



<u>Decision Ref:</u>	2022-0240
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure & voiding Failure to provide correct information
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a **Motor Insurance Policy** with the Provider on **14 February 2019**. This complaint concerns the Provider's decision to void the Complainant's policy due to his failure, when applying for the policy, to disclose two claims he had within the previous five years on a commercial insurance policy he held with a different insurer.

The Complainant's Case

The Complainant says his spouse telephoned the Provider on his behalf on **1 February 2019** to obtain a private car insurance quotation for him. The Complainant says he later telephoned the Provider on **13 February 2019** asking it to set up cover for him, based on the quotation previously received. The **Motor Insurance Policy** came into force the following day, on **14 February 2019**, after the Complainant had confirmed to the Provider the cancellation of his commercial insurance policy with a different insurer.

The Complainant says his car was set on fire outside his residence on **26 March 2019** and he telephoned the Provider the following day, on **27 March 2019**, to notify it of the loss.

Following its claim assessment, the Provider advised the Complainant by telephone and letter on **11 April 2019** that it was voiding his **Motor Insurance Policy** on the basis that when he applied for cover he had declared that he had no claims in the previous five years and that it had now come to the Provider's attention that this was not the case.

The Complainant says that during his spouse's telephone call to the Provider on **1 February 2019**, the Provider led him and his spouse to believe that it could not take his commercial

insurance policy into account, when setting up his private **Motor Insurance Policy**, but that it would take into account his named driver experience on his spouse's motor policy with the Provider. The Complainant says that as a result, when he and his spouse advised the Provider that he had no claims in the previous five years, they did so on the basis that there had been no claims made in his name on his spouse's motor policy.

The Complainant emailed a complaint to the Provider on **26 April 2019**, as follows:

" ... When taking out this policy with [the Provider] my Wife rang and went through all the details as she has always dealt with the administrative side of our affairs.

The girl that was dealing with this stated that she could not take my commercial insurance record into account but could take my (sic) into account the named drivers experience that I had in my Wife's policy. There was a lot of questions asked in relation to detail, and when the girl asked about accidents in the last five years my Wife stated no because clearly the girl had told her that she could not take my commercial insurance into account. As I never had an accident on my Wife's policy or made any claim she answered no.

I am really very annoyed over the treatment that I have received from [the Provider] as they have made me feel like the criminal here.

When [the Provider] brought up the details of the accident number one I did not realise the date as I had presumed that it happened longer than this, and number two I did not think it was relevant as [the Provider] has stated that my commercial insurance could not be taken into account when I was taking out this policy ... "

Following its complaint review, the Provider wrote to the Complainant on **14 May 2019** to advise that it was standing over its decision to void his **Motor Insurance Policy** as he had stated that he had been accident and claims free for the previous five years when applying for cover when he had in fact two claims during that period, and that if he had disclosed these claims at the time, the Provider would not have been in a position to offer him cover as he would have been outside its new business acceptance criteria. The Provider also enclosed a CD containing the recordings of three telephone calls that took place on **1 February, 13 February and 14 February 2019**, relating to the Complainant's application for the policy. The Complainant sets out his complaint in the FSPO **Complaint Form** as follows:

"I took out insurance with [the Provider] ... I did receive the transcripts from the phone calls and the girl did ask my wife was there any accidents in the last nine years which she replied (sic) it wouldn't be 9 years. She asked would it be five and my wife said yes, it was actually 4½ years. I think it's really unfair as there was no lies told. It was a misunderstanding and I was with [the Provider] for 10 years named on a policy".

The Complainant maintains that the Provider has not provided recordings of all the telephone calls that he and his spouse had with the Provider in relation to his policy.

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For example, in her email to this Office of **24 February 2020**, the Complainant's spouse submits, among other things, that:

"[The Provider] said there was 3 phone calls between ourselves and [Provider] staff. The (sic) was actually 4 calls made in total before the insurance and after the criminal damage on the 26th March 2019 was done, there was a few more calls.

One call that sticks in my mind after the incident was a call from a male employee from [the Provider] talking to [the Complainant] about the damage, this male told [the Complainant] not to attempt to drive that car, that he was not insured and [the Provider] would contact the garda.

[The Complainant] replied to the man, the car was burned out so how could I drive it?

[The Complainant] was very upset when he got off the phone.

That was nearly one of the last calls [the Complainant] had with [the Provider].

And I would like [the Provider] to get the recording from that call ...

When [the Complainant] told me about that call I was fuming, we were made feel like criminals.

I really hope [the Provider] can get the recording as I feel it was threatening us ...

This car was insured based on my policy that I had with [the Provider], years with [the Complainant] as a named driver.

[The Provider] would not look at [the Complainant] because he had, had commercial insurance before, until I told them he was on my policy as a named driver ...

I had to get a letter from [the Provider] to send back to [it] to say [the Complainant] was a named driver on my policy for the last 9 years with no accidents".

In his email to this Office of **17 June 2021**, the Complainant submits that:

*" ... First of all, [my spouse] was asked a question – "Did he have an accident in the last 9 years?" to which [she] replied "It wouldn't be nine years". Then [my spouse] was asked "Would it be 5 years?" to which [she] said "Yes, five years or just over". I didn't have the exact dates to hand. If this was so important for [the Provider] and if it would have such an impact on my policy and the claim itself in future, they should have asked me for exact dates when the accident happened on the commercial policy? Also, you can notice the difference in [my spouse's] reply where in the first question of 9 years, she responded with certainty that **it would not be 9 years. However, in the second question, [she] was not sure about the dates which is evident in [her] reply – five years or just over.** Why did [the Provider] not ask me further questions on this? If they would asked me for specific dates, I would have digged these out for them and provided exact dates. **It is [the Provider's] responsibility to ask me further questions and ask me to get exact details and dates on the past accidents because from my reply it is clear that I was not sure about the exact date.***

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*Most of the calls that they have provided are all related to setting up the policy and not one of them mentioned about [the Complainant] will have to start a fresh policy as a first time driver and that they would not take his commercial driving experience into consideration. **Where are these calls? ...***

The first call with [the Agent], you can hear me saying – “I will get back to you”. There is no follow up call after this. They never answered me back after this ...

I was not asked appropriate and enough follow up questions for me to disclose everything what they wanted”.

The Complainant says he submitted to the Provider a letter it had sent to his spouse on **19 February 2019** relating to her motor policy with the Provider, and on which he was listed as a named driver, that stated:

“We wish to confirm that [the Complainant] is currently a named driver on the above numbered policy. [The Complainant] has been named on this policy from 02/09/2009 to the present date.

During this period, no accidents or claims were reported to us in connection with this driver”.

The Complainant says the Provider did not contact him after that seeking Proof of his No Claims Bonus. In that regard, the Complainant contends that as his **Motor Insurance Policy** remained in force, the Provider had therefore accepted his named driver experience letter of **19 February 2019** to maintain his policy.

In this regard, in her email to this Office of **2 March 2021**, the Complainant’s spouse submits, among other things, that:

“ ... If [the Provider] wanted to see [the Complainant’s] no claims bonus from [his previous insurer] I would have got that but because [the Provider] only wanted my no claims bonus with [the Complainant] on it, they went with that.

If [the Provider] had of sent me or [the Complainant] a reminder to get his commercial no claims bonus, we would have got it, they didn’t, that proves that they went on my no claims bonus for [the Complainant] on that car ... ”

In the **Complaint Form** he completed, the Complainant advises that he would like this matter resolved as follows:

“I would like the car finance to be paid back and the fire brigade to be paid. I was fully comprehensive. I am at a loss here. I’m still paying €285.00 a month for a car that’s not there anymore, through criminal damage”.

The Provider's Case

The Provider says that the Complainant incepted a private **Motor Insurance Policy** with it on **14 February 2019**.

In its **Formal Response** to the complaint investigation by this Office dated **5 February 2021**, the Provider set out the following timeline of events in relation to the Complainant's complaint:

On **1 February 2019**, the Provider says that the Complainant's spouse telephoned to obtain a private car insurance quotation on his behalf. The Agent provided a quote based on the information the Complainant's spouse provided. Following this call, the Provider emailed the **Your Car Insurance Quotation Statement of Fact** to the Complainant.

On **13 February 2019**, the Provider says that the Complainant telephoned to take out insurance based on the quotation previously provided. The Complainant advised that his current commercial motor policy with a different insurer, was due to be cancelled. The Agent advised that the Provider would need confirmation that his commercial motor policy was cancelled before it could set up his cover. The Provider says it required such confirmation as the Complainant's No Claims Bonus was coming from this policy.

On **14 February 2019**, the Provider says it received four emails from the Complainant. One email was blank, the other three contained a forwarded email from the different insurer confirming that the Complainant's commercial motor policy was due to be cancelled at 16:30 that day. The Provider contacted the Complainant to advise that it had received confirmation of the cancellation of his commercial motor policy. The Complainant incepted his new **Motor Insurance Policy** with the Provider and it issued him with his policy documents. The Agent advised the Complainant that he needed to send in his Proof of No Claims Bonus within the next 30 days. The Provider separately wrote to the Complainant seeking, *"Original proof of your no claims bonus from your previous insurance company (which must be from within the last two years)"*.

On **18 February 2019**, the Provider says it responded to the blank email advising the Complainant that it could not see the document and asking him to resend.

On **19 February 2019**, the Provider says that the Complainant emailed confirmation that he had been a named driver on his spouse's motor policy with the Provider since **2 June 2009** and that no accidents or claims had been reported in connection with him. The Provider says that in error, this named driver experience was inputted as earned No Claims Bonus. As a result of this mistake, the Provider endorsed the Complainant's policy and increased his No Claims Bonus to 6 years and sent him updated policy documents advising that his monthly direct debit would be reduced with effect from **14 March 2019** to reflect the change. The Provider says that the chase of the Complainant's Proof of No Claims Bonus was also mistakenly closed, on receipt of his letter of named driver experience.

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On **27 March 2019**, the Provider says that the Complainant telephoned to advise that the previous evening, on **26 March 2019**, whilst in the house, his spouse noticed that the insured vehicle which was parked in front of the house, was on fire. The Complainant advised that the Fire Brigade and the Gardaí were notified of the incident. As the party liable for the fire was not identified, the Complainant said he did not know whether to claim from his **Motor Insurance Policy** or from the Motor Insurer's Bureau of Ireland. The Agent transferred the call to the Underwriters so that the Complainant could be advised of the possible effects of a claim on his policy. This call was transferred back from the Underwriters shortly after, and the Complainant then advised that the insured vehicle had been taken away by the Gardaí for forensic investigations. The Provider says that in line with its standard procedures, it appointed a Motor Assessor to inspect the damaged vehicle, as soon as it is made available by the Gardaí to do so.

On **28 March 2019**, the Provider says it registered the Complainant's claim for fire damage and investigations commenced. A check on the Insurance Link database indicated that the Complainant had two claims within the five years prior to the inception of his policy, with a previous insurer, namely, a claim registered on **4 August 2015** and a second claim registered on **29 November 2015**. The Provider also wrote to the investigating Garda station requesting a Garda Abstract Report.

On **29 March 2019**, the Provider says that the Complainant telephoned seeking a claim update. The Agent advised him that it had come to the Provider's attention that he had two prior claims with a previous insurer in **2015**. The Complainant confirmed that the two claims were registered against a commercial motor policy. The Agent advised that the Underwriters would have to verify the information he gave at the policy inception regarding any previous claims. The Complainant said he had no claims registered for the time he was a named driver on his spouse's motor policy. The Agent advised that more information would be needed from his previous insurer, such as the amounts paid on the two claims, and that the Complainant could request and furnish the Provider with this information. The Agent also advised that the Provider was waiting for the Motor Assessor Report.

On **1 April 2019**, the Provider says that the Complainant telephoned to advise that he had not received the information from his previous insurer regarding the two claims. The Motor Assessor inspected the Complainant's vehicle.

On **2 April 2019**, the Provider says it received the Motor Assessor Report, which included photographs of the damaged vehicle, and which noted, as follows:

"Heavy fire damage sustained onto the complete cabin area, further fire damage sustained onto the external body panels, we noted further damage sustained onto the front bumper, grill, bonnet, possibly by the emergency services.

Damage consistence with fire damage.

Vehicle is un-roadworthy due to fire damage".

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On **3 April 2019**, the Provider says it wrote to the Complainant's previous insurer requesting, under the Code of Practice on Data Protection for the Insurance Sector, information regarding the claims registered against the commercial policy. The Provider received an updated Motor Assessor Report that placed an estimated pre-accident value on the Complainant's vehicle of **€12,300.00 (twelve thousand and three hundred Euro)**. The Motor Assessor confirmed that the damaged vehicle had been moved to free storage. The Provider wrote to the Complainant to advise that his vehicle had been classified as a Category B write-off and also emailed him a copy of this correspondence and advised that the information from his previous insurer was still awaited. The Complainant telephoned the Provider and was told that the vehicle had been moved to an approved garage in order to avoid storage charges and that the information from his previous insurer was required.

On **4 April 2018**, the Provider says that the Complainant telephoned to advise that he had called his previous insurer and that they would revert regarding the previous claims. The Complainant's spouse telephoned and was advised that the Provider did not have authorisation to discuss his policy or claim details with her. An email was received from the Complainant's previous insurer confirming that the Complainant had two motor damage to vehicle claims, namely, a claim with a date of loss of **4 August 2015** that was finalised in the amount of **€4,036.64** and a claim with a date of loss of **29 November 2015** that was finalised in the amount of **€48,970.60**. The details of these previous claims were referred to the Underwriters.

On **8 April 2019**, the Provider says that the Complainant's spouse telephoned and was again advised that it did not have authorisation to discuss his policy or claim details with her. An email was then received from the Complainant giving consent to discuss the policy and claim details with his spouse. The Complainant's spouse telephoned again and the Agent advised her that the two claims the Complainant had with his previous insurer were not disclosed at the time he incepted his **Motor Insurance Policy**. She was advised that the matter was under review and that the Provider would revert once it had a decision.

On **9 April 2019**, the Provider says it received an email from the Complainant seeking a claim update and it replied that the matter remained under review and it would revert once a decision was made.

On **10 April 2019**, the Provider says that the Complainant's spouse telephoned seeking a claim update and she confirmed that the policy the Complainant held with his previous insurer was a commercial motor policy. The Complainant's spouse stated that *"you are making us feel like criminals here"* and she was of the opinion that the Complainant's commercial motor claims should not have an impact or be considered in regards to his private **Motor Insurance Policy**. The Complainant also telephoned and said he felt like *"some sort of criminal"*.

On **11 April 2019**, the Provider says it received confirmation from the Underwriters that the Complainant's **Motor Insurance Policy** would be cancelled from its inception. The Provider telephoned the Complainant and advised him that his policy will be voided and that unfortunately it would not be dealing with the claim, due to the fact that the previous claims had not been disclosed at the inception of his policy.

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The Complainant advised that he would contact his solicitor. The Provider also wrote to the Complainant confirming that it would be voiding the policy.

On **12 April 2019**, the Provider says that the Complainant emailed requesting a copy of the telephone call recording from the inception of his policy and it replied that his request had been forwarded to the Underwriters.

On **15 April 2019**, the Provider says that the Complainant telephoned and was provided with the location of the insured vehicle. The Motor Assessor contacted the Provider to advise that the Complainant had gone to retrieve the vehicle but as it was classified a Category B write-off, he was not permitted to retrieve it.

On **19 April 2019**, the Provider sent the Complainant a cheque in the amount of **€114.95 (one hundred and fourteen Euro and ninety-five Cent)**, representing a refund of all policy premium paid. This cheque was cashed on **26 April 2019**.

On **29 April 2019**, the Provider says it received correspondence from An Garda Síochána dated **25 April 2019** advising that the requested Abstract Report could not be issued as the matter was still under investigation. The Provider also received an email of complaint from the Complainant and it sent him a complaint acknowledgment letter the following day.

On **14 May 2019**, the Provider issued its **Final Response** to the Complainant, as follows:

*“On the quotation phone call with your wife [on **1 February 2019**], she explained that you would be giving up use of the commercial vehicle to take out insurance on a private car. The agent asked if you, the proposer had been claim free in the last 9 years. [Your wife] advised that you would not have been 9 years claim free but that you had been over 5 years claim free. The agent advised that a quotation could be provided based on 5 years but when more information was available, this could be amended if it turned out that you had been claims free for longer.*

[Provider] policies are set up on the basis of the “Statement of Fact” that is completed with the proposer over the phone. The following statement was read out to you on the phone call on 14th February 2019.

“You have a continuing obligation to disclose material facts to [the Provider]. If you are in any doubt as to whether or not a fact is material, you must disclose it to us. If you do not disclose a material fact or if you misrepresent a material fact then your policy of insurance may be voided and claims will not be paid”.

The agent then asked if you understood and agreed to these terms, which you responded that you did.

We issued the quotation documentation to you on 1st February 2019 and the new business documentation on 14th February 2019. On the quotation Statement of Fact

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and the business Statement of Fact..., Question 5 relates to previous accidents and claims. The specific question is outlined below:

“To the best of your knowledge and belief, have you or any person who will drive had any accidents, losses or claims within the past 5 years in connection with any motor vehicle, other than as shown below?”

The reply on these documents was “No”.

Please note that the policyholder is responsible for notifying [the Provider] immediately if any information contained in these documents is inaccurate or incomplete. [The Provider] was not made aware of any alterations to be made at a later stage by you.

Had [the Provider] been aware that you had previous claims on any motor policy, including any commercial policies, [the Provider] would not have agreed to offer cover.

I apologise for any inconvenience caused but our decision remains and we are not in a position to offer you cover as you have had 2 accidents prior to cover taking effect with us and you are therefore outside of our new business acceptance criteria”.

The Provider enclosed a CD containing the recordings of three telephone calls that took place on **1 February, 13 February** and **14 February 2019**, relating to the Complainant’s application for the policy.

The Provider notes that the Complainant was a named driver since **June 2009** on his spouse’s motor policy with it. As he was not the policyholder but was an additional driver, the Provider confirms that the Complainant was never insured with it on his own policy, prior to the inception of his **Motor Insurance Policy** with it on **14 February 2019**.

The Provider says the Complainant’s **Motor Insurance Policy** was set up based on the questions asked and not just on his named driver experience on his spouse’s policy. The Provider says that the Complainant had advised that he was accident and claims free for five years and held a No Claims Bonus in his own name. The Provider took this information into consideration when accepting the Complainant for cover.

The Provider says that the Complainant’s own No Claims Bonus on his commercial motor policy with a different insurer, would take precedence over any named driver experience and that the questions asked were in relation to his claims history, and not just in relation to his experience as a named driver on his spouse’s policy. The Provider confirms that the Complainant’s commercial motor policy was taken into account and that it has identified no telephone call in which it advised the Complainant or his spouse that it would not be.

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The Provider says that during the telephone call on **1 February 2019**, the Complainant's spouse advised that the Complainant was giving up his van and getting a car instead. The Provider notes that she was asked how many years No Claims Bonus the Complainant had and that this question was repeated in the background to the Complainant, who was not sure. The Complainant's spouse advised that he had been driving roughly 30 years and when then asked if he would be accident and claims free for the last 9 years, she advised "*no, but he'd be over 5 anyway*".

The Provider says it proceeded with the quote on the basis that the Complainant was accident and claims free for the past five years, as this was within its new business acceptance criteria, and that it was agreed during the call that it would quote based on him having a 5 year No Claims Bonus (coming from his commercial motor policy). Later during this call, the Provider notes that the Agent reconfirmed "*and you said he hasn't had any accidents or claims in the last 5 years*", and the spouse agreed. The Agent also advised that the quote would be emailed to the Complainant and it was understood that no cover was in place, and that the Complainant would revert if he wished to take out the cover.

The Provider says that when setting up the **Motor Insurance Policy** during the telephone call with the Complainant on **14 February 2019**, the Agent advised that the policy was being set up with a 5 year No Claims Bonus and the Complainant answered "yes". The Agent then asked the Complainant had he been driving accident and claim free for the last five years and he answered "yes". The Provider says the Complainant was then informed that it could put cover in place based on the information provided.

The Provider says the Complainant was then advised that the Agent would ask some questions, and that these must be answered truthfully and that he must not withhold any material fact. It was explained to him that a material fact is any information that might influence the Provider in its assessment of acceptance of his proposal. The Provider says that the Complainant was also advised that "*if you do not disclose a material fact or if you misrepresent a material fact then your policy of insurance may be void and claims may not be paid*" and was asked if he understood this, and he confirmed he did. The Agent reiterated that the Complainant had been driving accident and claims free and in his own name for the past five years, and the Complainant again confirmed that this was correct.

In response to the Complainant's comment that "*there was no lies told. It was a misunderstanding*", the Provider says that it asked during the telephone calls on **1 February 2019** and on **14 February 2019** whether the Complainant had any accidents or claims in the past five years. This was reconfirmed again later in each of these calls. The Provider notes that on both calls, and in each instance asked, both the Complainant and his spouse answered NO to this question, which was not correct.

The Provider says it only first came to light that the Complainant had two claims within the five years prior to the inception of his **Motor Insurance Policy** when it carried out a check on the Insurance Link database on **28 March 2019**, the day after the Complainant had first notified it of his loss. The Provider says it did not have access to claims information with other insurers or the Insurance Link database at the point of sale of the policy, as at the time it only had access to that database, when a claim was notified to it.

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The Provider notes that both the **Your Car Insurance Quotation Statement of Fact** dated **1 February 2019** and the **Your Car Insurance Statement of Fact** dated **14 February 2019** document state, *"No Claims Discount: 5 Years (Subject to Documentary Proof)"*. The Provider acknowledges that it did not receive the Complainant's Proof of No Claims Bonus prior to setting up his policy. The Provider says the Complainant had confirmed to it that he held a 5 year No Claims Bonus and that the Agent had advised him by telephone on **14 February 2019** that he had 30 days to send the Provider proof of this. The Provider also wrote to the Complainant that same day requesting his Proof of No Claims Bonus. The Provider says it received by email on **19 February 2019**, a letter of named driver experience which confirmed that the Complainant was a named driver on his spouse's motor policy since **2 June 2009** and that no accidents had been reported in relation to him.

The Provider says it had quoted the Complainant for cover based on him having his own 5 year No Claims Bonus but that due to a mistake on its part, it accepted the letter of his named driver experience from his spouse's policy to maintain the policy, rather than the Proof of No Claims Bonus it had requested from him. The Provider says the Complainant's named driver experience was erroneously inputted as a No Claims Bonus, when instead it should have continued to seek from him the Proof of No Claims Bonus from his previous insurer. The Provider confirms that no reminder letter issued to the Complainant requesting his Proof of No Claims Bonus after it had received his letter of named driver experience on **19 February 2019**.

The Provider notes, however, that in its letter to the Complainant on **14 February 2019** it had specifically asked him for his Proof of No Claims Bonus from his previous insurer and by telephone that same day, the Agent had clearly informed the Complainant that, *"We just need you to send in your proof of No Claims Bonus but you have 30 days from today to send that in, ok?"*, to which the Complainant response *"Ok"*. The Provider says that despite its error, the fact remains that the Complainant's previous claims were not disclosed when asked about his claims history in the past five years and it submits that had it sought the correct documentation and received the Proof of No Claims Bonus with the claims noted, it would have made the decision to cancel the Complainant's policy, at that point.

The Provider reiterates that the Complainant's **Motor Insurance Policy** was clearly set up based on his having a No Claims Bonus, and not based on him having named driver experience from his spouse's policy. The Provider says it quoted the Complainant based on his own No Claims Bonus and that all questions asked of him were done so to capture his driving history and experience, and that the questions about any previous accidents or claims he may have had, were not specific to one policy.

In response to the Complainant's spouse's comments that after one particular telephone call with the Provider, the Complainant *"was very upset when he got off the phone"* as the Agent had told him *"not to attempt to drive that car, that he was not insured and [the Provider] would contact the garda"*, words which she says were threatening in its manner, the Provider says it did not have a telephone conversation with either the Complainant or his spouse where such alleged statements were made.

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The Provider notes that during a telephone call on **10 April 2019**, the Complainant's spouse said "you are making us feel like criminals here", and on a separate call that same day, the Complainant said he feels like "some sort of criminal". The Provider says these statements were made in the context of conversations where its Agent was advising of the reason why details of the previous claims are required and that no threats of reporting the Complainant to the Gardaí, nor advices regarding the driving of the vehicle, were made during either call. The Provider notes, however, that when it wrote to the Complainant on **11 April 2019** to advise that his policy was voided from inception, this letter also stated:

"We must advise you that it is an offence to drive a vehicle without valid insurance cover. We may inform An Garda Síochána of our actions".

The Provider reiterates that it has identified no telephone call in which it advised the Complainant or his spouse that it could not take into account his commercial motor policy or that it would not accept his No Claims Bonus from that policy. The Provider says it has searched its system using the contact numbers provided by the Complainant and it is satisfied that it has supplied recordings of all the telephone calls relating to his policy, in response to this complaint. The Provider adds that if the Complainant can provide further information, such as an alternative telephone number that they may have called it from, then it can investigate and search its system further.

The Complaint for Adjudication

The complaint is that in 2019, the Provider wrongfully or unfairly refused to admit and pay the Complainant's claim and voided his **Motor Insurance Policy**, and that it furnished him with poor customer service when dealing with his policy application and claim.

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 on **30 June 2022**, 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Complainant incepted a **Motor Insurance Policy** with the Provider on **14 February 2019**.

The Complainant notified the Provider by telephone on **27 March 2019** that his car had been set on fire outside his residence, the previous evening.

Following its claim assessment, the Provider informed the Complainant by telephone and in writing on **11 April 2019** that it was voiding his **Motor Insurance Policy** on the basis that when applying for his cover, he had declared that he had no claims during the previous five years and that it had now come to the Provider's attention that he had two claims within that period, both under a commercial motor policy he had held with his previous insurer.

I note that the Complainant emailed a complaint to the Provider on **26 April 2019**. Following its complaint review, the Provider wrote to the Complainant on **14 May 2019** to advise that it was standing over its decision to void his **Motor Insurance Policy** as he had stated that he had been accident and claims free for the previous five years, when applying for his policy when he had in fact two claims in that period, and that if he had disclosed these claims at the time, the Provider would not have been in a position to offer him cover as he would have been outside its new business acceptance criteria.

I note from the documentation before me that the Complainant had two motor damage to vehicle claims within the five years prior to incepting his policy with the Provider, namely, a claim with a date of loss of **4 August 2015** that was finalised in the amount of **€4,036.64** and a claim with a date of loss of **29 November 2015** that was finalised in the amount of **€48,970.60**, both under a commercial motor policy he had held with a different insurer.

The Complainant's spouse telephoned the Provider on his behalf on **1 February 2019** to obtain a private car insurance quotation for him. Having listened to the recording of this telephone call, I note the following exchanges:

Agent: *Would he be accident claims free in the last 9 years, would you say?*

Spouse: *Not 9 years, no, he would be, he would be about, over 5 anyway*

Agent: *Yeah, because we ask, one of the questions we ask, have you had accidents or claims the last 5 years – so I could do a quote with you today if you like for him?*

....

/Cont'd...

Agent: - You said he hasn't had any accidents or claims in the last 5 years?

Spouse: No ...

[underlining added for emphasis]

The Complainant has advised that during this telephone call, the Provider led him and his spouse to believe that it could not take his commercial motor policy record into account when setting up his private **Motor Insurance Policy**, but that instead it would take into account his named driver experience on his spouse's motor policy with the Provider; however, having listened to the recording of the call, I note that the Complainant's recollection of this call is not matched by the recording.

The **Your Car Insurance Quotation Statement of Fact** dated **1 February 2019** that the Provider then emailed to the Complainant stated that:

"The details on this statement of fact are based on the information you supplied to us on 01/02/2019. Please check these details carefully as they will form the basis of your insurance contract with us. If any answer has been left blank or if any details need alteration, please contact us on [telephone number redacted] (calls may be recorded) to advise of the change. Material changes may affect your quotation ...

5. Accidents/Claims History

To the best of your knowledge and belief, have you or any person who will drive had any accidents, losses or claims within the past 5 years in connection with any motor vehicle, other than as shown below?

No [no claim details are shown below] ...

Material Facts Declaration – Continuing Obligation

You agree that the information supplied by you, or by a relevant party on your behalf is, to the best of your knowledge, true and complete and that no material fact has been misrepresenting or withheld by you.

You acknowledge that failure to disclose all material information may result in the voidance or cancellation of your policy, a claim not being paid or partly paid, you encountering difficulty obtaining insurance elsewhere or, in the case of property insurance, you breaching the terms or conditions of any loan on the property.

Material information is that which [the Provider] would regard as likely to influence its assessment or acceptance of this insurance. You have a continuing obligation to immediately disclose to [the Provider] any information that may affect this insurance or increase the risk of loss or damage or injury to others. You agree that if you are in any doubt you will disclose it to us.

/Cont'd...

Please note that this document, in conjunction with any other information supplied by you or on your behalf will form the basis of your contract with [the Provider].

If any answer has been provided by a person other than you, you agree that such person shall be your agent and not an agent of [the Provider].

Please read this document carefully and check that all the details in it are accurate. If any information is inaccurate or incomplete you must notify [the Provider] or your insurance intermediary immediately”.

[underlining added for emphasis]

Having listened to the recording of the telephone call the Provider made to the Complainant on **14 February 2022**, I note the following exchanges:

Agent: *Now, I am going to ask you some questions and you must answer these questions truthfully and not withhold any material fact. A material fact is any information that might influence [the Provider] in our assessment or acceptance of your proposal. You have a continuing obligation to disclose material facts to [the Provider]. If you are in any doubt as to whether or not a fact is material, you must disclose them to us. If you do not disclose a material fact or if you misrepresent a material fact then your policy of insurance may be voided and claims may not be paid. Do you understand that?*

Complainant: *Yes I do*

...

Agent: *- You've been driving accident and claim free and holding insurance in your own name this last 5 years?*

Complainant: *Yeah*

Agent: *Yes*

...

Agent: *- We just need you to send in your proof of No Claims Bonus but you have 30 days from today to send that in, ok?*

Complainant: *Ok*

Agent: *But as of 4:30 today you are immediately insured with us”.*

[underlining added for emphasis]

/Cont'd...

The Provider sent the Complainant his policy documentation on **14 February 2019** and the attached cover letter advised him to:

“Please read your statement of fact document carefully as this forms the basis of your contract with [the Provider]. If this document contains any inaccurate or incomplete information you must notify us immediately”.

The enclosed **Your Car Insurance Statement of Fact** dated **14 February 2019** stated that:

“The following document sets out confirmation of your material facts declaration and your data protection consent. You should read this document carefully and ensure the information recorded is accurate and understood by you. IF this document contains any inaccurate or incomplete information you must notify us immediately on [telephone number redacted] (calls may be recorded. You should note that you have a continuing duty to disclose all information that might influence our assessment of your risk, and failure to do so may entitle us to void this policy

5. Accidents/Claims History

To the best of your knowledge and belief, have you or any person who will drive had any accidents, losses or claims within the past 5 years in connection with any motor vehicle, other than as shown below?

No [no claim details are shown below] ...

Material Facts Declaration – Continuing Obligation

You agree that the information supplied by you, or by a relevant party on your behalf is, to the best of your knowledge, true and complete and that no material fact has been misrepresenting or withheld by you.

You acknowledge that failure to disclose all material information may result in the voidance or cancellation of your policy, a claim not being paid or partly paid, you encountering difficulty obtaining insurance elsewhere or, in the case of property insurance, you breaching the terms and conditions of any loan on the property.

Material information is that which [the Provider] would regard as likely to influence its assessment or acceptance of this insurance. You have a continuing obligation to immediately disclose to [the Provider] any information that may affect this insurance or increase the risk of loss or damage or injury to others. You agree that if you are in any doubt you will disclose it to us.

Please note that this document, in conjunction with any other information supplied by you or on your behalf will form the basis of your contract with [the Provider].

If any answer has been provided by a person other than you, you agree that such person shall be your agent and not an agent of [the Provider].

/Cont'd...

Please read this document carefully and check that all the details in it are accurate. If any information is inaccurate or incomplete you must notify [the Provider] or your insurance intermediary immediately”.

[underlining added for emphasis]

Having considered the evidence before me, I am of the opinion that the Provider afforded the Complainant a number of clear opportunities, both verbally and in writing, to disclose whether he had any motor claims in the previous five years, and that the Complainant failed to disclose the material fact that he had two claims within that period. In that regard, I am satisfied that the Provider had also clearly advised the Complainant on a number of occasions of the possible consequences of the failure to disclose to it a material fact, including that this may result in his policy being voided.

I note that both the **Your Car Insurance Quotation Statement of Fact** dated **1 February 2019** and the **Your Car Insurance Statement of Fact** dated **14 February 2019** asked the Complainant the following claims history question:

“5. Accidents/Claims History

To the best of your knowledge and belief, have you or any person who will drive had any accidents, losses or claims within the past 5 years in connection with any motor vehicle, other than as shown below?

No [no claim details are shown below] ...”

[underlining added for emphasis]

I am satisfied that this claims history question is clear and unambiguous, in that it is asking the Complainant whether he had any accidents, losses or claims within the past five years in connection with any motor vehicle.

I am therefore of the view that it was not reasonable for the Complainant to have understood that the Provider could not or would not take into account the two claims he had against his commercial motor policy within the previous five years, when assessing his claims history for the purpose of offering him cover.

Instead, having read the **Your Car Insurance Statement of Fact**, as directed by the Provider to do, I take the view that it would have been prudent of the Complainant to have advised the Provider of the two claims he had within the past five years. As he had an obligation to answer “Yes” to the claims history question and to provide details of the two claims, I am satisfied that it was reasonable for the Provider to conclude that the Complainant’s failure to do so, constituted the nondisclosure of a material fact.

/Cont’d...

Insurance contracts are contracts of utmost good faith, wherein the failure to disclose information allows the Insurer to void the policy from the outset and refuse or cancel cover. Once nondisclosure takes place – whether innocent, deliberate or otherwise – the legal effect of that nondisclosure can operate harshly, and it entitles an Insurer to, amongst other things, cancel cover, as the Provider has done in this instance. As the Provider was not made aware of the fact that the Complainant had two claims within the past five years when it agreed to incept his policy, I am satisfied that the policy came into being on the basis of a false premise.

This Office is aware that the courts have long considered the issues surrounding non-disclosure of material facts. For example, in ***Aro Road and Land Vehicles Limited v. Insurance Corporation of Ireland Limited*** [1986] I.R. 403, where the Court determined that representations made during an insurance proposal should be construed objectively, Henchy J said:

“... a person must answer to the best of his knowledge any question put to him in a proposal form”.

I am also cognisant of the views of the High Court in ***Earls v. The Financial Services Ombudsman*** [2014/506 MCA], when it indicated that:

“The duty arising for an insured in this regard is to exercise a genuine effort to achieve accuracy using all reasonably available sources”.

In my opinion, it would not be reasonable to conclude that the Complainant took all efforts to ensure that the Provider was provided with an accurate answer to the claims history question that was put to him verbally by telephone on **1 February 2019** and again on **14 February 2019**, and in writing on **1 February 2019** and again on **14 February 2019**.

As a result, when the Provider voided the Complainant’s **Motor Insurance Policy** due to the nondisclosure of material facts, I am satisfied that it was entitled to do so and that its actions were in strict accordance with the terms and conditions of the insurance arrangement in place.

I note the Provider has confirmed that the Complainant’s **Motor Insurance Policy** was set up, based on him having a No Claims Bonus.

In this regard, I note that both the **Your Car Insurance Quotation Statement of Fact** dated **1 February 2019** and the **Your Car Insurance Statement of Fact** dated **14 February 2019** state:

“2. Car ...

No Claims Discount: 5 Years (Subject to Documentary Proof)”.

[underlining added for emphasis]

/Cont’d...

Having listened to the recording of the telephone call the Provider made to the Complainant on **14 February 2022**, I note the following exchanges:

Agent: - *You've been driving accident and claim free and holding insurance in your own name this last 5 years?*

Complainant: *Yeah*

Agent: *Yes*

...

Agent: - *We just need you to send in your proof of No Claims Bonus but you have 30 days from today to send that in, ok?*

Complainant: *Ok*".

[underlining added for emphasis]

The Provider also wrote to the Complainant on **14 February 2019**, as follows:

"... We are pleased to confirm cover with effect from 14/02/2019 at 00.01hrs ... you will need to send us the following:

- *Original proof of your no claims bonus from your previous insurance company (which must be from within the last two years). Please note that renewal notice from your previous insurer will not suffice as a proof of no claims bonus*".

[underlining added for emphasis]

Having listened to the recording of the telephone call the Complainant's spouse made to the Provider on **19 February 2022** during which she gave the Agent the policy number of her own motor policy with the Provider, I note the following exchange:

Spouse: *... I'm looking for a copy of my No Claims Bonus.*

Agent: *Your No Claims Bonus, yeah.*

Spouse: *Its - even if you can email to it me. Its, em, my husband is on it as well.*

Agent: *Yeah*

Spouse: *And, em, he needs it, cause he's on it as well, for his No Claims Bonus.*

Agent: *Does he, does he just want a copy of his named driving experience?*

/Cont'd...

Spouse: Yeah, and his no claims bonus. Or something like that. Whatever you can give me.

Agent: Yeah. He, he – you'd have a No Claims Bonus. He, he has named driving experience.

Spouse: Right – yeah –

Agent: So do you want, do you need your no claims bonus or do you just want a copy of his named driving experience? I presume it's just the named driving experience that you're looking for.

Spouse: I think it's the main – yeah, cause he has to send over his last five years and stuff -

Agent: Yeah

Spouse: And he has commercial vehicle, and he was on my car as well

Agent: Yeah, so he has been on this policy since the 2nd of June 2009, so I'll send that on to you there, just to confirm that he has been on the policy since that date until the current date and during that time there were no accidents or claims

Spouse: Ah brilliant

[underlining added for emphasis]

I note that the Agent informed the Complainant's spouse during this call that while she herself held a No Claims Bonus on her motor policy, the Complainant only had named driving experience.

The Provider then wrote to the Complainant's spouse on **19 February 2019**, as follows:

"We wish to confirm that [the Complainant] is currently a named driver on the above numbered policy. [The Complainant] has been named on this policy from 02/09/2009 to the present date.

During this period, no accidents or claims were reported to us in connection with this driver".

The Complainant furnished the Provider with this named driver experience letter, which makes no reference to a No Claims Bonus.

I accept the Provider's position that where a new customer holds motor insurance in his or her own name elsewhere, regardless of whether such cover is in respect of a private or a commercial vehicle, the claims history on the policy held in his or her own name will always take precedence over any named driver experience on any other policy. I am not convinced however, that the Complainant understood this.

The Complainant incepted his **Motor Insurance Policy** with the Provider on **14 February 2019** and was required to furnish it with his Proof of No Claims Bonus within thirty days from the inception date, that is, by **16 March 2019**.

I note the Provider acknowledges that due to a mistake on its part, it accepted the letter of named driver experience from the Complainant in order to maintain the policy when instead, it ought to have chased the Complainant for his Proof of No Claims Bonus. The Provider has confirmed that as a result of its error, no reminder letters issued to the Complainant requesting his outstanding Proof of No Claims Bonus, after it received his letter of named driver experience.

If the Provider had not made this error and instead had chased the Complainant for his Proof of No Claims Bonus in the short term, as it ought to have done, and if the Complainant had responded by furnishing the Provider with this document with the two claims noted, within the permitted thirty day period before **16 March 2019**, discussions would have inevitably ensued between the parties and it is reasonable to presume that the Provider would then have withdrawn cover as the Complainant's claims history would have placed him outside of its new business acceptance criteria.

I am of the view that this would then have afforded the Complainant the opportunity to pursue motor insurance elsewhere, such that by the time of his loss on **26 March 2019**, he may then have obtained valid cover elsewhere, from a different insurer, to cover his vehicle which was worth some **€12,000**. Alternatively, at the very least, he would have been aware at that time, that he had no such cover in place.

As a result, I am of the opinion that the Provider's error in accepting the Complainant's letter of named driver experience that resulted in it failing to chase him for his Proof of No Claims Bonus, constitutes poor customer service and was unreasonable and unjust to the Complainant within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

That said, in view of his clear failure to disclose to the Provider that he had two claims against his commercial motor policy when it asked him verbally and in writing of his claims history within the past five years, I am cognizant that a considerable level of responsibility for having his **Motor Insurance Policy** cancelled lies with the Complainant himself. However, in recognition of the poor customer service I have identified above, I consider it appropriate to direct the Provider to pay the Complainant the compensation specified below.

/Cont'd...

I am conscious that there was an element of misunderstanding as between the Complainant and his wife to the effect that the new policy had been arranged, taking account of his driving experience and history on his wife's vehicle. I am conscious however that there had been no claims over a period of essentially a decade, on the Complainant's wife's policy but that nevertheless, the Complainant's wife, during the first telephone call, understood that the Complainant could not say that he had had no claims in a 9-year period.

In those circumstances, in my opinion, there was some element of understanding by the Complainant and his wife as to the impact of the claims made on the other commercial policy, but in my opinion, the Provider's acceptance of the letter of named driving experience (in error) to meet the requirement which it had asked for, of proof of no claims bonus, compounded the misunderstanding which had arisen. In those circumstances, and in order to achieve a position of fairness as between the parties, I consider it appropriate to direct the Provider to amend its records to reflect that the Complainant voluntarily cancelled his motor insurance policy in February 2019.

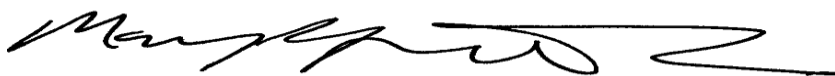
Finally, I have considered the content of the recordings of telephone calls that have been furnished in evidence and I am satisfied that the different Agents who dealt with the Complainant and his spouse throughout were at all times professional and courteous and each endeavoured to assist the Complainant and his spouse by way of providing them with current and correct information.

Having regard to all of the above, it is my Decision therefore, on the evidence before me that it is appropriate to partially uphold this complaint.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4)(d) 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 **€4,000.00 (four thousand Euro)** to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

22 July 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.