



<u>Decision Ref:</u>	2021-0435
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Failure to provide no claims bonus/ inaccurate no claims bonus No claim bonus issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to a motor insurance policy and to the Provider initially refusing, and then subsequently delaying, to issue the Complainant with a one year no claims bonus certificate.

The Complainant's Case

The Complainant incepted a car insurance policy with the Provider on **15 May 2018**. During the period of one year, two claims were made on the policy.

The first claim related to an accident that took place on **2 June 2018**. The Provider was notified of the incident on **5 June 2018**, and the claim was processed through the Complainant's policy. The Complainant fully reimbursed the cost of this claim to the Provider, and on **21 November 2018** she received an email from the Provider noting that her no claims bonus had been reinstated.

The second claim related to an incident that took place on **8 September 2018**. In her complaint form of **29 March 2020**, the Complainant explained that she went abroad and left her car keys with her neighbour "*for safety*". This neighbour was not insured to drive the car. He drove the Complainant's car and caused a road traffic collision.

This neighbour (hereinafter 'the uninsured driver') signed a Mandate with the Provider, agreeing to repay the Provider for any costs arising out of the incident of **8 September 2018**.

A payment plan was established in **May 2019**, and payment was completed on **5 January 2021**.

The Complainant's annual policy ended on **15 May 2019**, and documentation issued to the Complainant indicated that she had a no claims bonus of zero years. The Complainant subsequently contacted the Provider to seek a no claims bonus certificate, and this was refused.

At this time the Complainant received an automatic online renewal quotation from the Provider for a premium of approximately €4,000 (four thousand Euro). Following correspondence with the Provider's underwriting team, this quote was reduced to €3,738.48 (three thousand, seven hundred and thirty-eight Euro and forty-eight cent). The Complainant had sourced lower premiums with other insurance providers; however, these premiums were dependent on the Complainant receiving a one year's no claim bonus. The Complainant did not renew her policy with the Provider.

In a letter to this office of **10 September 2020**, the Complainant noted that the Provider had issued her with a no claims bonus certificate on **24 July 2020**, 14 months after the end of her policy. She explained that she did not have any insurance cover for that period and, due to the break in coverage, she is now not able to secure affordable insurance cover.

The Complainant submitted that she had not been driving during the 15 months following the end of her cover, and that this affected her financially and had a "*a negative impact on [her] career*". She submitted that the "*unfair handling*" of her issue caused her huge stress and the loss of valuable time.

The Provider's Case

In the Provider's **Final Response Letter** of **18 March 2020**, the Provider stated that it could not issue the Complainant with a no claims bonus certificate for the year 2018/2019. The Provider noted that there had been two claims made on the Complainant's policy, and that the second claim had not yet been fully reimbursed.

In response to submissions from the Complainant, the Provider noted a number of comments to this office on **10 December 2020**. It explained that it had an internal policy to allow customers to have their no claims bonus reinstated, in situations where a claim is reimbursed in full. However, this is only applicable where the full payment of the claim is received prior to the policy renewal date. This policy is not set down in the Provider's policy document. However, the Provider points out that the Complainant was aware of this and she engaged with this process when repaying the first claim made on her policy.

In relation to the second claim made on the Complainant's policy, the Provider noted in its formal response to the investigation by this Office, that the Complainant had a contractual duty of care to safeguard her insured vehicle.

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On **10 September 2018**, the Provider received a phone call from the uninsured driver, who stated that the Complainant had gone abroad and had left a set of car keys with him for emergency use. The uninsured driver had driven the Complainant's car and caused an accident. On **19 September 2018**, the Complainant confirmed that she had left the keys with the uninsured driver for emergencies when she was out of the country. She stated that the uninsured driver had used her car without permission, and that he did not have his own insurance.

On **13 October 2018**, the Provider's regional claim manager met with the Complainant and the uninsured driver to take statements on the accident. The Complainant gave a signed statement that:

"While I was away I left my car keys with [uninsured driver].

...

I was 100% sure that he would not drive my car. I gave him my keys in the event of an emergency. I left the car parked outside my apartment."

The Provider issued a Mandate to the Complainant and the uninsured driver to be signed and returned, authorising the Provider to take over representation in any action arising from the incident of **8 September 2018**. The signatory would be liable to the Provider for all sums paid in respect of any settlement or award arising from the incident, and the Provider would be able to issue proceedings against the signatory to recover any unpaid sums of the same. This Mandate was signed and returned by the uninsured driver.

On **22 March 2019**, the Complainant emailed the Provider to ask if it was necessary for her to sign the mandate, when the uninsured driver acknowledges that he drove the car without her permission and had undertaken to pay all of the expenses. The Provider responded on **26 March 2019** that:

"While we understand that the driver has committed to paying back the cost of the claim, the contract of insurance is between both you and [Provider] and therefore failure to seek recovery from the driver will result in [Provider] seeking recovery from you.

We also must note having completed a full investigation into the incident, your vehicle was not reported stolen to Garda and no prosecutions were taken against the driver concerned."

On **5 April 2019**, the Provider contacted the insurance provider of the third party involved in the accident of **8 September 2018**. As the Provider insured the car used in the accident, but not the driver, it was the 'Insurer Concerned' under the Motor Insurers' Bureau of Ireland (MIBI) rules. As a result, it was liable to pay all expenses not covered by the third party's own insurance. The Provider says that the claim was settled at **€39,732.06** (thirty-

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nine thousand, seven hundred and thirty-two Euro and six cent) and the Provider made the relevant payments on **15 April 2019**.

The uninsured driver undertook to reimburse the Provider for this cost, and a recovery plan was established. The Provider submits that the monthly instalment plan created with the uninsured driver may have taken up to 15 years for the sum to be recovered in full.

The Provider relies on Clause 18 of its policy document, which allows it the right of recovery against customers, where it is legally obliged to pay a claim that would not have otherwise been covered by the policy.

The Provider's position is that the claim arising from the incident of **8 September 2018** is an 'at fault' claim. It says that the Complainant did not safeguard her vehicle. Although she did not expect the uninsured driver to drive her car, she left him the car keys and enabled him to have access to the vehicle.

The Provider says that the Complainant's annual policy with it, ended on **15 May 2019**. On the same day, the Complainant contacted the Provider to query the quote of €4,000 (four thousand Euro) that she had received as part of an automated renewal process. The Provider stated that it had not provided a quote for the Complainant, as relevant documentation had not been received prior to the end of her policy.

The Provider submits that it offered the Complainant a new business quotation on the car insurance. On **10 March 2020**, a quote of **€6,675.85** (six thousand, six hundred and seventy-five Euro and eighty-five cent) was given to the Complainant. This figure was based on the fact that the Complainant did not have a no claims bonus, and did have two claims on her previous policy. Notably, the Provider stated during the phone call of **10 March 2020** that the first claim was not listed as an 'at fault' claim. The Provider submits that this quote was revised as a goodwill gesture, and reduced to **€3,738.48** (three thousand, seven hundred and thirty-eight Euro and forty-eight cent).

The Provider notes that, in response to requests from the Complainant in **March 2020** for a no claims bonus certificate it offered to provide a letter detailing the claims on the policy. This was accepted by the Complainant.

The Provider says that in **July 2020**, it was informed of the Complainant's difficulty in travelling to work during a pandemic. The Provider's underwriting team decided to make an exception to provide a one year no claims bonus to the Complainant. It made this decision on the basis that it had received a year of payments from the uninsured driver. A copy of the certificate was sent to the Complainant on **24 July 2020**, and again on **31 August 2020** with a cover letter detailing the two claims, for indemnity purposes.

In its reply to this Office, the Provider notes that it made multiple attempts to contact the Complainant prior to her policy ending in **May 2019**. It submits that it was not given the opportunity to discuss the issue of the no claims bonus certificate until the Complainant made contact in late **January 2020**.

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The Provider states:

“The Complainant notes within their Summary of Complaint that we have treated her unfairly for something for an accident that was out of her control. Please note that by leaving their car keys with their neighbour and not adhering to the duty of care terms and conditions of their policy, this allowed them access to the vehicle which unfortunately resulted in a high cost claim.”

In response to the Complainant’s submission that she could not access affordable car insurance due to her gap in cover, the Provider notes that it has a practice to accept a no claims bonus, and award a discount, where it has been obtained within the last 24 months. The Provider indicated that a new business quotation could be offered to the Complainant.

The Complaint for Adjudication

The complaint is that the Provider initially refused and then delayed the issuing of a no claims certificate to the Complainant, which led to her obtaining unaffordable insurance premium quotations, as a result of which she was unable to use her car from **May 2019**.

The Complainant wants the Provider to *“pay me compensation as I have lost my valuable time and financially affected as a result of their poor service”*.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties 26 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.

I note that the timeline for the conduct underlying the complaint is as follows:

Date	Event
15/05/2018	The Complainant's policy with the Provider begins.
02/06/2018	The first accident takes place.
05/06/2018	The Provider is notified of the first accident.
08/09/2018	The second accident takes place.
20/09/2018	The Provider is notified of the second accident by the uninsured driver.
21/11/2018	The Complainant reimburses the Provider for the first claim and the Provider responds that her no claims bonus has been reinstated.
14/03/2019	The Provider issues a Mandate to the Complainant and uninsured driver.
26/03/2019	A signed Mandate from the uninsured driver is received by the Provider.
15/04/2019	The Provider issues payment for the third party's losses from the second accident, in the total of €39,732.06
15/05/2019	The Complainant's annual motor policy with the Provider ends.
27/05/2019	The Provider establishes communication with the uninsured driver and a payment plan is established.
10/03/2020	Call from the Provider to the Complainant to offer quotation of €6,675.85.
12/03/2020	Call from the Provider to the Complainant to offer quotation of €3,738.47.
18/03/2020	Final Response Letter issued.
29/03/2020	Complaint made to this office.
24/07/2020	The Provider issues the no claims bonus certificate.
05/01/2021	The uninsured driver completes payment on the second claim.

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I note that the Provider's policy document states at page five:

"No-claims bonus

If no claim arises during the period of insurance, at the renewal date we will reduce the renewal premium in line with our no-claims bonus scale applying at the renewal date. You can ask for details of the no-claims bonus scale.

If a claim arises during any period of insurance, we will reduce your no-claims bonus as follows:

No-claims bonus	Reduced to
1 year	0 years
2 years	0 years
3 years	0 years
4 years	1 year
5 years or above	2 years"

At page nine of the policy document, it states:

"Duty of care

12. You or any insured person must:

- a. take all reasonable steps to prevent accidents, injuries, loss or damage;*
- b. protect the vehicle against loss or damage;*
- c. give us access, at any reasonable time, to examine the vehicle;*
- d. not leave the vehicle unlocked while unattended or leave the keys to the ignition with the vehicle while unattended..."*

At page 11 of the policy document, the following is noted:

"Rights of recovery

18. If the law requires us to pay a claim which would not otherwise have been covered by your policy, we reserve the right to recover that amount from you or the person on whose behalf we made the payment."

In determining whether the Provider's original decision not to issue a one year no claims bonus certificate was incorrect or unfair, the status of the second claim must be considered. The Provider argues that this second incident constituted an 'at fault' claim, which was processed through the Complainant's policy and therefore had an impact on her no claims bonus. The Complainant argues that she had no responsibility for the accident, and that it should not affect her no claims bonus.

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I consider that the Complainant had a contractual duty to take reasonable steps to protect the vehicle and to prevent accidents. I accept the Provider's submission that the Complainant did not take reasonable steps to safeguard the vehicle, when leaving the keys to the car with the uninsured driver for "*emergencies*". Although she says that she did not expect the uninsured driver to drive the car, the keys were given to him on the express or implied basis that there may be certain circumstances where he would drive the car, as an uninsured driver.

The fact that the Complainant did not report the unauthorised use of her car to the Gardai, is at odds with any argument that she did not give permission for the car to be driven by this person. Therefore, I am satisfied that the Provider was entitled to classify the subsequent accident as an 'at fault' claim on the Complainant's policy.

The Provider's policy document provides that a claim arising will have the effect of reducing the policyholder's no claims bonus to zero years. However, the Provider also has an internal policy whereby the no claims bonus can be reinstated, if claims are reimbursed by the policy renewal date.

In this situation, the uninsured driver provided the signed Mandate to the Provider less than two months before the policy renewal date. I further note that a payment recovery plan was established after the end of the Complainant's annual policy with the Provider. I am satisfied that because the payment was not fully reimbursed before the policy end date, the Complainant could not at the time of renewal, avail of the Provider's policy to reinstate the no claims bonus.

I also note that in **July 2020**, when the Complainant made clear her hardship of travelling to work during the pandemic, the Provider provided the Complainant with a one year no claims bonus certificate. It was not legally obligated to do so, as this was not in line with its internal policy for reinstating the no claims bonus. However, I believe that the Provider acted very fairly in the circumstances, in doing so.

Accordingly, I do not accept that the Provider acted incorrectly or unfairly in originally refusing to issue a no claims bonus certificate to the Complainant. Neither do I accept that it delayed in providing the no claims bonus certificate to the Complainant, as it was not obliged to do so, but ultimately it did so as a gesture to the Complainant.

Having regard to the above, I do not consider it appropriate to uphold the Complainant's complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 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.