



<b><u>Decision Ref:</u></b>	2021-0564
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Household Buildings
<b><u>Conduct(s) complained of:</u></b>	Lapse/cancellation of policy Claim handling delays or issues Rejection of claim - fire
<b><u>Outcome:</u></b>	Partially upheld

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

This complaint is made against an insurer (the Provider). The complaint concerns the Provider's decision to declare a home insurance policy *void ab initio* on the grounds of the Complainant's failure to disclose a previous conviction.

**The Complainant's Case**

The Complainant submits that he purchased a home insurance policy from the Provider. The policy was purchased through a third party broker in **October 2019** over the telephone.

The Complainant subsequently submitted a claim under the policy arising out of a fire which occurred at his home, also in **October 2019**. The Provider repudiated the policy citing a non-disclosure of a material fact by the Complainant – namely a previous conviction for driving without motor insurance.

The Complainant's representative states:

*...The question raised by [Provider] is put in a very peculiar manner as it states **"you or any member of your household have never been convicted of or have any prosecutions pending for any offence (other than speeding or parking offences)"**.*

*Anyone with a basic command of English can see that it is not even a question. Furthermore, it appears to exclude any reference to motoring offences and so it is not surprising at all that [the complainant] said "yes". Why didn't [Provider] simply formulate a question "Have you ever been to court, for anything?" or "have you ever been convicted of any offence whatsoever, of any kind?"*

*Such plain and obvious questions would have elicited an ordinary answer and would have avoided the entire difficulty in this case, one way or the other. [The Provider] refer to their "acceptance criteria" but they don't include any written statement of their "acceptance" criteria. It is thus a further invention by [Provider] to justify their inappropriate behaviour in this case.*

*[Provider] emphasises that the Statement of Fact "clearly outlines both the importance of the information being declared and the consequences of a failure to disclose information." They seem to have forgotten that it was filled in over the phone.*

*...Again [Provider] refer to the "question" in relation to convictions, but as pointed out (sic) above it is not in fact a question at all and the manner in which the sentence is constructed appears to exclude anything to do with motoring. The fact that motoring appears to be excluded is not really surprising in circumstances where what was being discussed was a house insurance policy and it is nothing short of devious that [Provider] now seek to cancel a house insurance policy in these circumstances where a fire clearly took place and where the loss adjusters report confirms it as an accidental fire (albeit with a worrying comment about "fortuitous")*

*[Provider] say "the question was clearly asked". Unfortunately, it was not. It was not a question at all and the manner in which the statement (not a question) was put clearly indicated that it excluded motoring offences.*

The Complainant's solicitor, in a letter to the Provider dated **30 January 2020**, states:

*"[The Complainant] states that everything he did with [the Provider] was over the phone i.e. he did not fill out any form and when the above was put to him, which excludes speeding or parking offences, he clearly understood that what he was being asked was whether he had any convictions that were in any way relevant to with household insurance and we cannot see that [the Provider] is in any way materially affected by the accidental non-disclosure of a previous conviction for having no insurance on his car some years earlier".*

/Cont'd...

The Complainant is seeking to have his household insurance policy reinstated and his claim arising from the fire at his home in **October 2019** admitted. He is also seeking compensation.

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

In its letter to the Complainant dated **11 December 2019**, the Provider states:

*"It has come to our attention that you may have had a previous conviction that was not disclosed to us when the policy was taken out on the 17 October 2019. The Statement of Fact at inception states "You or any member of your household have never been convicted of, or have any prosecutions pending, for any offence (other than speeding or parking offences)".*

In a subsequent letter to the Complainant dated **20 January 2020** the Provider states:

*"Due to this non-disclosure of material facts, we have no option but to declare the policy void with effect from the 17<sup>th</sup> October 2019. The voiding of this policy confirms that no insurance cover has been provided under this policy and therefore all premiums collected under this policy will be returned to you".*

In its Final Response Letter dated **29 January 2020** the Provider states that on **11 December 2019** it issued a letter to the Complainant requesting a written response outlining the details of his previous conviction. The Provider states that this information was required by **25 December 2019**. The Provider states that the Complainant sought an extension of time (which it granted) to **2 January 2020**.

The Provider states that, having not received the information sought it issued a further letter requesting the information by **10 January 2020**. It states that having not received the information sought, it proceeded to issue its final response letter confirming its decision to declare the policy *void ab initio*.

### **Complaint for Adjudication**

The complaint is that the Provider:

Incorrectly refused to pay the Complainant's claim under his house policy relating to a fire in his premises in October 2019; incorrectly voided the Complainant's policy from inception and failed to reinstate the policy when requested.

Before dealing with the substance of the complaint, I must point out that the insurance policy at the centre of this complaint was sold to the Complainant by a third party broker. As this complaint is made against the Respondent Provider (the insurer) it is the conduct of this Provider which has been investigated by this Office. As a result, this decision deals only with the conduct of the Provider.

### **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 20 November 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.

/Cont'd...

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainant applied for a household policy with the Provider through a third party broker by telephone on **14 October 2019**.

This was a lengthy call which dealt with a lot of detail. I believe it will be useful to set out the section of the call which dealt with the assumptions. I should also point out that the connection was very poor, and the parties found it difficult to hear each other at times.

Having dealt with a number of matters such as a previous claim, the cost of the policy and payment methods the call proceeded as follows:

Provider's Agent: So we just have to cover off a few assumptions with you. They are just extra questions you have to say yes or no to ok?

... Pause...

Provider's Agent: Is that alright?

Complainant: Say that again will you?

Provider's Agent: Sorry [Complainant] your signal keeps going on me [Complainant] I can't hear you

Complainant: Inaudible  
Mentioned the cost again

Provider's Agent: So I have a few questions for you. You just have to say yes or no to all of them ok?

Complainant: Ok. Yea

Provider's Agent: The property, including domestic outbuildings is not used as a place of employment for any employee other than domestic employees is that correct?

Complainant: That is right yep

/Cont'd...

Provider's Agent: The property then, including domestic outbuildings is not used to store commercial goods

Complainant: No it's not

Provider's Agent: The property has never been monitored for subsidence, heave or landslip

Complainant: Nope

Provider's Agent: The property has never been subject to a survey which mentions a settlement or movement of the property, nor has it ever been underpinned

Complainant: What's that mean?

Provider's Agent: Sorry is that correct?

Complainant: What does it mean though?

Provider's Agent: What?

Complainant: What does the question mean?

Provider's Agent: The property, so there's never been any study to check if there's any subsidence or heave or landslide

Complainant: Ah no, no inaudible

Provider's Agent: The property has never been subject to a survey. Sorry the property has never suffered damage through flood.

Complainant: No, no

Provider's Agent: There's no history of flood damage in the area.

Complainant: Not that I know of. No, no

Provider's Agent: The property, then, is constructed of either brick, or stone, or concrete, including timber frame with concrete or brick external cladding.

/Cont'd...

Complainant: That's right yea

Provider's Agent: The property is in a good state of repair and it will be maintained in a good state of repair at all times and is free from any signs of external or internal cracks besides fine surface cracks on the plaster.

Complainant: That's right, yea, ok

Provider's Agent: The property is not currently subdivided as flats or bedsits.

Complainant: Nope

Provider's Agent: The property is not within 100 metres of any lakes, rivers, streams, canals, sea or any body of water.

Complainant: Nope

Provider's Agent: The property is not within 200 metres of any property that has been subject of subsidence, heave, landslip, flood, coastal or river erosion.

Complainant: Em, not that I know of, no

Provider's Agent: The property is roofed with either slates or tiles or concrete or metal other than corrugated iron, asphalt, mineral felt or torch on felt, provided the torch on felt is less than 50% of the entire roof area.

Complainant: Yes the roof is roof tiles

Provider's Agent: Perfect

Provider's Agent: This property is your main residence, is occupied by you and members of your household as your principal private residence and is not left unoccupied for more than 45 days in a row

Complainant: No we go on holiday for a week or maybe two weeks in a year

Provider's Agent: That's fine and then the property then, the proposer which is you, is an individual and not a company or a firm

/Cont'd...

Complainant: No

Provider's Agent: The property shows no signs of damage which may be attributable to subsidence, heave or landslip

Complainant: Nope

Provider's Agent: The proposer, oh sorry there was no trade or business or profession carried on the property to be insured other than office work carried out from the home that does not involve regular visits to the property

The Provider's Agent: The proposer who is you, is an individual and not a company or a firm

Provider's Agent: Ok

Provider's Agent: You or any member of your household have never been convicted of, or have any prosecutions pending for any offence other than for speeding or parking offences

Complainant: No, no

Provider's Agent: You or any member of your household have never been refused insurance or had insurance cancelled or had any specific terms or conditions imposed by an insurer. For example [inaudible] or policy loading

Complainant: No

Provider's Agent: and finally, you or any member of your household have not made any claim or suffered any loss during the last five years from anything you wish to insure whether insured or not other than any loss or claim disclosed to us

Complainant: Well apart from one claim I had this year

Provider's Agent: Yes but besides that, there's been no other claims

Complainant: Ah no nothing



The call went on to deal with matters such as payment details, mortgage details, alarm details, policy terms and conditions and cooling off period.

The Provider's Agent pointed out the need to read the policy documents which would be sent to the Complainant.

As stated above, the quality of the phone connection was very poor at times during this call but the third party broker's agent was patient and professional at all times during the call while he collected a very considerable amount of data.

On foot of this telephone call with the third party broker, a Statement of Fact issued to the Complainant. This is a six page document which included among other things a list of 20 assumptions on the lines of those listed in the phone call of **14 October 2019**. It included the following notices:

*"THIS DOCUMENT FORMS THE BASIS OF YOUR CONTRACT*

*This Statement of fact confirms your agreement that the statements made by you or on your behalf are true and complete to the best of your knowledge and belief. The information contained in this Statement of Fact shall be incorporated in the contract between you and [the Provider] [...] These facts have been taken into account when calculating the policy premium and applying terms and conditions to your Insurance Policy."*

*"Please note that a failure to disclose all material facts or disclosures of false information could result in:*

*- The Policy becoming void"*

*"Material facts are those facts an insurer would regard as likely to influence the acceptance and acceptance of your risk, which includes for example, past claims made or submitted by you or any member of your household, including losses suffered by you or any member of your household, whether insured or not [...] You should check this document, your policy schedule and any other enclosures immediately and if any of the information is incorrect please contact your Broker or [the Provider]..."*

/Cont'd...

***“Assumptions***

[...]

*- You or any member of your household have never been convicted of, or have any prosecutions pending, for any offence (other than speeding or parking offences).”*

The policy had a start date of **17 October 2019**.

On the morning of the first day that the policy was intended to have come into force (17 October 2019) the Complainant’s home was damaged by fire.

The Complainant submitted a claim under the policy and the Provider instigated an investigation into the claim.

There is no suggestion that the fire was anything other than an unfortunate accident. Forensic reports carried out on behalf of the Provider concluded: *“the fire was candle related, not intentionally malicious and that no course for stateable recovery presented”*.

Therefore, it appears that the claim would likely have been payable under the policy but for the fact that the Provider, during its investigation, discovered that the Complainant had been convicted for an offence of driving without insurance.

This appears to have come to light when the Provider’s loss adjuster / fire investigator asked the Complainant about an article in a local paper dated **15 October 2019** which appeared to state that the Complainant was convicted for the offence of driving without insurance, resulting in a fine of €150 and a two-year disqualification from driving.

The Provider’s loss adjuster notes the explanation given by the Complainant on **25 October 2019** as follows:

*“In March / April [third party] lost a baby while staying with us. I drove [third party] to [third party]’s house. I was stopped by Gardai. My insurance covered me to drive other cars, but this had expired a few days. I was in court around the 18<sup>th</sup> of September 2019. I got a fine and a 2 year [driving] disqualification hence [local paper] article”*.

On **11 December 2019** the Provider issued correspondence to the Complainant advising as follows:

*"It has come to our attention that you may have had a previous conviction that was not disclosed to us when the policy was taken out on 17<sup>th</sup> October 2019.*

*The Statement of Fact issued at inception states "You or any member of your household have never been convicted of, or have any prosecutions pending, for any offence (other than speeding or parking offences).*

*In order to obtain a quote online you would have had to been able to comply with the assumptions. The above statement, You or any member of your household have never been convicted of, or have any prosecutions pending, for any offence (other than speeding or parking offences), was complied with, therefore stating that you have not had any convictions or pending convictions.*

*Failure to disclose material facts may invalidate this insurance policy. We therefore require a written response from you outlining your previous conviction prior to the inception of the policy and advising why you did not disclose this material fact when this policy was taken out.*

*Please forward this information by 25<sup>th</sup> December 2019 in order for us to proceed."*

The Provider failed to submit recordings of a number of important calls in its original submission to this office. I wrote to the Provider **24 June 2021** seeking recordings of all calls. In response the Provider furnished the following call recordings:

- Call from the third-party broker to the Complainant dated **25 September 2019**
- Call from the third-party broker to the Complainant dated **11 October 2019** (Parts 1 & 2)
- Call from Provider to Complainant dated **11 December 2019**
- Call from Complainant to Provider **19 December 2019**
- Call from Provider to Complainant **13 January 2020**
- Call from Complainant's Solicitor to Provider **28 January 2020**

/Cont'd...

I have listened to and considered the content of these call recordings, in addition to the call recording of 14 October 2019. I find it both disappointing and concerning that the Provider did not furnish recordings of all relevant calls with its original response to this office.

The call from the Provider on **11 December 2019** was to establish where it should direct its correspondence to the Complainant.

In response to the correspondence, dated **11 December 2019**, from the Provider seeking a response by Christmas Day, **25 December 2019**, the Complainant contacted the Provider by telephone on **19 December 2019** seeking more time to respond.

The Provider extended its deadline to **2 January 2020**. This was despite the Complainant pointing out that this was the Christmas holiday period, but the Provider reiterated the deadline of **2 January 2020**.

In the event, the Complainant did not furnish a response to the letter of **11 December 2019** and the Provider sent a reminder letter to him on **3 January 2020**. The Provider called the Complainant on **13 January 2020**, seeking a response. On this call the Complainant informed the Provider of his intention to seek legal advice.

On **14 January 2020** the Complainant's Solicitor wrote to the Provider as follows:

*"Herewith formal letter of authority signed by your insured [Complainant], please note its contents carefully.*

*[Complainant] instructs that you have refused to cover him for a claim under his house policy relating to a fire in his premises in October 2019 and that your refusal is based on him having had a motoring conviction for no insurance previously.*

*Please let us have copies of the following as a matter of urgency:*

- 1. Copy of [Complainant's] proposal form for the house insurance.*
- 2. A full and complete copy of the insurance policy applicable as at the date of the fire, the subject of the claim.*
- 3. Copy of all correspondence between [Provider] and [Complainant] relating to the fire claim.*
- 4. A copy of [Provider's] "final response" letter concerning [Complainant's] fire claim to enable us consider referral to Financial Services Ombudsman/Insurance Ombudsman or the instigation of Arbitration proceedings or a claim for damages against [Provider] for breach of the insurance contract."*

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By letter dated **20 January 2020** sent directly to the Complainant, the Provider advised the Complainant that it had decided to declare the policy void ab initio by reason of the Complainant's non-disclosure of a material fact (his conviction for driving without insurance). This letter stated, among other things, the following:

*"Dear [Complainant],*

*I refer to previous correspondence in respect of the above household policy.*

*We have now completed a thorough review of all aspects of this case and your household insurance with [Provider].*

*Insurance policies are founded on the principles of Utmost Good Faith. You are under a duty to disclose all material information. Material Information is any information, which is known to you or deemed to be known to you, which is likely to influence an insurer in acceptance of the risk and/or on the terms applied. This duty of disclosure is an ongoing one and does not just arise at inception of the policy.*

*It has come to our attention following a review by the claims department on the 28th of November 2019, that you had a pending conviction at the time of arranging cover under this policy and the outcome (sic) of this offence took place between the time of arranging cover and the policy going live.*

*A Statement of Fact for insurance was issued on the 14th October 2019. This Statement of Fact contained a declaration that the statements made were true and complete to the best of your knowledge and belief. This document also highlighted the importance of reading all the information contained within and outlined the implications of failure to disclose a material fact.*

*We now believe the statement in relation to pending convictions to be false, You or any member of your household have never been convicted of, or have any prosecutions pending, for any offence (other than speeding or parking offences).*

*Due to this non-disclosure of material facts, we have no option but to declare this Policy void with effect from the 17th October 2019. The voiding of this policy confirms that no insurance cover has been provided under this policy and therefore all premiums collected under this policy will be returned to you.*

*A copy of the Statement of Fact is attached.*

/Cont'd...

*If you wish to make a complaint about this decision please contact our Customer Services Manager, [Provider Dublin address]"*

By letter dated **22 January 2020** the Complainant's Solicitor wrote to the Provider as follows:

*"We haven't had yet response to our letter 14th January 2020 but [Complainant] has just phoned our office to say that [Provider] have sent him a text message saying that his house insurance is cancelled. If that is true, it looks like "bully boy" tactics before we even had your response.*

*We request that you immediately reinstate the insurance pending dealing with the present claim.*

*Please issue a final response letter now in case we need to consider referral to the Ombudsman."*

On **28 January 2020** the Complainant's Solicitor telephoned the Provider seeking to know why he had not received responses to his correspondence while the Provider had written directly to the Complainant cancelling the policy. I will set out further details of this call later.

By letter dated **28 January** the Provider wrote to the Complainant's Solicitor as follows:

*"I write to you in regard to the above noted claim.*

*We note that our colleagues in Underwriting have completed a thorough review of all aspects of this case and have determined that the above policy be cancelled ab initio due to non disclosure of material facts.*

*In view of the above it is apparent that no such policy was in force at the time of the above noted incident and we regret to advise that we are unable to make a payment on this occasion and will proceed to close our file. We trust you will note our position here.*

*If you require further clarification in relation to our decision please do not hesitate to contact me on the number below to discuss the matter further.*

*If you are still dissatisfied with the outcome and would like to register a complaint please contact your Insurance Broker or contact [the Provider at its Dublin address].*

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By letter dated 30 January 2020 the Complainant's Solicitor wrote to the Provider as follows:

*"Dear [Redacted],*

*Further to our telephone call at 11:10 a.m. this morning, you said:*

*You are dealing with this particular claim*

*You do not have our letter of 14th January 2020, letter of authority and our reminder of 22nd January 2020 on your file.*

*That even though all your letters are addressed from [Dublin address], thus inviting a reply to [Dublin address], you work in Galway.*

*"I don't work in the post office" in answer to a question as to how it could take 2 weeks for a letter to get from Dublin to Galway.*

*See attached copies of:*

*The insured's Letter of Authority  
Our letter of 14th January 2020  
Reminder of 22nd January 2020"*

By letter dated **29 January 2021** the Provider wrote to the Complainant's Solicitor as follows:

*I understand your concerns with [Provider] to be in relation to the following Policy being treated as void ab initio, prior to issuing your offices with a response to your letter dated 14/01/2020. If you feel my summary of concern is inaccurate, please let me know.*

*I have reviewed the file and would outline the sequence of events, as follows:*

*On 11/12/2019 we issued a letter to [Complainant] requesting a written response outlining details of his previous conviction prior to inception of this policy, asking why he did not disclose this material fact when the policy was being taken out.*

*This information was required by 25/12/2019, in order to review the file. A copy of this letter is attached for your records.*

/Cont'd...

*On 19/12/2019 [Complainant] contacted our office and asked for an extension to this response time, as he was away. We agreed to extend this response time to 02/01/2020.*

*On 03/01/2020, failing receipt of response from insured, we issued a further letter to [Complainant], requesting his response by 10/01/2020, and that no further reminder would be issued. A copy of this letter is enclosed for your records.*

*On 20/01/2020, failing hearing from Insured on or before the deadline date 10/01/2020, we issued a letter to [Complainant], confirming this policy is being treated as void. A copy of this letter is enclosed for your records.*

*On 28/01/2020, you contacted our office by phone, requesting reason for non-response to your letters dated 14/01/2020 and 22/01/2020. You kindly offered to email in both letters, which we received from you on 28/01/2020.*

*In the meantime, we received an email from our Dublin Office on 28/01/2020 attaching a copy of your letter to us dated 14/01/2020, which was received in our Dublin Office on 23/01/2020.*

*Had we received this request we would have provided you with the required information. However, this letter of request was only received by us on 23/01/2020 and the Policy had already been treated as void ab-initio, as outlined in our letter to [Complainant] dated 20/01/2020.*

*A copy of the Statement of Fact which formed the basis of this contract, is enclosed for your records. Material facts are based on the legal principal of "utmost good faith," which requires a person who is seeking insurance of any kind to disclose any and all information that could be deemed relevant by an insurer.*

*As a result of non-disclosure of material facts, this policy was treated void ab-initio. This is our final decision.*

*I do hope you find this response satisfactory. However, should you have any further concerns in relation to this matter please do not hesitate to contact me.*

The letter also informed of the right to bring a complaint to this Office and included contact details for this Office.

/Cont'd...



The Complainants Solicitor in a letter to the Provider dated 30 January 2021 stated, among other things:

*Thank you for your letter of 29th January 2020.*

*While you have stated that your letter is a “final response” letter, I would like to give [Provider] a further opportunity to reconsider this matter.*

*I suggest that the deadlines for response unilaterally imposed by [Provider], particularly over the Christmas period, were arbitrary and unreasonable.*

*Furthermore, you clearly are now aware that [Complainant] sought legal advice and it surely can't be surprising that someone would seek, and should be given a reasonable opportunity to seek such advice, when dealing with an insurance company threatening not to pay out under his policy, for an alleged non-disclosure, of something which is utterly irrelevant to the household insurance concerned.*

*While your letter deals with the sequence of events and the time limits **imposed** by [Provider] over the Christmas period, your letter has not dealt with the fundamental issue of the alleged non-disclosure in this case.*

The letter goes on to put forward arguments (set out elsewhere in this decision) in relation to the voiding of the policy and non-payment of the claim.

### **Analysis**

The Complainant (and his advisors), in essence, submit that:

1. A conviction for driving without insurance was not a conviction within the meaning of the question asked (which specifically excluded convictions for speeding and parking offences), therefore he did not give a false answer to the question; and/or
2. A conviction for driving without insurance is not a material fact in the context of a household policy.
3. The question that the Provider relies on in order to void the policy was not in fact a question. Rather it is asserted that it is a confusing statement.

/Cont'd...

The Provider's position is that a conviction for driving with no insurance falls within the convictions that must be disclosed in response to the question, and that such a conviction is a material fact in the context of the policy. It states that the conviction places the Complainant outside its acceptance criteria. I accept that the Provider is entitled to set its own commercial and acceptance criteria and is therefore entitled not to offer insurance to people who have certain convictions. However, the difficulty is the Provider did not actually ask a question, at any stage, prior to incepting the policy in relation to convictions. I will return to this later.

I note the Complainant contends that speeding or parking offences in fact mean road related offences, motoring offences or convictions that are not in any way relevant to household insurance.

I do not accept this proposition. I accept that a conviction for driving without insurance is not a speeding or parking offence and should have been declared if the question had been asked.

The Provider asserts that it gave the Complainant the opportunity to submit information for it to take into account when making its decision and states that the Complainant failed to do so. However, I note that the Complainant had sought additional time to seek legal advice. Having done so his solicitor wrote to the Provider. However, because of either a delay in the delivery by An Post or in the Provider's system in relation to the management of its incoming post, the Provider wrote to the Complainant cancelling his policy during the period when his solicitor was awaiting a response from the Provider.

I note the Provider relies heavily on the content of the call between the Complainant and the Provider on **14 October 2019** in terms of its decision to void the Complainant's policy. It is the following statement, included in the assumptions, which I note the Provider has characterised as a question, that is most relevant in this regard.

During the call the third party broker's agent stated:

*"You or any member of your household have never been convicted of or have any prosecutions pending for any offences other than speeding or parking offences."*

The Complainant responded: "No. No."

I note the Provider characterises this statement as a question. I do not agree. It clearly is not a question. It is a statement.

/Cont'd...

I note the Provider states:

*“The question on convictions was clearly answered at 1.09 minutes into the 2<sup>nd</sup> part of the call and no clarification on the question was sought by the insured”*

Firstly, I do not accept that this is a question. It is a confusing statement.

If the purpose of this statement was to establish whether or not the Complainant, or any member of his household, had ever been convicted of, or had any prosecutions pending then a simple straightforward question asking if this was the case requiring a yes or no answer could have elicited this with absolute clarity.

I note the same difficulty arises with other of the statements. However, as they are not relevant to this complaint, I do not propose to analyse them.

I note the Complainant answered “no” to that statement relating to convictions. Given the manner in which the statement was put and that the Complainant did in fact had a conviction, it appears to me that “no” was the correct answer.

Answering “no” was stating that the assumption was not correct.

Accordingly, I believe it is incorrect and unreasonable for the Provider to use the Complainant’s response to this statement in order to support its action in voiding the Complainant’s policy.

I note the Provider states that if it was aware of the Complainant’s conviction it would not have provide insurance cover to him. Therefore, the response to this statement was of grave importance and the matter should have been dealt with in a more appropriate manner.

I will now deal with the issue of whether a fact is material to the risk being insured. This matter has been considered in detail by the Courts.

Where a customer fails to disclose a fact at inception of a policy, for whatever reason, a provider is entitled to deem the policy void ab initio in the event that this non-disclosure related to a material fact. A material fact is one which would have influenced a reasonable insurer had it been disclosed.

/Cont’d...

Accordingly, it is not sufficient merely to establish that the particular insurer involved would have declined cover, it is also necessary to show that such a course would have been reasonable, or that a reasonable insurer would have been influenced by the information had it been disclosed.

The decision of Finlay C.J. in ***Kelleher v. Irish Life Assurance Company*** is instructive. Finlay CJ quoted the following extract from MacGillivray and Parkington on Insurance Law (8th ed.,1998):-

*"It is more likely, however, that the questions asked will limit the duty of disclosure, in that, if the questions are asked on particular subjects and the answers to them are warranted, it may be inferred that the insurer has waived his right to information, either on the same matters but outside the scope of the questions, or on matters kindred to the subject matter of the questions.*

*Thus, if an insurer asks, 'How many accidents have you had in the last three years?', it may well be implied that he does not want to know of accidents before that time, though these would still be material. If it were asked whether any of the proposer's parents, brothers or sisters had died of consumption or been afflicted with insanity, it might well be inferred that the insurer had waived similar information concerning more remote relatives, so that he could not avoid the policy for non-disclosure of an aunt's death of consumption or an uncle's insanity.*

*Whether or not such waiver exists depends on a true construction of the proposal from, the test being, would a reasonable man reading the proposal form be justified in thinking that the insurer had restricted his rights to receive all material information, and consented to the omission of the particular information in issue?" [emphasis added]*

In ***Coleman v. New Ireland***, Clarke J summarised the relevant law on disclosure in the following terms:-

*"The requirement that a proposer for a policy of insurance must make full disclosure is more than well settled. Thus, an insurer can avoid a policy of insurance where either:-*

*A. The insured fails to disclose a material fact; or*

*B. The proposer makes a positive misrepresentation in the course of the negotiations.*

/Cont'd...

*Furthermore, an insurer may be entitled to avoid a contract of insurance where there has been a breach by the proposer of a term of the contract of insurance warranting that a certain set of facts is the case.*

*Whether, and to what extent, there has been any such warranty is a matter of construction of both the insurance policy itself together with connected documents such as any proposal form." [emphasis added]*

Clarke J. went on to state as follows:-

*"It is clear, therefore, that any material non-disclosure or any materially inaccurate answer to a question on the proposal form are to be judged by reference to the knowledge of the proposer, and whether answers given were to the best of the proposer's ability and truthful." [emphasis added]*

I am not satisfied that a reasonable person could be justified in thinking that the Provider had restricted its right to receive information regarding convictions other than those related to speeding and parking (neither of which includes driving without insurance).

I accept that that the Provider was entitled to be informed of the Complainant's conviction. I note in that regard that the conviction in question appears to have taken place at some point between one month prior to, and the day of, his application for the policy.

The fact that the insurer has stated that a conviction that falls within the statement and assumptions will render a customer outside its terms of cover means that the Provider is entitled to be informed of a conviction such as the conviction that the Complainant appears to have received. However, if this is the case, I would expect the Provider to have asked in the clearest possible terms if the person proposing for insurance or any member of their household had any convictions and not to rely on the response to a confusing, and badly worded statement. However, I do acknowledge that the assumption was also included in the Statement of Facts issued to the Complainant which he ought to have read.

In addition to the confusion caused by the disputed statement, I also find some aspects of the handling of this matter by the Provider to be unreasonable and unacceptable. The Provider was threatening to void the Complainant's policy of insurance. This had very serious consequences for him. Not least it would mean that the claim for the damage to his home caused by an accidental fire would be rejected.

/Cont'd...

Perhaps, even more serious, having a contract of insurance cancelled can make it virtually impossible to secure home insurance into the future. Given the serious consequences of the action the Provider was proposing to take I believe the Provider gave the Complainant unreasonable and unrealistic deadlines of Christmas Day and **2 January** to respond to its request for information. I note the Complainant also sought extra time to seek legal advice/representation.

Furthermore, when the Complainant did secure legal representation, I note that despite the Complainant's legal representative writing to the Provider it wrote directly to the Complainant cancelling the policy rather than replying to his solicitor's correspondence and queries. When the Complainant's legal representative contacted the Provider seeking an explanation as to why this had happened and why his correspondence had not been responded to, he was met with a less than helpful response and attitude.

The Complainant's solicitor called the Provider on **28 January 2020** seeking to know why he had not received a response to his (the solicitor's) letter of **14 January 2020**.

The following extracts from the call are relevant:

Complainant's

Solicitor:

We wrote to you on the **14<sup>th</sup> of January** with a formal letter of authority authorising you to deal with us signed by the policy holder and we've heard nothing from you and yet [Provider] has written to him directly on the 20<sup>th</sup> of January and I'd just kinda like to know what's going on.

Provider's Agent:

Ok where did you send the letter to? It doesn't look like we've received that on the file. What was the address?

Complainant's

Solicitor:

[Provider's Dublin address] with the claim number and the policy number written on it.

Provider's Agent:

Ok. Perfect. So we work in Galway. So we would have to wait for it to actually come down to ourselves from the Dublin office.

Complainant's

Solicitor:

You... sorry you work where?

/Cont'd...

Provider's Agent: In Galway

Complainant's  
Solicitor: And you [Provider] wrote to [Complainant]

*Interrupted by Agent*

Complainant's  
Solicitor: Sorry just a second you wrote to [Complainant] and the address on your letter [Dublin address]

Provider's Agent: Yea so all our post goes to [Dublin address] and then it's transferred to wherever it needs to go.

Complainant's  
Solicitor: Is it going by horse and cart? We wrote to you on the 14<sup>th</sup>

Provider's Agent: I do not like your attitude at all

Complainant's  
Solicitor: I don't like yours either

Provider's Agent: Ok. So I'm actually dealing with this policy so I know exactly what's going on

Complainant's  
Solicitor: Do you?

Provider's Agent: I do indeed Sir, yea

Complainant's  
Solicitor: So how does it take from the 14<sup>th</sup>, it's now the 28<sup>th</sup>. Two weeks later you're telling me that a letter hasn't gone from Dublin to Galway.

Provider's Agent: Unfortunately I don't work in the Post Office so I won't be able to answer that.

Complainant's  
Solicitor: I beg your pardon? Say that again

/Cont'd...

Provider's Agent: Was it registered post

Complainant's  
Solicitor: No, no say what you said again

Provider's Agent: I really don't like your attitude on the phone

Complainant's  
Solicitor: No, no. I asked you to say what you said again, because I didn't hear it properly. You made some comment about the Post Office.

Provider's Agent: Yea so unfortunately I don't work in the Post Office so I don't know which way they work

... Pause...

Complainant's  
Solicitor: What's your name?

Provider's Agent: Sorry?

Complainant's  
Solicitor: What is your name?

Provider's Agent: [First name]

Complainant's  
Solicitor: [First name] What?

Provider's Agent: [First Name Second Name]

Complainant's  
Solicitor: Ok

Provider's Agent: So if you wait I can have a look here for the letter. If you wanna wait a minute

... Pause ...

/Cont'd...



Complainant's

Solicitor: Oh it might be there

Provider's Agent: It could be there. I have to look for you Sir

Complainant's

Solicitor: Do you have an email address that I can flick it up to you in two minutes. Then it definitely will be there.

Provider's Agent: That's perfect so it's [Provider's Agent's email address]

Complainant's

Solicitor: Who is your superior?

Provider's Agent: My superior is [First Name Second Name]

Complainant's

Solicitor: Is called [Second Name] does he or she have a Christian name?

Provider's Agent: [First Name Second Name]

Complainant's

Solicitor: [First Name Second Name] ok we'll get this up on email to you in a few minutes

Provider's Agent: That's perfect thank you

Complainant's

Solicitor: Alright, thank you

Having listened to the recording and considered the contents of the call between the Complainant's Solicitor and the Provider on **28 January 2020** I find the tone of call was far from conciliatory or helpful. I believe this was mainly due to the casual and unhelpful approach of the Provider's agent. Cancelling a policy of insurance is a very serious matter and should be taken seriously by the Provider. The Complainant's solicitor was trying to establish why he had not received a response to his correspondence of **14 January 2020** in circumstances where the Provider, without engaging with the Complainant's solicitor, had proceeded to void the Complainant's policy.

/Cont'd...

I believe the casual and adversarial approach in her responses to the Complainant's solicitor was most unhelpful. The Provider may need to provide training for its staff in how to deal with customers in such situations.

I note the Provider in its letter to the Complainant of 11 December 2019 states:

*"In order to obtain a quote online you would have had to been able to comply with the assumptions."*

I do not see the relevance of this statement as the Complainant bought the policy over the phone through a third party broker.

Having considered all of the evidence and submissions, I accept that conviction for driving without insurance was a conviction within the meaning of the convictions as set out in the assumptions in the Statement of Fact (which specifically excluded convictions for speeding and parking offences). I also accept that a conviction for driving without insurance is a material fact in the context of a household policy and I accept that it should have been disclosed.

However, I do not accept that it is correct to characterise the response given by the Complainant to the statement/assumption on the call on **14 October 2019** in relation to convictions to be an event of non-disclosure. The Complainant answered "no" to the statement. Given that he had a conviction, this was the correct response.

I do however accept that the Complainant later received the assumptions in the Statement of Facts and ought to have notified the Provider at that stage and therefore bears some responsibility for the unfortunate circumstances he found himself in.

While it is far from ideal that the Provider is relying on a set of assumptions issued after the purchase of the policy, I do, nonetheless accept that the Provider was entitled to declare the policy void ab initio because of the fact that the Complainant had a previous conviction.

That said, I believe the Provider's conduct was unreasonable in the aspects outlined in this Preliminary Decision. For this reason, I partially uphold this complaint and direct the Provider to pay a sum of €16,000 to the Complainant for the inconvenience caused by the Provider's unreasonable conduct.

/Cont'd...

## **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)**, the conduct of the Provider was unreasonable.

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 €16,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

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

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

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



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

22 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,

/Cont'd...

**(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.**

