



<u>Decision Ref:</u>	2021-0065
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Failure to provide product/service information
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the Complainant's request for a "Green Card" from his motor insurance provider.

The Complainant's Case

The Complainant submits that in April 2019, he contacted the Provider to request a Green Card in advance of travelling to a number of countries, some of which are within the European Union and others of which are outside the European Union. The Complainant says that his request was refused by the Provider.

The Complainant states that the Provider also asked him what distance he would be "covering" in his car, "*in an obvious attempt to pre-empt paying of any claim should [he] exceed the provisional mileage given when the insurance was made*".

The Complainant contends that he finds this "*preposterous*", and states that the Provider's refusal to provide him with a Green Card, indicates that it is not "*aware of international agreements Ireland has signed*".

The Provider's Case

The Provider submits that it provides "*the minimum cover to drive in certain countries in addition to the full policy cover [it provides] within geographical limits*". The Provider further submits that the policy booklet defines the geographical limits, and states that "*certain countries*" for which it provides the "*minimum cover to drive in*" do not include many of the countries that the Complainant stated he would be visiting on his travels.

The Provider contends that the policy booklet lists the additional countries that it provides “full policy cover in, for a single trip of up to 60 days” but this list does not include several of the countries that the Complainant stated he would be visiting on his travels.

The Provider asserts that:

“A Green Card sits on the cover that is provided by a valid insurance policy and is proof that the required cover is in place. The Green Card cannot stand on its own without the valid policy cover and is in fact redundant if the policy cover does not exist or if the policy had been cancelled. As the cover we provide does not extend to those countries listed above, we cannot issue a valid Green Card that would imply differently”.

The Provider further asserts that:

“...when calculating insurance premiums, Insurers consider several factors, one of which is the annual mileage undertaken in the vehicle to be insured. As such, this information is material to the risk presented and would affect both our acceptance of a risk and the premium we may charge. On this basis, it is very important that the annual mileage declared accurately reflects the actual use of the vehicle”.

The Complaint for Adjudication

The complaint is that the Provider acted wrongfully in that it refused to provide the Complainant with the Green Card he requested and it also asked him to confirm the distance he would be travelling in his car while travelling abroad.

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 **18 August 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.

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

Policy Terms and Conditions

The policy cover which the Complainant held with the Provider, at the relevant time which gives rise to this complaint, included the following:

“Section 1 – Liability to Third Parties

...

6. Foreign Use of the Insured Vehicle – Compulsory Insurance Extension

While the insured vehicle is in:

- *any country which is a member of the European Union (EU); or*
- *any country in respect of which the European Commission is satisfied has made arrangements to meet the requirements of Article 7(2) of EU Directive 72/166/EEC relating to insurance of civil liabilities arising from the use of motor vehicles,*

under this Section, we will provide the minimum level of cover in respect of liability which is legally insurable in the country concerned to comply with the compulsory insurance legislation.

This minimum level of insurance cover does not provide any cover for loss or damage to the insured vehicle.

If you require cover for loss or damage to the insured vehicle, whilst travelling in countries mentioned above, please refer to Section 4 – Foreign Use of the Insured Vehicle”.

I note that the policy document also outlined what is covered under the policy, and which countries were covered:

“Section 4 – Foreign Use of the Insured Vehicle

This Section only applies if cover shown on your Schedule is “Third Party, Fire & Theft” or “Comprehensive”.

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What is covered:

1. Foreign Use of the Insured Vehicle – Extended Cover

In addition to the minimum level of cover in respect of liability which is legally insurable in the country covered under Section 1 – Benefit 6. Foreign Use of the Insured Vehicle – Compulsory Insurance Extension, this policy is automatically extended to provide cover shown on your Schedule whilst the insured vehicle is being driven by you or any insured driver in:

- any country which is a member of the European Union (EU) and also Andorra, Gibraltar, Iceland, Liechtenstein, Monaco, Norway, San Marino and Switzerland; or
- any other country in respect of which the European Commission is satisfied has made arrangements to meet the requirements of Article 7(2) of the EU Directive 72/166/EEC relating to insurance of civil liabilities arising from the use of motor vehicles.

List of countries where this cover applies:

Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden and Switzerland.

A Green Card or Letter of Authority is not required for the countries listed above and no additional premium will be payable providing the qualifying conditions are met.

Cover applies providing that:

- the period of foreign travel does not exceed 60 days for any one trip abroad, calculated from the date that the **insured vehicle** left the **geographical limits**; and
- the use of the **insured vehicle** during the trip abroad is for social, domestic or pleasure purposes; and
- **you** and/or any **insured driver** have their main permanent residence in the Republic of Ireland; and
- the **insured vehicle** is not left abroad whilst **you** or any **insured driver** in charge of the **insured vehicle** returns to the Republic of Ireland (without **our** prior agreement).

*For any period of foreign travel in excess of 60 days for any one trip abroad, the cover provided by this policy will be limited to the minimum level of cover in respect of liability which is legally insurable in the country unless **you** contact **your insurance broker** to obtain **our** prior agreement. If **we** agree to extend cover beyond the 60 days limit, **we** may at **our** discretion charge an additional premium and apply policy restrictions.*

*No cover is provided by this policy whilst the **insured vehicle** is being driven by **you** or any **insured driver** in any country that is not listed above. If **you** plan to visit any country that is not listed above, **you** must contact **your insurance broker** to obtain **our** prior agreement. If **we** agree to extend cover to any other country, then **we** will issue a Letter of Authority to **your insurance broker** if necessary and **we** may at **our** discretion charge an additional premium and apply policy restrictions."*

[my emphasis]

Analysis

This Policy was inceptioned on the **15 September 2016** and was cancelled on the **1 May 2019**.

The Complainant has stated in his submissions to this Office, regarding the request he made to the Provider in April 2019, that:

"My travel plans included driving within the EU and outside of the EU: Russia (European part) followed by Belarus, Ukraine, Moldova, Serbia, Bosnia and Herzegovina, Switzerland. The Green Card was refused"

The Provider has referred to the policy document which provides for cover of a vehicle whilst in:

- *"any country which is a member of the European Union (EU); or*
- *any country in respect of which the European Commission is satisfied has made arrangements to meet the requirements of Article 7(2) of EU Directive 72/166/EEC relating to insurance of civil liabilities arising from the use of motor vehicles."*

It appears, based on the evidence made available to this Office, that Russia, Ukraine, Belarus, Moldova, Bosnia and Herzegovina do not fall within the two categories above and are therefore not covered under the Complainant's policy.

The Provider also relies on page 42 of the policy booklet, which further outlined the countries for which the Provider automatically provided extended cover for a single trip of up to 60 days. The countries listed did not require a Green Card. I note however that Russia, Ukraine, Belarus, Moldova, Bosnia and Herzegovina were not covered in that manner by the policy.

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I am therefore satisfied that the Provider was entitled to decline to issue a Green Card to the Complainant as to have done so, would have suggested that the Complainant was covered in these countries. The policy terms and conditions do not specify cover for Russia, Ukraine, Belarus, Moldova, Bosnia and Herzegovina. I take the view accordingly that the Provider was entitled to adopt the position which it did, in circumstances where cover is not provided for those countries under the policy.

The Complainant has further submitted in his complaint to this Office that:

“Clearly, the people I have dealt with are not aware of international agreements Ireland has signed”.

The Provider has responded to this in its submissions to this Office and has stated that:

“To ensure we had not inaccurately or inadvertently misunderstood our requirements under law, or indeed, that the law or position in relation to those countries had not changed recently, we contacted the Motor Insurance Bureau Of Ireland (M.I.B.I) on the 25th April 2019, prior to issuing our Final Response Letter, who confirmed to us that there is no obligation on an insurer to provide cover, or a Green Card, for policyholders travelling to Russia, Ukraine, Belarus, Moldova, Bosnia & Herzegovina”.

Having considered the evidence submitted to this Office, I am satisfied that the Provider was entitled to decline the Complainant’s request for a Green Card, as the cover the Provider makes available does not extend to the six countries in question.

The Complainant contends:-

“The Final Response Letter sent to me by my underwriter and, apparently, endorsed by the Motor Insurers Bureau of Ireland (MIBI), clearly demonstrates violation of EU law, Irish law, and also of legally binding international agreements Ireland has signed up to. It is also evidence that I am deprived of my basic right to travel on my car to any country outside the EU and affiliated countries (such as Switzerland, Iceland, Norway).

I do not however accept that the refusal by the Provider to issue a green card to the Complainant was in violation of EU and Irish law. The Complainant’s insurance cover is valid in all member states of the European Union as confirmed in his policy document.

The Complainant also referenced the judgment of the Supreme Court, delivered by Mr Justice Finnegan on 2 February 2011 in *DPP -v- Leipina and Suhanovs* [No. 195/2007]. I am conscious however that the circumstances of that court case are not directly relevant to the Complainant’s contentions, and indeed the case concerned two European Union countries (Latvia as the country where the insurance was issued and Ireland, where the vehicle was registered).

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With regard to the Complainant's assertion that the Provider is violating "*legally binding international agreements Ireland has signed up to*", I have reviewed the **Multilateral Guarantee Agreement between National Insurers' Bureaux** signed in Madrid on 15 March 1991, which provides that:

"The undersigned Bureaux undertake, in the context of their reciprocal relations, to abide by the mandatory provisions as well as by the optional provisions of Sections II and III of the Internal Regulations, where applicable adopted by the Council of Bureaux on 30 May 2002."

The above referenced **Internal Regulations**, contain both mandatory and optional provisions. The mandatory provisions regulate the payment of claims between Bureaux, whereas the Optional Provisions set out that each Bureau (i.e. MIBI) shall be responsible for establishing the rules on the issuance and delivery of Green Cards under the Bureau's authority.

I am satisfied therefore that there was no obligation on the Provider to offer the Complainant a Green Card, as such a matter fell within the commercial discretion of the Provider, just as it falls within the commercial discretion of each individual insurer.

Since the Preliminary Decision of this Office was issued to the parties, the Complainant has also asserted that:

"the Motor Insurers Bureau of Ireland must answer whether they issue any Green Cards at all -- as required by law (see I and II above)? Has the concept of Green Card been void in Ireland with only Brexit bringing it to life in relation to travel within the UK only.

Ireland, through MIBI, has unilaterally excluded the above mentioned countries from the multilateral Green Card system and has therefore violated the constitution of the Green Card system Ireland is a member of.

...

The motor insurance business in Ireland is under the anti-cartel microscope of the EU and has been in a dire need to be reined in for quite some time."

This complaint investigation concerns only the conduct of the respondent financial provider. The FSPO holds no jurisdiction to investigate any suggested wrongdoing on the part of the MIBI in its establishment of the rules on the issuance and delivery of Green Cards.

The Complainant further stated in his submissions to this Office that:

"I was also asked what distance I would be covering with my car in an obvious attempt to pre-empt paying of any claim should I exceed the provisional mileage given when the insurance was made".

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The Provider responded to this stating as follows:

“When responding to the Broker in relation to the initial enquiry of the 15th April for a Green Card, we asked if the annual declared mileage of 9,000 remains accurate. Separately, we note from the policy that the policyholder’s annual mileage is declared as 9000 miles per annum, can you confirm that this is accurate?”. This was the mileage last declared to us under the policy. We did not request the distance that would be covered, and we did not request this directly from the complainant.

When calculating insurance premiums, we consider several factors, one of which is the annual mileage undertaken in the vehicle to be insured. This is asked at the inception of the policy As such, this information is material to the risk presented and would affect both our acceptance of a risk and the premium we may charge. On this basis, it is very important that the mileage declared accurately reflects the actual use of the vehicle”.

I am of the view that the Provider was entitled to refuse to provide cover, or a Green Card, to the Complainant because the countries the Complainant was intending to travel to, were not covered under the policy arrangement. Neither do I accept the Complainant’s contention that he was asked by the Provider to confirm the distance he intended to travel, during his trip.

On the basis of the evidence made available by the parties, I am satisfied that the Provider’s conduct in refusing to provide the Complainant with a Green Card was reasonable. I accept that the Provider acted in accordance with the terms and conditions of the policy, and accordingly, 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**

9 March 2021

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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.

