An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0398
Sector:	Insurance
Product / Service:	Household Contents
Conduct(s) complained of:	Claim handling delays or issues Failure to provide correct information
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint arises out of a home insurance policy held by the First Complainant jointly with his wife, the Second Complainant. The policy was incepted with the Provider via a broker (referred to herein as "the Broker") on **7th March 2019.**

The Complainants' Case

The First Complainant states that in **August 2019**, he made two claims under the Jury Service benefit in his home insurance policy. The claims were in respect of the First Complainant and his wife, the Second Complainant, who were both coincidentally summoned to attend court "*within a week of each other*". The First Complainant notes that it was a legal requirement for both he and his wife to attend court on the dates requested and their attendance was confirmed by the court registrar.

The First Complainant states that he was made aware by a relative of the existence of a minor benefit of his home insurance policy, comprising a daily payment for court attendance. He also notes that:

> "*the courts often outline to jury members the availability of this minor 'benefit' in home insurance policies*"

The First Complainant initially made the two claims through the Broker. The Provider subsequently contacted the First Complainant to ascertain the nature of the claims. The First Complainant submits that before proceeding with the claims, he "*was cautious enough to ask* [the Provider] *would this affect* [his] *no claim bonus and possibly renewal*".

The First Complainant states that this was "*"…a question I believe most of the insured public would not have asked*" and that it was "*because of* [his] *background and training"* that he did so. The First Complainant asserts that the response he received from the Provider by email dated **15th August 2019** "*was technically correct in so far as no claim bonus with* [the Provider] *not affected*". However, the First Complainant submits that he has "*effectively become uninsurable*" due to the fact that he has made two claims in one year. The First Complainant states that:

> "[He] *was not aware of any further practical steps that I could have taken at the time to ascertain the totally unexpected, unjust and disproportionate ultimate impact of these minor claims totalling €350. Competing insurance companies would not have entertained a theoretical discussion as how such jury claims may or may not impact on their future ability to quote".*

In regard to the Provider's response of **15th August 2019**, the First Complainant submits that he:

> "*does not believe that* [the Provider's] *Property Claims Advisor should have written as she did…knowing/should have known at that time that* [the Provider's] *no claims bonus was not transferrable and that I would be put in an uninsurable position with every other insurance company as a consequence of the two claims*".

The First Complainant states that:

> "*I cannot determine what relevant knowledge the claims advisor I dealt with in August 2019 may or may not have had. I do know with certainty that any guidance on the likely or even possible consequences of making such minor claims would have resulted in the claims not proceeding. In addition, the claims advisor should have advised regarding the potential significance of two (rather than one claim) claims in such a short period".*

The First Complainant submits that the advice issued by the Provider's claims department is at odds with documentation he received regarding the renewal of his home insurance policy dated **7th February 2020**. The First Complainant states the renewal document sets out that:

> *"..the no claims bonus will reduce to nil if I switch to the cheaper alternative*"

The First Complainant further submits that the consequences of the jury service claim were within the exclusive knowledge of [the Provider] in this instance, and that it is impossible for a policy holder to make a meaningful assessment as to whether such a claim should be made without those consequences being shared with the policy holder.

The First Complainant states that the Provider's Underwriting Department sent him an "*undated letter"* in March 2020 headed '**Statement of Claims History'** stating that no claims were made. The First Complainant's presumption upon receipt of this letter was that it was as a result of his full repayment of the claims.

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However, the Provider emailed the First Complainant on 30th March 2020 stating that this was in fact incorrect and due to an "*unfortunate error"* on the part of the Provider.

The First Complainant refers to the Provider's Final Response Letter dated **18th March 2020** which regards the "*assumption"* the First Complainant made in relation to the significance of the claims as "*regrettable*". The First Complainant submits that his assumption was "*the only practical one* [he] *could have made, is eminently reasonable and shared by the general public".*

The First Complainant notes that his assumption of how such jury claims would be handled by other insurers was shared by the Provider's employees and he refers to two telephone conversations with such employees, which are referred to below under the heading '*Evidence'*.

The First Complainant submits that:

> *"By claiming these minor benefits, offered by a number of insurance companies in Ireland, I have been put in the position that makes me virtually uninsurable. What was I 'guilty' of? Fulfilling my legal obligation to serve as a juror. Unless this is resolved, does this mean that for the rest of my life, when seeking insurance quotes, I will be stating that I have been turned down for quotes from insurance companies WITH ALL THE INNUENDO THIS CARRIES? Such claims cannot be considered to be normal claims, understood by all."*

The First Complainant also notes that he repaid both claims to the Provider on **3rd March 2020** and "[he] *still* [does] *not know the benefit* [he] *derived from repaying the two claims".*

The First Complainant submits:

> *"*[The Provider] *is a major player in the industry and yet claims to have no knowledge of how other companies in the industry conduct their business. This is disingenuous; it is highly unlikely that a company could operate successfully in the insurance marketplace without such knowledge."*

The First Complainant submits that because he "*carried out* [his] *civil duty as a juror*", he is now being treated "*as if I were some form of serial offender presenting an unacceptable risk to the insurance sector"* and has been rendered uninsurable. He asks:

> "*In practical terms, how would a customer go about attempting to verify how other insurance companies would deal with Jury Service claims and is such a theoretical requirement reasonable given that* [Provider] *knew the position?"*

The First Complainant states that "*the absence of transparency/related lack of knowledge and resulting adverse impact on policy holders is unacceptable on every level*".

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The Provider's Case

On **8 August 2019,** the Provider's Claims team received an email from the First Complainant's Broker notifying it of a claim. Due to a lack of clarity in the correspondence with the Broker, the Claims team contacted the First Complainant to obtain further information about the claim. During this telephone conversation, the Provider established that the First Complainant wished to make two claims for Jury Service under the home insurance policy on behalf of both himself and his wife, the Second Complainant. The Provider noted during the telephone call that the First Complainant had already discussed this with his Broker who he advised had explained the policy's limits.

The First Complainant thought he would be required to fill out a claim form as part of this process; however, the Claims Handler explained that he would only be required to submit some paperwork. As the First Complainant did not have the required information to hand, it was agreed between the First Complainant and the Claims Handler that the Claims Handler would contact the First Complainant via email later that day.

The Claims Handler subsequently sent an email to the First Complainant acknowledging the Provider's notification of the two claims and including the Provider's Claims Process letter. The Provider states that this letter is issued so that all its customers have sight of important information from the beginning of the claims process. Two further emails were sent to the First Complainant's on **8th August 2019** confirming that each of the two claims had been set up and requesting claim papers evidencing the attendance at court, in addition to the First Complainant's payment details to discharge the claim.

On **9th August 2019**, the First Complainant emailed the Claims Handler confirming that the requested documentation would be provided shortly thereafter. In this email, the First Complainant also requested confirmation from the Provider that:

> "*this claim does not in any way affect our no claims position and need not be mentioned when renewing the policy either with* [Provider] *or other companies?"*

On **15th August 2019**, before the Provider issued its settlement proposals, the Claims Handler emailed the First Complainant to address his question in his email dated **9th August 2019**. This email confirmed that Jury Service claims do not affect the No Claims Discount in relation to policies with the Provider. The Claims Handler stated that she could not advise on how the matter would be dealt with by other insurance providers. However, the Claims Handler stated that the claims for jury service being made by the First Complainant were "*still claims at the end of the day"* and must be disclosed to other insurers when a claims history is queried.

The Provider subsequently issued its two settlement proposals in separate emails. The First Complainant thanked the Claims Handler for the clarification and accepted the settlement proposals in respect of both claims.

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On **19th August 2019**, the settlement payment for both claims (€200.00 in respect of the First Complainant's attendance at jury service and €150.00 in respect of the Second Complainant's attendance) was discharged. Two settlement letters were emailed to the First Complainant confirming the above amounts and including the following statement: "*Please note that this claim will not result in the loss of your No Claims Discount at next renewal".*

Following receipt of a renewal invitation from the Broker, the First Complainant telephoned the Provider's Underwriting department on **2nd March 2020** and explained that he was having difficulty obtaining insurance with other providers due to the two claims for Jury Service. He enquired whether if he repaid the value of the two claims to the Provider, this would "*wipe them off* [his] *record".* The Provider's underwriter explained that the Provider could not confirm whether this would be deemed as acceptable to other insurance companies, as it is only in a position to comment and advise on its own behalf. The Provider's underwriter also set out the differences between the First Complainant's relationship with the Provider and his relationship with his Broker. The Provider's underwriter explained that as the Broker works with a number of different insurers, the Broker would be better positioned to advise the First Complainant on their acceptance criteria. The Provider's underwriter offered to put the First Complainant in contact with a supervisor within the Broker's company. The Provider's underwriter also offered to log a complaint on behalf of the First Complainant and to contact the Provider's claims team so that his complaint could be investigated.

In response to the First Complainant's statement that "*The* [Broker] *renewal I received on **7th February 2020** stated that "my bonus will reduce to nil" if I switch to a cheaper alternative* – [Broker] *knew the factual position but neither* [Broker] *or* [Provider] *alerted me to the fact",* the Provider submits that this advice pertains to an alternative quote the Broker was able to obtain on the First Complainant's behalf. The Provider submits that this advice does not relate to any aspect of the Complainants' policy with the Provider and consequently, does not relate to 'any outsourced activity' within the meaning of the Consumer Protection Code.

On **3rd March 2020,** the First Complainant contacted the Provider's Claims team and informed the Claims Handler that he wished to repay the two claims made in respect of Jury Service. The Claims Handler advised the First Complainant that if he chose to repay the claims, it would still be important to disclose the claims to other insurers in the future. The Claims Handler advised him to explain to other prospective insurers, that the claims had been repaid. The Claims Handler emailed the First Complainant with bank details to enable him to repay the claims. Confirmation of the full payment was received by the Provider from its accounts team on **5th March 2020**.

On **11th March** 2020, the Provider's underwriting department issued a 'Statement of Claims History' to the First Complainant. On **16th March 2020**, the Provider issued its Final Response letter to the First Complainant. On **28th March 2020,** the Provider's Complaint Handler received an email from the First Complainant with his response to the Final Response Letter. The First Complainant requested confirmation as to what "*his precise position was now that he had repaid both claims*". He also queried the 'Statement of Claims History' he had received from the Provider which stated that no claims had been made.

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On **30th March 2020**, the Complaint Handler replied to the First Complainant, apologising for the inaccurate information provided in the 'Statement of Claims History' and assured the First Complainant that a corrected statement would be provided to him. In response to the First Complainant's query as to his "*precise position*" after repaying the claims, the Complaints Handler confirmed the paid status of the two claims. The revised 'Statement of Claims History' was issued to the First Complainant on that day, noting that both claims had been closed and recovered in full.

The Provider is satisfied that it acted honestly, fairly and professionally in its dealings with the First Complainant. It confirms that it has not been involved in any market-wide discussions in relation to Jury Service cover. It also states that its decision to not impact its customer's No Claims Discount for making such a claim is made at its own discretion and that:

> "*As a matter of routine* [the Provider] *conducts peer analysis of the home insurance market;*
>
> - *We note that not all providers provide the same benefits under their insurance policy and that not all insurance policies offer jury service cover.*
> - *We further note that acceptance criteria; including claims acceptance criteria, when proposing for a new policy of insurance differs from one insurance provider to another. Each insurer is entitled to determine their own acceptance criteria at their own discretion".*

The Provider submits that it cannot comment on the terms and conditions of other insurance providers, or what other insurers deem to be acceptable in respect of a customer's claims history, as it would be improper and without authority to do so. It notes that the First Complainant's chosen Broker is responsible for sales and advice.

The Complaint for Adjudication

The complaint is that the Provider:

1. Poorly communicated with and mis-informed the First Complainant and
2. Poorly handled the Complainants' claims for Jury Service benefit.

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 Complainants were 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.

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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 **11 October 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Chronology of Events

- **8th August 2019:** Provider receives notification from Complainant's Broker of a claim. Provider telephones First Complainant to ascertain the nature of the claim. The First Complainant subsequently furnishes information regarding Jury Service claims via email to Claims Handler. Claims Handler acknowledges notification of claims and furnishes the Claims Process letter via email. Further documentation is requested from the First Complainant.
- **9th August 2019:** First Complainant emails Claims Handler confirming he will forward the requested documentation. First Complainant requests confirmation that "*this claim does not in any way affect our no claims position and need not be mentioned when renewing the policy either with* [the Provider] *or other companies?*
- **15th August 2019:** Provider receives documentation necessary to process claim. Claims Handler responds to First Complainant's query, confirming that Jury Service claims do not affect the No Claims Discount in respect of a policy with the Provider, but that she could not state how other insurers would deal with these types of claim. Claims Handler advised First Complainant that Jury Service claims were still claims and must be disclosed to other providers when claims history is queried. First Complainant thanks Claims Handler for clarification and accepts the settlement proposals.
- **19th August 2019:** Settlement payment for both claims is discharged and settlement letters are emailed to First Complainant in respect of each claim. Each letter states: *"Please note that this claim will not result in the loss of your No Claims Discount at next renewal."*
- **7th February 2020:** First Complainant receives renewal notice from the Broker.

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- **2nd March 2020:** First Complainant contacts Provider's Underwriting team and explains his difficulty in obtaining insurance elsewhere due to the two claims. First Complainant enquires if repayment of the claims will "*wipe them off his record*". Provider's underwriter explains that he cannot comment on what might be acceptable to other insurers. Provider's underwriter explains the difference between the Complainants' relationship with the Provider and with the Broker. Provider's underwriter offers to put a supervisor within the Broker company, in contact with the First Complainant. Provider's underwriter offers to log a complaint and to contact its Claims team to facilitate investigation of the complaint.
- **3rd March 2020:** The First Complainant telephones the Provider's Claims team to enquire about repaying the claims. The Provider's Claims Handler empathises with the First Complainant's difficulties in securing quotations for insurance with other providers and explained how payment could be made. The Provider's Claims Handler advises the First Complainant that if he chooses to repay the claims, he should nevertheless disclose the existence of the claims to other insurance companies, in addition to the fact they had been repaid. The Claims handler furnishes the First Complainant with bank details via email for repayment of the claims.
- **3rd March 2020:** The First Complainant has a second conversation with the Provider; the Provider's Complaints Handler called to establish the nature of the complaint. The Complaints Handler advises that the issues would be reviewed and that the Provider would respond in due course. The First Complainant emails the Provider confirming that both claims have been repaid. A complaint acknowledgement letter is issued to the First Complainant.
- **4th March 2020:** Provider's underwriter responds via email to the First Complainant's query confirming that the Provider's Complaints Handler on the Claims team would be dealing with the complaint, going forward.
- **5th March 2020:** Provider receives confirmation from its accounts team that both claims have been repaid in full.
- **11th March 2020:** Provider issues 'Statement of Claims History' to the First Complainant
- **16th March 2020:** Provider issues its Final Response Letter to the First Complainant, in addition to a claims experience letter confirming the repayment of both claims
- **28th March 2020:** First Complainant responds to the Provider's Final Response Letter, asking what his "*precise position was now that he had repaid both claims*". First Complainant also queries the 'Statement of Claims History' he had received, which stated that no claims had been made by the First Complainant.
- **30th March 2020:** Provider's Complaints Handler responds to the First Complainant apologising for the inaccurate 'Statement of Claims History' and assures First Complainant that a correct statement will be provided to him. The Complaints Handler confirms the paid status of both claims as requested by the First Complainant. A revised 'Statement of Claims History' is issued to the First Complainant nothing that both claims have been closed and recovered in full.

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Evidence

(i) Provider Home Insurance Product Information Document

Duplicates of this document have been made available by the Provider in its evidence. This is a document that does not make any specific reference to Jury Service benefit under the policy. In its Final Response Letter dated **16th March 2020**, the Provider refers the First Complainant to the "*Jury Service peril"*. This cannot be found in the Provider Home Insurance Product Information Document or in the Broker's policy document as set out below.

It appears that the Provider is in fact quoting from its own 'HomeCare' home insurance policy document, which states as follows:

> "*We will pay the daily benefit shown in your schedule for each day or part of a day that you or your partner go to court for jury service. A claim under this section will not affect your no-claims bonus and you will not have to pay an excess under this section".*

The Provider again refers to its own policy document in the Final Response Letter dated **16th March 2020** when it states:

> "*I also refer to "Section 5 – No Claim discount" detailed on page 21 of your policy wording:*
>
> *If we pay for a claim during any period of insurance, we will reduce your no-claim discount to 0% at your following renewal.*
>
> *Any payment we make for jury service will not affect your no-claim discount".*

It is not clear whether this specific "Home Care" document was provided to the First Complainant.

(ii) Broker's Home Policy Booklet

It appears that the First Complainant received this document upon the inception of his policy with the Provider via the Broker. Under '*Jury Service',* which appears at Part (s) of the policy's Contents section, this document states:

> "*The Insurer will pay you €50 per day for each day you attend at court for jury service as long as you give the insurer satisfactory written proof from the court you attended. The Policy Excess does not apply".*

No Claims Discount is addressed under '*Conditions Which Apply to the Whole* Policy' at Part 14 of the Broker's Home Policy Booklet. At page 84 under '*Important Points to Note'*, it states:

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> "*The following claims will not affect the calculation of your No Claims Discount or be taken into consideration when determining eligibility for No Claims Bonus Protection:*
>
> *…Jury Service Claims"*

(iii) Initial Claim Notification by Broker

The Provider was notified of the First Complainant's claims via email by the Broker on **8th August 2019.** Headed '**Household Claim Notification'**, the document sets out the First Complainant's contact details and the following information:

- Under '*Cause*', it states '*malicious damage'*
- Under '*Loss Description'* it states '*Claim for Jury Service Duty, down for 4 days 02-05 July. A wife* [name redacted] *down for Jury Service for 3 days 09-11 of July'.*
- Under 'Date/Time of Loss, the document lists '*06 Aug 2019 @'*.

(iv) Provider's Claims Process Letter (attached to emails from Provider to First Complainant on **9th August 2019**)

This letter was sent to the First Complainant by the Provider before he received settlement offers in respect of the two jury service claims. The document is entitled "[Provider] *Claims Process – Please read carefully"*

This document states the following:

> "*Remember that, <u>if a claim is paid under a policy, the settlement of that claim may affect future insurance contracts of that type</u>. For further information in this regard, claimants should contact their agent, broker or branch."*
>
> [My emphasis]

*(v) Email correspondence of **9th August 2020*** and ***15th August 2020***

On **9th August 2020,** in his emailed response to a request for documentation relating to the claims, the First Complainant asked the Provider's Claims Handler the following question:

> "*Can you confirm please that this claim does not in any way effect our no claims position and need not be mentioned when renewing the policy either with [the Provider] or other companies?"*

On **15th August 2020,** the Claims Handler responded:

> "*I can confirm that with* [the Provider], *Jury Service claims does not affect your No Claims Discount. Unfortunately I would not be in a position to advise how it would affect other companies as these are still claims at the end of the day and <u>must be disclosed if asked you had any previous claims.</u>"*
>
> [My emphasis]

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On **15th August 2020,** the First Complainant responded:

> "*Thanks for that clarification* [Claims Handler]".

(vi) Renewal invitation from Broker

This document, dated **7th February 2020**, was issued by the Broker to the First Complainant. It states:

> "*Please note as you have incurred a claim in the last three years your no claims bonus will reduce to nil if you switch to the cheaper alternative. If you want to retain your protected no claims bonus please turn overleaf to view your renewal premium as issued by your current insurer".*

(vii) Telephone conversations

Recordings of telephone calls between the First Complainant and the Provider were submitted by the Provider as part of its formal response to this Office. The first of these calls was made by the Claims Handler on **8th August 2019** upon receipt of the initial claim notification from the Broker. The pertinent quotes from this call are set out below:

Claims Handler:	*I'm calling because your broker sent in an email, now it's a bit confusing…they said the cause was malicious damage, they're it's jury service*
First Complainant:	*They didn't seem to have a clue. It's jury service and nothing else. It's very simple as I understand it, the policy covers it number one. It got an email already from somebody there…confirming that it should be €50.00 a day up to a max of €500.00…I thought I'd be getting a claim form to fill in but they didn't seem to know anything whatsoever about jury service.*
Claims Handler:	*I'll have a look, because with [Broker] policies, they're a bit different.*

Subsequently, there were a number of calls between the parties in **March 2020** relating to the First Complainant's inability to secure insurance quotes from insurers other than the Provider, due to the two claims made for Jury Service. On **2nd March 2020**, the First Complainant spoke with a representative to whom he set out the position that "*no insurer wants to touch me*" as a result of the claims.

First Complainant:	The covering note from the [Broker], which I presume is in some way coming through you guys as well, specifically says that I have incurred a claim and I can't carry my No Claims Bonus and it'll be more expensive if I switch to some other company.

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That seems to be quite different to what I was told originally, which is 'you're fine with us, you may be fine other places, you may not be or whatever but we can't say, but yet they can say very clearly when my renewal comes out that if I stay with [Provider]I get…well it's not transparent what I get….I can't move.

During this conversation, the Provider's representative explained the types of situations when he would usually see policy holders repaying their claims, such as a situation where a policyholder wants to offset a premium impact on their policy. He also set out the differences between the capabilities of the Provider's claims team and those of the Broker in relation to the First Complainant's ability to obtain quotations across the insurance market:

Representative: *The difference between [Broker] and the claims department conforming…[Broker] would be an insurance intermediary that would contract with multiple different insurance companies…we say, from my side, we deal with different brokers, doesn't have to be [Broker]and normally those brokers might transact with [various insurance companies] whoever it may be, and they would know the acceptance criteria of the other companies and our claims department wouldn't and all they'd be able to confirm is what would happen on our part.*

First Complainant: ***…****But isn't it very misleading?...It effectively means that with a home insurance policy, the only thing you can ever claim for is something of a major consequence, so any little benefit that [Provider] and other people claim to give is meaningless.*

Representative: *..exactly, if you don't have the ability to claim the market, yeah*

[…]

First Complainant: *If I pay it back, does that mean that I have had a claim or does it mean I have had no claim?*

Representative: *The problem with that is: it comes down to each insurance company's interpretation of a claim…*

The discussion between the First Complainant and the Representative then turned to the repayment of the claim. The representative advised that he didn't want to see the First Complainant repaying the €350.00 if it wasn't going to make any difference to the First Complainant.

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The First Complainant's position was that "*in my head it will make a difference"* and that a competing insurer had advised him that he could "*buy back the claim"* and they imply that the claim would *"disappear from whatever register".*

The Provider's representative acknowledged that this may be the case, but did not want to advise the First Complainant that this would be the position "*across the board*".

On **3rd March 2020**, the First Complainant telephoned the Provider's Claims department enquiring about repayment of the claim. Upon learning of the nature of the claim and that other insurers were refusing to quote the First Complainant, the Claims Handler stated:

> "*What we are told is that jury duty does not have any effect whatsoever on any home insurance policy"*

The Claims Handler was empathetic to the First Complainant's position throughout the call, repeatedly expressing surprise at the attitude of other insurers:

Claims Handler:	*My understanding is that you can claim as many times for Jury Duty. It's not meant to affect your No Claims Bonus in any possible way*
First Complainant:	*With other insurance companies?*
Claims Handler:	*With ours, definitely*
Complaint:	*Well you have to think about it, why would one want to be tied for six years necessarily, to [Provider]… that's the effect it has.*
Claims Handler:	*…basically, any claim we're dealing with for Jury Duty alone, not anything else, we tell every customer it does not impact on your No Claims Bonus*
First Complainant:	*…It doesn't affect your No Claims Bonus with [Provider], but I'd go on to say "but, you're tied into [Provider] for the next five years". You have to go on to do the second part of this sentence.*
Claims Handler:	*I doubt it.*

When discussing the Broker's renewal notice with the First Complainant that appeared to be at odds with the advice received from the Provider in August 2015, the Claims Handler explained that the Broker acts as an intermediary between the Complainants and the Provider. With regard to the repayment of the claim, the Claims Handler advised that even if the First Complainant repaid the claims, there would always be a record of the fact the claims were made. Additional remarks by the Claims Handler included:

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- "*I'm so baffled by this"*
- *"I think it's very harsh"*
- *"Jury duty is such an innocent claim"*
- *"It's so unrelated to home insurance"*
- *"You've opened our eyes to it"*

On **3rd March 2020**, a Complaints Handler telephoned the First Complainant to acknowledge receipt of his complaint and to ensure that the Provider had the Complainants' "*side of the story correct*".

The First Complainant explained that other insurers do not distinguish between the claims for jury benefit and any other claim. He also stated that the other insurers' principal issue was not the claim type but the fact that two claims had been made within one year.

Representative: *A lot of insurers have that jury duty benefit, and it's a good benefit, and it does not affect the No Claims Bonus, and why they're turning down good business baffles me.*

First Complainant: *It couldn't impact it more, to be honest…it's not even that they say 'we'll knock you back a year because of it' or something. They literally will not quote me. if I have a real issue with this house with a fire or something, and I have to make a claim with Aviva, then I'll have had three claims.*

Representative: *You are the ideal customer, your demographic, your location, your proximity to emergency services…*

[…]

Representative: *We give Jury Duty payments daily…this is not unusual, people call us, the court themselves tell people that your home insurance probably covers this, we deal with them daily*

First Complainant: *Somebody's got to reconcile my experience with that, because I literally picked up the phone and got nowhere*….[Three insurance companies mentioned] *were the three specifically, then I gave up hope and I stopped*

Representative: *Are you doing these via online processes?*

First Complainant: *No, why would I go online? Online only works if you have nothing complicated to deal with. I never go online if I have something complicated to explain.*

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Representative: *You're speaking to people, and you're telling them straight out 'I've had two claims, both for jury duty' and they're saying 'thanks, no thanks'?*

First Complainant: *Absolutely. They say their system prohibits them from doing it. I say, can you not reach across the desk, or find the underwriter and explain this is not be burning the house, this is me doing my civic duty.*

Representative: *Have you queried, if for example if you had the one claim, would they be more tolerant, would they accept you?*

First Complainant: *It's possible, it's very possible because I think it's the two within the period is the one that's killing me. I'm just unlucky that both of us were called at the same time. My belief would be that one would perhaps be a different scenario. But I didn't do that, because it wasn't relevant*.

Representative: *And even though it's a joint policy?*

First Complainant: *Well they're separate claims, you call them separate claims, you paid out twice*

Representative: *That's true, they are. We've had to split them up.*

First Complainant: *They're different days, etc. so I would have thought they are separate claims.*

Representative: *I am just astonished.*

Later during the call, when discussing the No Claims Bonus and the First Complainant's policy, the following exchange took place:

First Complainant: *If I leave [Provider] tomorrow, do I carry my No Claims Bonus with me or do I not? Do you give me a Schedule that says I'm at 40% No Claims Bonus?*

Representative: *The Schedule says No Claims Bonus at 40%*

First Complainant: *It will say that, will it?*

Representative: *Again, how other insurance companies…*

First Complainant: *Hold on now, stay with the question. It's a very straightforward question. If I leave [Provider] tomorrow, will it say I'm carrying with me a 40% No Claims Bonus?*

/Cont'd…

Representative: *I don't know.*

First Complainant: *Well, Janey Mac…I think you should know*

Representative: *I'm a Claims Advisor, so no.*

First Complainant: *Well, you're in Complaints. So, you can't tell me whether your insurance notice will say whether I carry it or not, because this [the renewal notice from the Broker] is saying: "If you want to retain your No Claims Bonus, please turn overleaf"…so I think we'll have another conversation on this, whenever you get a chance*

Representative: *Protected No Claims Bonus is a separate standalone feature for all claim types. That's if there was a burglary, or a fire, or a storm or something like that. If you made a claim under a certain amount, the bonus is protected. That's what that benefit refers to. It's No Claims Bonus Protection*

First Complainant: *...you're dealing with lay people, you're dealing with a sector that's meant to be protected. Maybe you want to have a little re-read and re-think as to what people are getting in front of them and the confusion that's been sown in their minds by handler deception. That's my bottom line on it.*

Representative: *Again, we'll look at that, but again, at the end of the day your No Claims Bonus was not impacted.*

First Complainant: *It was, because I can't bring it elsewhere. You're not telling me that I can bring my 40 per cent elsewhere, so totally it's been impacted.*

Representative: *No, that's completely at the discretion of the other insurers to make that decision.*

First Complainant: *Hold on, are you going to give me a Schedule that says I have 40 per cent or are you not? You couldn't answer that a moment ago, so unless you can answer it now, I suggest you defer the conversation […] Are you going to give me a Schedule that says I have a 40 per cent No Claims Bonus?*

Representative: *The Schedule provided, and I'll get you a copy of it…I will request it…you should have it already but it sounds like you don't -*

First Complainant: *You know I don't, because I told you I don't. You're not dealing with a child here who doesn't read things.*

/Cont'd…

I've read this, I've spent a day in it, so if I tell you I don't have it, I don't have it. So can we move on from that please?

Representative: *As I said, if you don't -*

First Complainant: *I'd like to finish the conversation now, so maybe you could you just write to me please when you've progressed and read and analysed and compared and thought about what I've said. Could we do that?*

Representative: *Certainly.*

First Complainant: *Thank you.*

I note that the First Complainant's distress and unhappiness with this situation is evident throughout these calls.

(vii) Final Response Letter

The Provider's Final Response Letter, dated **16th March 2020** reaches the following conclusion:

> "*…we are completely satisfied with the conduct of the claim hander insofar as* [the Claim Handler] *advices were correct and accurate. As detailed above: your 'No Claims Bonus' has not been impacted as a result of the two jury service claims. Regrettably, we are not in a position to comment on the acceptance criteria of other insurance companies nor can we influence their processes or their terms and conditions. All we can do is inform our customers of the policy terms in respect of the 'No Claims Discount'. Ultimately, it is the customer's decision whether to claim or not.*

In respect of the First Complainant's statement that the renewal invitation he received from the Broker contradicted the advices provided by the Claim Handler, the letter states:

> "*Unfortunately,* [the Provider] *are not in a position to comment on the conduct of your insurance broker and we respectively suggest that this is a matter that you take up directly with them".*

(viii) First Complainant's Inquiry about 'Statement of Claims History"

On **28th March 2020**, the First Complainant responded to the Provider's Final Response Letter. He states:

> "*As you are aware, I have fully repaid the two jury claims made as confirmed* [the Provider's] *letter dated **16th March** headed Claims Experience. I also separately received by post A STATEMENT OF CLAIMS HISTORY. This states that No Claims were made, unlike the Statement previously provided by* [the Provider].

/Cont'd…

> *Where is my precise position if I wish to change insurance provider during the coming year or on renewal next year? I am fully aware of the* uberrimae fidei *principle – when asked, do I or do I not have a claims history,* [the Provider] letter states that I do not.

(ix) Provider's response to First Complainant's Inquiry about 'Statement of Claims History'

On **30th March 2020**, the Provider responded to the First Complainant's queries about the 'Statement of Claims History' which stated that the First Complainant had submitted 'No Claims'. The Provider responded as follows:

> "*I have discussed your concerns in respect of the "Statement of Claims History" with our Underwriting Depart, as this is a document which they are responsible for, and your concerns here are justified. It is evident that you have been inadvertently provided with contradictory information. Underwriting's intention was to allay your concerns and provide you with a document which confirms you have a full No Claims Discount. These actions were carried out in good faith and well-intended. Their advices that no claims were made however are clearly incorrect and an unfortunate error. I apologise for this error and I confirm that our Underwriting Dept are issuing a revised/corrected "Statement of Claims History" which will be dispatched to you ASAP"*
>
> [My emphasis]

In response to the First Complainant's query about his position with regard to other insurers, the Provider states:

> "*Uberimmae fidei is generally interpreted to mean 'the utmost good faith'. It obliges both parties to an insurance contract to disclose all material information in relation to that contract. In this case as stated on my claims experience letter dated 16 March 2020, your precise position when approaching other insurance providers is: two claims in respect of 'Jury Service' were made under you home insurance (policy number HY-581911817). The terms of your policy dictate that neither of these claims impacts your No Claims Discount. In addition, you have taken the decision to repay both claims in full and I confirm that Aviva's entire outlay has been recovered in full and our records have been updated accordingly."*
>
> [My emphasis]

Analysis

There are two limbs to this complaint:

1. *The Provider poorly communicated with the First Complainant, including the provision of misinformation*

It is apparent from the evidence above that the First Complainant now finds himself in a situation where, as a result of availing of a minor benefit in his policy with the Provider, he is unable to obtain insurance quotations from other companies.

/Cont'd…

It has been set out by the Provider that the acceptance criteria of other insurers is not within its knowledge, and that it is not appropriate for it to comment or provide advice in respect of how its competitors may approach or classify a particular individual's claims history.

However, it appears to me that this is not the issue at hand; the issue to be determined under this limb of the complaint is whether the Provider discharged its duties to the First Complainant under the Consumer Protection Code in highlighting the consequences of bringing a claim for Jury Service.

Provision 2.1 of the Consumer Protection Code 2012 (as amended) states that:

> "*A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market,"*

Provision 4.21 states that:

> "*Prior to offering, recommending, arranging or providing a product, a regulated entity must provide information, on paper or on another durable medium, to the consumer about the main features and restrictions of the product to assist the consumer in understanding the product."*

The policy document issued by the Provider to the First Complainant via the Broker which lists Jury Service as a benefit explicitly states that a claim under this benefit will not affect the policy-holder's No Claims Bonus. It does not state that it "will not affect the policy-holder's No Claims Bonus **with [Provider]**". It is clear that the First Complainant relied on this information when deciding to bring the claim, as can be seen from the extract of his telephone conversation with the Claims Handler on **8th August 2019**: "*It's very simple as I understand it, it's in the policy number one"*.

The Provider's Claims Process Letter which was furnished to the First Complainant on **9th August 2019** before he received settlement offers in respect of the two jury service claims contained the following proviso:

> "*Remember that, <u>if a claim is paid under a policy, the settlement of that claim may affect future insurance contracts of that type</u>. For further information in this regard, claimants should contact their agent, broker or branch."*
>
> [My emphasis]

I am satisfied that the inclusion of this provision in the Claims Process letter, warned the Complainant that by making a claim for Jury Service benefit, this could impact future insurance cover, even though 6 months later the Complaints Handler who spoke to the First Complainant on **3rd March 2020** observed that although it's referred to as a "claim", the Jury Service offering is "*more a policy benefit*".

/Cont'd…

The Provider says that it "*cannot offer advice on any other insurance company and would not be familiar with any other company's acceptance criteria*". I am satisfied that knowledge of its competitors' specific acceptance criteria is not necessary for the Provider to act in the "*best interests of its customers and the integrity of the market"*.

A reasonable, general knowledge of how the Provider's own benefits are perceived generally, by the market as a whole, is what is appropriate. In my opinion the Provider's Claims Handlers should be aware of how claims made on the Provider's policies (irrespective of the nature of such claims) can impact policyholders in their future insurance needs.

Provision 2.4 of CPC states that:

> *"A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it: has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code;"*

It is apparent from the audio evidence that each the representatives of the Provider who spoke to the First Complainant after he had made the two claims were sympathetic, courteous and professional. However, there was a total lack of knowledge among the Provider's representatives of the far-reaching consequences a claim for its Jury Service benefit could have, within its industry.

In my opinion, the Provider's staff members should be generally aware of how claims for policy 'benefits' may be potentially regarded, when seeking to obtain insurance elsewhere, so this information can be communicated to customers in advance of the making of a claim, and so that appropriate advice can be sought if necessary. In this instance however, there was conflicting information made available to the Complainants.

In respect of the 'Statement of Claims History' that was erroneously issued to the First Complainant on **11 March 2020**, stating that no claims had been made on the policy, I note that this error had to be brought to the Provider's attention by the First Complainant. I am conscious that the matter was rectified and a revised 'Statement of Claims History' was then furnished to the First Complainant.

Be that as it may, I am concerned that if the erroneous document had been relied on by the First Complainant when seeking insurance quotations from other insurers, he could have been successful in obtaining insurance cover elsewhere on a false premise, which might indeed have led to far more significant difficulties for him. It is also clear that this further issue contributed to the First Complainant's distress and confusion. I note that the Provider has acknowledged its error and has offered compensation in the sum of €250.00 as a customer service payment. However, in light of the foregoing, I do not consider the Provider's offer to be a reasonable sum of compensation for its conduct in this regard.

/Cont'd…

2. The Provider poorly handled the First Complainant's claims for Jury Service

I am not satisfied that the First Complainant's claims for Jury Service were poorly handled. I have outlined above the shortcomings in respect of the Provider's communications about its Jury Service benefit. However, it appears that from the documentary and audio evidence, that the First Complainant was provided with sufficient information to make an informed decision about whether to make a claim for Jury Service. It is apparent that the contents of the initial claim notification by the Broker necessitated the Provider to make direct contact with the First Complainant to ascertain the nature of the claim.

After the Provider's initial contact with the First Complainant, the correspondence continued online where the First Complainant asked the specific question in his email of **9th August 2020**:

> "*Can you confirm please that this claim does not in any way effect our no claims position and need not be mentioned when renewing the policy either with [the Provider] or other companies?"*

On **15th August 2020,** the Claims Handler responded:

> "*I can confirm that with* [the Provider], *Jury Service claims does not affect your No Claims Discount. Unfortunately I would not be in a position to advise how it would affect other companies as <u>these are still claims at the end of the day</u> and must be disclosed if asked if you had any previous claims."*
>
> [My emphasis]

This statement provided the First Complainant with more information than available to anyone else seeking to claim the benefit through a broker, without a follow-up phone call being required. He was clearly informed that the Jury Service claims would have to be disclosed to other insurers. The Provider's Claims Process Letter which was furnished to the First Complainant on **9th August 2019** <u>before he received settlement offers</u> in respect of the two jury service claims contained the following proviso:

> "*Remember that, if a claim is paid under a policy, <u>the settlement of that claim may affect future insurance contracts</u> of that type. For further information in this regard, claimants should contact their agent, broker or branch."*
>
> [My emphasis]

Whilst the inclusion of this proviso alone was arguably not sufficient for the reader to reasonably believe that the Jury Service benefit would be deemed a claim from the perspective of other insurers, I am satisfied that taken together with the Claim Handler's email of **15th August 2019**, this put the Fist Complainant clearly on notice of the position and, in those circumstance, it would have been reasonable to expect the First Complainant to contact his broker who he had initially made the claim through on **6th August 2019**, seeking further advice, if any further clarification was required.

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It is apparent from the documentary and audio evidence that the Provider's representatives dealing with the First Complainants case were professional, courteous and patient at all times. When the First Complainant initiated his complaint via telephone on **2nd March 2020** in respect of his claiming of the Jury Service benefit and the consequences he has suffered, the Provider explained the differences between the Provider and the Broker and the roles they play. The Complaints Handler recommended that the First Complainant contact the Broker, and offered to set up a call. When the First Complainant enquired about repaying the claims and whether doing this would assist him in securing insurance quotations elsewhere, the Complaints Handler provided him with honest, candid advice, stating that he did not want to see the First Complainant repaying the claim to the Provider if it was not going to benefit the First Complainant in any way.

The First Complainant contacted the Provider's Claims department to repay the claim on **3rd March 2020**. Despite learning that the Complainant simply wanted to repay the claims, the Claims Handler took time to enquire about the full extent of the First Complainant's situation, in respect of which she was very sympathetic and courteous. The Claims Handler also explicitly stated that even if he repaid the claims, he would still have to disclose them to other prospective insurers, but that he could of course then also say that the claims had been repaid.

Overall, I am satisfied that the Provider did not poorly handle the First Complainant's claims for jury service. Insofar as the first strand of the complaint is concerned however, for the reasons outlined, I am satisfied that the Provider was guilty of poor communication with the First Complainant, details of which are set out above. I consider the Provider's conduct in that regard to have been unreasonable within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017*** and in those circumstances, to mark that finding I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants in the sun of €700, in order to conclude.

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 Complainants in the sum of €700, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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.***

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The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

3 November 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.