



<b><u>Decision Ref:</u></b>	2021-0346
<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 Complaint handling (Consumer Protection Code) Lapse/cancellation of policy
<b><u>Outcome:</u></b>	Partially upheld

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

On **3 September 2016**, the Complainant incepted a motor insurance policy online with the Provider, through its agent.

In the preliminary decision of this Office, the agent was referred to as a tied agent of the Provider, because the FSPO took the view on the evidence available, that the agent was a *de facto* tied agent of the Provider. In those circumstances, and having communicated with the Provider to that effect, the Provider confirmed its understanding on 21 April 2021, that it would be identified as the respondent provider to the Complainant's complaint which arises in this matter.

Since the preliminary decision of this Office was issued on 24 May 2021, the Provider has indicated that the agent in question "*see themselves as a Multi Agency intermediary rather than a tied agent*".

The Provider was therefore asked for confirmation of what other providers of motor insurance, the agent in question was in a position to make available to the Complainant on 3 September 2016, other than the Provider; no such details were confirmed.

In addition, the Provider has not taken issue with the communicated opinion of this Office that the actions taken by the agent in September 2016 in its interactions with the Complainant, were actions taken in its capacity as agent for its principal, the Provider, and that the Provider, as principal, is responsible for the acts of its agent, in that regard. For that reason, the term "*Provider*" referred to in this document, includes both the Provider itself and also its agent which sold and administered the policy on its behalf. The actions of the agent are also referenced below, where suitable, for clarity purposes.

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

On **3 September 2016**, the Complainant incepted a motor insurance policy online with the Provider, at a premium cost of **€857.77** (excluding an agreed additional non-refundable charity donation of €1). The policy had a commencement date of the following day, 4 September 2016 and the Complainant's husband was listed as a named driver on the policy.

Later that same day, the Complainant used her online portal account with the Provider to upload her insurance history statement from the Motor Insurers' Bureau of [European Country] dated **August 2016**.

On **14 September 2016**, a Provider Advisor informed the Complainant by telephone that her no claims bonus certificate was not acceptable, as it covered a period up to **6 January 2010**, and her no claims bonus needed to have been active within the previous 2 years, for it to be available to be applied to her policy. The Complainant says that this requirement was not stated anywhere on the Provider's website. The Complainant then asked the Advisor how much her policy would cost without a no claims bonus, and she says that the Advisor informed her it would be **€1,046**.

The following month, on **7 October 2016**, a Provider Advisor telephoned the Complainant to advise that if she did not pay the outstanding premium balance of €1,034.03, then the Provider would cancel her motor insurance policy. The Complainant says that she had understood from her earlier telephone call with the Provider on 14 September 2016 that this sum was the total premium for a motor insurance policy with a zero years no claims bonus, and not an additional amount to the €857.77 that she had already paid to the Provider on 3 September 2016.

The Complainant did not pay the additional amount of €1,034.03, and the Provider cancelled her motor insurance policy from 23:59 on **7 October 2016**.

Having paid the Provider €857.77 on 3 September 2016, the Complainant received a refund of **€600.44** following the cancellation of her policy. However, the Complainant calculates that she should only have been charged €78.72 for her time on risk, from 3 September to 7 October 2016, and that the Provider therefore ought to have refunded her **€779.05**.

The Complainant also says that if the Provider's Advisor had made it clear to her during the telephone call on 14 September 2016 that the amount of €1,034.03 was an additional premium amount to be paid, in order for her policy to continue with a zero years no claims bonus, that she would then herself have cancelled her motor insurance policy with the Provider, which she notes would have been within the permissible 14 day cooling-off period, and thus she would have incurred no cancellation charges whatsoever.

In addition, the Complainant says that following the cancellation of her policy on 7 October 2016, she had no alternative but to purchase motor insurance elsewhere, at a cost of €2,232.18. The Complainant sets out her complaint in the Complaint Form she completed, as follows:

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*"I purchased a car based on [the Provider's] internet quote (and T & Cs) of €858.77...on the 3<sup>rd</sup> Sept 2016. According to T & C [the Provider] accepts no claims bonus from EU. Official document was uploaded through website the same day. Receipt of document was acknowledged on the 13 Sept 2016, saying 'require a copy of most recent [no claims bonus]'.*

*I called the office and left a call back request on the 13 Sept 2016 in order to get clarification, as the [no claim bonus] document was issued in August 2016. It came up that there is no agents available to chat, you either have to use online chat or [leave] a call back request.*

*Agent called me back and advised that I have to provide a no claim bonus within last 2 years. I pointed [out] that it's not stated anywhere on the website, he insisted it was. I asked what will be the price if I'll go as a first time buyer, the response was '€1,046' and that in order to avail of that offer I have to provide copies of our drivers' licences. Since it was only €200 more and I was going through a high risk pregnancy, I decided to proceed with the new quote for [peace] of mind and to avoid further stress.*

*I said that we're in the process of exchange (in terms of [driving licences]) and was told to upload documents provided by NDLS (National Driver Licence Service). Documents were uploaded. I was told they can't accept it. I requested another call back on the 19<sup>th</sup> Sept 2016. Agent called me back, I explained the situation. He said I have to request a letter from NDLS stating all our driving licences details on the headed paper. Also, I pointed out that website does not state that no claims bonus should be within last 2 years. The response was 'it's a standard practice'.*

*The letter which I received from NDLS was also uploaded to website. I requested another call back on the 23<sup>rd</sup> Sept 2016. The guy told me I have to provide copies of our driving licences and pay the balance, otherwise my insurance will be cancelled on the 7 Oct 2016. Luckily licences were received on the 6 Oct 2016 and were uploaded.*

*On the next day (07 Oct 2016) I received a phone call from agent, who said I have to pay the balance or my insurance will be cancelled. I asked him to confirm the balance. The response was '€1,046'. I asked for clarification, as initially I was told that's a new price and it's a huge difference and I couldn't afford to pay that. The response was I have to pay or they're cancelling insurance – no clarification provided.*

*No need to say that after such service I didn't want to deal with this company. As a result, my insurance was cancelled and I was charged penalty. The amount refunded was only €600.44 (charged me penalty in the amount of €178). I purchased insurance with [a different insurer] for €2,232.18...[This different insurer] was the only broker who was able to insure my car, as it falls into 'high risk' category.*

*As a result of: - poor advertisement – poor T & C's – extremely poor customer support service I'm out of pocket €1,637.02 and I want this to be reimbursed.*

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*I submitted complaint to company on the **18 Jan 2017**. Received a phone call on the 19<sup>th</sup> Jan 2017. Agent told me again in terms of no claims bonus: 2 years is a standard practice and I should know this, it's not necessary to advertise this. I said all other websites clearly state their policy in terms of no claim bonus, he tried to get me confused, as he said [the different insurer I was now with] did not say anything in terms of European no claim bonus.*

*At this stage I didn't remember exact policies from the companies I called. I told him to provide an official response, he said he will and I've never heard back from the company again. Right after the phone call I made a research and provided copies of T & C's from Irish leading insurance companies, who clearly indicates their requirements in terms of [no claim bonus]. 2 years is not a standard practice, it varies from company to company".*

In addition, in her email to this Office on 18 April 2019, the Complainant submits:

*"I have stated 0 years driving experience in Ireland. 4 years [no claims bonus] within Europe. There was nothing on the website that [no claims bonus] should be within 2 years.*

*How would [the Provider] expect someone with 0 years driving experience in Ireland to be aware of a 'standard practice' [no claims bonus] rules, which are not even stated on the website (or anywhere at all I believe)? Previously I was buying insurance at petrol stations/online in Europe by providing my driver's licence and car passport. Based in this info all my previous driving history was visible to insurer. This was my 'standard practice' experience. No expiration for [no claims bonus] whatsoever. I did not expect something different here and read all terms prior [to] the purchase, none of them mentioned 2 years.*

*On the phone [on 14 September 2016] I was quoted a 'new price' of €1,048, therefore I decided to proceed as the difference was only €200. If they would've told me it's additional €1,048 and the new price will be €2,000 (circa), I would cancel my insurance right away. I was within the cooling off period and there was no need to pay any cancellation penalties. No letters with the new insurance price was issued to me (although [the Provider] declared they did till the moment I pointed [out] they did not and provided a copy of what I received).*

*No refund was offered upon receipt of my complaint due to poor customer support services. No investigation carried [out].*

*[The Provider] previously confirmed they do hold [telephone] recording, but 'never got a chance to listen to it'. They were asked to provide copies [of the call recordings] and they said they gladly will, next thing they was saying all recordings went missing. Also when they call they advise that calls are recorded.*

*Just to mention I was going through the high risk pregnancy, they made me cry on the calls because of extremely rude and unprofessional service. Therefore I'm not surprised that all of the recordings went missing".*

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As a result, the Complainant advises in her Complaint Form that:

*"I want [the Provider] to compensate me for the unexpected expenses incurred in the amount of €1,637.02, as I acted in good faith.*

- *They did not provide sufficient information on the webpage in terms of No Claims Bonus ...*
- *I am out of my pocket by €1,637.02 + bought a car which falls into high risk category, so I have to pay a higher insurance rate going forward as well*
- *Although they claim 2 years is a standard practice [after which a no claims bonus entitlement expires], I acted in good faith, and would expect to see [them] then agreeing to T & C's (like other major companies and based on the research I can see it varies from company to company, so I believe it's not a standard practice).*
- *I believe no one should be treated in such poor and unprofessional manner.*

*Original quote was €858.77 for a year (paid full amount at the time of purchase).*

*I used their insurance from 3 Sept 2016 – 06 October 2016 (cancelled on the 7<sup>th</sup> Oct 2016), it equals to €78.72 (monthly payment €71.56 + 3 days €7.16).*

*Refunded back only €600.44.*

*[The different insurer] insurance quote for monthly instalments equals to €2,232.18 + [insurer] membership of €84 in order to avail of additional discount ... €2,232.18 + €84 - €78.72 - €600.44 = €1,637.02".*

**The Complainant's complaint is that:**

1. the Provider furnished the Complainant with incorrect and/or inadequate information via its website, of the requirements in respect of a no claims bonus entitlement;
2. the Provider's underwriting of the Complainant's policy fell short of an acceptable standard, including the Provider giving the Complainant incorrect or misleading information by telephone, as to the premium amount due from her, when her motor insurance policy was amended to reflect zero years no claims bonus;
3. the Provider wrongfully or unfairly cancelled the Complainant's motor insurance policy;
4. the Provider wrongly calculated the premium refund due to the Complainant following its cancellation of her motor insurance policy; and
5. the Provider failed to deal with the Complainant's complaint in relation to these matters on a timely basis.

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### The Provider's Case

Provider records indicate that at 11:17 on 3 September 2016, the Complainant obtained a motor insurance quote from its agent's website.

When entering the information necessary to generate this quote, the Complainant was asked "Years No Claims Bonus ", to which she chose "4" from the dropdown menu.

The Provider notes that if hovered upon, the '' help icon revealed the following information as to no claims bonuses:

*"Every year that you have insurance in your own name and you do not make a claim you will be given 1 years No Claims Bonus up to a maximum on 10 years depending on the insurer.*

*The number of years' entitlement should be expressed on your current insurers renewal notice. Note: Your no claims bonus can only be applied to 1 live policy. We will only accept a no claims bonus earned on a private car policy in the policyholder's name. We will accept a no claims bonus earned in the UK/Ireland or the EU with an English translation. The registration on your no claims bonus must match the vehicle you wish to insure".*

The Provider says that based on the information that she inputted, the Complainant was given an insurance quote of €857.77. She then proceeded to purchase this motor insurance policy quote of €857.77, paying in full by card at 11:21 on 3 September 2016, with an agreed additional non-refundable charity donation of €1 added for a payment total of €858.77.

Prior to purchasing her insurance cover, the online policy application asked the Complainant "Who is your current insurer", to which she chose "Unknown" from the dropdown menu. The Complainant was also asked "Current policy expiry date", to which she chose "3" from the date dropdown, "Sept" from the month dropdown and "2016" from the year dropdown menu, indicating the then current date of 3 September 2016 as the expiry date.

The Provider notes that it later came to light that this expiry date was incorrect and ought to have been entered as **6 January 2010**. Had she input the correct expiry date of her last motor insurance policy, the Provider says that the Complainant would not have been able to proceed with the policy application and a warning would have directed her to its customer services team, as follows:

#### ***"Quote Problem***

*We cannot proceed any further at this present time as we need to speak to you to confirm some details.*

*Please call us on [customer service telephone number]"*.

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The Provider says that, at that stage, the Complainant would have been advised that her no claims bonus could not be used, and her motor insurance policy would have to be recalculated based on zero years no claims bonus. This did not happen however, because the Complainant had inputted an incorrect expiry date when completing the online policy application, thereby allowing her to continue and purchase the cover.

The Provider notes that a no claims bonus is designed to reward continuing claims free experience. If a driver has not been driving for a sustained period, then that person does not enjoy the same benefit as a driver who has been driving claims free over the same period. The Provider says that generally, this period is 2 years, and it is aware of more than 20 other motor insurers that follow the same process.

The Provider acknowledges that at the time the Complainant purchased her cover in September 2016, there was no reference in any of its policy documents within its online portal, to the fact that a no claims bonus had to have been active within the last 2 years for it to be applied to a policy, nor was this 2 year period included in the information stated under the no claims bonus 'i' help icon, though it has since been added.

Nevertheless, the Provider says that the Complainant's policy was offered and based on the expiry date of her last motor insurance policy that she inputted when applying for her new cover online, which indicated that her 4 years no claims bonus ran to 3 September 2016, rather than some 6.5 years previously, on 6 January 2010. The Provider says that if the Complainant had entered the correct expiry date, she would have been prevented from purchasing her cover online without first contacting the Provider directly.

Following the inception of her motor insurance policy, the Provider sent the Complainant a Welcome Letter by email on **3 September 2016**, which stated as follows:

*"Your policy for [vehicle registration] runs for 12 months from 04/09/2016 and the policy is xxxxxx727. You should receive your insurance certificate and disc within the next couple of days along with information of what we require from you in terms of documentation.*

**Your Insurance Documents**

*All documentation to do with your insurance can be found in your 'Online Portal' under documents. You will have access to the following*

- *Statement of Facts*
- *Policy Wording*
- *Schedule*
- *Terms of Business*
- *Cover Summary".*

The Provider says that when it emails correspondence to a policyholder, its systems automatically send a text message to the customer's mobile number and in this regard, a text message was sent to the Complainant's mobile number at 11:19 on 3 September 2016 confirming that:

*"[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account".*

The Provider says that immediately after, it posted a "Documents Needed New Business" Letter to the Complainant, which enclosed the insurance certificate and disc and confirmed that it required proof of her no claims bonus within the next seven days, as follows:

*"If you have already forwarded these items to us please ignore this letter. Otherwise please forward these documents within the next 7 days ...*

**No Claims Bonus From Previous Insurer** – *This document should have been sent from your previous insurer along with your renewal notice. It will confirm the number of years no claims bonus discount you are entitled to".*

The Provider says that at 11:29 on **3 September 2016**, the Complainant connected to the online chat facility to ask how she could forward her no claims bonus and the Advisor confirmed that she could post this to the Provider or upload it via her online portal account.

The Provider says that at 14:38 on 3 September 2016, the Complainant uploaded an insurance history statement from the Motor Insurers' Bureau of [European Country] dated 16 August 2016, to her online portal account, indicating that the Complainant had a 51.5 month history of no accidents, in the period from **26 July 2005** to **6 January 2010**. This document was forwarded to Management to confirm if it was acceptable as a certificate of no claims bonus.

As this had yet to be confirmed, the Provider says that it emailed the Complainant a "Documents Needed Chaser" Letter on **11 September 2016**, as follows:

*"Further to our previous correspondence we have not received the items indicated below. In order to maintain cover and avoid our cancellation procedure please send the items within the next 7 days.*

*If you have already forwarded these items to us please ignore this letter.*

**No Claims Bonus From Previous Insurer** – *This document should have been sent from your previous insurer along with your renewal notice. It will confirm the number of years no claims bonus discount you are entitled to".*

In addition, the following text message was sent to the Complainant's mobile number at 09:07 on 11 September 2016:

*"[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account".*

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The Provider says that at 10:25 on 11 September 2016, the Complainant sent the following query on the Provider's I-Message facility:

*"Can you please advise why I keep getting letter and email chasers that I have to upload a no claims document (latest correspondence has today's date – 11.09.2016)? Document was uploaded straight after insurance was purchased (over a week ago – 03.09.2016) and still is under status 'pending'"*.

At 11:46 on **12 September 2016**, the Complainant connected to the online chat facility with the same query and the Advisor confirmed that her no claims bonus document had been referred to Management and was still under review, and that this would take a few more days.

The Provider says that at 08:11 on **13 September 2016**, it was confirmed that the Complainant's insurance history statement from the Motor Insurers' Bureau of [European Country] was not acceptable as a no claims bonus, because it covered a period up to January **2010** only; because the Complainant had advised in her online policy application that she had last been insured up to 3 September 2016, the Provider required a certificate of no claims bonus to verify this.

As a result, on 13 September 2016 the Provider amended the "Documents Needed Chaser" Letter of 11 September 2016 on the Complainant's online portal account to read:

*"Further to our previous correspondence we have not received the items indicated below. In order to maintain cover and avoid our cancellation procedure please send the items within the next 7 days.*

*If you have already forwarded these items to us please ignore this letter.*

**No Claims Bonus From Previous Insurer:-**

*We acknowledge receipt of your no claims bonus certificate with thanks, however we require a copy of your most recent copy. If you do not have a No Claims Bonus within the last two years we require a copy of licence for both drivers named and the additional premium to amend your No Claims Bonus to 0 years. Please make sure this is received before the date of cancellation".*

The Provider notes that the date of this letter was not altered and remained 11 September 2016. In this regard, in its email to this Office at 15:31 on 14 May 2018, the Provider says that:

*"The date is shown as the 11/09/2016 as this letter is valid from 7 days from when it is created. Any adjustments to this letter within the 7 days will still have the date of the 11/09/2016".*

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Similarly, in its email to this Office at 10:56 on 22 May 2018, the Provider says that:

*“To clarify, even though this letter was amended on the 13/09/2016, as it was an automated letter it still had the date of the 11/09/2016 and allowed 7 days for the items to be produced”.*

In addition, the Provider says that the following text message was sent to the Complainant’s mobile number at 09:02 on 13 September 2016 regarding the amended Documents Needed Chaser Letter:

*“[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account”.*

The Provider says that at 14:13 on 13 September 2016, an Advisor replied to the Complainant’s I-Message of 11 September 2016, as follows:

*“We acknowledge receipt of your no claims bonus certificate with thanks, however we require a copy of your most recent copy. Please forward this into the office within the specified time. These [Documents Needed Chaser Letters] are automatically issued by the system to chase the document that is under query. Please forward your most recent no claims bonus to our office within the specified time frame. If the no claims bonus you have already submitted is your most recent please contact our office urgently in order to discuss this matter”.*

The Provider says that at 11:36 on 14 September 2016, the Complainant telephoned the Provider and advised that she had not held motor insurance cover during the preceding 2 years. The Advisor confirmed that her motor insurance policy would now need to be amended to zero years no claims bonus, which would incur an additional premium of €1,034.03, and that she was also required to submit a copy of all driving licences.

The Complainant advised that she had sent their licences to the National Driver Licence Service (NDLS) to transfer them to Irish licences and the Advisor asked that she check with the NDLS how long this would take. Although this call was not recorded, the Provider notes that the Advisor’s contemporaneous policy notes in relation to this telephone call state:

*“Cli [client] does not have an NCB [no claims bonus] within the last 2 years, advised cli we need licence and Ap [additional premium] to amend”.*

The Provider says that because it had not yet received the required copies of the driving licences and payment of the additional premium, a new “Documents Needed Chaser” Letter was emailed to the Complainant on **18 September 2016**, as follows:

*“Further to our previous correspondence we have not received the items indicated below. Unfortunately if these items are not received within 7 days of the date of this letter we will have no alternative but to proceed with our cancellation procedure ...*

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**No Claims Bonus From Previous Insurer:-**

*We acknowledge receipt of your no claims bonus certificate with thanks, however we require a copy of your most recent copy. If you do not have a No Claims Bonus within the last two years we require a copy of licence for both drivers named and the additional premium to amend your No Claims Bonus to 0 years. Please make sure this is received before the date of cancellation”.*

In addition, the Provider says that the following text message was sent to the Complainant’s mobile number at 09:07 on **18 September 2016**:

*“[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account”.*

The Provider says that at 09:26 on **20 September 2016**, the Complainant informed an Advisor by telephone that she was still waiting on their driving licences from the NDLS but would upload to her online portal account a copy of the temporary licences that they had been given by the NDLS.

The Provider says that at 17:15 on **20 September 2016**, the Complainant uploaded a copy of a NDLS Customer Receipt dated 24 August 2016 that contained no personal details such as her name or address and, in any event, clearly stated:

*“This receipt is proof of payment/application only and cannot be used in place of a Driving Licence/Learner Permit”.*

The Provider says that at 11:04 on **22 September 2016**, an Advisor tried to telephone the Complainant in relation to the driving licences but someone else answered and said that they would get her to contact the Provider when she returned home. A text message was then sent to the Complainant’s mobile number on 22 September 2016 confirming that:

*“[The Provider] tried to contact you at 11:04 on the 22/09/2016”.*

The Provider says that at 11:55 on **22 September 2016**, the Complainant connected to the online chat facility and the Advisor confirmed receipt of the NDLS Customer Receipt but advised that the Complainant needed to upload a copy of the driving licences or obtain a letter from the NDLS confirming all the information that is on the driving licences.

The Provider says that as it had not yet received the required copies of the driving licences and payment of the additional premium, a Notice of Cancellation Letter was sent by registered post to the Complainant on **26 September 2016**, as follows:

*“Further to our recent correspondence, we have not received the items ... As a result we will have no alternative but to **CANCEL** your policy on the **07/10/2016**”.*

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The Provider says that a copy of this Notice of Cancellation Letter was also emailed to the Complainant and the following text message was sent to her mobile number at 12:58 on 26 September 2016:

*"[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account".*

The Provider says that at 16:34 on **6 October 2016**, the Complainant uploaded a copy of the Irish driving licences to her online portal account.

The Provider says that at 14:08 on 7 October 2016, an Advisor telephoned the Complainant to confirm that the Provider had received the driving licences and to advise that she now had to pay the additional premium of €1,034.03 to stop her policy cancelling at midnight. The Provider says that the Complainant said that they could not afford to pay this amount and the Advisor confirmed that the policy would therefore cancel at midnight.

The Provider says that it then emailed and posted a Notice of Cancellation to the Complainant dated **7 October 2016** confirming that:

*"Following our previous correspondence ... we have **CANCELLED** your motor insurance policy from **07/10/2016**".*

The Provider cancelled the Complainant's policy from 23:59 on 7 October 2016.

The Provider says that it held a written agreement with its agent giving it authorisation to issue cancellation notices on its behalf. It says that at 10:18 on 12 October 2016, the Complainant connected to the online chat facility to query how much of a refund she was due and when it would be received. The Advisor confirmed that the Accounts Department would calculate any refund due and that this would be refunded by 21 October 2016. The Advisor also sent a link in the chat facility for its Terms of Business and advised the Complainant that section 7 contained details of the cancellation charges.

In this regard, section 7, '**Cancellation Rights**', of this Terms of Business document states at pg. 3, as follows:

*"If the policy is cancelled within the cancellation period any return premium will be net of a €25 administration charge.*

*If you cancel the policy after the cancellation period your refund will be calculated on the following basis*

<b>Period of Cover</b>	<b>Up to 1 mth</b>	<b>Up to 2 mths</b>	<b>Up to 3 mths</b>
<i>Proportion of annual premium retained</i>	25%	30%	40%
<i>Proportion of annual premium refunded</i>	75%	70%	60%

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*If we are forced to cancel the policy due to non-payment or we have not received any of the information we have repeatedly requested any cancellation return will be subject to a further €25 (€50 in total) charge to cover additional administration costs”.*

The Provider says that at 16:42 on **18 October 2016**, its Accounts Department refunded the amount of €600.44 back to the card the Complainant had used to incept the policy on 3 September 2016. As her policy was cancelled on 7 October 2017, which was more than one month but less than two months after its commencement on 4 September 2016, the Complainant was charged 30% of the €857.77 premium that she had paid on 3 September 2016, in accordance with the Provider’s Terms of Business. The Provider says that at 16:17 on 18 January 2017, the Complainant connected to the online chat facility to query the Complaints Department email address, and the Advisor confirmed this to her. Later that day at 17:22, the Provider received a complaint from the Complainant by email.

The Provider says that at 10:25 on 19 January 2017, the Provider’s Complaints Officer telephoned the Complainant in relation to her complaint. The Complainant said that she unhappy that the Provider had not accepted her no claims bonus. The Complaints Officer explained that a no claims bonus expires 2 years after it not being used and that this is a general rule within the Irish motor insurance industry. The Complainant also said that she had been told by telephone on 14 September 2016 that the amount of €1,034.03 was the total for a new policy with zero years no claims bonus, and not an additional amount on top of the €857.77 that she had already paid on 3 September 2016. The Complaints Officer advised that they would investigate this, and listen to any telephone call recordings and include this in the Provider’s final response.

The Provider says that on 19 January 2017 at 15:24, the Complainant emailed screenshots from other insurance companies outlining where on these companies’ websites it shows their criteria for accepting a no claims bonus. Some two months later, on 15 March 2017 at 10:24, the Complainant emailed the Complaints Department requesting the Provider’s final response. The Complaints Officer then emailed and posted the Provider’s Final Response Letter dated 15 March 2017 to the Complainant, and a text message was automatically sent to her mobile number at 14:34 confirming that:

*“[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account”.*

The Final Response Letter dated 15 March 2017 stated:

*“I am sorry that you had reason to complain about the level of service we have provided.*

*As per our telephone conversation on the 19/01/2017, I can confirm that we have addressed the issue of your no claims bonus. I can confirm that at the purchase of your policy, you advised that you have earned 4 years No Claims Bonus and could provide a valid certificate of No Claims Bonus to confirm his as being complete and accurate/*

/Cont’d...



*On the 05/09/2016, a Certificate of No Claims Bonus was acknowledged in our office in your name. This certificate showed that the expiry date of this certificate of No Claims Bonus, issued by the Motor Insurers Bureau of Latvia showed that this policy has lapsed on the 06/01/2010.*

*On the 14/09/2016, you spoke to an advisor in our office via telephone and confirmed that this was the most recent No Claims Bonus earned in your name. However, as this certificate expired in 2010 and had not been used on a policy within 2 years of the expiry date, our advisor confirmed that this certificate was now invalid. It was confirmed during that conversation that we would require to reduce the No Claims Bonus years to 0 years and...an Additional Premium payment of €1,034.03 would be required for this reduction. It was further confirmed that we would also require a copy of all drivers' licences on the policy before we could complete this reduction and take payment.*

*On the 19/09/2016, you spoke to an advisor and advised that you were awaiting the return of your drivers' licence as you were in the process of changing your licence and that you had a licence which the NDLS and other insurance companies had advised you we would accept. On the 21/09/2016, a receipt for a driving licence change was acknowledged in our office. However, as this document showed no information relating to you this was deemed as unacceptable and an email was issued to you requesting proof of a valid driving licence.*

*On the 26/09/2017, a Recorded Delivery Notification of cancellation was issued to you to advise that your policy would be cancelled should a requested documentation proofs and required additional premium not be received before the advised date of cancellation on the 07/10/2016, we would have no option but to issue a forced cancellation against your policy of motor insurance.*

*On the 07/10/2016 at 13.13 hours, copies of all driving licences were acknowledged in our office.*

*At 14.08 hours, you spoke to an advisor who confirmed we would require a payment of €1,034.03 as an additional premium for your policy to continue. You declined to make this payment and our advisor confirmed that your policy would continue to cancel at midnight.*

*At 23.55.59 hours on that date, all cover on your policy ceased and a cancellation confirmation letter was issued to you via post and email to the last known address on your policy.*

*On the 18/10/2016 at 16.42 hours, a refund of €600.44 was issued to you via the credit/debit card used to make the original payment. The cancellation charges were in line with the percentage amount as shown in our Terms of Business agreed by you at the purchase of your policy.*

/Cont'd...

*Taking all information into account, I can confirm that [the Provider] have made no errors in relation to your policy of motor insurance.*

*In relation to validity of No Claims Bonus, a No Claims Bonus is valid for a period of 2 years. The entitlement to No Claims Bonus discount becomes invalid if not used on an active policy of motor insurance for a period of 2 years. Once this time period has passed, your entitlement to all earned No Claims Bonus is null and void and you must begin any policy with 0 years no claims bonus.*

*This 2 year time period for the validity of a No Claims Bonus is standard across the insurance industry as a whole and information with regards to this criteria is readily available from a number of sources.*

*At the purchase of your policy, you advised that you had 4 years No Claims Bonus on a valid certificate of No Claims Bonus. However on receipt of your No Claims Bonus it was found that your No Claims bonus has expired on the 06/01/2010 and you confirmed this was your most recent No Claims Bonus. As this had not been used on a valid policy of motor insurance within 2 years, your No Claims Bonus became invalid on the 07/01/2012. Therefore we were unable to accept this and we were required to reduce the earned No Claims Bonus years to reflect the correct information. This led to an additional premium being required to reflect the adjusted risk of insurance.*

*In relation to the requested licences from your policy, we can only accept a copy of a valid driving licence or letter from the NDLS confirming all required information in relation to a driving licence. We received a receipt for the changing of a licence but this document did not confirm any personal information in relation to you. Therefore this was not deemed as being acceptable.*

*As you have advised [you] sought advice from other insurance companies as to the acceptance of this letter. You have advised that other insurance providers confirmed they would accept this document. I advise that each insurance company will have their own set of rules and guidelines in relation to documents which are acceptable to their company only and should not have advised you that we would accept this document.*

*Like other insurance providers, we confirm on all Documents Needed letter issued the information we require in relation to what is acceptable for each requested document. As this is our requirement, no other third party should offer advice as to what will be acceptable to our company”.*

/Cont'd...

The Provider says that following receipt of an email response from the Complainant sent at 18:17 on 15 March 2017, the Provider's agent emailed the Complainant at 09:42 on 16 March 2017, as follows:

*"In response to your queries listed below,*

- 1) The examples you have provided do not confirm that all companies state on their website about the 2 years validity of a No Claims Bonus.*

*Example 1 is in relation to a named driver's experience and in this information it does not state about any time period for validity of No Claims Bonus.*

*Example 2 is in relation to No Claims Bonus discount and does advise that this company will require your certificate of No Claims Bonus within 7 days. Again, no reference is made to a time frame of validity of No Claims Bonus.*

*Example 3 is in relation to No Claims Bonus and this states within the last 2 years.*

*As per Financial Conduct Authority regulations, the information we provide about our specific insurance cover must be clear, concise and not misleading. This information is about specific information included in our products only. Any information which is common knowledge and which information is readily available ie by internet search etc does not have to be displayed under these regulations as this information is common knowledge and an industry standard validity for a no claims bonus.*

- 2) Unfortunately I have not been in a position to listen to the advised telephone call but the notes on your policy show that the advisor did confirm that this was an Additional Premium. However I will further investigate this and have requested my supervisor to listen to the call to confirm the conversation information.*

*If the advisor has incorrectly informed you that the required payment was for a full policy I apologise and this matter will be dealt with internally. However I can confirm that a Recorded Delivery Notification of Cancellation was issued to you on the 26/09/2016 which clearly showed that the amount required for the reduction was an Additional Premium. This was also advised in a further call with our advisor on the 07/10/2016 who also confirmed that the amount was an Additional Premium. If you had been advised incorrectly in the first conversation, 1 further document and one further conversation clearly stated to you that this was an Additional Premium rather than for a new policy".*

The Provider says that it did not mislead the Complainant throughout the policy application process and that her motor insurance policy had been provided in good faith that the information that she had inputted online when purchasing the policy had been correct, and that documentation sought would be made available upon request, for verification of same.

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The Provider notes that its agent's Complaints Officer advised the Complainant by telephone on 19 January 2017 that, as part of the complaint investigation, they would listen to the recording of the telephone call that the Complainant had with the Provider on 14 September 2016. The Provider says that regrettably, it since came to light that it does not hold any call recordings in relation to this matter, though the Provider notes that the contemporaneous policy notes that the Advisor who spoke with the Complainant by telephone at 11:36 on 14 September 2016 took, in relation to that call, indicate that she was advised of an additional premium amount, as follows:

*"Cli [client] does not have an NCB [no claims bonus] within the last 2 years, advised cli we need licence and Ap [additional premium] to amend",*

The Provider says that its agent's Complaints Officer will always advise a complainant that they will try and get the call recordings listened to and will then request these recordings. In this instance, the Provider notes that none of the Complainant's telephone calls were recorded, though it says this was not a coincidence, as contended by the Complainant.

To clarify, the Provider's its agent said that there had been a fault with its recording system at that time, insofar as it failed to record a certain percentage of its calls. This fault first came to light in early 2018 and was resolved at that time. In any event, the Provider notes that it does not state that all telephone calls are recorded, rather it states that calls may be recorded for training and monitoring purposes. The Provider says its Complaints Officer would not know in advance which calls were recorded and therefore on occasion, it is not always possible to listen back to the calls, as they were not recorded.

With regard to the Complainant's comments regarding the customer service she encountered on the telephone from the different Advisors who she spoke with, the Provider's agent said that it cannot pass comment as to how the Complainant was treated as it unfortunately has no telephone call recordings to review, but if it was aware of any unacceptable levels of service to its customers, it would view this rather gravely and would look to discipline any individuals involved. It apologised if the Complainant felt she received a less than acceptable level of customer service from the different Advisors who she spoke with. It also advised that it does now have a continual monthly review process where it rates Advisor calls, in order to maintain high customer service levels.

The Provider acknowledges, however, that upon completing its investigation of the complaint at hand, it was apparent that the Complainant's original complaint was not dealt with fittingly. In this regard, the Provider says that the Complainant should have been provided with further clarification, as follows:

*"As [the Complainant] input the incorrect expiry date of their previous policy, this in turn led to the no claims bonus being unacceptable. It is not clear if this was advised to [the Complainant] as the telephone calls were not recorded. There is also no mention of this in the Complaints Final Response that was issued to [the Complainant].*

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*Following the issue of a final response from our team, [the Complainant] made further contact by email, advising of her dissatisfaction at the final response issue. At this stage [the Complainant] should have been contacted further to discuss her concerns, unfortunately no contact was made”.*

The Provider has also confirmed that its agent had no authority to handle complaints on its behalf, and it should have referred the Complainant’s complaint to the Provider. Regrettably, the agent did not make the Provider aware of the Complainant’s complaint at the time it was made. Indeed, the Provider says that it was not made aware of this complaint until **15 April 2019**, after the Office of the Financial Services and Pensions Ombudsman instructed the agent to do so.

To ensure that such matters do not arise again, the Provider says that it now receives a copy of its agent’s *Complaints Log*, which is discussed at a monthly operational meeting between the Provider and its agent. In addition, there is also a monthly complaints meeting in place, to ensure that all complaints made to the agent, regarding the Provider, are now brought to its attention.

The Provider says that on **18 October 2016**, it refunded the amount of €600.44 back to the card the Complainant used to incept the policy on 3 September 2016. As her policy had been cancelled on 7 October 2016, which was more than one month but less than two months after its commencement on 4 September 2016, the Provider notes that the Complainant was charged 30% of the €857.77 premium that she had paid on 3 September 2016, in accordance with its Terms of Business.

Having reviewed the matter further, in its email to this Office at 17:51 on 25 April 2019, the Provider, through its agent, advised that as a gesture of goodwill to the Complainant, and in an effort to resolve this matter, it was prepared to reduce the cancellation charge and charge the Complainant for her time on risk cover only, that is, €109.35 from 3 September to 7 October 2016, resulting in an offer of an additional refund to the Complainant in the amount of €148.98. The Provider advised that this offer remained open to the Complainant to accept.

### **The Complaint for Adjudication**

The complaint is that the Provider was guilty of maladministration, insofar as it:

1. supplied the Complainant with incorrect and/or inadequate information, of its requirements in respect of a no claims bonus entitlement, including through the information made available through its website;
2. failed to offer the Complainant an acceptable standard of underwriting and supplied the Complainant with incorrect or misleading information by telephone, regarding the premium amount due, when her motor insurance policy was amended to reflect zero years of no claims bonus;

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3. wrongfully or unfairly cancelled the Complainant's motor insurance policy;
4. wrongly calculated the refund due to the Complainant following its cancellation of her motor insurance policy; and
5. failed to deal with the Complainant's complaint in relation to these matters, in a timely way.

### **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 **24 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. Following the consideration of an additional submission from the Complainant, the final determination of this office is set out below.

I note that the Complainant incepted a motor insurance policy online with the Provider on **3 September 2016**, with a commencement date of 4 September 2016. Her husband was listed as a named driver on the policy. She purchased her motor insurance policy on 3 September 2016 by paying the Provider the premium of €857.77 by way of a card payment using its agent's website. I note that this policy came into being on the basis that the Complainant had advised the Provider during her online policy application, that she had 4 years' no claims bonus.

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I note that later that same day, the Complainant uploaded her insurance history statement dated August 2016, from the Motor Insurers' Bureau of [European Country], which I note confirmed that the Complainant had a 51.5 month history of no accidents, spread intermittently from 26 July 2005 to 6 January 2010.

By telephone on **14 September 2016**, a Provider Advisor informed the Complainant that this statement was not acceptable as a no claims bonus because it covered a period up to 6 January 2010, whereas a no claims bonus entitlement had to have been active within the last 2 years, in order for it to be applied to a policy, as it expires after a 2 year period.

The Complainant says that the Advisor told her during this call that a motor insurance policy with a zero years no claim bonus would cost her €1,046 in total. However, the Provider says that the Advisor told the Complainant that it had to amend her policy to reflect a zero years no claim bonus, and that this amendment would incur an additional premium of €1,034.03.

The Complainant says that it was only during a subsequent telephone call with the Provider on **7 October 2016** that she first learnt that the sum of €1,034.03 quoted to her by the Advisor during the telephone call on 14 September 2016, was a sum in addition to the €857.77 that she had already paid to the Provider on 3 September 2016.

The Complainant did not want to pay this additional premium amount of €1,034.03 and the Provider then cancelled her motor insurance policy from 23:59 on 7 October 2016. The Provider then refunded the amount of €600.44 to the Complainant on 18 October 2016.

I note that the Complainant advised in her Complaint Form of "*unexpected expenses incurred*" after the Provider cancelled her policy on 7 October 2016, insofar as she says it cost her €2,232.18 to purchase motor insurance elsewhere. In this regard, however, I note that the Provider was intending to charge the Complainant €1,891.80 for a zero years no claim bonus motor insurance policy if she wished to proceed, but that the Complainant declined to pay this total amount, as she was entitled to, and instead sought insurance elsewhere, which cost her some €340 more.

There are five elements to the complaint of maladministration by the Provider and I shall consider each separately, as follows:

**1. The complaint that the Provider provided the Complainant with incorrect and/or inadequate information via its website, of the requirements in respect of a no claims bonus entitlement:**

The Complainant input her details on the Provider's website on 3 September 2016 in order to obtain a motor insurance quote, which she received in the amount of €857.77.

The Provider has advised, and I accept, that it cannot recreate historical quote information on its quotation engine, though it has submitted what it advises to be some representative screenshots of its online quotation process from a training file, that has some of these screenshots saved. In addition, the Provider advises that the layout of its quotation engine has been updated since September 2016, and is now slightly different, though it says that the questions posed and information sought therein remains more or less the same.

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The 'Insurance Details' section of the online quotation process in use in September 2016 asked, amongst other things:

***"Please enter how many years no claim you have below***

***Years No Claims Bonus***  ***"***

I note from the documentation before me that the Complainant chose "4" from the dropdown menu.

The Provider advised this Office that if the Complainant had hovered the cursor over the no claims bonus '' help icon, the following information would have been displayed:

*"Every year that you have insurance in your own name and you do not make a claim you will be given 1 years No Claims Bonus up to a maximum on 10 years depending on the insurer. The number of years entitlement should be expressed on your current insurers renewal notice. Note: Your no claims bonus can only be applied to 1 live policy. We will only accept a no claims bonus earned on a private car policy in the policyholders name. We will accept a no claims bonus earned in the UK/Ireland or the EU with an English translation. The registration on your no claims bonus must match the vehicle you wish to insure".*

More recently, since the preliminary decision of this Office was issued, the Complainant on 24 May 2021, submitted a screenshot of the relevant website which she says was taken by her in 2016, and I note the pop-up message, which is displayed in this screenshot, appeared under the question:

***"Please enter how many years no claim you have below***

***Years No Claims Bonus***  ***"***

The pop-up message in question, displays the following information, seemingly starting mid-sentence, but the second half of the Provider's quotation above:

*"will only accept a no claims bonus earned on a private car policy in the policyholders name. We will accept a no claims bonus earned in the UK/Ireland or the EU with an English translation. The registration on your no claims bonus must match the vehicle you wish to insure."*

The Provider has since confirmed, as of 17 August 2021, that

*"The screenshot provided by the customer is the correct help text that was in place when customer purchased in 2016. As per previous responses, it was standard industry practice at that time that a no claims bonus expires after 2 years. The NCB used on this policy was almost 6 years expired."*

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The Provider also pointed out that the 2016 online platform asked for “*current insurance details*” and it has supplied a screenshot of that field for entry, in 2016.

I note that the Provider acknowledges that in September 2016, at the time when the Complainant purchased her cover, there was no reference in any of its policy documents within its online portal, to the fact that a no claims bonus had to be active within the last 2 years, for it to be applied to a policy.

The Provider has confirmed that neither was this 2 year period included in the information stated under the no claims bonus ‘i’ help icon, though it has more recently added this information as follows:

*“Every year that you have insurance in your own name and you do not make a claim you will be given 1 years No Claims Bonus up to a maximum on 10 years depending on the insurer. The number of years entitlement should be expressed on your current insurers renewal notice. Your No Claims Bonus is valid for 2 years after the expiry of your last motor policy. Note: Your no claims bonus can only be applied to 1 live policy. We will only accept a no claims bonus earned on a private car policy in the policyholders name. We will accept a no claims bonus earned in the UK/Ireland or the EU with an English translation. The registration on your no claims bonus must match the vehicle you wish to insure”.*

[underlining added for emphasis]

In the Final Response Letter to the Complainant dated **15 March 2017**, I note that the Provider’s agent stated as follows:

*“The entitlement to No Claims Bonus discount becomes invalid if not used on an active policy of motor insurance for a period of 2 years. Once this time period has passed, your entitlement to all earned No Claims Bonus is null and void and you must begin any policy with 0 years no claims bonus. This 2 year time period for the validity of a No Claims Bonus is standard across the insurance industry as a whole”.*

In this regard, I accept the Provider’s position that the Complainant’s no claims bonus was not acceptable to it, as it had expired. I also accept that it is standard across the Irish motor insurance industry as a whole, that a no claims bonus entitlement has to have been active within the last 2 years in order for it to be applied to a new policy. I am satisfied to see that the Provider’s online quotation process now clearly states this.

I note that the information under the no claims bonus ‘i’ help icon, in September 2016, stated that

*“...The number of years entitlement should be expressed on your current insurers renewal notice...”*

and that

/Cont’d...

*"...The registration on your no claims bonus must match the vehicle you wish to insure..."*

Although this suggested that the no claims bonus entitlement should, to some extent, be contemporaneous and that it should also relate to the vehicle that the customer was seeking to insure, I am not satisfied that, in this instance, this was adequate to alert the Complainant (or any other person who was unfamiliar with Irish motor insurance industry norms) to the fact that the no claims bonus earned, must be within the most recent two year period.

I note that in September 2016, the Complainant was seeking to insure a newly purchased vehicle, but she had not held motor insurance cover since **6 January 2010**, some 6.5 years earlier. In facilitating the proposal process, the Provider, in my opinion, ought to have ensured that it either asked the relevant question about the no claims bonus earned, or alternatively, it should have made the relevant information available to the proposer, in a clear and prominent manner.

As referenced above, the Provider's evidence is that, in order to proceed with the motor insurance quotation of €857.77 that she had obtained on 3 September 2016, the Complainant was required to complete the online policy proposal and this asked her "*Who is your current insurer*", to which I note she chose "*Unknown*" from the dropdown menu.

In addition, the Provider maintains that the Complainant was also asked "*Current policy expiry date*", to which she chose "*3*" from the date dropdown, "*Sept*" from the month dropdown and "*2016*" from the year dropdown menu, indicating the then current date of "**3 September 2016**" as the expiry date.

Since the preliminary decision was issued in May 2021, the Complainant has submitted that:

The field was never called '**Current policy expiry date**'. Firstly, it was called in the past '**Inception Date**' or something like this and I insist that either correct date was indicated or there was no ability to insert the correct date, hence random was picked up.

I object that it's my fault: first of all - they failed to provide the original logs (same as all recordings it went missing). They provided simulation via **upgraded & enhanced system** along with **mock-up** data (again entered manually). Taking all the errors in attention, I'm pretty sure it was incorrectly inserted by the agent in the past.

Or if it was actually a system limitation - then it's unacceptable for online company, it should give opportunity to insert correct data and throw an error right away saying that it's not possible to proceed to purchase since the expiry is not within last 2 years. I can confirm 100% that I did not get any error messages. And I hope you noticed that all other data, bar this one in question, was 100% accurate.

Unfortunately, I have not saved this screenshot. In my defence: this point was raised only after a years of ongoing investigation, it never came up initially as a concern, hence I doubt that it was my fault.

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Up to date - I have not received any evidence from the company proving at least one of their words, they just were blaming me and after my back up was saying sorry.

I note that the Provider confirms that if the Complainant had entered the correct date of the expiry of her last motor insurance policy as 6 January 2010, or any date more than 2 years before the then current date, she would not have been able to proceed with the policy application and a warning would have directed her to telephone its customer services team, as follows:

***“Quote Problem***

*We cannot proceed any further at this present time as we need to speak to you to confirm some details.*

*Please call us on [customer service telephone number]”.*

In those circumstances, even though the Provider’s website did not state that a no claims bonus had to be active within the last 2 years, in order for it to be applied to a policy, I am satisfied that if the Complainant had entered the correct date of the expiry of her last motor insurance policy as 6 January 2010 (or indeed any date more than 2 years before the then current date) she would not then have been able to proceed with the policy application at that time, and a warning would have directed her to telephone the Provider’s customer services team, who would then have explained to her that her no claims bonus entitlement was not acceptable to the Provider because it had expired.

I accept that the Provider offered the Complainant her motor insurance policy, and calculated the associated premium due, based on the information that she had made available when completing the online policy application, and that this information included “3 Sept 2016” as the expiry date of her last motor insurance policy, which indicated that her 4 years no claims bonus was current to 3 September 2016, rather than having expired some 6.5 years previously, on 6 January 2010. I do not accept in that respect that the details captured in the online application, were “*incorrectly inserted by an agent*” as she suggests.

In her email to this Office at 10:41 on 30 April 2018, I note that the Complainant advised:

*“I do not remember this part ... either there were no required option available in the drop down menu and I processed information at my best knowledge (no agents were available) or it has been incorrectly processed/manually added by [the Provider]. Drop down menu is a common problem across majority of websites, so I never pay attention to that. Even if it a case that I included the random date (because drop down is not working properly) I did not expect any issues, as again (it comes to point in [my] initial complaint), [the Provider’s] website does not state any [no claims bonus] T&Cs”.*

I take the view however that the onus was on the Complainant to make sure that all information that she included in her online policy application to the Provider was correct

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before she proceeded to request motor insurance cover through the Provider, as all such information formed the basis of any proposed contract of insurance. Selecting a “random” date is not appropriate when proposing for insurance.

On 3 September 2016, the Complainant uploaded an insurance history statement from the Motor Insurers’ Bureau of [European Country] dated 16 August 2016, to her online portal account, thereby confirming that she had a 51.5 month history of no accidents, spread intermittently from 26 July 2005 to 6 January 2010.

In her email to this Office at 16:10 on 18 April 2019, I note that the Complainant advised:

*“Previously I was buying insurance at petrol stations/online in Europe by providing my driver’s licence and car passport. Based in this info all my previous driving history was visible to insurer. This was my ‘standard practice’ experience. No expiration for [no claims bonus] whatsoever. I did not expect something different here and read all terms prior [to] the purchase, none of them mentioned 2 years”.*

Unfortunately, the Complainant was ill-advised to suppose that motor insurance in Ireland was administered in a manner similar to those other countries where she had previously purchased motor insurance cover. In this regard, it would have been prudent of the Complainant to have contacted the Provider directly to specifically query whether she was, in September 2016, entitled to benefit from her no accidents history that had ceased accruing on 6 January 2010, some six years and eight months earlier, when she had been last insured.

I am therefore of the opinion that, given the evidence made available by the parties, that although the Complainant was largely responsible for the difficulties which ensued, because she entered details on the proposal which were not accurate, nevertheless the Provider has a case to answer for not making clear that a no claims bonus entitlement, was required to be less than two years old.

**2. The complaint that the Provider failed to offer the Complainant an acceptable standard of underwriting and supplied her with incorrect or misleading information by telephone, of the premium amount due when her motor insurance policy was amended to reflect zero years no claims bonus:**

The Complainant telephoned the Provider on 14 September 2016 and confirmed that she had not held motor insurance cover during the preceding 2 years. As a result, the Advisor informed the Complainant that her motor insurance policy would need to be amended to reflect a zero years no claims bonus.

I note that the Complainant says that the Advisor then told her during this call that a motor insurance policy with zero years no claim bonus would cost her €1,046 in total. However, I note that the Provider says that the Advisor informed the Complainant that the policy amendment would incur an additional premium of €1,034.03.

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The Complainant says that it was only during a subsequent telephone call with the Provider on 7 October 2016 that she first learnt that the sum of €1,034.03 quoted to her by the Advisor during the telephone call on 14 September 2016, was, in fact, a sum in addition to the €857.77 that she had paid to the Provider on 3 September 2016.

The Provider advises that the telephone call on 14 September 2016 was not recorded, however it has furnished this Office with the Advisor's contemporaneous policy notes in relation to this call, as follows:

***"Note 14/09/2016 11:36 [Name Redacted]"***

*Cli [the Complainant] does not have an NCB (no claims bonus) within the last 2 years, advised cli we need licence and Ap [additional premium] to amend".*

It is regrettable that there is no recording of the telephone call that the Complainant made to the Provider on 14 September 2016, as this would have indicated, one way or the other, if the Advisor had made it sufficiently clear to the Complainant that the required €1,034.03 was (following the amendment of her policy to reflect a zero no claims bonus) an amount in addition to the €857.77 that she had already paid on 3 September 2016. Indeed it is regrettable that no audio recordings are available. Given the absence of audio evidence, it is not possible for me to determine what exactly was discussed between the parties by telephone, on 14 September 2016.

In her email to this Office at 10:41 on 30 April 2018, I note that the Complainant advises that:

*"For me there is a huge difference between €1,034 and €1,900. The word 'additional payment' was not mentioned on the initial call (or any after, until the final call where I wanted to pay the balance of €200 (as I expected based on initial telephone conversations) and was told it's actually €1,034 (!!!). No documents were issued stating I have to pay additional premium...For me €1,000 is a huge difference.*

*There was a cooling-off period where I had a chance to exit without penalties".*

In this regard, the Complainant submits that if she had understood during her telephone call with the Provider on 14 September 2016 that the amount of €1,034.03 was in addition to the €857.77 that she had already paid on 3 September 2016, that she would then have cancelled her policy straightaway and would not have incurred any cancellation penalties, as the cancellation would have occurred within the applicable 14 day cooling-off period. I shall return to this point when I consider the fourth part of this complaint below.

I believe that the Provider has a case to answer to the Complainant, with respect to the information it made available to her on 14 September 2016, about the additional premium payable. In particular, in my opinion, it is disappointing that no written communication was issued to the Complainant, through her online account, to confirm the position, given the information which had come to light regarding the absence of a no claims bonus, thereby warranting what was effectively a new quotation on an entirely different basis.

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A written communication would have avoided the mis-communication which subsequently arose and indeed would have also ensured that the missing audio evidence of the telephone call in question, would not have resulted in such a dearth of contemporaneous evidence as to the information given. I believe that the Provider should have issued a correction in writing to the Complainant, to confirm the amount of the additional premium.

**3. The complaint that the Provider wrongfully or unfairly cancelled the Complainant's motor insurance policy:**

The Provider cancelled the Complainant's motor insurance policy from 23:59 on 7 October 2016 as the Complainant chose not to pay the additional premium due, following the amendment of her policy on 14 September 2016 to reflect zero years no claims bonus.

I note that there is a written agreement between the Provider and its agent giving the agent authorisation to issue cancellation notices on the Provider's behalf. I also note from the documentation before me that the Provider sent a Notice of Cancellation by registered post to the Complainant on 26 September 2016, as follows:

*"Further to our recent correspondence, we have not received the items ... As a result we will have no alternative but to **CANCEL** your policy on the **07/10/2016**".*

I see that a copy of this Notice of Cancellation was also emailed to the Complainant and that the following text message was sent to her mobile number at 12:58 on 26 September 2016:

*"[The Provider] have emailed important correspondence regarding your motor insurance. This can also be viewed from your online account".*

In this regard, Section 12, 'Cancellation', of the General Conditions of the applicable Policy Document [November 2015] provides at pg. 13 as follows:

*"We may cancel this policy by giving you 10 days written notice to your last known address. All cover will cease from that date".*

I am satisfied that the Notice of Cancellation dated 26 September 2016 provided the Complainant with 10 days written notice of the Provider's intention to cancel her policy, in accordance with the relevant terms and conditions of her motor insurance policy.

In addition, I note that the Provider telephoned the Complainant at 14:08 on 7 October 2016 and that during this call, the Agent confirmed to the Complainant that her policy would cancel at midnight. I also note that the Provider then emailed and posted a Notice of Cancellation to the Complainant dated 7 October 2016 confirming that:

*"Following our previous correspondence ... we have **CANCELLED** your motor insurance policy from **07/10/2016**".*

I am therefore satisfied that in cancelling her policy from 23:59 on 7 October 2016, that the Provider acted in accordance with the terms and conditions of the Complainant's motor insurance policy.

**4. The complaint that the Provider wrongly calculated the refund due to the Complainant following its cancellation of her motor insurance policy:**

On 18 October 2016, the Provider refunded the sum of €600.44 back to the card that the Complainant used to incept the policy on 3 September 2016. As her policy had been cancelled on 7 October 2016, which was more than one month but less than two months after its commencement on 4 September 2016, I note that the Provider charged the Complainant 30% of the €857.77 premium that she had paid on 3 September 2016, in accordance with section 7, 'Cancellation Rights', at pg. 3 of its Terms of Business document, as follows:

*"If the policy is cancelled within the cancellation period any return premium will be net of a €25 administration charge.*

*If you cancel the policy after the cancellation period your refund will be calculated on the following basis*

<b>Period of Cover</b>	<b>Up to 1 mth</b>	<b>Up to 2 mths</b>	<b>Up to 3 mths</b>
<i>Proportion of annual premium retained</i>	25%	30%	40%
<i>Proportion of annual premium refunded</i>	75%	70%	60%

*If we are forced to cancel the policy due to non-payment or we have not received any of the information we have repeatedly requested any cancellation return will be subject to a further €25 (€50 in total) charge to cover additional administration costs".*

As I already noted above when dealing with the second part of this complaint, the Complainant submits that if she had understood during her telephone call with the Provider on **14 September 2016** that the amount of €1,034.03 was in addition to the sum of €857.77 that she had already paid on 3 September 2016, that she would then have cancelled her policy straightaway and she would not have incurred any cancellation penalties (other than the applicable €25 administration charge), as the cancellation would have occurred within the 14 day cooling-off period.

In this regard, in its email to this Office at 17:51 on 25 April 2019, I note that the Provider advised that as a gesture of goodwill to the Complainant, and in an effort to resolve this matter, that it was prepared to reduce the cancellation charge and charge the Complainant

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for the time on risk cover only, that is, €109.35 from 3 September to 7 October 2016, resulting then in an offer of a further refund to the Complainant in the amount of €148.98.

I am of the opinion that the policy is clear regarding how refunds of premium will be calculated. Nevertheless, in light of the Provider's failure to communicate the amount of the additional premium in writing, which might as the Complainant suggests, have triggered the Complainant to cancel the policy sooner, I consider the Provider's offer, of a further refund of €148.98, in the circumstances, to be reasonable, insofar as the Complainant will then only have paid for her time on cover, from 3 September to 7 October 2016.

**5. The complaint that the Provider failed to deal with the Complainant's complaint in relation to these matters on a timely basis:**

Chapter 10, 'Errors and Complaints Resolution', of the Central Bank of Ireland's Consumer Protection Code 2012 provides on pgs. 67-68, as follows:

***"COMPLAINTS RESOLUTION***

*10.7 A regulated entity must seek to resolve any complaints with consumers ....*

*10.9 A regulated entity must have in place a written procedure for the proper handling of complaints ... At a minimum this procedure must provide that:*

- a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;*
- b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;*
- c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;*
- d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter*

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*to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman ...”.*

The Complainant first emailed her complaint to the Provider at 17:22 on **18 January 2017**. I note that the Provider’s agent’s Complaints Officer telephoned the Complainant the following day, at 10:25 on 19 January 2017, and discussed the complaint with her.

The Complainant emailed the Complaints Department later that same day, at 15:24 on 19 January 2017, referring therein to the earlier telephone call and providing further information regarding her complaint. I take the view that the Complaints Officer’s earlier telephone call at 10:25 on 19 January 2017 was an adequate acknowledgement of the Complainant’s complaint.

I note that the agent posted and emailed its Final Response to the Complainant on **15 March 2017**. This was the 40<sup>th</sup> business day after the first receiving the complaint from the Complainant on 18 January 2017, and this therefore complied with the above provisions of the Consumer Protection Code 2012.

That said, there is nothing in the documentation before me to suggest that the Provider supplied the Complainant with an update on the progress of its investigation of her complaint during the period between the Complaints Officer’s telephone call on 19 January 2017 and its final response letter of 15 March 2017, when such an update ought to have been provided either on or before 21 February 2017, that being the 20<sup>th</sup> business day after the Complaints Officer’s telephone call on 19 January 2017, as set out in the above provisions of the Consumer Protection Code 2012. This is disappointing, as indeed is the reference to the regulations of the Financial Conduct Authority in the UK, in the Provider’s subsequent communication to the Complainant on 16 March 2017.

In addition, I note that section 22, ‘**Complaints**’, of the Terms of Business Agreement between the Provider’s agent and the Provider states at pg. 16 that:

*“Each Party will notify the other Party in accordance with the CBI [Central Bank of Ireland] rules and, in any event, as soon as reasonably practicable after becoming aware of the complaint, of any complaint concerning either Party relating to the Insurance Business and Insurance Mediation Activities subject to this Agreement”.*

In this regard, the agent had a contractual obligation to notify the Provider of the Complainant’s motor insurance policy, of the elements of her complaint that she had emailed to the agent on 18 January 2017 that were relevant to the Provider, and its failure to do so until 15 April 2019, some 26 months later, is disappointing.

Indeed, it is notable that the Provider remained unaware for a lengthy period that the Complainant had made the complaint which has given rise to this investigation.

The Provider’s agent’s correspondence to the Complainant on 15 March and 16 March 2017, addressed her complaint. Given that the Provider’s interactions with the Complainant had, at all relevant times, been through its agent, it is unclear whether the Provider would have adopted different position, but it had no opportunity to do so, as it was not advised of the complaint, owing to a failure in the structures which it had put in place.

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In addition, I note that there were a number of errors or omissions in the Final Response that issued to the Complainant in March 2017 and, later, in the Complaint Response to this Office in April 2018, transmitted by the Provider's agent.

For example, I note that the Provider advised as part of its Complaint Response to this Office in April 2018, that:

*"Upon completing this investigation as requested by the Financial Services Ombudsman it is apparent that [the Complainant's] original complaint was not dealt with fittingly. [The Complainant] should have been provided with further clarification as follows;*

*As [the Complainant] input the incorrect expiry date of their previous policy, this in turn led to the no claims bonus being unacceptable. It is not clear if this was advised to [the Complainant] as the telephone calls were not recorded. There is also no mention of this in the Complaints Final Response that was issued to [the Complainant].*

*Following the issue of a final response from our team, [the Complainant] made further contact by email, advising of her dissatisfaction at the final response issue. At this stage [the Complainant] should have been contacted further to discuss her concerns, unfortunately no contact was made".*

In this manner, the agent acknowledged that it failed to set out in its Final Response Letter to the Complainant dated 15 March 2017 that she had submitted her online policy application with the expiry date of her last motor insurance policy recorded as the then current date of 3 September 2016, which was incorrect. It also failed to explain to her that if she had entered the correct expiry date of 6 January 2010, or any date more than 2 years before the then current date, then she would then not have been permitted to proceed with the policy application and a warning would have directed her to telephone its customer services team. I regard this failure of the Provider, through its agent, to accurately set out such a significant response to the conduct complained of, in its Final Response, to be unsatisfactory. In addition, as a further example, I note that in its Final Response Letter to the Complainant dated 15 March 2017, the Provider stated that:

*"On the 26/09[2016], a Recorded Delivery Notification of cancellation was issued to you to advise that your policy would be cancelled should all requested documentation proofs and required additional premium not be received before the advised date of cancellation on the 07/10/2016, we would have no option but to issue a forced cancellation against your policy of motor insurance".*

I note, however, that the Notice of Cancellation that the Provider both emailed and sent by registered post to the Complainant on 26 September 2016 made no reference to a "required additional premium". In this regard, in its email to this Office at 10:56 on 22 May 2018, the Provider's agent advised:

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*“The wording ‘and required additional premium’ should not have been included at this stage on the complaints final response as it was not highlighted on the Recorded Delivery letter”.*

Errors and omissions of this nature are unsatisfactory and can cause considerable confusion, as it has done in this instance. The Complainant ought to have been able to rely on the expertise of the Provider with regard to information concerning the administration of her policy, and she should rightly have expected that the Provider would investigate thoroughly any complaint that she might make regarding that policy.

I consider the failure of the Provider to investigate thoroughly the Complainant’s complaint that she made to it on 19 January 2017, and its resultant failure, through its agent, to provide her with complete and accurate information in its Final Response Letter to her, dated 15 March 2017, to constitute an unsatisfactory level of customer service toward her.

Taking account of the Provider’s failure to confirm in writing to the Complainant, the amount of the additional premium which was required, for a policy with zero years no claims bonus, and the confusion that thereafter ensued, in addition the poor customer service to the Complainant in the manner in which the Provider investigated her complaint, I consider it appropriate to partially uphold this complaint, and to direct the redress detailed below.

### **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)(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 rectify the conduct complained of by paying the Complainant a further refund in the amount of €148.98. In addition I direct the provider to make an additional compensatory payment to the Complainant in the sum of €750, 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.**



**MARYROSE MCGOVERN**

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**DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

30 September 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.

