



<b><u>Decision Ref:</u></b>	2021-0328
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Car
<b><u>Conduct(s) complained of:</u></b>	No claim bonus issues
<b><u>Outcome:</u></b>	Partially upheld

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

The Complainant's complaint relates to a motor insurance policy.

**The Complainant's Case**

The Complainant incepted a motor insurance policy online with the Provider on **29 October 2018**. Noting that the Complainant's online application had been based on his having 1 year's No Claims Discount earned in Ireland or the UK, in his own name on a private vehicle, and that he held a full European driving licence, the Provider later voided the Complainant's policy on **22 November 2018** from inception, having learnt that the Complainant in fact held an Australian driving licence and his No Claims Bonus Certificate was earned in Australia; this fell outside of its acceptance criteria. The Provider recorded the policy as "*Null and Void*" and refunded the premium collected, save for the €55 non-refundable set-up fee.

The Complainant sets out his complaint, as follows:

- *Obtained insurance online on 29.10.18 on my mobile phone and answered truthfully to online format of [the Provider]*
- *As waiting for my Australian No Claims to be received from [a different insurer]. Once received, sent to [the Provider] but heard nothing back, so called after a few days.*

- *When I called, I was nearly instantly told that there would be a deduction of €50 and that my policy was process[ed] as null + void as I didn't disclose documents which I disagreed and questioned and also stated that it seemed to be an online scam with the way they had their questions on their online form and it was to mislead people like me trying to obtain insurance and to deduct money. I thought about this more with the length of time it took for [the Provider] to return my money with the deduction.*
- *I received letter stating I didn't disclose documents which is untrue as I had sent in the documents to what I had answered to and what I have.*
- *Had a phone call (lengthy) with a supervisor where nothing was resolved and just made repeated statements which I think she knew herself made no sense and was nonsense to the situation but did smartly say that she would bring the issue up with their internet/marketing department.*
- *... When I took the policy out online as it was discounted, upon filling the insurance questions in, it came to licences, which gave multiple answers of; Irish full, provisional Irish, full UK and then Full EU-other than Irish/UK...I chose the "other than Irish/UK" as I hold a full Australian [driving licence]. Then after choosing that, a dropbox [sic] comes down automatically, which I choose the amount of years. It never asks where the no claims bonus is from. Something [the Provider] claimed on this, when I had the telephone call when this came up and [the Provider] were saying they only accept Irish licences, which even with this, it makes no sense, because legally I have to transfer my licence to an Irish Full, which I have already done.*
- *On top of this issue with [the Provider], they have put me in unnecessary position where other insurance won't look at me because of the null and void on my record.*
- *I had secured a job at this time of getting insurance but have since lost it due to this issue caused by [the Provider] and not having transport and since not being able to get insurance off anyone, it has affected other opportunities. As you can imagine, I am a [occupation redacted] and this totally effects my finances and had caused me serious stress and anxiety".*

In his later email to this office dated 20 March 2019, the Complainant advised *"I decided to go back to Australia as I couldn't get affordable insurance due to this undeservingly 'null and void' issue"*.

The Complainant seeks for the Provider to have the *"Null and Void to be removed from record – compensation for losing a €600 a week job due to issues caused by [the Provider]"*.

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

The Provider maintains that it was entitled to void the policy on the basis that the Complainant provided inaccurate information in the course of his online application for insurance.

Specifically, the Provider maintains that the Complainant inaccurately indicated that he held an Irish or UK driving licence when he did not, and that he inaccurately indicated that his no claims certificate was earned in Ireland, when it was not.

### **The Complaints for Adjudication**

The Complainant's complaint is that the Provider wrongly or unfairly voided his motor insurance policy in November 2018.

### **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 July 2021 outlining my preliminary determination 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.

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Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail to this Office dated 27 July 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 11 August 2021 that it had no further submission to make.

Having considered the Complainant's additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

### **Analysis**

This complaint came about because of a misunderstanding of the Provider's online insurance application process. This is clear from the detail set out in the Complainant's Complaint Form.

As part of the application process, the Complainant was required to identify the type of licence he holds. The options were as follows (as per the Complainant's Complaint Form):

*Irish full, provisional Irish, full UK and then Full EU-other than Irish/UK*

I have reviewed the screen shots from the Provider's website. I note the relevant drop-down box provides the following four options which are consistent with the Complainant's account:

*Full Irish Licence  
Provisional Irish Licence  
Full UK Licence  
Full EU Licence – Other than Irish / UK*

The Complainant chose the fourth option, namely '*Full EU Licence -other than Irish / UK*'. It is apparent that the Complainant, who held an Australian licence and did not hold an Irish or UK or EU licence, chose this option by focusing solely on the second half of the phrase, that is, "*Other than Irish / UK*".

In doing so, I accept that the Complainant made a mistake given that he did not hold an EU licence of any description. This mistake only came to light when the Complainant furnished his No Claims Discount document which made clear that it was earned in Australia. The Complainant subsequently confirmed that he had no 'Named Driving Experience' earned in Ireland or the UK.

The Provider states that in those circumstances, the Complainant fell outside its "*acceptance criteria*". It is within the Provider's commercial discretion to set whatever acceptance criteria it sees fit (subject to compliance with the law). I accept that the Complainant did not fall within the applicable acceptance criteria. I also accept that the Complainant had

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incorrectly completed the application to (unintentionally in my view) give the appearance that he did fall within the acceptance criteria.

Therefore, I accept that it was open to the Provider to cancel the policy and to deem it void from the beginning. This is the action the Provider took, and it returned the premia paid (minus the '€55 non-refundable set-up fee').

Voiding of an insurance policy is a very serious matter with longstanding and serious consequences. It is clear that the voiding of the Complainant's policy had very serious implications for him, particularly in relation to his ability to secure alternative insurance and carry out his occupation. In circumstances where the Complainant was engaging with the Provider, I believe its actions were disproportionate. I note that almost one year after it had voided the Complainant's policy, the Provider amended the cancellation to a voluntary cancellation. This was six months after the Complainant had returned to Australia.

I believe it would have been reasonable and proportionate for the Provider to engage with the Complainant and give him the opportunity to cancel the policy when the error first came to light. If he had refused to do so, then I accept it would have been reasonable and proportionate for the Provider to then cancel/void the policy.

The Provider also relies on a second ground for voiding the policy to the effect that, in completing the online application, the Complainant confirmed, inaccurately, that he had a one year's no-claims discount earned in Ireland. In making this argument, the Provider relies on the content of a help icon which is only visible if clicked, and which stipulates that the no-claims discount "*must have been earned in Ireland or the UK...*".

I note that the stipulation relied upon by the Provider is not visible on the main page but rather would only have been revealed if the Complainant clicked on a very small 'i' information icon. I believe a key piece of information such as this, that is of such importance that it can, and did, ultimately lead to the voiding of a policy should have been brought to the Complainant's attention in a more clear and forthright manner.

In its response to this office, the Provider has noted that it has amended the description of the cancellation of the policy to 'voluntary cancellation', thereby removing any requirement on the Complainant to declare any cancellation or voiding of the policy in the context of any future applications for insurance. I welcome this action by the Provider as it will serve to alleviate any impact on the Complainant should he seek insurance in Ireland in the future. However, as noted above this was only implemented almost a year after the voiding and six months after the Complainant returned to Australia.

I accept that the Complainant, through his error in completing the application process, contributed in a very significant way to the difficulty that he found himself in. However, I believe that the Provider could and should have taken a more proportionate action when the matter first arose. If it had done so, it could have greatly reduced the inconvenience caused to the Complainant.

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I believe the Provider's conduct in voiding the policy was disproportionate and unreasonable in the particular circumstances of this complaint. For this reason, I partially uphold the complaint.

In my Preliminary Decision I indicated my intention to direct the Provider to pay a sum of €1,000 in compensation to the Complainant. The Complainant, in his post Preliminary Decision submission, expresses his disappointment with this amount of compensation and sets out the reasons why he believes an additional sum of compensation is merited. Given the extent to which the Complainant contributed to the events that led to the cancellation of the policy, I remain of the view that a sum of €1,000 compensation is appropriate.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.

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 €1,000, 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.

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.**



**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

27 September 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.