



<u>Decision Ref:</u>	2019-0022
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy
<u>Outcome:</u>	Upheld

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

Background

The First Complainant renewed his motor insurance policy on **17 October 2016**. The Second Complainant, his son, was a named driver on the policy. The Company was the underwriter of this policy, which was managed and administered by a named Insurance Intermediary on its behalf. The policy was co-branded in the names of both the Company and the Insurance Intermediary. As part of this policy, the First Complainant agreed to the fitting of a telematics device to his car, which recorded data on its usage, like the distance and speed travelled. This device was fitted by a third party telematics supplier which provided both the telematics device itself and the vehicle behavioural data to the Insurance Intermediary.

The Complainants' Case

The First Complainant was advised by the Insurance Intermediary on **28 June 2017** that his motor insurance policy would be cancelled on 11 July 2017 as the telematics device had recorded his car travelling at a speed of in excess of 160 kilometres per hour between 25 June and 26 June 2017, as follows:

"[The Insurance Intermediary] has recorded that you have driven above 160KPH. As most serious accidents are caused by excessive speed it is imperative that you drive within the speed limit.

Unfortunately due to the level of excessive speed we have no alternative but to cancel you[r] policy on 11/07/2017”.

The First Complainant made a number of telephone calls to the Insurance Intermediary over the days that followed in an effort to resolve the matter.

In this regard, the First Complainant sets out his complaint, as follows:

“When I telephoned [the Insurance Intermediary] I was told the telematics device that was fitted to my car...has recorded my car doing a speed of 222 [kilometres per hour] on 25/06/2017 and as a result of this my policy would be cancelled. When I protested against this and wished to contest said speed recorded I was told I would have to wait until [the Insurance Intermediary] had heard more from [the telematics supplier] who fitted the device to my car. I protested further stating it was inconceivable that my car, a 12 year old 1 litre Opel Corsa, could achieve this speed. On 4/07/2017 I was told the cancellation of my policy was to be removed and my policy was back in force.

I then complained to [the Insurance Intermediary] about my treatment and wished to contest all data recorded by the device fitted...to my car in relation to speeding events moderate/severe/dangerous”.

The First Complainant states that this incident caused *“undue stress to me and my son [the Second Complainant]”*. He questioned the reliability of the telematics device fitted to his car. In this regard, the First Complainant asked *“how can [the Insurance Intermediary] cancel a policy from data that was not double checked?”* and he sought for it *“to request [the telematics supplier] to commit to double check data in relation to speeding events recorded, i.e. take 2 shorter periods of time and analyse these points in isolation”*.

The Complainants’ complaint is that the Company wrongly or unfairly notified the First Complainant that it intended to cancel his motor insurance policy due to excessive speeding, based on data that was found afterwards to be unreliable.

The Company’s Case

Company records indicate that the First Complainant renewed his motor insurance policy on 17 October 2016. The Second Complainant, his son, was a named driver on the policy. The Company was the underwriter of this policy, which was managed and administered by a named Insurance Intermediary. The policy was co-branded in the names of both the Company and the Insurance Intermediary. As part of this policy, the First Complainant agreed to the fitting of a telematics device to his car, which recorded data on its usage, like the distance and speed travelled. This device was fitted by a Third Party telematics supplier that provided both the telematics device itself and the vehicle behavioural data to the Insurance Intermediary.

The Company notes that the Insurance Intermediary advised the First Complainant on 28 June 2017 that his policy would be cancelled on 11 July 2017 as the telematics device

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recorded his car travelling at a speed of in excess of 160 kilometres per hour between 25 June and 26 June 2017. The Company understands that this policy cancellation notice was later withdrawn on 4 July 2017 and that the telematics supplier confirmed to the Insurance Intermediary that the 222 kilometres per hour reading at 3.09pm on 25 June 2017 was based on GPS data that was unreliable.

As the policy cancellation notice was withdrawn, the Company notes that there are no adverse consequences following this event, for the First Complainant and that no reference to it appears or will appear on any documentation that the First Complainant requires to gain insurance. As a result, there is no impediment to the Complainants seeking cover with another Provider or to the First Complainant renewing cover with the Company. The Company also confirms that as a direct result of this incident, the telematics supplier has been changed.

The Company says that it has had no interactions whatsoever with the First Complainant in respect of his policy, which was at all times managed and administered by the Insurance Intermediary. In this regard, whilst the motor insurance policy is co-branded in the names of both the Company and the Insurance Intermediary, the Company, as underwriters of the policy and as part of its terms of business with the Insurance Intermediary, granted authorisation to the Insurance Intermediary to, *inter alia*, issue policy cancellation notices, on its behalf.

Whilst it does not take responsibility for any acts or omissions on the part of the Insurance Intermediary, the Company was sorry to learn of this complaint, and regretted the upset and stress which this matter had caused to the First Complainant and his family. Whilst the Company indicated that it had not been party to these events, it wished to acknowledge that the Complainants were ultimately insured with the Company and therefore it offered a customer service gesture of €300 by way of compensation.

The Complaint for Adjudication

The Complainants' complaint is that the Company wrongly or unfairly notified the First Complainant that it intended to cancel his motor insurance policy due to excessive speeding, based on data that was afterwards found to be unreliable.

Decision

During the investigation of this complaint by this Office, the Company was requested to supply its written response to the complaint and to supply all relevant documents and information. The Company responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Company's response and the evidence supplied by the Company. A full exchange of documentation and evidence took place between the parties.

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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 3 December 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 complaint at hand is that the Company wrongly or unfairly notified the First Complainant that it intended to cancel his motor insurance policy, due to excessive speeding, based on data that was found afterwards to be unreliable.

In this regard, the First Complainant renewed his motor insurance policy on 17 October 2016. The Second Complainant, his son, was a named driver on the policy. The Company was the underwriter of this policy, which was managed and administered by a named Insurance Intermediary. The policy was co-branded in the names of both the Company and the Insurance Intermediary.

As part of this policy, the First Complainant agreed to the fitting of a telematics device to his car which recorded data on its usage, like the distance and speed travelled. This device was fitted by a third party telematics supplier that provided both the telematics device itself and the vehicle behavioural data to the Insurance Intermediary.

I note that the policy, whilst co-branded, confirmed within the definitions section, that every reference to “we” within the policy was taken to mean the Company itself, as underwriter of the cover. The Company has confirmed in that regard that “with regard to issuance of cancellation notices [the Intermediary] carry out this function on behalf of [the Company]”.

The ‘**Important Terms of your Policy in relation to Telematics**’ section of the applicable Policy Document at pg. 7, provided at pg. 10, as follows:

“13. Speed

IMPORTANT – Speeding

*If the **box** detects that **your car** has been driven at 160kph or over on a public road, **your policy** will be cancelled under the terms shown in General Conditions 4 ‘Cancellation’.*”

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The '**General Conditions**' section of the Policy Document provided at pg. 13, as follows:

"4. We may cancel this policy

...

e) If the box detects that your car has been driven at 160kph or over on a public road".

The Insurance Intermediary advised the First Complainant on 28 June 2017 that his policy would be cancelled on 11 July 2017 as the telematics device had recorded his car travelling at a speed of in excess of 160 kilometres per hour between 25 June and 26 June 2017. I note that the Insurance Intermediary later withdrew this policy cancellation notice on 4 July 2017 and ultimately, the telematics supplier confirmed that the 222 kilometres per hour reading at 3.09pm on 25 June 2017 was based on GPS data that was unreliable.

I note from the documentary evidence before me that the Company had no interactions with the First Complainant in respect of his policy, which was managed and administered by the Insurance Intermediary. In this regard, although the policy is co-branded in the names of both the Company and the Insurance Intermediary, I note that the Company has confirmed that the Intermediary was authorised to issue cancellation notices, on behalf of the Company.

I note that in this instance, the policy was not ultimately cancelled, as the First Complainant reacted quickly on receipt of the cancellation notice which had been issued by the Insurance Intermediary. Whilst the notice was not one which the Company issued, it was nevertheless issued by the Intermediary on behalf of the Company, in the context of the arrangements which both financial service providers had put in place.

When this office asked the Company to respond to a number of queries relating to the events giving rise to this complaint, this office was referred by the Company in many instances, to the Insurance Intermediary, with which it had entered into certain terms of business, which included an arrangement whereby the Intermediary acted as a complaints handling manager for the Company.

I have noted in that regard, that in the context of the Complainant's dissatisfaction with the issue of the cancellation notice, the Intermediary wrote to the First Complainant on 26 July 2017, setting out its investigation into the matter complained of as follows:

"On the 28/06/2017, notification was received to our office in relation to an excessive speeding event on 25/06/2017 at 15.09 hours, where the Telematics device fitted to your vehicle recorded a speed of 222kph being driven. We contacted the Third Party Partner who deal with the data received in reference to this incident and it was confirmed that they deemed the data to be reliable. Due to the confirmation of this data being reliable, a Recorded Delivery Notification of Cancellation was issued against your policy. This letter confirmed that as a speed of over 160kph had been recorded against your vehicle, your policy would be force cancelled on the 11/07/2017.

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On the 29/06/2017, you spoke to an advisor via telephone who confirmed that information had been received in relation to a speed driven in excess of 160kph and this had [led] to the cancellation procedure against your policy. You advised that you did not believe this information to be correct due to the performance of your vehicle and wished to contest the speeding event. You advised that you wish to receive a copy of the trip data as proof of the speeding event on the 25/06/2017.

A request was issued to...our Third Party Partner, to carry out a further investigation into the speeding event to confirm that the information provided was true and reliable.

On the 03/07/2017, at 15.59 hours, you spoke to an advisor in our office via telephone and queried the status of your request for the relevant trip date in relation to the excessive speeding event that your policy was being cancelled for. Our advisor confirmed that this information had as yet not been received to our office, but that as soon [as] the information was available to our office, we would contact you directly.

At 16.07 hours, a request for an update to the progress of our request for the information of your trip data issued to [the telematics supplier] to have this information expedited.

On the 04/07/2017, at 9.20 and 14.51 hours respectively, you spoke to an advisor in our office via telephone in relation to the status of your trip data request. It was advised at that time we had not received the required information.

Due to the duration of time without the receipt of the required trip data, the decision was made to remove the cancellation from your policy.

At 16.08 hours, you spoke to an advisor in our office who confirmed that the cancellation of your policy had been removed. Our advisor confirmed that if any further excessive speeding events showed on your policy, your policy would be cancelled.

You advised that you were unhappy with the information that had been provided and that you had been unfairly treated. You advised that you wished for all dangerous driving events on your policy to be investigated. Our advisor confirmed that they would pass this request onto our General Manager to see if this request was possible.

On the 05/07/2017, a letter of complaint was received to our office via email in relation to the issues raised about the excessive speeding event. This complaint was acknowledged on that date and an acknowledgement confirmation letter was issued to you.

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On the 19/07/2017, at 14.46 hours, I spoke to you via telephone and confirmed that the required trip data had been received and that upon further investigation it was found that the excessive speeding event on the 25/06/2017 was incorrect and that the GPS signal at the time of the incident was unreliable.

You advised that you were unhappy that a cancellation had been placed on your policy due to incorrect information and that the issues...this had caused. I confirmed that when notification had been given in relation to the event, confirmation had been received from [the telematics supplier], who had advised that the data was correct and reliable. I advised that in these circumstances, we had followed our cancellation procedures based on the information provided by [the telematics supplier] who collect and analyse the data. I confirmed that upon the checking of the previous driving history of your policy, we had agreed to remove the cancellation from the policy.

You advised that if this information was incorrect, then you felt that any other dangerous speeding events previously registered on your policy could also be unreliable. You confirmed that you wished for previous speeding events to be investigated to confirm the reliability. I confirmed that I would be willing to request this information for you and to have those events investigated further. I confirmed that this information would be requested from [the telematics supplier] but unfortunately could not confirm a time period of how long this request would take to complete. I also confirmed that upon receipt of this further information, I would contact you directly and dependent on the results of the trip data speeding events, we could discuss options available at that time to ensure the issues did not arise again.

Taking all available information into account, I can confirm that the Recorded Delivery Notification issued against your policy on the 28/06/2017 was issued based upon data being supplied [and] confirmed by our Third Party Partner, [the telematics supplier] as being correct.

I can confirm that when the information was received in relation to the excessive speeding event, an advisor referred the event to [the telematics supplier] to ensure the data was correct and reliable. This was confirmed by that organisation and based on that information, we followed our cancellation procedure. It was confirmed by [the telematics supplier] that they had checked the journey as a whole and the two points surrounding the speeding event. They also confirmed that they had checked for any anomalies that would suggest any issue that would affect the functionality of the Telematics Device. It was also confirmed that the GPS signal quality throughout your journey was of the highest quality.

Upon speaking to you and your advice that you wished to contest the speeding event, we issued a further request to [the telematics supplier] to further investigate the speeding event. Upon their further investigation, [the telematics supplier] took a shorter 2 periods and analysed the information from those periods in isolation. During this further isolated investigation, [the telematics supplier] checked the two

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points preceding the excessive speeding event of 222kph and it was found that the GPS signal at these two points was considered to be poor quality and that they now considered the information about the speeding event to be unreliable.

I apologise for the undue inconveniences these issues have caused to you. We have acted on information which was confirmed as being reliable and have issued the cancellation notification of your policy based in this information.

As confirmed, due to the further investigation into the speeding event, this data has now been confirmed as incorrect. The decision had already been made on the 04/07/2017, to remove the cancellation from your policy based on your previous history”.

I accept that the Insurance Intermediary checked the speeding alert of 222 kilometres per hour recorded by the First Complainant’s telematics device at 3.09pm on 25 June 2017, with the telematics supplier on 28 June 2017, prior to it sending the First Complainant the policy cancellation notice, and that the telematics supplier in reply, confirmed to the Insurance Intermediary that the data was accurate. However, I note that it was only following a telephone call from the First Complainant on 29 June 2017 when he questioned the speeding event and complained about the imminent cancellation of his motor insurance policy, that the Intermediary then requested from the telematics supplier, a detailed analysis of trip data for the speeding event in question.

The consequences for a policyholder where his or her motor insurance policy is cancelled are severe and the person who finds themselves in such a position will find it both difficult and expensive to obtain alternative motor insurance with another Provider.

As a result, I take the view that it would have been prudent and reasonable and more appropriate for the Insurance Intermediary to have sought a detailed analysis of trip data for the suggested speeding event, from the telematics supplier in order to fully verify this event before issuing the notice of policy cancellation, particularly in circumstances such as these where the speeding event was a single event of such excessive speed that the policy terms and conditions provide for the cancellation of the motor insurance policy based on that one event alone. I note that if the Intermediary had done so in this instance, it would have been advised by the telematics supplier (as it was on 11 July 2017) that the data was unreliable and it would not have had any reason to issue the policy cancellation notice. In this regard, I do not consider it best practice for the Insurance Intermediary to have failed to seek a detailed analysis of trip data for a speeding event from the telematics supplier until after it has already issued the policyholder with a policy cancellation notice arising from that speeding event.

The First Complainant understandably, has had cause to question “*all data recorded by the telematics device fitted by the telematics device company to his car*”. In this regard and in accordance with the policy terms and conditions, I note that the Insurance Intermediary sent the First Complainant a SMS text each week listing the distance travelled and the number of “moderate”, “severe” and “dangerous” speeding events that were recorded in the preceding week, if any. This information was then used by the Insurance Intermediary to

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create a monthly score that the First Complainant was notified of by email and these scores were used by the Insurance Intermediary to reward kilometres and/or calculate the premium, as the premium is initially calculated based on, *inter alia*, the number of kilometres of insured driving chosen by the policyholder and shown on the policy schedule. Whilst understandably he is now questioning the reliability of this data, I note that the First Complainant did not complain of or suggest that any such data negatively affected his premium at any stage. One can well understand however, that he has been left with a very real sense of unease.

The Insurance Intermediary has advised that previous speeding events were not checked at the time they were recorded as there was no reason to believe that these previous events were inaccurate. In this regard, the Insurance Intermediary states that the telematics supplier confirmed to it that the 222 kilometres per hour reading at 3.09pm on 25 June 2017 was an isolated incident and that additional measures had since been put in place to ensure there would be no reoccurrence of same. In addition, on 10 November 2017, the Insurance Intermediary also provided the First Complainant with his full trip data history from 17 October 2016, when the policy was renewed, to 20 July 2017 by email. In this regard, I note that the First Complainant has not, as part of this complaint, identified any data record or entry in this full trip data history which he considers to be inaccurate or unreliable. Be that as it may, whilst it may be that the reading of 222kph on 25 June 2017 was an "*isolated incident*", it is of course impossible to know definitively, without specific forensic analysis, whether all of the readings over the relevant period of insurance were entirely accurate, given that it required the particular telematics supplier to be questioned and subsequently re-questioned again, regarding the incident giving rise to this complaint, before the data was then ultimately confirmed to be "*unreliable*".

I accept that the Insurance Intermediary did not ultimately cancel the First Complainant's motor insurance policy and that his cover remained uninterrupted and in force throughout its annual term and thus, happily, there is no impediment as a result of this matter, to him seeking insurance with another Provider into the future, or renewing his cover with the Company. However, given the very severe consequences that cancelling a motor insurance policy has for a policyholder, the notification of an imminent policy cancellation due to an event such as excessive speeding was understandably stressful for the First Complainant and I note that he had to make a number of telephone calls to the Intermediary to resolve the matter, and to prevent the cancellation of the policy coming to pass.

In addition, it is somewhat inevitable where there is more than one named driver on the policy that a policy cancellation notification due to excessive speeding can cause considerable confusion and discord amongst the persons listed on the policy, here a father and son, particularly when the policy cancellation notice itself does not provide key information such as the exact speed, time or even the exact date of the speeding event, as was the case in this instance. I have no doubt that this was an extremely stressful experience for the Complainants, made all the worse by the First Complainant's occupation as a professional driver.

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I am satisfied that the Company retains the responsibility for that incorrect cancellation notice having been issued by the Insurance Intermediary on behalf of the Company; as the underwriter of cover, the Company cannot remove itself from a decision to cancel that cover, simply by agreeing to have the administration of the policy effected by another separate entity. In my opinion such an arrangement constitutes an “outsourcing” within the meaning of Central Bank of Ireland’s Consumer Protection Code. The Company has a responsibility to ensure that whatever business arrangements it puts in place, those arrangements are appropriate and meet best practice, so that policyholders insured with it do not receive a service which falls short in quality, or which is in any way diminished by that business arrangement. It is also disappointing to note that the First Complainant’s dealings, when he put this co-branded policy in to place, appear to have left him utterly unaware that his cover was held with the Company, and not with the Insurance Intermediary.

His understanding in that regard was not altered when the Insurance Intermediary advised the First Complainant on 28 June 2017, that his motor insurance policy would be cancelled on 11 July 2017, as follows:

“[The Insurance Intermediary] has recorded that you have driven above 160KPH. As most serious accidents are caused by excessive speed it is imperative that you drive within the speed limit.

*Unfortunately due to the level of excessive speed we have no alternative but to cancel you[r] policy on **11/07/2017**”.*

[my underlining]

Nowhere in this communication is it made clear that the cancellation was being issued by the Insurance Intermediary on behalf of the Company as underwriters. I believe that the Company has a case to answer to the First Complainant in that regard. No policyholder should be confused regarding the role of a financial service provider with which that person is interacting. This notification of policy cancellation should have made it clear that it was issued by the Insurance Intermediary on behalf of the Company as underwriters in accordance with the arrangements which both financial service providers had put in place; this would have made the position more clear for the First Complainant, as policyholder.

Whilst I note that the Company acknowledged that the Complainants were ultimately insured with it, and therefore it offered a customer service gesture of €300 by way of compensation, I believe that it would have been more appropriate for the Company to have acknowledged responsibility for these events which arose in the context of the structures which the Company had put in place for the administration of its policies, whether or not the First Complainant had any direct communications with the Company. Such direct communications were not necessary, as the Company had agreed that the Insurance Intermediary could take certain actions on its behalf, including issuing cancellation notices. Consequently, when the Insurance Intermediary wrongfully issued the cancellation notice to the first complainant, I am satisfied that it did so on behalf of the Company as underwriter of the policy.

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Accordingly, taking into account all of the circumstances of this matter I consider it appropriate to uphold this complaint that the Company wrongfully issued a cancellation notice to the First Complainant, as I am satisfied that it did so via the Insurance Intermediary. To mark that decision, I direct the Company to make a compensatory payment to the First Complainant in the sum of €1,500, within a period of 35 days of the First Complainant's nomination of account details to the Company. This direction is irrespective of the terms of business as between the Company and the Insurance Intermediary, which may ultimately govern the ability of the Company to recover that compensatory payment it makes, from the Insurance Intermediary, per their own business arrangements.

I also intend to furnish a copy of my decision in this matter to the Central Bank of Ireland, for such action as it considers to be appropriate. Whilst I note that the third party telematics supplier was changed, as a direct result of the experience of the Complainants in this matter, nevertheless, I am concerned that there may be other policyholders who had their motor policies cancelled by the Company, via communications issued by the Insurance Intermediary on its behalf, in reliance on telematics data gathered by the third party telematics supplier which recorded the First Complainant's car travelling at 222kph on 25 June 2017, when such data was subsequently noted to be "unreliable".

It is my Decision therefore, on the evidence before me that this complaint is upheld.

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)(g)**
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Company to make a compensatory payment to the First Complainant in the sum of €1,500, within a period of 35 days of the First Complainant's nomination of account details to the Company. I also direct that interest is to be paid by the Company 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 Company 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
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

3 January 2019

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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.