



<u>Decision Ref:</u>	2018-0111
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Refusal to insure - failure to renew policy
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant holds a household insurance policy with the Company that was incepted on 1 June 2001 and renewed annually since. His complaint is that his insurance company decided to discontinue providing flood cover as part of his home insurance policy. He also raises issue with regard to the premium charged.

The Complainant's Case

The Complainant holds a household insurance policy with the Company, which was due for renewal on 1 June 2017. The Company telephoned the Complainant on 26 May 2017 to notify him that it would no longer be in a position to offer him flood cover from the policy renewal date of 1 June 2017. The Complainant states that "[the Company] *has decided to discontinue providing flood cover as part of my home insurance policy. No good grounds for doing so have been provided to me. I made a claim in October 2011 and [the Company] continued to provide insurance cover until it came to renewing my policy in June 2017*". In this regard, the Complainant submits that "*an insurance company should not be allowed to discriminate against a customer just because they have made a claim or claims*". As his most recent flood damage claim was in 2011, the Complainant questions why the Company continued to provide him with flood cover at renewal in June 2012, June 2013, June 2014, June 2015 and June 2016 before now declining to offer such cover.

Having then failed to find an alternative insurer that would provide him with flood cover, the Complainant confirmed to the Company on 19 June 2017 that he was renewing his household insurance policy with it. The Company renewed this policy from 1 June 2017.

In this regard, the Complainant considers that the Company ought not to have charged him from 1 June 2017 until 19 June 2017, when he contacted it to confirm that he was renewing his policy and submits that “[the Company] *sought to charge for cover for a period when any reasonable policyholder would think that they do not have cover*” and that “*any logic would dictate that the policy would run from the date the policy was renewed...19th June*”.

In addition, the Company charged the Complainant €643.28 for his policy renewal in June 2017 without flood cover, which he notes was the same premium it had charged at renewal the previous year in June 2016, when flood cover was provided. In this regard, the Complainant submits that “[the Company] *is trying to charge the same premium for a policy without flood cover as one with flood cover*”.

As a result of the foregoing, the Complainant submits that the Company acted in breach of General Principles 2.1, 2.2, 2.3, 2.12 and 4.21 of the Consumer Protection Code 2012.

The Complainant seeks for the Company to reinstate flood cover as part of the cover provided by his household insurance policy.

There are four elements to the Complainant’s complaint, as follows:

- 1) The Company acted wrongly or unfairly in refusing to offer the Complainant flood cover on his household insurance policy at renewal in June 2017, particularly given that his most recent flood damage claim was in 2011.
- 2) The Company renewed the Complainant’s household insurance policy from 1 June 2017 when he did not contact the Company until 19 June 2017 to confirm that he was renewing the policy.
- 3) The Company charged the Complainant the same premium in June 2017 for his household insurance policy without flood cover as it had charged him the previous year, in June 2016, when flood cover was provided.
- 4) The Company acted in breach of Sections 2.1, 2.2, 2.3, 2.12 and 4.21 of the Consumer Protection Code 2012.

The Provider’s Case

The Complainant holds a household insurance policy with the Company. Company records indicate that flood cover was included annually from the policy inception on 1 June 2001 until its renewal date on 1 June 2017, at which time the Company declined to offer the Complainant flood cover.

Household insurance is an annual policy. Each year the Company reviews such policies to determine the level of cover and premium it is willing to offer for the year ahead, based on its assessment of the risk involved. In this regard, the Company wrote to the Complainant on 2 May 2017 requesting the Eircode of the insured property to assist in its review of his

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policy ahead of its renewal date. The Complainant provided this information by telephone on 25 May 2017.

The Eircode allowed the Company to pinpoint the exact location of the property and using its enhanced flood model tool enabled the Company to make a more informed assessment as to the risk of future flooding to the property. The Company considered this information in conjunction with the Complainant's previous flood claims experiences in October 2002, August 2008 and October 2011, as follows:

PREVIOUS FLOOD DAMAGE CLAIMS		
<i>Claim number</i>	<i>Date of Loss</i>	<i>Claim Amount Paid</i>
551175	24 October 2011	€16,621
373997	9 August 2008	€4,850
129346	13 October 2002	€15,608

As a result of its review, a decision was made to exclude flood cover from the policy and the Company telephoned the Complainant on 26 May 2017 to notify him that it would no longer be in a position to offer him flood cover from his policy renewal date of 1 June 2017. In this regard, the Company notes that underwriting criteria changes on an ongoing basis and the criteria applicable in, for example, 2012, may no longer be applicable in 2017. In addition, the Company previously advised the Complainant in its claim settlement letter of 5 March 2012, issued in relation to the 2011 claim, as follows:

“Under the Consumer Protection Code we are obliged to inform you that claim payments under your policy may affect future insurance contracts of this type. If you require further information in this regard, please contact your Broker or [the Company]”.

Whilst it was in a position to offer flood cover to the Complainant in previous years, due to changes in its acceptance criteria and its more informed assessment as to the risk of future flooding to the property, the Company was no longer in a position to offer the Complainant flood cover from his next policy renewal date.

When it telephoned the Complainant on 26 May 2017 to notify him that it would no longer be in a position to offer flood cover from the renewal date of 1 June 2017, the Company advised that it would allow the Complainant time to review the market before issuing the renewal terms that excluded flood cover. In this regard, had the Company issued a declination in respect of flood cover in writing the Complainant would have been obliged to notify alternative insurers that he had been declined flood cover, which could have affected his ability to obtain flood cover elsewhere.

The Company issued its renewal terms to the Complainant on 6 June 2017 and the renewal documentation clearly stated that flood cover would no longer be available on the policy. The household insurance policy is an annual policy and the Company notes that the

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Complainant had the choice to accept the renewal terms offered and renew with the Company or to arrange insurance with an alternative insurer.

The Company offered the Complainant a premium of €643.28, which was the same premium as was offered at renewal in 2016. The Company is satisfied that the premium charged was correct and in line with its pricing approach regarding flood. However, following receipt of the Complainant's complaint, the premium was reviewed and the Company agreed to allow a refund of €75 to acknowledge the reduction in policy cover and a cheque for this amount issued to the Complainant.

The renewal date of the Complainant's household insurance policy was 1 June 2017 and he contacted the Company on 19 June 2017 to proceed with the renewal. The policy was backdated to 1 June 2017 to ensure the continuation of cover with no gap in insurance and should a claim arise with a date of loss in that intervening period, that is, between 1 June 2017 and 19 June 2017, then it may fall for consideration under the policy. The Company notes that a gap in policy cover, no matter how long, may pose problems with alternative insurers in the future should the Complainant seek cover elsewhere. In addition, the Company notes that the Complainant chose to renew the policy on the terms offered on 6 June 2017, which included that the policy would renew from 1 June 2017.

Finally, the Company is satisfied that it complied with the provisions of the Consumer Protection Code 2012 in its dealings with the Complainant. The Company does not accept that the change in policy terms or criteria were not communicated in an appropriate and professional manner to the Complainant. The Company notified the Complainant by telephone on 26 May 2017 that it would no longer be in a position to offer flood cover and it allowed the Complainant time to seek alternative cover rather than issuing a declination letter which could have affected his ability to arrange cover elsewhere. The Company notes that each policy is reviewed on an individual basis and it is not in a position to disclose internal underwriting criteria to customers, which is sensitive information. The Company notes that the Complainant proceeded to renew his policy with the Company on the terms and conditions offered.

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

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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 June 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.

The Complainant holds a household insurance policy with the Company, which was due for renewal on 1 June 2017. Flood cover was included annually from the policy inception on 1 June 2001 until its renewal date on 1 June 2017, at which time the Company declined to offer the Complainant flood cover. In this regard, there are four elements to the Complainant's complaint, as follows:

- 1) The Company acted wrongly or unfairly in refusing to offer the Complainant flood cover on his household insurance policy at renewal in June 2017, particularly given that his most recent flood damage claim was in 2011.
- 2) The Company renewed the Complainant's household insurance policy from 1 June 2017 when he did not contact the Company until 19 June 2017 to confirm that he was renewing the policy.
- 3) The Company charged the Complainant the same premium in June 2017 for his household insurance policy without flood cover as it had charged him the previous year, in June 2016, when flood cover was provided.
- 4) The Company acted in breach of Sections 2.1, 2.2, 2.3, 2.12 and 4.21 of the Consumer Protection Code 2012.

For clarity, I shall consider each of these four elements of the complaint separately.

1) The Company acted wrongly or unfairly in refusing to offer the Complainant flood cover on his household insurance policy at renewal in June 2017, particularly given that his most recent flood damage claim was in 2011.

The Company states that flood cover was included under the Complainant's household insurance policy annually from its inception in 2001 until its renewal date on 1 June 2017, at which time the Company declined to offer the Complainant flood cover. The Company also states that as household insurance is an annual policy, it reviews such policies each year to

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determine the level of cover and premium it is willing to offer for the year ahead, based on its assessment of the risk involved.

In this regard, I note from the documentary evidence before me that the Company wrote to the Complainant on 2 May 2017 requesting the Eircode of the insured property to assist in its review of his policy ahead of its renewal date.

The Complainant provided this information by telephone on 25 May 2017. The Company states that the Eircode allowed it to pinpoint the exact location of the insured property and using its enhanced flood model tool enabled the Company to make a more informed assessment as to the risk of future flooding to the property. The Company advises that it considered this information in conjunction with the Complainant's previous flood claims experiences in October 2002, August 2008 and October 2011.

The Company states that although it was in a position to offer flood cover to the Complainant in previous years, that due to changes in its acceptance criteria and its more informed assessment as to the risk of future flooding to the property that it made a decision to exclude flood cover from the policy and it telephoned the Complainant on 26 May 2017 to notify him that it would no longer be in a position to offer him flood cover from his policy renewal date of 1 June 2017.

I note that in its correspondence to the Complainant dated 1 August 2017, the Company advised, as follows:

"Prior to your 2017 renewal, your policy was reviewed and based on the claims history of flood damage which you experienced in 2002, 2008 and more recently in 2011, we were unfortunately not in a position to offer full cover going forward and renewal terms were issued to you excluding flood cover. I understand you are a long standing customer and hold other policies with us but regretfully we remain unable to offer flood cover for this property.

An insurance policy, like any other contract, is based on the legal principles of offer, acceptance, and consideration. Each year, an Insurer may offer terms which can be accepted by those seeking insurance, who then elect to pay the premium requested, which represents the consideration aspect of the contract. The policy held by the Complainant with the Company was a one year policy, as opposed to an ongoing policy. The Company was not obliged to offer a contract of household insurance to the Complainant in the first instance, nor is it required to renew the policy annually.

As a result while I realise how distressing it must be for the Complainant not to have flood insurance cover for his home, I must accept that the terms of insurance it offers, if any, at each renewal, including any exclusions, is a matter for the commercial discretion of the Company with which I will not interfere.

2) The Company renewed the Complainant's household insurance policy from 1 June 2017 when he did not contact the Company until 19 June 2017 to confirm that he was renewing the policy.

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The Complainant states that having failed to find an alternative insurer that would provide him with flood cover, he telephoned the Company on 19 June 2017 to confirm that he was renewing his household insurance policy with the Company and to pay the premium. I note from the documentary evidence before me that the Company renewed the Complainant's policy from 1 June 2017.

The Complainant, however, considers that the Company ought not to have charged him from 1 June 2017 until 19 June 2017 and submits that "[the Company] sought to charge for cover for a period when any reasonable policyholder would think that they do not have cover" and that "any logic would dictate that the policy would run from the date the policy was renewed...19th June".

In this regard, I note that in its correspondence to the Complainant dated 1 August 2017, the Company advised, as follows:

"On the 19/06/17 you contacted us to advise that you wished to proceed with policy cover with us. We agreed to reinstate the policy from the effective renewal date of 01/06/17. I understand that you have advised that you had no claims in that period and that cover should commence from the 19/06/17 however the policy was backdated to ensure continuation of policy cover with no gap in insurance and should a liability claim for example transpire with a date of loss in that intervening period then it may fall for consideration under the policy. A gap in policy cover, no matter how long, may also pose problems with alternative insurers next year should you seek cover elsewhere at that point. The policy was renewed from the date of renewal, i.e. 01/06/17 and unfortunately we are not in a position to alter same."

I note the Company has suggested that it was in the Complainant's best interest to renew the policy from 1 June. In this regard, I note an internal Company e-mail of 30 June 2017 states "if the insured had insisted on lapsing the policy wef 1/06/2017 and incepted a new policy wef 19th, then no such cover would be in place for that gap period. As you rightly pointed out earlier, this gap in cover could also cause problems should the insured seek to take out cover with an alternative insurer next year, for example".

It is not clear to me why this gap in cover for what is an annual insurance policy could cause difficulty for the Complainant. I do not believe this was explained properly to the Complainant. Therefore it is my intention to direct that the Company engage with the Complainant and explain the consequences of such a break in cover and further offer to re-commence the policy from 19 June 2017 and refund the premium paid for the period 1 June to 19 June should the Complainant wish to do so after any possible implications of making this change have been fully explained to him.

3) The Company charged the Complainant the same premium in June 2017 for his household insurance policy without flood cover as it had charged him the previous year, in June 2016, when flood cover was provided.

I note from the documentary evidence before me that the Company charged the Complainant the same premium of €643.28 in June 2017 for his household insurance policy

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without flood cover as it had charged him the previous year, in June 2016, when flood cover was provided. The Company states that it is satisfied that the premium charged was correct and in line with its pricing approach regarding flood. However, following receipt of the Complainant's complaint, the premium was reviewed and the Company refunded the Complainant by way of cheque the sum of €75 to acknowledge the reduction in policy cover.

In this regard, in its correspondence to the Complainant dated 1 August 2017, the Company advised, as follows:

"I note that the premium offered in 2016 – which included flood cover – was €643.28, which is the same amount offered for your 2017 renewal where flood cover was excluded.

We appreciate your point that the premium should be less if less cover provided and following our review into this and based on your long standing custom we are prepared to allow a reduction of €75 to this year's premium. A refund for this amount will be issued to you shortly".

The Complainant does not consider that the amount the Company refunded, that is, €75, accurately reflects the removal of flood cover from his policy.

It appears unreasonable to me that the Complainant was, initially, expected to pay the same premium for insurance without flood relief as he had been charged for insurance which included flood relief which the Company clearly believed to be of significant risk.

The setting of an insurance premium is a matter for the commercial discretion of an insurance company based on the risk assessment and the criteria involved. This office will not interfere with the commercial discretion of a financial service provider unless it is exercised in a manner that is unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant.

I note from the internal Company e-mail of 30 June 2017 that a company agent states:

"My own personal opinion (and it appears that of Pricing also) is that the premium should reduce if flood is excluded, On that note, if there is scope to offer a reduced renewal premium (i.e. a discount) here then I think it is worth considering, especially as this is a long-standing customer".

I cannot reconcile this with the Company's response to this office dated 27 February 2018 where it states:

"The premium we offered was €643.28 which was the same premium as was offered in 2016. The premium charged was correct and was in line with [the Company's] pricing approach regarding flood. However, following receipt of [the Complainant's] complaint the premium was reviewed and we agreed to allow a refund of €75 to acknowledge the reduction in policy cover and a cheque for this amount was issued to [the Complainant].

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It is a generally accepted principle that insurance premiums reflect the level of risk involved. It is difficult therefore to understand the Company's "approach regarding flooding" as it relates to the Complainant.

While I accept that the Company refunded €75 to the Complainant, I note this was only done after he complained about the fact that his premium had not reduced to reflect the reduced cover and consequently reduced risk for the Company.

I believe the manner in which the Company dealt with the premium following the removal of flood cover was unreasonable.

4) The Company acted in breach of Sections 2.1, 2.2, 2.3, 2.12 and 4.21 of the Consumer Protection Code 2012.

The Complainant contends that the Company acted in breach of Sections 2.1, 2.2, 2.3, 2.12 and 4.21 of the Consumer Protection Code 2012. In this regard, Chapter 2, 'General Principles', of the Central Bank of Ireland's Consumer Protection Code 2012 provides at pgs. 7-8, as follows:

*"A **regulated entity** must ensure that in all its dealings with **customers** and within the context of its authorisation it:*

- 2.1** acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;*
- 2.2** acts with due skill, care and diligence in the best interests of its **customers**;*
- 2.3** does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service ...*
- 2.12** complies with the letter and spirit of this Code".*

In addition, Chapter 4, 'Provision of Information', of the Consumer Protection Code 2012 provides at pg. 24, as follows:

*"**4.21** Prior to offering, recommending, arranging or providing a product, a **regulated entity** must provide information, on paper or on another **durable medium**, to the **consumer** about the main features and restrictions of the product to assist the **consumer** in understanding the product".*

The Complainant set out this element of his complaint in his email to this office dated 29 November 2017, as follows:

"Under Section 2.1 of the Code, [the Company] is obliged to "act honestly, fairly and professionally in the best interests of its customers". In my view, [the Company] has failed miserably in this regard. They have not given any clear and logical reason for changing their behaviour from one year to the next ...

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For the same reasons, [the Company] are in breach of Section 2.2 of the Code and it is clear that in this instance, they have not acted “with due skill, care and diligence in the best interests of its customers”. In fact, they have deliberately misled a customer in that they never spelled out the conditions under which they would withdraw flood cover from a home insurance policy. In this sense, they are in breach of Section 2.3 of the Code which requires [the Company] to “not recklessly, negligently or deliberately mislead a customer”.

Section 4.21 of the Code requires [the Company] to provide information on paper, or other durable medium, to the consumer about the restrictions of the product to assist the consumer in understanding the product.

Again, [the Company] has totally failed in this area and are again in breach of this section of the Code as they never provided information in writing outlining the restrictions of their home insurance cover and the grounds on which they would withhold flood cover on a home insurance policy.

In summary, it is clear that [the Company] has not complied with the letter and spirit of the Code and so is in breach of Section 2.12 of the Code”.

Having considered the evidence before me, I accept that the Company complied with these sections of the Consumer Protection Code 2012.

For example, I note from the recording of the telephone call on 26 May 2017 between the Company and the Complainant that the Agent clearly explained to the Complainant that the Company would not be offering flood cover as part of its renewal terms and its reasons why, and that the Agent presented the Complainant with the options then open to him, as follows:

“From our research there hasn’t been any major works done that would prevent flood in that area...the situation that we are in now is that we would have to exclude flood cover on your policy there for the renewal...if we exclude flood cover from your policy it will prevent you from being able to get flood cover in the future with anybody else. Alternatively, if you want to check the market out now because they’re using the same systems that we have, we are only aware of the flood issue because there’s been previous claims on the policy, but the systems that we use to detect floods don’t show flood in your area, you should be able to obtain a quote with flood cover with another company, they wouldn’t be aware of it. But we are aware of it so we would have to exclude flood cover but if we go ahead with this policy and exclude flood cover you are bound to tell every insurance company in the future that you had flood cover excluded and you’ll never be able to get it again ...

I can see that there have been various flood things on the policy and that’s the thing about insurance – it has to be a fortuitous event, something that you can’t see coming...something you can’t see coming, not something that we’re easily able to predict. So it is likely that you will flood again in the future, so we’d only protect people against things that are unlikely to happen, and hope that they don’t happen,

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not something we know will happen, so that is why we won't be including flood cover on the policy from here on in ...

But to prevent you from ever being able to get flood cover with anybody else, if we don't go ahead with the renewal you could get quotations from other insurers that wouldn't exclude flood for you because they wouldn't be aware of the flood issue in the area, it's not close to a river, it is an underground issue, but once we exclude it from your policy if you were to go ahead with us, you'll never be able to get flood cover with another insurance company again. Just trying to give you a little bit of advice that might help you going forward in relation to the flood ...

Just in terms of the fact that there has been a few claims on the policy there I can understand that it would be absolutely heart-breaking if there was another flood issue on the property and you had no cover on it – so that's the only reason I would suggest pricing on the market and see if you can get someone else to quote you flood cover”.

In addition, I note that the Company then wrote to the Complainant on 6 June 2017 clearly detailing that no flood cover was being offered as part of the renewal terms, as follows:

“...there is an important change to your renewal offer that we wish to bring to your attention:

Flood Cover has been removed.

This change will come in to effect from renewal and will be reflected in the renewal documentation.

All other aspects of the Household Insurance renewal remain unchanged”.

I therefore accept that the Complainant was advised in writing that the Company was no longer offering flood cover on his policy in advance of him accepting the renewal terms offered.

There is no evidence before me indicating that the Company failed to deal with the Complainant or process his complaint in compliance with the provisions of the Consumer Protection Code 2012.

While I accept the Provider's commercial discretion in deciding whether or not it will insure a particular risk, in this case flood insurance, I believe the manner in which the renewal was dealt with and premium was sought by the Company was unreasonable. Therefore, I intend to partially uphold this complaint and direct the Company to engage with the Complainant to explore the advantages and disadvantages of renewing the policy from 1 June as opposed to 19 June. Having done so, I intend to direct that the Provider then give the Complainant the option of renewing on either date and amend the premium charged if, and as, appropriate. For the Provider's unreasonable approach in seeking to charge the same

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premium for a reduced risk, I intend to direct the Provider to pay the Complainant a sum of €700 in compensation.

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) (g) and (f)**.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to engage with the Complainant to explore the advantages and disadvantages of renewing the policy from 1 June as opposed to 19 June.

I also direct that the Provider make a compensatory payment to the Complainant in the sum of €700, 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**

19 July 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**.