



<u>Decision Ref:</u>	2019-0040
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

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

Background

This complaint concerns the Complainant's motor insurance policy held with the Provider. The motor insurance policy was incepted on 23 May 2016 and cancelled by the Provider on 27 June 2016 due to non-installation of a telematics device.

The Complainant's Case

The Complainant submits that she took out motor insurance for herself and her daughter with the Provider. The Complainant submits that the Provider was supposed to arrange for a telematics box to be installed in the car, and cancelled the policy as it was not installed.

The Complainant states that *"On the email I received from [the Provider], the day I took out insurance it stated that they would be in contact with me within 5 working days to arrange installation. I didn't hear anything from them about this until they sent me a cancellation letter. When I contacted them, they told me to contact the installation company myself, which I did. But because the date was later than they wanted, they cancelled our policy"*. The Complainant submits that she has since had to take out insurance with another provider which has cost her twice as much in premiums.

The Complainant states that she is seeking *"full payment of our current insurance plus compensation. As I was under pressure to borrow money for deposit of insurance as I am unemployed and [the Complainant's daughter] is only a student"*.

The Provider's Case

The Provider submits that it is essential that the Telematics Device is installed in the vehicle as this is used to monitor the driving behaviour of the driver and the driving score and bonus miles are calculated from these behaviours.

The Provider submits that when a customer purchases their policy they are advised that the Telematics Device must be fitted within fourteen days of the start date of the policy. The Provider submits that the customer must confirm the best number to contact them on to arrange this appointment as this is used by its installation partner to contact them. It submits that customers are further advised on the confirmation screen of their policy that the box must be installed and active by a specified date dependant on the start date of the policy. The Provider submits that it is further confirmed that should the box not be installed to the vehicle by this date, it is within its rights to cancel the policy. The Provider submits that it also advised that if an installation appointment is not available in this timeframe to contact its office.

The Provider submits that when the policy is purchased it gives every customer a period of thirty one days to return all required documentation and complete all appropriate actions for the policy to continue. The Provider submits that it issues three "*Documents Needed*" letters at the end of each seven day request advising of the date that it required the documentation to be returned. It submits that each of these documents also advised of the required date for the installation of the Telematics Device.

The Provider submits that as the Complainant agreed to the terms of the policy at purchase, she advised that she was aware that the Telematics Device should have been fitted within 14 days of the start date of the policy, as advised in both sections headed "*BOX Fitting*". The Provider submits that by ticking continue the Complainant agreed to contact its office should the box not be installed within the 14 day period. The Provider submits that it received no contact from the Complainant to advise that an installation appointment had been arranged, therefore, it was unaware and not in a position to offer assistance to her. The Provider submits that when the Complainant contacted its office to advise that she had not arranged an appointment, on 16 June 2016, the Recorded Delivery Notification of Cancellation had been issued, and unfortunately the date advised was not acceptable as it must work within the same guidelines and timeframes for all customers. It states that "*This is the fairest way to do so and is in line with our treating customers fairly policy*".

The Provider submits that its installation partner made numerous attempts to contact the Complainant on her advised contact number to arrange an installation appointment at a time and date of her choosing. It submits that each attempt to contact the Complainant was unsuccessful and a voicemail was left on each occasion to advise her to contact their office to arrange an appointment within the defined timeframes. The Provider submits that its installation partner have stated that they were not contacted by the Complainant until 24 June 2016 when an unacceptable installation date was agreed.

The Provider submits that the onus is on the customer to ensure that they are available to make and attend an installation appointment. The Provider submits that as its installation partner contacted the Complainant on seven separate occasions to attempt to arrange an

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installation appointment with her, it had made appropriate steps to attempt to arrange an installation appointment with the Complainant via its installation partner. The Provider states that *“Had they been successful in contacting you on any of the occasions they attempted to contact you, the installation of your Telematics device would have been completed within the required time frame and your policy would have continued”*.

The Provider submits that after the cancellation of the Complainant’s policy, as per its Terms of Business accepted by the Complainant at the time of purchase, it was due to retain 30% of the total annual premium, which equated to the sum of €272.65, the same amount the Complainant paid as a deposit at the purchase of her policy on 23 May 2016. The Provider states that *“However the decision was made to reduce the charges after cancellation to the following:*

- *Time on Risk – A daily pro rata’d charge for the total number of days you were on cover from the start date of your policy to the date of forced cancellation*
- *[The Provider’s] administration charge of €30 (advised in our terms of Business and Terms and Conditions)”*

The Provider submits that on 5 July 2016 the sum of €148.70 was refunded to the account the original payment was made from.

The Complaint for Adjudication

The complaint is that the Provider unreasonably cancelled the Complainant’s motor insurance policy.

Decision

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 29 January 2019, outlining the preliminary determination of this office in relation to the complaint. The parties were

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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.

Communications were received from the Provider on 14 February 2019 with general queries in relation to this office's process. These queries were duly responded to by this office. In the absence of additional submissions falling under the category of an additional point of fact, an error of fact or an error of law, the final determination of this office is set out below.

The Provider submits that on 23 May 2016, the Complainant completed a quotation via its website in relation to a policy of motor insurance. The Provider submits that upon completing the required information for the quotation, the Complainant opted to tick the box to confirm that she had read, understood and agreed to the statements and duty of disclosure of her policy. The Provider submits that upon agreeing to these terms the Complainant was offered five quotations for different guaranteed kilometre allowances with a price offered in the incremental steps. The Provider submits that the Complainant selected that 12,000km of guaranteed driving would suit her driving needs for the 12 month period of her policy, and the cost of the policy was €875.51 for the annual premium.

The Provider submits that that once the Complainant selected the guaranteed kilometres and corresponding price, she selected to tick the required box to confirm that she had read and understood and agreed to the Terms and Conditions of her policy of motor insurance. I note that Condition 6 of the policy document, under the heading "*Important Terms of your Policy in relation to Telematics*" provides the following:

"6. Box Installation

When you take out your policy or change your car, we or our approved installer will contact you to arrange for a box to be fitted to your car.

We will pay the cost of:

- *The box;*
- *Fitting the box;*
- *Retrieving data from the box.*

We will arrange to have the box fitted within 14 days of you taking out a policy with us. We will contact you to arrange a mutually convenient time and place to undertake the fitting. We reserve the right to nominate an alternative site near your home or place of work to fit the box.

..."

The Provider submits that the Complainant then proceeded to purchase her policy by a Direct Debit Agreement where she elected to make a deposit payment with the remainder of her premium paid by nine monthly instalments on a date she selected.

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The Provider submits that once the Complainant had purchased the policy, an information box showed to confirm the following information in relation to the instalment of the Telematics Box:

“BOX FITTING

As we have to fit [a Telematics Device] to your vehicle, we will need to arrange a mutually convenient time. This installation will usually take place on a week day either at home or your place of work. Installation is straight forward and shouldn't take longer than 15 minutes.

As per the terms in this insurance policy, [a Telematics Device] must be installed in your vehicle for your policy to continue. If we are unable to contact you, or if you are not able to arrange for your car to have [a Telematics Device] installed within 14 days of your policy starting, we reserve the right to cancel your policy cover with us. Normal cancellation procedures will take place which are detailed in our policy wording.”

The Provider submits that the Complainant was further asked to confirm her best contact number to allow it to contact her to arrange the installation of the Telematics device, to which she confirmed same. The Provider submits that to confirm that she was aware of all information, the Complainant selected to click the required continue button to confirm cover on her vehicle.

The Provider submits that upon completion of the policy, it requested the following documents were returned to its office within seven days of the date of issue of the letter:

- Certificate of No Claims Bonus from previous insurer
- Driver Status Confirmation
- Copies of all sections of all drivers licences on the policy
- Signed Direct Debit Mandate
- Vehicle Registration Documents (Logbook)

The Provider submits that it also requested the following action was taken within 14 days of the inception of the policy:

- Installation of Telematics Device

The Provider submits that on the final screen of the policy purchase, the Complainant was also advised of the following in relation to the fitting of the Telematics device:

“Box Fitting

Even before [the Telematics Device] is installed in your vehicle you will be insured to drive your car from the start date you have indicated. We will contact you within

5 working days by telephone to arrange an installation appointment with one of the... engineers. The box must be installed and activated on or before 07/06/2016.

If the box is not installed before this date your policy may be cancelled. If you are not available at anytime before this date please contact us immediately”.

The Provider submits that a “Documents Needed” letter was issued to the Complainant via email to advise of the requirement for the return of all documentation. I note that the Provider’s letter dated 23 May 2016 set out, among other things, the following:

“We have issued your insurance disc for 30 days. An annual disc/certificate will only be forwarded once we are in receipt of the indicated items. If you have already forwarded these items to us please ignore this letter. Otherwise please forward these documents within the next seven days.

Required	Received	Under Query
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Installation of Telematics Device – One of our engineers will be in contact with you shortly to arrange the installation of a telematics device. This device needs to be installed and activated by the 07/06/2016	√		
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The Provider submits that on 26, 27, 28 and 30 May 2016 its installation partner attempted to contact the Complainant, on the number she provided during the policy purchase, to arrange an installation appointment for the Telematics device to be fitted to her vehicle. The Provider submits that its installation partner stated that on each occasion they attempted to contact the Complainant they were unsuccessful “However, a voicemail was left on each occasion advising you to contact their office to arrange an installation appointment and a contact number was also left for your return call” .

The Provider submits that on 31 May 2016, due to the non receipt of all requested documentation, a Documents Needed Chaser letter was issued to the Complainant via email to confirm the requirement for all documentation to be returned within seven days of the date of issue of the letter. I note that the Provider’s letter dated 31 May 2016 states, among other things, the following:

“Further to our previous correspondence we have not received the items indicated below. In order to maintain cover and avoid our cancellation procedure please send the items within the next 7 days.

If you have already forwarded these items to us please ignore this letter.

<i>Required</i>	<i>Received</i>	<i>Under Query</i>
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...

<i>Installation of Telematics Device – One of our engineers will be in contact with you shortly to arrange the installation of a telematics device. This device needs to be installed and activated by the 07/06/2016</i>	✓		
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The Provider submits that on 1 June 2016 the following documentation was received in its office:

- No Claims Bonus Certificate from an Insurance Company with renewal date of 9 March 2016
- Driver Status Confirmation
- All sections of Driving Licences for all drivers on the policy
- Vehicle Registration Documentation

The Provider submits that during the purchase of the Complainant’s policy she advised that she was insured by another Insurance Company until 23 May 2016. The Provider submits that as the information showing on the received Certificate of No Claims Bonus differed from that advised by the Complainant at the purchase of the policy, an email was issued to her advising that it would require her most recent No Claims Bonus showing the information advised at the purchase of her policy.

The Provider submits that a signed Direct Debit Mandate was also received in its office in relation to the Complainant’s policy. The Provider submits that the SEPA section was signed by the Complainant, however she had advised that her bank account was in another name. The Provider submits that it required the SEPA section to be signed in the same name as the bank account. The Provider submits that a copy of the Direct Debit Mandate was issued to the Complainant via post with directions on how to complete the document.

The Provider submits that on 7 June 2016, due to non receipt of all requested documentation, a Documents Needed Chaser Reminder letter was issued to the Complainant via email. The Provider submits that this letter confirmed that it would require all correct documentation returned to its office within seven days of the date of issue of the letter. The Provider submits that this letter also confirmed that it would require the installation of the Telematics Device to be completed within the defined time period. The Provider submits that it was also confirmed that should all actions not be completed within this timeframe, it would have no option but to issue a notification of cancellation against the Complainant’s policy of motor insurance.

I note that the Provider’s letter dated 7 June 2016 states, among other things, the following:

“Further to our previous correspondence we have not received the items indicated below. In order to maintain cover and avoid our cancellation procedure please send the items within the next 7 days.

If you have already forwarded these items to us please ignore this letter.

Required	Received	Under Query
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Installation of Telematics Device – One of our engineers will be in contact with you shortly to arrange the installation of a telematics device. This device needs to be installed and activated by the 15/06/2016	√		
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The Provider submits that on 9 and 10 June 2016, its installation partner unsuccessfully attempted to contact the Complainant on the advised number to arrange an installation appointment. The Provider submits that a voicemail was left on each occasion advising the Complainant to contact their office to arrange an installation appointment and a contact number was also left for her return call.

The Provider submits that on 14 June 2016, due to non receipt of all repeatedly requested documentation being received by its office, a Recorded Delivery Notification of Cancellation was issued against the Complainant’s policy of motor insurance. The Provider submits that this letter advised that it required both the Complainant’s most recent No Claims Bonus and also the installation of the Telematics device before the advised cancellation date of 27 June 2016. The Provider submits that this was issued via An Post Recorded Delivery, and an email was issued to the Complainant confirming this information. I note the Provider’s letter dated 14 June 2016 states, among other things, the following:

“Further to our recent correspondence, we have not received the items as indicated below. As a result we will have no alternative but to CANCEL your policy on the 27/06/2016.

Required	Received	Under Query
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Installation of Telematics Device – One of our engineers will be in contact with you shortly to arrange the installation of a telematics device. This device needs to be installed and activated by the 15/06/2016	√		
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The Provider submits that on 16 June 2016, the Complainant's certificate of No Claims Bonus was accepted as being the Complainant's most recent No Claims Bonus due to the purchase date of the vehicle. The Provider submits that an email was issued to the Complainant to confirm that it would require the installation of the Telematics device before the advised date of cancellation. I note that this email states "... *you must ensure that your telematics box is installed before the cancellation date to [sic] avoid cancellation of the policy*". The Provider submits that at 20.23 hours on 16 June 2016 an I-message was received in relation to the Complainant's account advising that she had not as yet had the Telematics Device installed. I note that this I-message states "... *When will someone be out to install telematics box? Can you please ensure [sic] that they do not ring me on a private number thanks*".

The Provider submits that on 18 June 2016 at 11.45am, the Complainant was advised to contact the engineers and arrange an appointment and a number was given for contact. I note that the Provider's email stated "... *if you have not got an appointment yet, please call the engineers directly on... to arrange...*". The Provider submits that on 21 June 2016 its installation partner attempted to contact the Complainant on the advised number to arrange an installation appointment. The Provider submits that the attempt at contact was unsuccessful, however, a voicemail was left advising the Complainant to contact their office to arrange an installation appointment and a contact number was also left for her return call.

The Provider submits that on 24 June 2016 an installation appointment was arranged via its installation partner for 12 July 2016. The Provider submits that it received notification of this on 27 June 2016 "*However, as per the terms of your policy and the proposed cancellation date of your policy, this date was unacceptable*". The Provider submits that an advisor from its office attempted to contact the Complainant at 12:02 hours to advise the Complainant of this and ask the Complainant to contact its installation partner to arrange an earlier appointment that may be acceptable. The Provider submits that this attempt to contact the Complainant was unsuccessful.

The Provider submits that as the Telematics device had not been installed and active within the defined timeframe, the policy was force cancelled with all cover ceasing at 23.59.59 hours on that date. The Provider submits that a letter and email confirming the cancellation of the policy was issued to the Complainant.

I note that the Complainant, in her email to the Provider dated 14 July 2016, states:

"NEVER was I told that I had to contact the company myself, until 18th June when I contacted you saying the device was still not installed. Your documents state "One of our engineers will be in contact with you" not, I have to contact the company myself. I didn't know about the company, not their name, where they are based or even a phone number for them, so again, how did you expect me to contact them!!!! I have call logs to prove they never rang me, nor did I ever miss a call from their company..."

While I note that the Provider submits that its installation partner attempted to contact the Complainant on 26, 27, 28, and 30 May 2016 and stated "*a voicemail was left on each*

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occasion advising you to contact their office to arrange an installation appointment and a contact number was also left for your return call”, the Provider’s installation partner notes for these attempted contacts state, among other things, the following:

- *“26.05.16 NO ANS NO VM”*
- *“27.05.16 no ans line ringing out”*
- *“28.05.16 NO answer no vm...”*

I note that no note is inserted for the attempted contact on 30 May 2016. The Provider also submits that on 9 and 10 June 2016, its installation partner unsuccessfully attempted to contact the Complainant and a voicemail was left on each occasion advising the Complainant to contact their office to arrange an installation appointment and a contact number was left for her return call. I note that the Provider’s installation partner’s internal notes for 9 and 10 June 2016 provide:

- *“09.06.16 No answer no vm option”*
- *“10.06.16 Line Released”*

The Provider submits that its installation partner attempted to contact the Complainant on 21 June 2016, and again submits that a voicemail was left advising the Complainant to contact their office to arrange an installation appointment and a contact number was left for her return call.

I note that the Provider’s installation partner’s notes for 21 June 2016 provide:

- *“21.06016 – Called Policy Holder, no answer, no voicemail option”*

Having carefully considered all of the evidence before me, I accept that the Complainant was on notice of the requirement to have a telematics device installed initially by 7 June 2016, which timeframe was later extended to 27 June 2016. I also accept that the Provider’s installation partner attempted to contact the Complainant on numerous occasions prior to the cancellation of her policy on 27 June 2016. That said, it is most disappointing and completely unacceptable that the Provider confirmed in its submission to this Office that its installation partner left voicemails for the Complainant with contact details for her to contact them, when it is clear from the evidence before me that its installation partner did not do so and indeed it would appear that there was no voicemail facility for them to do so. I expect a financial service provider to provide this office with accurate information when responding to a complaint.

The evidence before me also indicates that the Complainant was contacted by the Provider’s installation partner on a private number, and it is disappointing that the Complainant was not provided with contact details for the Provider’s installation partner until 18 June 2018. Furthermore, I am of the view that the Provider should have set out in its correspondence to the Complainant how its installation partner was going to make contact with her so that she could have expected their call. That said, the Complainant was on notice of the necessity

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of having the telematics device installed, and she could have followed up with the Provider when she received no contact from its installation partner.

Cancelling an insurance policy has very serious implication for the policyholder and should not be done lightly. I note that when the Provider issued the Complainant with the contact details for its installation partner, she made contact with them on 24 June 2014 to arrange an appointment for the installation of the telematics device, that is, prior to the cancellation date of 27 June 2016. I note that the Complainant submits that the 12 July 2016 was the earliest date the Provider's installation partner could give, and in the circumstance, I am of the view that the Provider should have been more flexible regarding the cancellation date for the policy.

While I must accept that the Provider was entitled to cancel the Complainant's policy pursuant to the policy terms and conditions, I find the manner in which it did so to be unreasonable and unacceptable. I direct the Provider to make a compensatory payment in the sum of €5,000.00 for its lapses in service regarding its communications with the Complainant and remove any reference to an imposed cancellation from its records.

Consequently, 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)(b)**.
- 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 €5,000.00 to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 February 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—

(b)

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(c) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

