



<u>Decision Ref:</u>	2021-0551
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Partially upheld

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

This complaint concerns a motor insurance policy.

The Complainant's Case

The Complainant contends that she was involved in a road traffic accident in **April 2017** and that she has supplied details of the accident to the Provider *"on numerous occasions"*. The Complainant asserts that the Provider *"continued to ring"* her requesting that she obtain *"letters from police to prove I had no convictions, even after explaining I had none"*.

The Complainant submits that as part of the claim investigation, she met with the Provider's investigator and that an interview was conducted with her in a car, where the conversation was *"tape recorded"*. The Complainant states that she had *"to sit in a car with a man I didn't know dragging up photos from past on google and questioning me like a criminal leaving me distraught for years"*. The Complainant contends that following this meeting, the Provider *"continued to question"* her in relation to the *"online article"* and that the Provider *"started bombarding [her] with phone calls on a weekly basis sometimes daily"*.

The Complainant asserts that she contacted the Gardaí and was advised that:

“it was illegal what [the Provider was] asking for as they wanted a garda vetting which had personal information...which the policy officer informed they would have access to which has nothing to do with them”

The Complainant submits that she explained the position, as outlined by the Gardaí, to the Provider’s representative and asked whether this was the reason for the “hold up with the claim”. The Complainant asserts that the Provider’s representative confirmed that this was not the reason for the delay in settlement of the claim and went on to advise her that “ah don’t worry about it we believe you now’ and we’ll leave it at that”. The Complainant states that she:

“...couldn’t just leave it at that as they persecuted me for years. I couldn’t just suppress the overwhelming feeling it had brought up for me never mind the amount of weight I lost, I also was prescribed [medication] due to this, caused by all the stress”.

The Complainant states that the claim is currently open “3 years later and my new insurance is 1450” and that she “cannot go to another insurance company as the claim is still active”. The Complainant goes on to states that the Provider has “dealt with this inappropriately” and that “it brought up a lot for me and had to speak with my doctor and councillor (sic)...I’m still suffering”.

The Complainant sent further submissions to this Office by way of email dated **16 January 2021**. Much of these lengthy submissions re-iterates points made by the Complainant in her complaint form and the relevant parts of these submissions can be summarised as follows:

- The Complainant believes a number of calls from the Provider are not included in the evidence, specifically calls made on **14 August 2018** and **15 August 2018**;
- The Complainant only met with the investigator because she felt she was obliged to and because she felt pressured to meet him;
- The investigator did not make the Complainant aware of the line of questioning he would undertake prior to the interview and this brought up traumatic past events for the Complainant;
- The investigator showed the Complainant a photo of herself leaving court, which was not available in the public domain;

/Cont’d...

- The threat of having her insurance cover affected significantly affected the Complainant's peace of mind;
- The Provider did not keep the Complainant updated as to the status of the third party claim against her;
- The threat of having her cover removed meant that the Complainant forgot to complete the accident report form;
- The eventual decision of the claims handler not to seek the letter of no convictions shows that it was unnecessary and this matter could have been brought to a conclusion at a much earlier stage;
- The Complainant maintains the Provider harassed her by continuously seeking the no conviction letter;
- The Complainant denies that she has breached her policy and stresses that she did not lie on her policy proposal form;
- The Complainant states that the request by the Provider for her to sign an affidavit is putting her under pressure; and
- The handling by the Provider of the third party claim and the Complainant's subsequent complaint has caused "*extreme anxiety*" to the Complainant.

The Complainant made a further submission to this Office dated **29 January 2021** wherein she states that she wishes to "*point out an important fact that when I made my formal complaint in 2019 I was still insured with [the Provider] up until 2020*".

Ultimately, the Complainant wants the Provider to admit that it handled the circumstances pertaining to the complaint wrongly and to provide a sum of compensation in recognition of the "*mental anguish*" suffered.

The Provider's Case

In its Final Response Letter to the Complainant dated **25 May 2020**, the Provider has stated that:

"During our investigations, we became aware of an online article that may have related to you. This information is available in the public domain and as such it was freely accessible to us. To avoid making any assumptions, our investigator asked you to confirm if this article related to you. You confirmed it did and therefore we needed more information."

The Provider goes on to state that:

“The proposal form you completed when seeking insurance from us asked a specific question in relation to any past conviction you might have.

As you answered this question in the negative, we understandably needed more information taking into account the article in question. For this reason, we asked that you provide a letter from An Garda Síochána confirming that you had no convictions. Your complaint form refers to a request for personal information relating to your past. I must assure you that at no time did we request or refer to any other personal information. Our concern was and remains that we simply require confirmation that you have no convictions as stated in the proposal form you completed.”

The Provider states that it is a condition of the Complainant’s policy, pursuant to page 10 of the policy booklet that the Complainant fully co-operate with Provider investigations.

In respect of the aspect of the complaint that relates to the Complainant being brought into a car and taped, the Provider states that on the day of the Complainant’s pre-arranged meeting (**15 August 2018**), the investigator phoned the Provider as previously arranged. The Provider states that during this phone call the Complainant and the investigator arranged to meet at the flat complex where the Complainant lived. The Provider states that upon arrival to the flat complex, the investigator rang the Complainant to let her know he had arrived and the Complainant came out of her flat and met the investigator in his parked car, where the interview took place. The Provider states that the investigator requested permission for the interview to be recorded and the Complainant agreed to the recording.

The Provider asserts that the claim remains outstanding and that they are unable to close the file as a *“personal injury summons has now been received”*. The Provider states that it will *“make every effort to defend this third-party claim but that ultimately a judge could award the third party a settlement amount”*.

In its Final Response Letter to the Complainant, the Provider also apologised for failing to issue a Final Response Letter outlining its findings further to the complainant’s complaint of **18 December 2019**.

/Cont’d...

The Provider made further submissions to this Office dated **18 December 2020**. These submissions expand upon the circumstances in which the Provider requested correspondence from An Garda Síochána relating to the Complainant. The Provider states that during the course of its investigation into the personal injuries claim against the Complainant arising out of the road traffic incident in **April 2017**, it became aware of a newspaper article from **April 2012** wherein an individual with the same name as the Complainant was arrested for [an alleged criminal offence, specifics redacted].

The Provider noted that on the proposal form the Complainant filled out and signed on **14 February 2016** in respect of her insurance policy with the Provider, the Complainant stated that she had not been convicted of any offence of any nature. The Provider states that it accepted the proposal form from the Complainant on the basis that she had no prior convictions and an insurance policy was incepted with a start date of **14 March 2016**. The Provider states that it needed to confirm whether the Complainant had filled out the proposal form correctly in order to assess whether the Provider would indemnify the Complainant as a result of the personal injuries action against her. During the investigator's meeting with the Complainant on **15 August 2018**, the Complainant confirmed that the article related to her and also stated that she had not been convicted as a result of the arrest.

The Provider stated that subsequent to the interview, it requested the Complainant to provide a letter from the Gardaí stating that she had no convictions. The Provider states that this was requested on several occasions and the Provider also agreed with the Complainant that she could provide a letter from her solicitor stating that she had not been convicted as a result of the incident noted in the article. The Provider states that unfortunately, it never received the requested letter from the Gardaí or from the Complainant's solicitor.

The Provider states that further to the information provided by the Complainant, its claims handler contacted the Gardaí on **15 May 2019** seeking the information concerning the Complainant's past convictions. The Provider states that Gardaí declined to provide this information due to data protection reasons.

The Provider states that on **16 May 2019**, the Complainant spoke with the Provider's claim handler and explained that she was having difficulty getting the requested information and that it was causing her a lot of upset. The Provider states that the Complainant told it that if she was to get a letter from the Gardaí to say she had no convictions, she would have to send the Provider details of very sensitive information from her past because this would be included on the correspondence from the Gardaí.

/Cont'd...

The Provider states that its claims handler explained that it did not want any personal information, merely information concerning past convictions. The Provider also informed the Complainant that it had attempted to seek the information from the Gardaí itself but could not gain access to it. During this phone call, the Provider states that it became apparent that the Complainant was requesting a Garda vetting form from the Gardaí rather than the requested letter stating that she had no convictions.

The Provider states that because the Complainant seemed so upset, its claims handler made the decision not to pursue the matter any further and despite not knowing whether the Complainant has prior convictions, has decided not to withdraw policy cover.

The Provider submits that upon inception of her policy, the Complainant was issued a copy of the Provider's data protection notice which constituted a contractual agreement that the Provider could process data relating to the Complainant's criminal convictions, or lack thereof.

The Provider also states that the Complainant did not lose her no claims discount as a result of the third party claim against her because she had chosen to pay an additional premium when taking out the policy to protect her no claims discount. The Provider states that the only effect on the Complainant's insurance policy as a result of the claim was that she found it difficult to move to another insurance company while she had an open claim.

The Provider states that it does not understand how the Complainant has been affected financially by its actions and that it denies that there was any undue pressure, influence or harassment applied as against the Complainant. In this regard, the Provider notes that it wrote twice to the Complainant on **4 December 2018** and **13 May 2019** seeking the letter of no convictions and called the Complainant 18 times (seven of which went unanswered). The Provider states that during these calls it treated the Complainant with respect and understanding.

In respect of the Complainant's complaint that she has suffered trauma due to the receipt of a letter from the Provider's solicitor asking that she sign an affidavit verifying the facts of the defence asserted by the Provider in the third party proceedings against her, the Provider states that this is a very routine situation and is in the best interests of the Complainant.

The Provider made further submissions to this Office dated **28 January 2021** wherein it stated that all available phone calls were included in its response dated **18 December 2020**. It notes that the Complainant has now secured insurance with another provider. It further states that its investigator did not show the Complainant a picture of herself leaving court and only showed the Complainant the article which references the Complainant's arrest for [an alleged criminal offence, details redacted].

The Complaint for Adjudication

The complaint is that the Provider has proffered poor customer service to the Complainant, including handling the Complainant's claim poorly, poor communication with the Complainant and provided the Complainant with incorrect information.

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 12 October 2021 outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of her two emails dated 12 October 2021, copies of which were transmitted to the Provider for its consideration.

/Cont'd...

The Provider has not made any further submission.

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

I note that, through an intermediary, the Complainant incepted a motor insurance policy with the Provider with a start date of **14 March 2016**. When filling out the proposal form for this policy, the Complainant indicated that she had no prior convictions.

I note that in **April 2017**, the Complainant was involved in a road traffic accident with a third party. The Provider was notified of this accident on **19 April 2017** and attempted to call the Complainant on this date. On **20 April 2017**, the Provider again tried to call the Complainant and then issued a letter to the Complainant asking her to fill out an "Accident Report Form". The Provider again tried to call the Complainant on **25 April 2017** and again requested by letter that she complete the "Accident Report Form".

On **14 June 2017**, an interview over the phone between the Complainant and the Provider's claim investigator took place. I note that on **14 August 2018**, a claim investigator for the Provider rang the Complainant and they agreed to meet at a location that suited the Complainant on **15 August 2018**. On **15 August 2018**, the claims investigator rang the Complainant and it was agreed that the Complainant and the claims investigator would meet at her flat. I note that this interview took place in the claims investigator's car. From considering the audio evidence of this interview, while it is not ideal that such a meeting should be conducted in a car, I accept that this meeting was conducted in a professional manner and that the Complainant stated that she was happy with the interview being recorded. I note that during this interview the investigator produced a copy of the online article referencing the Complainant being arrested and the Complainant confirmed that she had not been convicted of the offence in respect of the arrest.

I note that on **4 December 2018**, the claims handler contacted the Complainant and requested she fill out the accident report form and that she furnish a letter from the Gardaí confirming she has no convictions. I note that on **13 May 2019**, the Provider issued a letter to the Complainant again requesting these two documents. This letter also stated that the Provider was not in a position to confirm indemnity to the Complainant until the claim was further investigated. I note that this letter prompted the Complainant to call the claims handler on **15 May 2019**. During this call the Complainant stated that the Gardaí had said it was illegal for the Provider to request the information in question but that the Provider could request it from the Gardaí itself.

/Cont'd...

I note that the claims handler rang the Complainant later that day and stated that she had spoken with the Gardaí but they would not release the information to the Provider. I note that on **16 May 2019**, the Complainant rang the Provider stating that she had called the National Assets Bureau and it had said it was illegal for the Provider to request this information from the Gardaí as it contained sensitive personal details about the Complainant. I note that the claims handler explained to the Complainant that the Provider did not need any personal information from the Gardaí. During this call, I note that the Provider decided to accept that the Complainant had no convictions and not seek the letter from the Gardaí.

I note that, pursuant to page 10 of the policy booklet the Complainant has a duty to fully co-operate with Provider investigations:

"You...must:

(d) send us all documents, proof, information and any letter or legal summons or similar document we may reasonably need; and

(e) co-operate fully with us in the investigation and in handling any claim"

I further note that upon inception of the policy, the Complainant was issued a copy of the Provider's data protection notice which stated:

"...some of the questions on this form may ask for details about your health, convictions and the health and convictions of third party's material to this risk....This information is important for underwriting and claims purposes and will remain confidential. If you proceed with this application, you are giving us permission to process your details for the above purposes, including checking with third parties or accessing State or other official records to verify whether the details you have given are accurate and complete.

By proceeding with this application, you are confirming that you have fully explained to each person who requires this insurance cover why we asked for this information and what we use it for. You are also confirming each person has agreed to this"

I accept that the above conditions of the policy and the data protection notice, oblige the Complainant to co-operate with the investigation and to furnish details about any criminal record (or lack thereof) to the Provider upon request.

/Cont'd...

I note that the Provider requested that the Complainant fill out the accident report and requested the Complainant provide a letter from the Gardaí stating that she had no convictions. There is no evidence that the Provider or its representatives harassed, unduly contacted or pressured the Complainant in any way when making this request. In fact, the audio evidence submitted demonstrates that the Provider's representatives dealt with the Complainant professional and politely at all times. I also do not see any issue or problem arising with the interview conducted by the claim investigator with the Complainant in the investigator's car. The interview was flagged in advance to the Complainant and the Complainant arranged to meet the investigator at her flat complex. The Complainant's evidence discloses that she did not want the investigator to come into her flat, so the interview took place in the investigator's car.

It is clear that the Complainant was greatly upset by the investigator asking her about her arrest for [an alleged criminal offence, details redacted] and was very surprised that he had access to information concerning this matter. While I understand why a reminder of her arrest was upsetting for the Complainant, the investigator was duty bound to investigate the circumstances of the accident and the Provider's indemnity of the claim. Part of that investigation includes checking whether the Complainant correctly answered the questions upon which the insurance policy was incepted, including her statement that she had no prior convictions.

The information concerning the Complainant being arrested was published in a public newspaper and was therefore publicly available. There is no audio or documentary evidence to support the Complainant's complaint that the investigator had a photograph of her outside court and even if there was, it was not necessarily incorrect or unreasonable. In this regard, I note that the audio evidence of the investigators interview with the Complainant does reference him showing the Complainant a newspaper article but not a picture. The fact that the Provider decided not to pursue the Complainant for the letter from the Gardaí concerning her lack of convictions after multiple attempts to do so, was the decision of the Provider and not an indication that it was wrong of the Provider to seek this information in the first place.

I note that the Complainant complains of the Provider not keeping her updated about the third party claim against her but also states that the Provider hassled her with an undue amount of phone calls. After considering the evidence presented to this Office and the number of calls and letters sent by the Provider to the Complainant, I do not accept that the Provider unduly called or wrote to the Complainant and I accept that the Provider kept the Complainant up to date with the claim against her insofar as was necessary and relevant.

/Cont'd...

I accept that the request from the Provider for the Complainant to sign an affidavit verifying the circumstances of the accident and verifying the Defence raised as against the personal injuries claim, is a normal request as part of the litigation process and not unduly burdensome on the Complainant.

In the interests of completeness, I also note that there is no evidence that the Complainant's insurance premium increased due to the claim against her. It would appear that this was the case because of the extra premium she had paid to protect her no claims bonus.

Furthermore, I note that there is no evidence that the Provider furnished any incorrect information or misinformation to the Complainant during its investigation into the claim against her or the processing of her complaint.

I note that the Provider accepts that it forgot to send a Final Response Letter to the Complainant in respect of the complaint raised on **18 December 2019** due to human error. While I accept that a letter was drafted and was to be sent on **29 January 2020**, it is most unfortunate that it was not sent until **25 May 2020** at the request of this Office. I note that this constitutes several breaches of provision 10.9 of the Consumer Protection Code 2012 (as amended) in that the Provider did not:

- provide the Complainant with a regular update on the progress of the investigation of the complaint at intervals of not greater than 20 days; and

- within five business days of the completion of the investigation advise the Complainant on paper of the outcome of the investigation and the details of this Office.

Finally, I note that the phone calls from **14 August 2018** and **15 August 2018** are not included in the evidence submitted by the Provider and while this is regrettable, the Complainant has not indicated why these phone calls further her complaint.

Based on the foregoing, I do not accept that the Provider proffered poor customer service to the Complainant nor do I accept that the Provider provided wrongful information or misinformation to the Complainant.

However, I do note that the Provider forgot to send a Final Response Letter to the Complainant until reminded by this Office to do so and accordingly, I partially uphold this complaint and direct the Provider to make a payment of €250 to the Complainant.

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) and/or Section 60(2)(g)** because of the improper conduct of the Provider in not furnishing the Final Response Letter until requested to do so by this office.

Pursuant to **Section 60(4) and Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €250, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

21 December 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,

/Cont'd...

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

