



<u>Decision Ref:</u>	2021-0223
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	No claim bonus issues Delayed or inadequate communication Dissatisfaction with customer service Maladministration Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns a Motor Insurance Policy (first taken out in 2014), where the Complainant is the policyholder, and where his wife is a named driver on the policy.

When the Complainant sought separate cover for the named driver in 2019, (to *extend the driving of other cars to her / make her the main driver*) he was informed that the extension of driving of other cars could not be extended to the named driver, and the named driver's no claims bonus had expired, so covering her as a main driver was not possible.

The complaint is that the Provider did not inform the Complainant in 2014 about the option available to him for rotating the policyholder as main driver (either himself or his wife) on the policy each year to ensure the continuation of both of their no claims bonuses.

The Complainant's Case

The Complainant submits that he has a *“motor insurance policy of which [his] wife is a named driver”*, and that the Provider advised him in **2019** that his *“wife's no claims bonus has been removed as she has remained a named driver for 5 years with [the Provider]”*.

The Complainant contends that the Provider informed him that *“for both parties to maintain their full no claims bonus, the policyholders must switch every year for the bonus to be intact”*.

The Complainant asserts that *“had we been advised in **2014** to do this, we would have completed this task each year when renewing”*.

The Complainant contends that when he asked the Provider why this was not offered or advised to him at the inception of his policy, its response was that it *“had no reason to ask you if you both had a no claims bonus”*. The Complainant further contends *“that [he] believes this question to be substantially relevant [as] owning a full [no claims bonus] can be up to 50-70% discount on some policies.*

The Complainant asserts that *“the responsibility to know what information to offer, should be on the insurer to ask not on the consumer to know”*.

The Complainant wants the Provider to reinstate his wife's full no claims bonus in order for them to maintain a full no claims bonus by switching the named driver each year.

The Provider’s Case

In its Final Response Letter dated **27 August 2019**, the Provider states that the Complainant is *“unhappy that we can’t extend the driving of other cars to [his] wife as a named driver”*. The Provider further states that the *“standard benefit allows the policyholder only to drive a car belonging to someone else on a third party only basis”*.

The Provider submits that on **6 August 2019** during a telephone call with the Complainant, he requested that his wife become the main driver however, the Provider advised him that it was unable to swap policy holders and would have to prepare a new quote with her as the main driver.

The Provider contends that it correctly advised the Complainant that his wife does not have a valid no claims bonus in her name and that it is unable to provide such a quote.

The Provider asserts that *“our minimum requirement is 1 year claims free driving in her name but as she is a named driving experience only, we’re unable to quote”*.

The Provider states that when the policy was initially set up in **2014**, at no point did the Complainant advise that they both had been insured separately and were going to be using one car in the future and that because of this the Provider did not advise of options regarding the Complainant’s wife’s no claims bonus.

Evidence

Policy Provisions

Definitions

*“You, your
The policyholder named in the schedule.*

*“No-claims discount
We will reduce the renewal premium (apart from the amount we charge under section 4) according to the following scale if no claim is made or arises under this policy in the period of insurance.*

<i>Period of insurance</i>	<i>Reduction</i>
<i>One Year</i>	<i>10%</i>
<i>Two Years</i>	<i>20%</i>
<i>Three Years</i>	<i>30%</i>
<i>Four Years</i>	<i>40%</i>
<i>Five Years</i>	<i>50%</i>

Any payment we make for fire or theft claims will not affect your no-claims account.

You earn the no-claims discount on each car separately if you insure more than one car with us.

Section 5 – Endorsements

*“PC302A - Optional Protected no-claim discount
You may make up to two unlimited claims in a three-year period without losing your no-claim discount. We will not take account of claims for windscreen breakage or fire or theft for the purposes of this endorsement.*

You must pay an extra premium for this cover”.

Policy Schedule

“Policyholder Name: [The Complainant]”

Endorsements

“PC302A - Optional protected no-claims discount cover is included”

Statement of Fact

"Your driving history

Please confirm that the following information is correct.

- 1. Date cover required from: "30/07/2014*
- 2. No claim discount entitlement: "50% representing 5 years, in own name".*
- 3. Country of origin where No Claim Discount earned: "Ireland"*
- 4. Previous Insurer: "..."*

The documentation sent to the Complainant at subsequent renewals included the following letter / statement:

"No Claim Discount Statement

To whom it may concern

Based on the information known to us at .. we confirm that [the Complainant] is entitled to a 50% No Claim Discount (stage 5 on our No Claim Discount Scale) on vehicle registration number ...

The actual number of claims-free years on this policy are 5+ years in own name"

The Complaint for Adjudication

The complaint is that the Provider did not inform the Complainant in 2014 about the option available to him for rotating the policyholder (as either himself or his wife) on the policy each year to ensure the continuation of both of their no claims bonuses.

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 **31 May 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.

By way of e-mail dated **31 May 2021** the Complainant acknowledged receipt of the Preliminary Decision.

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 held a private motor insurance policy which was first inception on **30 July 2014** through the Provider (an agent for the Underwriter of the Policy). The Complainant has been the policyholder since the inception of the policy, there was one additional named driver on the policy.

The Provider states and the evidence shows that the policy of insurance was taken out by the Complainant and the quote was requested with the Complainant as the proposer. The Provider states the Complainant opted to take a policy of insurance out in his own name and to add an additional/named driver onto the policy. The Provider says that for the purpose of clarity, it is important first to outline the difference between the "Main driver" that is, the policyholder and an "additional driver" in respect of motor insurance.

The Provider states that an additional/named driver is a person insured to drive another person's vehicle. This driver is not intended to be the main user of the vehicle. The policy holder must be the one who uses the car the most, therefore being named on another person's policy is not a true reflection of your driving experience.

The Provider submits that it is for this reason that you cannot earn a No Claims Discount when insured as an additional/named driver on a policy. The Provider's position is that when considering a new business quote, it will ask a number of questions in respect of the proposer's, vehicle and use of the vehicle. The Provider says that this information helps it to ensure that the proposer meets its acceptance criteria, and that the policy is rated correctly. The Provider states that all questions asked in relation to the "No Claims Discount earned" are in respect of the proposer for the policy and it does not request information for the "No Claims Discount" held by any additional/named drivers as this is not relevant to the quote.

The Provider states that during a telephone call with the Complainant on **06 August 2019**, its customer service agent correctly advised the Complainant that a NCD is only valid for 2 years when not in use. The Provider states that this is an insurance industry standard. The Provider submits that as such, the Complainant had from the outset chosen to use his NCD on the policy with the Provider therefore it was able to furnish him with a statement of No Claims Discount.

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The Provider says it is not privy to information relating to the additional/named drivers earned 'no claims discount', nor, it states, is it aware whether or not she held a policy in her own name. The Provider says it is important to provide clarity on the matter of the additional/named driver's entitlement to a no claims discount. The Provider's position is that it was never in possession of the additional/named drivers NCD therefore there was nothing for it to "reinstate".

The Provider states it can however provide the additional driver with a "statement of named driving experience". The Provider says that to provide anything more than this would not be suitable as the additional/named driver did not earn an NCD with the Provider.

The Provider states that during the telephone call on **06 August 2019**, its agent advised the Complainant that a lot of people opt to change the main user on the vehicle every second year to avoid losing their NCD. The Provider says it notes that the Complainant is unhappy that the Provider never advised him from the outset to change the main user every year so that the additional/named driver would not lose her NCD.

The Provider's response is that this is not something it would advise its customers to do.

The Provider says that the Complainant first contacted it in 2014, in its capacity as an intermediary, that is, to purchase a policy of insurance. The Provider arranged the policy of insurance requested by the Complainant. The Provider's position is that it would not have been suitable to offer advice in relation to how the Complainant should make changes to that policy on a yearly basis. The Provider says it would not have been suitable to advise the Complainant on anything other than the insurance cover he had requested. The Provider submits that as an intermediary its job was to arrange cover and to ensure all the relative information relating to the product was provided to the Complainant and that that information was accurate and up to date.

The Provider states, it is important to point out that regardless of the above, it is not possible for it to incept a policy in the named driver's name as she was not the owner and main driver of the vehicle. The Provider states that the proposer for cover must be the owner and main user and hence the NCD of the additional/named driver is not relevant to the proposal.

The Provider states that it is satisfied that at all times when arranging the Complainant's motor insurance policy for him it acted in the Complainant's best interest. The Provider says that when the Complainant approached it for a quote for his motor insurance its role as an intermediary was to ensure that it collected all relevant information/facts associated with the proposal in order to decide if the Underwriter would provide a quotation for the risk proposed. The Provider says it would not be reasonable to provide advice, gather information or provide a quotation for something that the Complainant did not ask for in terms of the risk proposed.

The Provider submits that when the Complainant took the quote out on its website, he was asked all relevant questions in order for the Provider to confirm if he was eligible for a

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quote with the Underwriter. The Provider submitted a copy of the statement of fact which was issued at inception of the policy. The statement of fact provides a copy of all answers given by the Complainant at inception.

As regards the Complainant's assertion that *"the responsibility to know what information to offer, should be on the Insurer to ask, not on the consumer to know"*, the Provider's response is that it is satisfied that it requested all relevant information needed to provide a quote of motor insurance to the Complainant.

The Provider says that the contract of insurance is between the Complainant and the Provider, and it is not required to ask any information in relation to the driving experience of any additional/named drivers added to the policy.

The Provider submits that it is important that as an intermediary it only seeks information relevant to the quotation requested by the proposer. In this regard, the Provider says it is satisfied that it asked for all information required in order to offer a quotation to the Complainant and it states that all key information relating to the policy was issued to the Complainant for review.

The Provider states that it was not aware that the Complainant and his wife were *"two policy holders coming from 2 full no claims bonus to one car and one policy"*.

The Provider states that it would go against public policy if it were to accept the NCD for additional/named drivers for a policy in a different driver's name.

The Provider states that the crux of this complaint is that the Complainant would like the Provider to provide a "No Claims Discount" to the second Complainant for the time she was insured as an additional/named driver with the Provider.

The Provider states that while it fully sympathises with the named driver, it cannot accept responsibility for the fact that she was not aware that she could not hold a "No Claims Discount" indefinitely when she did not hold a policy of insurance in her own name. The Provider states that a "No Claims Discount" is a discount provided by some insurers which represents the number of consecutive years a person holds a motor policy in their own name without any claims. The Provider states that it is an industry practice that each insurer provides that driver with a copy of their "No Claims Discount" so that they can shop around for insurance and prove to any other insurer that they have been claims free for a number of years.

The Provider states that it would not be suitable for it to provide a letter stating that the second Complainant has a "No Claims Discount" earned with the Provider when this is not the case. The Provider says that this would be misleading to other insurance companies if the second Complainant was to seek a quote with them.

The Provider states that Insurance Ireland provided the following explanation pertaining to this issue:

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*“The normal practice in the market in relation to a No Claims Discount is that it is valid for a period of 2 years from the last date on which your policy was in force (i.e., before it lapsed/was cancelled and not being used on another vehicle) ... Your No Claims Discount is based on your previous level of driving experience in **your name.**” [Provider’s emphasis added]*

Analysis

I accept, that based on the circumstances of the application for cover, and the information supplied by the Complainant at the initial application in 2014, the Provider has acted correctly in relation to the communications on, and in administration of, this policy.

I have noted the following in coming to that conclusion.

The contract of insurance was between the Provider and the Proposer / the policyholder, that is, the Complainant in this complaint.

This was not a joint policy with two policyholders (as stated by the Complainant), but the policy was set up in the Complainant’s name as Proposer / Policyholder with his wife included as a named driver only.

The information required and used by the Provider in arranging this insurance and setting the premium, concerned the Complainant’s driving record, and not that of the named driver.

It was the Complainant’s “No Claims Discount” that was relevant to the quote for insurance, and not the named driver’s No Claims Discount.

The only information required by the Provider in relation to the named driver was her name and her driving licence number. The named driver’s other details were not sought by the Provider as she was not the Proposer / Policyholder.

There is no evidence of the Provider having any knowledge of the named driver’s entitlement to a No Claims Discount in her own name.

There is no evidence of the Complainant having had any initial discussions with the Provider as to the named driver’s own No Claims Discount, or any query from the Complainant as to the safeguarding of the named driver’s own No Claims Discount.

The Complainant considers that the Provider should have, without being asked of it, highlighted the possible means of safeguarding the named driver’s No Claim Discount. I cannot accept that this was a responsibility of, or requirement that should have automatically been required of, the Provider. This is so, as there was nothing raised by the Complainant regarding that issue when he incepted the policy. No evidence has been

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furnished that advice or information was sought from the Provider in relation to the named driver's position of having come off her own motor policy and transitioning to a named driver of the Complainant's car on his policy.

During the initial telephone call in **2014** the agent confirmed that the details provided by the Complainant were correct and asked if the Complainant had any further questions in relation to the policy. The Complainant confirmed that he had no questions and wanted to proceed with the payment. It is noted that at each renewal the Complainant made direct contact with the Provider. In all of those contacts the Complainant had the opportunity to query the position regarding the named driver's status, but did not.

From the outset, the Complainant availed of an additional option of protecting his own No Claims Bonus. It is clear that this protection only applied to the Policyholder's No Claims Bonus and not to a named driver's No Claims Bonus.

The position is that an additional/named driver is a person insured to drive another person's vehicle, and that this person is not intended to be the main user of the vehicle. The policyholder must be the one who uses the vehicle the most. I accept therefore that being named on another person's policy does not generate an entitlement to a "No Claims Discount".

I accept that the onus is on an individual to seek advice when deciding to cancel their own policy of insurance, and then deciding to only become a named/additional driver on another person's policy. I do not accept that there is an onus on a Provider to give unsolicited advice about a named driver's own No Claim Discount, nor indeed make enquiries about a named driver's future plans, when granting insurance to the contracting Proposer / Policyholder.

I accept that the Statement of Fact makes it clear that it is the Proposer's / Policyholder's own No Claim Bonus that was being considered when the Provider offered insurance cover, and not that of the named driver. The Statement of Fact specifically states the no claim discount entitlement was **"50% representing 5 years, in own name"**.

Having regard to all of the above, I do not 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

29 June 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.