] with cover”*.

The Complainant says that the Provider explained the financial benefits of the NCBP to her using percentages and not *“in financial terms”*. She says that if she had been made aware by the Provider of the financial implications of not opting for NCBP, then she would have purchased it. The Complainant says that, as a consequence, the Provider *“did not protect her interests and instead accepted her decision without robustly ensuring that [she] was aware of the exact costs”* and by *“bombarding her with quotes and terms and conditions”* which put her in a *“position to make a very easy, but costly mistake”*.

The Complainant says that in **August 2018**, she contacted the Provider and enquired about making a claim on her motor insurance policy. She says that the Provider advised her in terms of percentages, as to the financial implications that the claim would have on her premium, for the following year. The Complainant says that if she had been informed by the Provider that the premium for the following year, would be €1,700.00, then her *“decision to proceed with the claim would [have been] fully informed”*.

The Complainant says that if the Provider had told her that she *“would suffer further loss over the years”* then *“[she] certainly would not have proceeded with the claim”*. She says that, as a consequence, she became *“ill and very upset”*, that it *“left her vulnerable as a driver”* and that she was *“really anxious that she would not receive any quotes”*.

The Provider’s Case

In its Final Response Letter dated **28 February 2019**, the Provider says that the Complainant contacted its customer Care Centre on 15 February 2018 as she had received a private motor quotation on its website. The Complainant was unable to input an inception date on the website and she was advised by the Customer Care Team that the private motor quotation was showing a premium of €521.00 which did not include any optional extras.

The Provider says that the Complainant then advised the Customer Care Representative that she had opted to include breakdown assistance cover in the quotation, which then generated a revised premium of €561.39. The Provider says that during this call, the Customer Care Representative asked the Complainant to confirm if she had read and understood all of the questions on the website, all of the assumptions and the terms of business, regarding the online private motor quotation. The Complainant confirmed accordingly and the Representative then proceeded to discuss cover and any other optional extras that the Complainant may have required for her quotation.

The Provider says that the Customer Care Representative discussed the option of adding No Claims Bonus Protection cover to the motor quotation. The Complainant was advised that her No Claims Bonus would be reduced from 75% to 35% in the event of a claim and the Representative offered to explain the No Claims Bonus Protection options and the cost of each, but the Complainant declined this cover. The Provider says that the Representative agreed a discounted price of €540.00 and cover was granted to the Complainant on her vehicle from 1 March 2018.

The Provider says that:

“No claims bonus protection is not mandatory in the insurance industry. [The Provider] has to provide all customers with the option of purchasing any optional extras available on the policy. The consumer can accept or decline the options available.”

The Provider says that subsequently the Complainant contacted it on **13 August 2018** *“to discuss the possibility of registering a motor damage claim on [her] private motor vehicle”*. The Provider says that the Complainant then *“wished to proceed in making a claim”* and that the claim was *“settled on 19 October 2018”*. The Provider says that during the course of the

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conversation on 13 August 2018, the accident circumstances were discussed and the Complainant asked if there was bonus protection or step-back on her policy. The Claims Handler advised the Complainant that should she wish to pursue a claim, her No Claims Bonus would reduce from 75% discount to 35% discount. The Provider says that during the call in question, the Complainant confirmed that she wished to proceed in making a claim.

The Complaint for Adjudication

The complaint is that the Provider:-

- (i) at the time of the sale of the policy in February 2018, failed to adequately explain to the Complainant what the financial impact would be on her, if she elected to proceed without purchasing the optional No Claims Bonus Protection and
- (ii) failed to adequately explain to the Complainant in August 2018, what the financial implications would be if she proceeded to make a claim on her policy.

The Complainant is unhappy that No Claims Bonus Protection is not mandatory and she believes that the Provider has a case to answer to her. She wants the Provider to restore her No Claims Bonus so that in future, she will not be exposed to higher premiums and to reimburse her for the loss suffered.

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 **18 November 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.

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Chronology of Events

- **14 February 2018:** The Complainant visited the Provider's website and obtained a quote for her car insurance which was inclusive of comprehensive cover and included breakdown assist as an add on.
- **15 February 2018:** The Complainant telephoned the Provider and enquired about the quote she had obtained online the day before. The Provider's Agent asked the Complainant if she had read and understood all the terms and conditions and the Complainant responded that she had. The Provider's Agent explained to the Complainant that as long as she had comprehensive cover then in the event of a claim, her No Claims Bonus would reduce from 75% to 35% and asked the Complainant if she wanted No Claims Discount Protection or if she wanted it explained and the Complainant replied that she did not. The Complainant purchased the policy and paid a deposit.
- **16 February 2018:** The Complainant sent in her signed proposal and proof of her no claims bonus to the Provider.
- **20 February 2018:** The Provider sent the Complainant her policy documentation.
- **13 August 2018:** The Complainant contacted the Provider and notified it of a claim. The Provider's Agent explained to the Complainant the step back in her No Claims Bonus from 75% to 35% if she decided to proceed with the claim and the Complainant elected to proceed.
- **14 August 2018:** The Provider's Claims Handler telephoned the Complainant and took information in relation to the claim. The Complainant said that she had obtained an estimate from her garage for €2,308.00 inclusive of VAT or €2,034.00 excluding VAT.
- **30 August 2018:** The Complainant telephoned the Provider and discussed her claim. She said that she preferred to go with her garage for the repairs costing €2,400, as opposed to the Provider's garage's quote of €1,500.00. The Complainant wanted to know how this would impact her No Claims Bonus.
- **31 August 2018:** The Complainant contacted the Provider's Claims Handler again and queried if the claim would affect her no claims bonus if she decided to go with her garage's quote as opposed to the Provider's garage quote. The Provider's Claims Handler told her this would come down to one claim and that it did not matter how much the claim was for. The Complainant asked how much her premium would be and the Provider's Claims Handler told the Complainant that he only dealt with claims and wouldn't know.

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- **13 September 2018:** The Provider's Claims Handler telephoned the Complainant and discussed settlement of the claim. He told the Complainant that it had agreed a figure with the Complainant's garage for €1,937.62, excluding the Complainant's excess of €300.00.
- **14 September 2018:** The Complainant telephoned the Provider to transfer her insurance onto another vehicle whilst her car was being repaired and was told that the Provider had waived the administration fee for the transfer of insurance.
- **31 January 2019:** The Provider issued its renewal documentation to the Complainant and that informed her that her policy was due for renewal on 1 March 2019. The letter also informed the Complainant that it would automatically renew if she did not contact the Provider before the renewal date.
- **12 February 2019:** The Complainant sent a complaint to the Provider.
- **28 February 2019:** The Provider issued its Final Response Letter to the Complainant.

Policy Terms and Conditions

I note the following from the terms and conditions of the policy in relation to the No Claim Discount:

"No claim discount

We will reduce your premium in line with the following scale if no claims have occurred over your previous periods of insurance:

<i>Period of insurance</i>	<i>No claim discount</i>	<i>Discount level after a single claim</i>
<i>One year</i>	<i>35%</i>	<i>0%</i>
<i>Two years</i>	<i>55%</i>	<i>0%</i>
<i>Three years</i>	<i>65%</i>	<i>0%</i>
<i>Four years</i>	<i>70%</i>	<i>35%</i>
<i>Five years</i>	<i>75% (maximum)</i>	<i>35%</i>

If your point on the scale represents four years claims free or more, your discount level will reduce to 35% following a single claim, rather than being reduced to zero.

Your no claim discount will not be affected by a claim insured under:

- *Fire and theft cover,*
- *Section 2 – Uninsured driver protection,*
- *Section 3 – Windscreen and window glass cover, or*
- *Section 3 – Breakdown assistance cover*

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You may also be able to further protect your no claim discount by purchasing one of our no claim discount protection covers:

- No claim discount protector, or
- Step-back no claim discount protector.

If either cover is included on your policy, this will be noted by endorsement on your schedule”.

The policy terms and conditions also include the following in relation to the No Claims Discount Protection (NCDP):

“No claim discount protector

Your no claim discount will not be affected by a claim insured under:

- Fire and theft cover,
- Section 2 – Uninsured driver protection,
- Section 3 – Breakdown assistance cover.

Any other claim including liability to third parties and damage to the insured car, will mean your no claim discount is impacted in line with our No claim discount protector rules:

1. The level of no claim discount granted under your policy will not be reduced as a result of a single claim within a two-year period of insurance (24 months).
2. If you have a second claim in this period, your no claim discount will be reduced as follows:
 - 75% back to 65%
 - 70% back to 65%
 - 65% back to 65%
3. If you have a third claim in this period, your no claim discount will reduce to zero”.

Analysis

This complaint arises from a car insurance policy that the Complainant purchased from the Provider in **February 2018**. I note that the Complainant’s policy was in force from 1 March 2018 to 28 February 2019. The Complainant’s submissions to this Office on **29 March 2019**, include the following:

"I still do not accept the "no claims bonus protection" in the insurance industry should be optional. I believe that [the Provider] did not act in good faith when providing me with the cover and was disingenuous in stating in its response that the bonus protection is not mandatory for them simply and only because it is not mandatory across the industry.

[The Provider] did not explain adequately why this product cannot be mandatory. Why not, as other products in the industry are mandatory given the valuable protection it provides, and the serious implications of not purchasing it, it should be included in any quote, otherwise insurance companies are not protecting their customers and only gain from such an optional product, to the detriment of their customers. Why should insurance companies be allowed to continue this practise?"

The Provider's Final Response Letter dated **28 February 2019**, advised the Complainant:

"With reference to the letter we received from you, you requested a change to [the Provider] Insurance policy, regarding the selling of no claims bonus protection as an optional extra. No claims bonus protection is not mandatory in the insurance industry. [The Provider] Insurance has to provide all customers with the option of purchasing any optional extras available on the policy. The consumer can accept or decline the options available.

On the investigation of your complaint I note you contacted our Claims Department on the 13 August 2018 to discuss the possibility of registering a motor damage claim on your private motor vehicle. In your letter you also state that during the claims process you were not advised about the nature of cover, the lack of protection and the implications of making a claim on your policy. The claims handler advised you that should you wish to pursue a claim your No claim Bonus would reduce from 75% discount to 35% discount. During that call you advised our claims handler that you wished to proceed in making a claim. I understand that your claim was settled on the 19 October 2018".

The Complainant believes that the Provider failed to fully inform her of the financial impact of her declining the optional No Claims Bonus Protection, which was available to her on the policy she purchased in February 2018. I note from the Provider's submissions to this Office that it says that:

"The Complainant met the acceptance criteria to be offered No Claims Bonus Protection cover as an optional extra to her private motor quotation. The Provider has two forms of bonus protection cover – Step Back Protection or Bonus Protection Extra. Both options were offered to the Complainant when she completed her online motor quotation on the 14 February 2018".

I note however from the audio evidence, that when the Complainant contacted the Provider on **15 February 2018**, and the Provider's Agent offered her the No Claims Bonus Protection the Complainant declined this by stating "No, No". The Provider has responded to the Complainant's submission that it has not explained why the NCBP cannot be mandatory, by stating that:

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“Bonus protection cover is not mandatory in Ireland. Basic road traffic act cover is currently the only mandatory insurance requirement in Ireland.

No Claims Bonus Protection cover is also not available to every proposer as it is subject to acceptance criteria.

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As no claims bonus protection cover is an additional cost eligible insurance proposers who are primarily concerned with securing the basic level of cover at the lowest available price can then make the decision whether to include this cover or not. Optional extras allow all customers to tailor the product to suit their needs and budgets.”

Whilst the Complainant is dissatisfied that the No Claims Bonus Protection available was optional only, and she believes that the Provider ought to have required her to pay for this additional cover, it is of course notable that such cover is not mandatory in this jurisdiction.

Indeed, if the Provider had obliged the Complainant to purchase the cover in question, it would of course have been open to criticism on the basis that the Complainant was not required to pay for such optional cover.

The Complainant is also unhappy as she believes that the Provider ought to have more adequately explained the financial implications to her of proceeding to make a claim on her policy in August 2018.

I note in that regard that having been in an incident, the Complainant telephoned the Provider on 2 August 2018. During this conversation the Provider’s Claims Handler told the Complainant that her No Claims Bonus Discount would be reduced from 75% to 35% which would be the equivalent of one year’s No Claims Bonus Discount. I note that this information was as outlined in the terms and conditions of the policy where the no claims discount and the no claims discount protector, are explained.

I also note that once the Provider’s Agent had advised the Complainant of the percentages, the Complainant asked what the monetary amount would be and the Provider’s Agent advised her that he could not provide this. This telephone conversation also makes clear that the Provider’s Agent advised the Complainant that it would take a few years to build back up the bonus to 75%, if she decided to proceed with the claim.

Accordingly, I do not accept the Complainant’s contention that if the Provider had told her that she *“would suffer further loss over the years”* then she *“certainly would not have proceeded with the claim”*.

Furthermore, I note that during a subsequent telephone conversation between the Complainant and the Provider's Claims Handler on **31 August 2018**, the Complainant asked how the claim would affect her premium the following year. The Provider's Claims Handler told the Complainant that he could not give this information as his department only dealt with claims but he told her the percentage of the no claims bonus would impact how the premium would be calculated.

Having considered all of the evidence provided to this Office, I am satisfied that the Complainant was offered bonus protection, when she proposed for the policy in **February 2018**. I also note that the Complainant was advised that this was optional and it was therefore entirely at her discretion, whether or not she wanted the NCBP. I accept the Provider's submission the no claims bonus protection is optional as not all customers can avail of it, due to certain acceptance criteria.

Furthermore, I note from the Complainant's letter to the Provider on **12 February 2019**, the following:

"I cannot explain why on this occasion, I declined this optional payment, except it was a mistake on my part. Please note that I did not appreciate the fact that I declined the NCBP, until I recently received my renewal quote from your firm last week."

I cannot accept the Complainant's submission that the Provider failed to fully inform her of the financial impact of not opting for the no claims bonus protection. The evidence confirms that the Complainant was offered this optional extra by the Provider's Agent on **15 February 2018** but she declined this suggested additional cover, and replied "No, No".

I am also satisfied that the Provider advised the Complainant of the financial impact of bringing a claim. The Complainant was advised that her no claims bonus would reduce from 75% to 35%, if she proceeded with the claim. I accept the Provider's submissions this cannot be calculated in monetary value, as it would not be possible to give an accurate quotation, in advance.

The Provider has submitted that the reason for percentages as opposed to financial figures is because:

"Attempting to calculate a monetary impact could result in the Complainant being provided with incorrect information. To avoid any incorrect information being provided, future no claims discount entitlements can only be referred to in percentage terms".

I note that the Complainant wants the Provider to restore her no claims bonus so that in future, she is not exposed to higher premiums and to reimburse her for the loss suffered. In that respect, the Provider has advised:

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“that if the Complainant wishes to repay the full claim amount of €2,153.36, her full no claims bonus would be re-instated to 75%. If the Complainant suffered any further claims or losses since her renewal date with her new insurance provider this could affect her newly re-instated no claims bonus”.

In my opinion, it is entirely a matter for the Complainant if she wishes to accept that proposal.

On the basis of the evidence made available by the parties, I am satisfied that the Provider’s conduct in respect of these events has been at all times reasonable. I am satisfied that the Provider acted in accordance with the terms and conditions of the policy and for the reasons outlined above, there is no reasonable basis upon which I believe 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**

10 December 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.