



<u>Decision Ref:</u>	2021-0063
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Other
<u>Conduct(s) complained of:</u>	No claim bonus issues Refusal to insure - failure to renew policy
<u>Outcome:</u>	0

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint was made by the Complainant in late 2018, and it arises from the motor insurance policy he held in early 2016.

The Complainant's Case

In **June 2015**, the Complainant renewed his motor insurance policy, which was underwritten by the Provider. This policy provided full comprehensive cover, with no claims protection.

The Complainant was involved in a road traffic incident on **9 April 2016**, which was still in dispute at the time when this complaint was made.

The Provider did not offer the Complainant renewal terms in **June 2016**, because it exited the market.

In order to assist in his seeking insurance elsewhere, the Provider furnished the Complainant with proof of his 'No Claims Discount'. This document stated that the Complainant held a 55% no claims discount, representing five years of no claims, but it also stated that there were nil claim-free years. As a result of this, in his letter to this Office dated **24 March 2019**, the Complainant notes that when he sought motor insurance elsewhere

"I received three refusals and then the quote for €4,200.00 + 5% = €4,410.00, that and I having paid insurance for comprehensive cover with a full no claims protection, a joke".

In this regard, in his letter to this Office dated **14 September 2018**, the Complainant submitted as follows:

*“Insurance certificate has **“open claim”** which prevents me from getting insurance at a reasonable price.*

*What is the point in having “Claims protection” on policy – **“no claims bonus applies”***

They can say that I haven’t been refused insurance but what is €4,200 plus 5% insurance levy. This after getting 3 refusals to quote insurance for me.

I am now 2 years and 3 months without insurance. This is appalling considering that I did not cause the accident. I am an innocent victim ...

I am getting nowhere with getting a NO CLAIMS on my insurance certificate in order to get a proper car insurance quote. [My Broker] rang me and said OPEN CLAIM had to be on certificate, in their words: because of transparency. There is no transparency in declaring that one has a NO CLAIMS PROTECTION and then ignoring the declaration. Besides, there has been no claim paid out to another insurer from my insurance company. This is a case of guilty till proven innocent.

If I have a NO CLAIMS PROTECTION then if language is to mean anything if a claim had been paid out on my behalf I would be protected but, in this case there hasn’t even been a claim paid out and I am not protected but punished. It is unjust to punish a person when s/he has not offended or committed a crime. It is unfathomably unjust to declare and even put in writing that a person has a NO CLAIMS PROTECTION and then refuse to honour that declaration ...

I am very annoyed, frustrated and depressed with how I have been treated. It is appalling”.

As a result, the Complainant set out his complaint in the **Complaint Form** he completed on 4 October 2019, as follows:

“I was in an accident 9/4/2016 – a vintage tractor crashed into the side of my vehicle. The tractor had no brake lights, indicators or side mirrors. The driver did not use hand signals; but as I was overtaking he turned to go up a side road without giving any warning. He admitted all this in his statement to Gardaí.

I had full comprehensive insurance with a no claims protection, had all documentation up-to-date but have been refused insurance because of an open claim.

I need the insurance company to honour the fact that I [have] a no claims protection – full comprehensive & did not cause the accident – I have been deprived of the life I had been accustomed to for the past three years”.

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The Provider's Case

The Provider maintains that, as a matter of “*transparency*”, it is required to record on a ‘**Proof of No Claims Discount**’ document, the accurate position regarding the number of claims-free years and the fact of the existence of any open claims. The Provider maintains that the information recorded on the Complainant’s ‘**Proof of No Claims Discount**’ document was accurate, and it further contends that it has acted in compliance with the terms of the policy of insurance.

The Complaint for Adjudication

The Complainant’s complaint is that the Provider wrongfully issued him with proof of his ‘No Claims Discount’ indicating, on its face, that he had an open claim and nil claim free years of driving. The Complainant had maintained to the Provider that he was not responsible for the road traffic incident giving rise to the claim, though at the time when this complaint was made, the claim itself had not yet been settled.

The Complainant contends that, as he had ‘no claims protection’ on his motor insurance policy, the fact of an open claim should **not** have been recorded by the Provider on his No Claims Discount.

When asked in October 2018, as to how he required the Provider to remedy the issue giving rise to his complaint, the Complainant said on the Complaint Form he completed for this Office that:

“I need the [Provider] to honour the fact that I had a no claims protection- full comprehensive and did not cause the accident...”

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.

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A Preliminary Decision was issued to the parties on **9 February 2021**, 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.

Following the consideration of additional submissions from the Complainant, the final determination of this office is set out below.

Prior to considering the substance of the complaint, it is useful to set out certain terms from the Complainant's insurance policy, and to examine the relevant parts of the Complainant's '**Proof of No Claim Discount**' document.

Terms and Conditions of the Insurance Policy

Section 7 of terms and conditions of the Complainant's insurance policy provides as follows:

If this is a yearly contract, and You do not claim under this insurance and You have not been involved in an accident which has or may resulting in a claim against You, We will give a discount from Your renewal premium.

...

We will reduce or remove Your No Claims Discount if We make any payment whatsoever, even if the accident is not Your fault, other than fire and/or theft claim, unless We get the money back from someone else. We may withhold the No Claims Discount in full or in part if there are any claims that have not been settled. If We recover all Our money, or We have good reason to believe a third-party claim would be unsuccessful, the NO Claims Discount would apply again.

The General Endorsements section of the policy includes the following:

ENDORSEMENT NUMBER 2 – Protected No Claims Discount

If you pay an extra premium We will not reduce your No Claims Discount if You do not claim more than once during the period of insurance.

The benefit will stop if

- *You make more claims mentioned above*
- or*
- *You no longer qualify for this benefit*

'Proof of No Claim Discount' Document

A 'Proof of No Claim Discount' document dated **26 April 2016** issued by the Provider to the Complainant included the following:

No Claims Discount: *55% Discount representing 5 years*
Claim Free Years: *Zero years*

<i>Claims Details:</i>	<i>Date of Claim</i>	<i>Payment</i>	<i>Status</i>
<i>TP Property Damage</i>	<i>09/04/2016</i>	<i>€</i>	<i>Open</i>

I note that a 'Proof of No Claim Discount' document was subsequently thereafter issued by the Provider, in similar terms.

Analysis

After this Office commenced the formal investigation of this complaint, noting that the basis that the investigation into the 2016 road traffic accident was ongoing and 'open', the matter of the liability for the road traffic accident came before a Circuit Court judge in **July 2020**. It was noted that the Court found the Complainant 40% responsible for the collision, with the other driver 60% responsible.

The Complainant, in **April 2016**, had full 'no claims discount' protection on his policy that was to apply, regardless as to the person at fault in any accident. Indeed it is clear, that, in this instance, the other driver was deemed to be more culpable for the accident than the Complainant. It is worth noting, nonetheless, that the Circuit Court Judge did not accept the Complainant's suggestion, that he bore no responsibility for the accident.

The Complainant's complaint stems entirely from the fact that, although he had paid for full 'no claims discount' protection, the 'Proof of No Claim Discount' document which he received from his insurer, whilst recording that he had the benefit of the full 55% 'no claims discount', also specified on its face that there were "0" claim free years and that there was an "open" claim.

The Complainant, in these circumstances, characterises the 'no claims discount' protection which he paid for, as completely useless given that he was unable to secure a reasonable quote for insurance with any other insurer, due to the content of the 'Proof of No Claim Discount' document.

The relevant terms of the Complainant's policy are reproduced above. The first point to note is that these terms bind the Complainant and the Provider only. These terms do not in any way bind any third party or other insurer in the market (all of which are free to consider new business pursuant to any commercial criteria they believe to be pertinent). The obligation imposed on the Provider is to not reduce the 'No Claims Discount' it offers its policyholder, in this instance the Complainant, in the event of a single claim only.

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The terms of the policy do not stipulate what is or is not to be included in a 'Proof of No Claim Discount' document. The Provider maintains that the fact of the existence of a claim must be noted on a 'Proof of No Claim Discount' document. I accept that the Provider is entitled to note this information on the document. The 'No Claims Discount' is a system that is designed as a means for insurers to reward the safer drivers amongst their customers. It is an internal policy that is written into contracts of insurance, such that an insurer becomes bound to extend the benefit to any customers, who meet the specified criteria.

The fact that, in practice, these good driving records are transferable between insurance companies does not mean that the Complainant is entitled to have the existence of a claim (including an open claim) expunged from the 'Proof of No Claim Discount' document; this discount must be a true statement of fact.

I am satisfied that the sole obligation on the Provider, in terms of the 'No Claims Discount' protection purchased by the Complainant, was to honour that provision to him, and therefore not to increase the Complainant's premium (by way of any reduction of the No Claims Discount) on the basis of the single collision in which the Complainant was involved. I accept that the Provider did not breach this obligation.

In the ordinary course, the difficulties experienced by the Complainant in securing reasonably priced insurance with the benefit of his full 'no claims discount' would have been cured, by an offer to renew his insurance with his existing insurer (the Provider), which would have been compelled to extend to him the benefit of the full 'no claims discount' notwithstanding the open claim. However, in the somewhat unusual circumstances of this particular case, the Provider had, in fact, prior to the renewal date, taken a decision to exit the Irish 'light commercial vehicle' market. This left the Complainant compelled to seek insurance from a different insurer and to rely, in that regard, on the 'Proof of No Claim Discount' document which the Provider had supplied to him.

I have great sympathy for the Complainant who found himself in a difficult position notwithstanding that he quite correctly thought that he had protected himself against the risk of finding himself in that very position. It will be of little comfort to the Complainant that the Provider would have been required to offer renewal terms to him, on the basis of the protected no claims basis, had it not been that it was exiting the market. This unfortunately, left the Complainant at the mercy of the market which was entitled to know, and to take into the account, the Complainant's actual claims history.

The Complainant surmises that if the claim been "*paid out*" and thus closed and not recorded as 'open' on the 'Proof of No Claim Discount' document, then he would have been "*protected*" and would have derived the benefit of his full 'no claims discount' when seeking quotes from other insurers. I do not accept this. In such an event, although there would have been no reference to an 'open' claim, nevertheless the 'Claims Free Years' would still have recorded '0 years' given that the Complainant's policy would have been recorded as having had a claim and therefore it would have had zero claims free years of driving.

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Incidentally, the 'open' claim has presumably now been finally closed, following the Circuit Court hearing in **July 2020**. While this represented a disappointingly long delay from the occurrence of the vehicular accident in April 2016, the trial giving rise to the determination of liability was a Personal Injuries action, brought personally by the Complainant himself and therefore, it was he (rather than the Provider) who had carriage of its prosecution.

Accordingly, I don't accept that the Provider issued the Complainant with a proof of his 'No Claims Discount', which was incorrect on its face, because it included the fact that he had an open claim and nil claim free years of driving.

On the basis of the evidence available, I accept that this was appropriate. In light of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainant, I am not in a position to uphold this complaint.

Since the Preliminary Decision was issued by this Office to the parties on **9 February 2021**, the Complainant has sought to establish when exactly the Provider made the decision to exit the market, or when it decided to exit that section of the market that affected him. This is a matter which falls outside the scope of this complaint investigation, but it will be open to the Complainant, should he wish to do so, to raise that query with the Central Bank of Ireland, which may be in a position to shed light on the timing of that process.

I note that the Complainant has also referred to the Order made by the Circuit Court Judge in July 2020 when, it seems, the judge calculated damages which had been claimed by the Complainant, in the sum of €45,833.33. It seems from the Complainant's submissions that the other vehicle was found to be 60% responsible for the road traffic accident, with 40% of the losses caused by the Complainant's own contributory negligence.

Against that background, the Complainant has now indicated a new element of dissatisfaction, insofar as he believes that the other 40% of the damages recognised by the Court, should be met by the above financial service provider, whether or not it has since left the market, given that he held a comprehensive policy of insurance at the relevant time. Before the FSPO will become involved in any such issue, the Complainant can make a claim to the Provider in respect of the figure in question, if he believes that he is covered for those losses by the terms of the insurance policy which he held at the time of the road traffic accident. If that claim is ultimately declined or not admitted in full, by the Provider, it will be a matter for the Complainant should he wish to do so, to then proceed by way of a new complaint to this Office, regarding that separate and more recent matter.

Conclusion

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

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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**

9 March 2021

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

ensures compliance with the Data Protection Regulation and the Data Protection Act 201