



<b><u>Decision Ref:</u></b>	2018-0071
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Mis-selling Failure to provide correct information Poor wording/ambiguity of policy
<b><u>Outcome:</u></b>	Upheld

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

##### **Background**

The Complainant purchased a travel insurance policy online on 21 June 2016. She believed she had purchased an annual policy however, in June 2017 the policy renewed automatically. The Complainant sought to cancel the policy on 21 July 2017 but the Provider refused to cancel the policy as it was outside the 14 day cooling off period for cancellation.

##### **The Complainant's Case**

The Complainant states that the online quote did not include a section which indicated that there was automatic renewal of the policy. The Complainant believes that as a key piece of information this should have been made clear on the online quote. It was only when she went to the online payment section that there was a mention of an automatic renewal and the consumer had to call the Provider to opt out of automatic renewal. The Complainant states that this is fundamentally unfair and not transparent. The Complainant states that there was no online option to tick a box to "opt out" and in the interest of consumer fairness and transparency, any option for automatic renewal should be by way of an express option to "opt in" rather than an "opt out" by way of phone call.

The Complainant makes the case that a travel insurance policy that automatically renews is a fundamentally different policy/product to an annual policy. The Complainant states that the consumer expectation for travel insurance is for 1 year.

The Complainant states that the fact that an email was sent on the 23<sup>rd</sup> May 2017 in relation to renewal is irrelevant. She states that this email was incorrectly headed “due for renewal” when it should have been headed “automatic renewal”, as this heading would have alerted the Complainant to the automatic renewal feature and to the fact that she needed to opt out.

The Complainant states that it is only when you open the email that you are alerted to the fact that there will be an automatic renewal unless you opt out by making a call at your own expense. The Complainant contends that it is unfair to make the consumer take an action to opt out.

The Complainant states that the product and the online sales platform runs contrary to all of the key elements of the Consumer Protection Code, it does not protect the best interests of the consumer, it does not demonstrate a positive consumer focused culture and it is not fair and transparent.

The Complainant is seeking that the process of automatic renewals be reviewed and assessed. She would also like to be reimbursed the cost of the policy for 2017 – 2018.

### **The Provider’s Case**

The Provider states that it is satisfied that the automatic renewal of the policy was made clear to the Complainant at inception of the policy, within the policy terms and conditions and in advance of renewal.

The Provider states that during the online purchase at the payment section, a notice would have displayed to highlight that the policy would automatically renew at the next renewal date.

The Provider states that the Complainant, as part of the online purchase, confirmed that she read and accepted the Terms and Conditions of the policy, the terms and conditions say the following;

*“By providing Your credit/laser/debit card details to (the Provider) and selecting the Direct Debit payment option, You confirm that [REDACTED] has Your full authority to debit the appropriate amount (the amount may vary annually) directly from Your credit/laser/debit card electronically each year at the renewal of Your Policy. We aim to automatically renew all new business (unless notified otherwise by You).”*

The Provider states that after purchasing her policy, notification was issued on 21 June 2016 to confirm that the policy had been incepted and that the policy was due to automatically renew.

The Provider states that on 23 May 2017 notification issued to the Complainant, in advance of her 21 June 2017 renewal date, and this outlined the following;

*“you selected to automatically renew, so your cover stays in force throughout the year and you don’t need to worry about buying cover before you travel. Your payment will continue as you’ve instructed and we will verify the validity of your card.”*

The Provider states that on 21 June 2017 notification issued to the Complainant that her policy had automatically renewed. The Complainant had a 14 day cooling off period to cancel this policy. The Provider states that it is the duty of the Complainant to review the details of the contract and to make contact with the Provider within the time frame if she wishes to amend or cancel the policy.

The Provider states that the automatic renewal process is a business practice that is exercised in the travel industry nationwide.

In its submission to this Office on 12 December 2017, the Provider stated *“as a gesture of goodwill and in an effort to resolve this issue to [the Complainant’s] satisfaction, we will agree to cancel her [travel insurance] policy with effect from 21st June 2017 and issue a full refund of €79.00 in respect of the annual premium paid subject to no claims made”*.

### **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 19 July 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, the final determination of this office is set out below.

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The issue to be decided is whether it was reasonable for the Provider to automatically renew the Complainant's travel insurance and thereafter refuse to cancel the policy and refund the premium paid.

Section 4.1 of the Consumer Protection Code provides that:

*"A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information."*

I accept the Complainant's submission that it would be both more transparent and fair if there was an *"opt in for automatic renewal"* box on the online purchase form. At the very least, I would expect that the consumer would have a choice of two boxes to choose to auto renew or not.

I note the online process sets out on the payment page that the policy will renew automatically and the Complainant was given the option to contact the Provider if she did not want automatic renewal.

I find the positioning of this notice strange. It seems to appear at the very end of the process after the credit card number, card holder name, expiry date and CCV number. I fail to understand why this information is not presented before the consumer is asked for their credit card details.

I find it even more strange and entirely unacceptable that in that a system that purports to be an online sales process that the only way to opt out of any aspect, including auto renewal, is by telephoning the Provider.

I cannot understand why the Provider would not provide this important part of the transaction online the same as all other elements of the process.

Online processes are often carried out outside of office hours – why then should a consumer be required to make a separate telephone call to prevent the Provider from automatically renewing a policy?

I note that the terms and conditions of the policy state under the heading *"important notices"* at page 10 that the policy will renew automatically. However, I see no reason why this important information is not more clearly displayed as part of the sales process.

The Complainant accepts that she received the email of 23 May 2017 advising her that the policy was *"due for renewal"*. I note that the body of the email clearly sets out in the first paragraph that the policy would automatically renew. However, I agree with the Complainant that the title of this e-mail is not as clear as it should be. Where the title in the subject line of the e-mail states *"due for renewal"* and the Complainant did not propose to renew, it would not be unreasonable to decide not to deal with the e-mail.

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That said, I accept it would have been more prudent and helpful if the Complainant had opened and responded to the e-mail. This is so, particularly given that the Complainant had the option at this stage of e-mailing or phoning the Provider if she did not want the policy to automatically renew.

As this policy was incepted online it was acceptable for the Provider to communicate with the Complainant via email.

I note that the Complainant was advised that the policy had automatically renewed on the 21 June 2017 and she could have cancelled the policy with a full refund within the 14 days cooling off period.

The Complainant contacted the Provider a month after the renewal on 21 July 2017 and sought to cancel the policy and sought a refund. I find the Provider's refusal to do so under the circumstances to be surprising and most inflexible.

The Provider, in its response to this office dated 12 December 2017, offered to cancel the policy and refund the premium.

The Complainant does not appear to have accepted this.

I believe this offer would have been reasonable had it been put forward when the Complainant first asked the Provider to cancel the policy. However, I feel having put the Complainant to the time and effort of making a complaint to this Office, it is not sufficient.

Therefore, for the reasons outlined above, I uphold this complaint and direct the Provider to pay a sum of €250 in compensation to the Complainant.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (b) and (g)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €250, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

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

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

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

14 August 2018

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*.**