



<b><u>Decision Ref:</u></b>	2021-0139
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	Failure to provide correct information No claim bonus issues
<b><u>Outcome:</u></b>	Upheld

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

This complaint concerns a motor insurance policy held with the Provider which fell due for renewal on 6 August 2018.

#### **The Complainant's Case**

The Complainant says that his car was broken into on **20 November 2017**, with a window being broken and a bag stolen from the vehicle. The Complainant says that he made a claim for the damage, having been told that the claim would not affect his No Claims Discount. The Complainant says that he later discovered that his No Claims Discount had been reduced from eight (8) years to three (3) years as a result of the claim. He says that the Provider had given him wrong information, which resulted in him receiving *"the wrong NCB certificate"*, which caused problems with his interactions with another insurer. The Complainant says that the Provider caused a problem with his No Claims Discount *"and they didn't correct it even though it was their problem"*.

The Complainant says that he gave permission for the Provider to speak with the third-party insurer to explain the No Claims Discount issue, *"but [the Provider] refused to take the call and that's why [the third-party insurer] cancelled my policy"*. The Complainant says that the cancellation of the policy means that *"no other insurance company will accept me"*, and that this is having consequences in his daily life. The Complainant wishes to know whether *"this is just a very poor service or they told their staff"* not to exchange information with the third-party insurer.

The Complainant says that he had to spend a lot of time trying *"to convince my new provider to accept my policy again"*, and that he was put to this trouble even though *"none of these mistakes were mine"*.

The Complainant has submitted a letter from the Provider dated **15 August 2018** that listed a claim for an incident that took place on **20 November 2017**, including a listing for a Fire and Theft claim of €307.19. The Complainant says that he queried what this claim was for, and that *"I need a clean NCB cert, it must be 0 claim. This is their problem not mine"*.

The Complainant says that, even if the claim he made had been taken, *"it should only affect the last 12 months NOT 6 years"*. The Complainant says that this is stated in the policy.

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

The Provider says that, under the terms of the Complainant's policy:

*"any one claim arising out of the fire or theft (or any attempt thereat) in one year of insurance shall not result in the discount presently applying being stepped back at the next renewal"*

and that:

*"where one claim arising out of the fire or theft (or any attempt thereat) occurs in one year of insurance, the no claims discount percentage will not be increased at the insured's next renewal date"*.

The Provider says that, in the Complainant's circumstances, his No Claims Discount should not have been affected. The Provider says that:

*"due to human error, at your 2018 renewal your NCD was stepped back to 35%...In this instance the underwriting agent stepped back your policy in error."*

The Provider says that the Complainant was misinformed on **2 August 2018**, when the Provider instructed the broker to tell the Complainant *"that should [he] pay back the settlement amount of €97.70 we could reinstate the full discount to 55%"*.

The Provider says that this was possible in certain circumstances and that in terms of his policy, the existence of this claim meant that *"your years no claims did not increase from 8 to 9" year*.

The Provider says that it wishes to issue the Complainant with a cheque in the value of €200 *"in acknowledgement of the errors noted above and as a goodwill gesture"*.

### **The Complaint for Adjudication**

The complaint is that the Provider maladministered the Complainant's policy and the issuing of his No Claims Discount, as a consequence of which the Complainant was required to pay *"extra money for my new policy"* and was disadvantaged when seeking quotations from other insurers.

The Complainant wants the Provider to give an explanation as to why the circumstances he described, took place.

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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 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 **15 April 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

## **Chronology of Events**

- **27 July 2017:** The Provider issued the Complainant's motor policy schedule that stated that his No Claims Discount was 55% and the period of insurance was from 6 August 2017 to 6 August 2018.
- **20 November 2017:** The Complainant's vehicle was broken into.
- **20 November 2017:** The Complainant telephoned the Provider and notified it that his car had been broken into. The Provider took details of the claim. The Complainant told the Provider that he would think about making a claim and he was told that it would transfer him to a different department, to discuss fixing the Complainant's windscreen.
- **29 November 2017:** The Complainant telephoned the Provider to discuss the claim and was told he would be transferred, so that he could discuss cover under the policy.

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- **4 December 2017:** The Provider called the Complainant and sought an update in relation to the valuations of the items stolen from the Complainant's car. The Provider also told the Complainant that he would require the claim form to be stamped and signed by the Gardai.
- **23 July 2018:** The Complainant contacted the Provider requesting his no claims discount certificate. The Provider told the Complainant that he would need to contact his Broker to obtain this. The Complainant asked the Provider to explain the difference between no claim bonus and no claim discount and the Provider's gave him details.
- **2 August 2018:** The Provider told the Broker (incorrectly) that if the Complainant paid back the settlement amount for €97.70 it would reinstate the full discount to 55%.
- **3 August 2018:** The third-party insurer sought information in relation to the Complainant's No Claims Discount. The Complainant asked the Broker if the Provider would speak to the third-party insurer in relation to the No Claim Discount, but it seems that the Provider refused.
- **3 August 2018:** The third-party insurer wrote to the Complainant and told him that it was withdrawing its offer of insurance and that as far as it was concerned there was no cover in place.
- **15 August 2018:** The Provider sent the Broker a letter which said that the Complainant's No Claims Discount was reduced to 35% which represented 3 years claims free driving.
- **20 August 2018:** The Provider sent the Broker an updated letter which said that the Complainant's No Claims Discount was 55% and this represented 8 years of claims free driving.
- **24 August 2018:** The third-party insurer sent the Complainant his No Claims Discount Certificate along with the insurance disc for his new policy.
- **6 September 2018:** The Complainant telephoned the Provider to make a complaint about the customer service he had experienced. He requested call recordings for 20 November 2017 and 29 November 2017. The Provider apologised to the Complainant and told him that the Agent who had transferred his call should have explained what the Complainant was looking for, before transferring the call and asked him if it was okay to transfer him to the claims department so that he could obtain the call logs. The Complainant told the Provider's Agent that he had repaid the claim amount of €97.70 and he queried what the €307.19 was for, but the Provider's Agent told him that she did not know. She told him that she could issue him with a new No Claim Discount and it would state that the claim had been repaid and that it was a notification only.

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The Provider asked for a written explanation in relation to the call with the Provider's Agent and what they had spoken about. She told that Complainant that she would have no problem doing this and she put him on hold while she tried to transfer him to the claims department, but ultimately, told him that the claims department would ring him back as she couldn't get through.

- **6 September 2018:** The Provider's Agent called the Complainant and explained what had happened in relation to his No Claim Discount. The Complainant told the Provider's Agent that he should have 9 years of No Claim Discount and it was explained to the Complainant that when a policyholder makes a claim for fire or theft there is no loss of the discount earned up to that point, but there is no gain of discount for that particular year. The Provider's Agent went on to explain that the Complainant didn't lose the discount he had, but because he made a claim for fire or theft, he didn't get the discount for the additional 12-month period. The Complainant told the Provider's Agent that his No Claim Discount had been reduced to 3 years. The Provider explained to the Complainant that on 15 August this had been rectified as the discount should not have been stepped back, and this had been corrected. The Complainant told the Provider's Agent that he was going to court and wanted the call recording for 20 November 2017 and 29 November 2017 and then he asked the Provider's Agent for all call recordings from 20 November 2017 to date.
- **15 October 2019:** The Provider sent the Complainant its Final Response Letter and emailed the Complainant and told him that a cheque for €97.70 would be issued to him, representing the returned settlement payment. It also offered the Complainant €200 in acknowledgement of the errors and as a goodwill gesture.

### **Policy Terms and Conditions**

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

#### ***"2. No Claim Discount***

***(a) Should no claim arise under the Policy during any one complete year of insurance or during a number of consecutive complete years, the insured upon reviewing the Policy shall be entitled to a discount from the renewal premium on the following scale:***

<b><i>Period of Insurance</i></b>	<b><i>Discount Levels</i></b>
<i>1 Year</i>	<i>15%</i>
<i>2 Years</i>	<i>25%</i>
<i>3 Years</i>	<i>35%</i>
<i>4 Years</i>	<i>45%</i>
<i>5 Years or more</i>	<i>55%</i>

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**(b) (i)** Any one claim arising out of fire or theft (or any attempt thereat) in one year of insurance shall not result in the discount presently applying being stepped back at the next renewal.

Where one claim arising out of fire or theft (or any attempt thereat) occurs in one year of insurance, the no claim discount percentage will not be increased at the insured's next renewal date.

**(ii)** Any one claim other than fire or theft arising in one year of insurance, shall result in the discount presently applying being stepped back by two levels at the next renewal as follows:

<b>Discount at Last Renewal</b>	<b>Discount at Next Renewal</b>
55%	35%
45%	25%
35%	15%
25%	0%
15%	0%

**(iii)** In the event of two or more claims of any type arising in one year of insurance no discount will be allowed at the following renewal.

**(c)** If the policy provides cover for accidental breakage of the windscreen or of the windows of the Insured Vehicle (and any scratching of bodywork resulting solely and directly from such breakage) any claims in respect of such damage will not affect the No Claim Discount”.

The complaint concerns suggested mistakes by the Provider in its administration of the Complainant's policy and the issuing of his No Claims Discount. In the Complainant's submissions to this Office he said that:

*“[The Provider] gave me [the] wrong information which [led] them to give me the wrong NCB certificate which led to another problem with another insurance company”.*

Furthermore, the Complainant has submitted that:

*“[The Provider] affected my NCB and they didn't correct it even though it was their problem”.*

I note the following from the Terms and Conditions, in relation to the No Claim Discount:

*“Any one claim arising out of fire or theft (or any attempt thereat) in one year of insurance shall not result in the discount presently applying being stepped back at the next renewal.*



*Where one claim arising out of fire or theft (or any attempt thereat) occurs in one year of insurance, the no claim discount percentage will not be increased at the insured's next renewal date".*

The Provider's Final Response Letter of **15 October 2019**, acknowledged the error which had occurred, and advised:

*"Therefore, based on the claim circumstances, your NCD should not have been affected. Unfortunately, due to human error, at your 2018 renewal your NCD was stepped back to 35%. For any theft claims that occur on policies they are automatically held for manual review at renewal stage and in this instance the underwriting agent stepped back your policy in error.*

*I note that a further error occurred when we misinformed your Broker on the 02/08/18 that should you pay back the settlement amount of €97.70 we could reinstate the full discount to 55%".*

Having considered the terms and conditions and the evidence provided to this Office, I note that the Provider should not have stepped back the No Claims Discount to 35% which resulted in the Complainant's No Claims Discount being reduced from 5 years or more, to 3 years. As per the terms and Conditions, the Complainant's No Claims Discount should have remained at 55%. At the time of policy renewal in **2018**, I note the following from a letter between the Provider and the Broker dated **15 August 2018**:

*"We confirm that currently, the insured is entitled to a No Claims Bonus of 35%. This represents 03 years claims free driving on Vehicle Registration No. [car registration number]".*

As per the terms and conditions, the Complainant's No Claims Discount should have remained at 8 years though it would not have been increased to 9 years, as the Complainant had made a theft claim.

The Provider has pointed out that the Complainant received the correct No Claims Discount on **20 August 2018**:

*"We note that the correct NCD was issued on the 20/08/18 noting 55% with 8 years – the number of years that were received at policy inception.... As the customer had a claim in the period of insurance his years no claims did not increase from 8 to 9. As per policy document".*

In relation to the No Claim Discount remaining at 8 years instead of increasing to 9 years, I am satisfied that the Provider acted in accordance with the terms and conditions of the policy. If the Insured makes a claim for fire or theft, his *"no claims discount percentage will not be increased at the insured's next renewal date"*.

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The Provider however incorrectly stepped back the No Claim Discount from 55% to 35%. Furthermore, the Provider wrongly instructed the Complainant's Broker on **02 August 2018** that if the Complainant paid back the settlement amount of €97.70 it would reinstate the No Claims Discount to 55%. I am satisfied that this added to the ensuing confusion.

The Complainant says that he gave permission to the Provider to furnish information to the third-party insurer, but the Provider refused to give this information. The Provider has responded to this and said that:

*"We do not have any record of the insured granting permission for us to speak to a third-party [insurer]"*.

On **3 August 2018**, the third-party insurer sought information in relation to the Complainant's No Claims Discount. The Complainant asked the Broker if the Provider would speak to the third-party insurer in relation to the No Claim Discount, but it seems that the Provider refused.

I note that in the Complainant's submissions to this Office, he has said that the third-party insurer cancelled his policy, as a result of the issues with his No Claims Discount. On **3 August 2018**, the third-party insurer wrote to the Complainant and although the date referred to is somewhat strange, I note that the letter advised:

*"The above numbered policy was inceptioned online on the 06 August 2018. When you were applying for insurance you declared that you had no claims in the last 5 years.*

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

*Had a full and complete disclosure been made at the outset we would have declined to offer a quotation.*

*In view of the above I must inform you that we have no option but to withdraw our offer of insurance. Therefore as far as we are concerned no cover was ever in force.*

*A cheque which represented the premium paid to us to date will be issued shortly.*

*We must advise you that it is an offence to drive a vehicle without valid insurance cover. We may inform An Garda Siochana of our actions".*

I note however that, subsequently, on **24 August 2018**, the third-party insurer wrote to the Complainant and issued him with his Certificate of Insurance and his insurance disc.

The Complainant has said in his submissions that:

*"From 03/08 until 24/08 was [a] very hard time for me, I could have been banned from driving for ever, this is the most difficult time that I have [had]"*.

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Furthermore, I note from the evidence supplied to this Office that the Complainant visited his General Practitioner (GP) 2 times. On 10 August 2018 the GP said that he was unfit to work from 10 August 2018 to 14 August 2018 due to fatigue. Similarly on 24 August 2018 the Complainant's GP said that the Complainant was unfit to work from 27 August 2018 to 29 August 2018, due to headaches and stress. The Complainant has said in his submissions that:

*"After [the third-party insurer] cancelled my policy, I had to sort out the problem with them before I go anywhere else, even though I didn't want to stay with [the third-party insurer], and I found other companies at that time were much cheaper, but I had to stay because I was told that no company will accept me after my policy [had been] cancelled, and I had to purchase the policy with [the third-party insurer], I'm still with [the third-party insurer] until now, not because I want to stay with them, but because I have to stay until the file of this case gets Close[d], there are many companies €150 / €180 cheaper more or less, but as I said, I have to stay with them"*

I do not accept the Complainant's suggestion that after he received his insurance certificate and disc on 24 August 2018, he had nevertheless to stay with the third-party insurer until the conclusion of this complaint process. Any such decision was entirely a matter for the Complainant.

Having listened to a telephoned call between the Complainant and the Broker on **3 August 2018**, I am satisfied that the Complainant's policy was not cancelled. The Complainant told the Broker at that time that the third-party insurer would give him 2 weeks to get his No Claims Discount into them. I also note that on **24 August 2018** the third-party insurer sent the Complainant his insurance certificate and disc.

Whilst I accept that the third-party insurer sent the Complainant a letter saying that it was withdrawing its offer of insurance, I am satisfied that the third-party insurer gave the Complainant 2 weeks to send in his new No Claim Discount Certificate and on **24 August 2018** the third-party insurer issued the Complainant with his insurance disc and policy documentation. No doubt the period from 3 August 2018 until 24 August 2018 was worrying for the Complainant. Happily, the issues which had arisen were resolved in time to prevent the cancellation of the policy by the third-party insurer, but I am very conscious that there was a considerable delay in the Complainant's receipt of the No Claims Bonus Certificate, causing tremendous inconvenience and giving rise to the necessity for the Complainant to communicate on an almost daily basis with the Provider and the broker. I have no doubt that this caused very considerable inconvenience and concern to the Complainant.

On **7 October 2020**, the Provider in its correspondence to this Office said that:

*"In relation to the NCB, we have no record of the complainant advising us that we could speak to another insurance company about his policy. When the other insurance company rang us we advised that the policy was insured through a broker and we did not discuss the complainant's policy."*

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*We accept that an error was made in relation to the handling of the NCB and a gesture of goodwill of €200 was issued to the complainant to acknowledge this”.*

When the Provider received the complaint, the error was rectified in relation to the No Claims Discount and the settlement money the Complainant had repaid to the Provider was re-issued to him, along with a Final Response Letter explaining how the errors had occurred. I am conscious however that this repayment and acknowledgement did not happen until **October 2019**, more than a year after the issues had caused the Complainant such difficulty. I also note from the evidence that the Provider in acknowledgement of the errors and as a goodwill gesture issued the Complainant with a cheque for €200.00.

I note that the Provider has offered a goodwill gesture of €200 to the Complainant in acknowledgement of the errors that occurred. However, from what has been set out above, I do not believe this amount was adequate to reflect the inconvenience and distress caused to the Complainant by the Provider ,having regard to the failings on the part of the Provider in its administration of the Complainant’s policy and the issuing of his No Claim Discount.

Even at this remove, it is not entirely clear whether the third-party insurer charged a premium on the basis of a full No Claims Discount or whether alternatively, though the policy was not cancelled, the Complainant nevertheless was required to pay more than he ought to have. No comment has been offered in that regard, since the Preliminary Decision was issued in April 2021.

For the reasons outlined above however, I am satisfied that the Provider’s conduct in this matter was unreasonable and unjust in the manner falling within the provisions of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**. In all of the circumstances therefore, I take the view on the evidence available, that this complaint should be upheld.

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b) and (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €1,500 (one thousand five hundred Euro) to an account of the Complainant’s choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider, though it should be noted that if the previous payment offered by way of cheque in the sum of €200 was accepted/cashed by the Complainant, this figure can be deduced from the amount in question.

- I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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 May 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
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.