



<b><u>Decision Ref:</u></b>	2019-0069
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Farm & Livestock
<b><u>Conduct(s) complained of:</u></b>	Failure to advise on key product/service features Maladministration
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainants entered into a farm insurance policy with their Insurer in **January 2010**. Following the closure of the Insurer's [local] branch, this policy was transferred to the Provider during 2012 as the Insurer's intermediary. In December 2013, the Insurer took the decision that it was withdrawing *Fatal Accident Cover C* from the Complainants' policy.

In **January 2017**, the Complainants sought to make a claim under the policy in respect of the fatal injury to a number of its livestock. The Provider informed the Complainants that no cover was in place in respect of claims of this nature as *Fatal Accident Cover C* was removed from the policy at the 2014 renewal.

**The Complainants' Case**

The Complainants' complaint consists of four parts.

***The Notification Complaint***

The Complainants state that upon referring a livestock fatal injury claim to the Provider in January 2017, they were informed that such claims were no longer covered by the policy as this type of cover had been removed by a letter from the Insurer to the Provider which the

Complainants state they never received. The Complainants state that they requested a copy of the letter from the Insurer deleting the cover from the policy and were provided with two letters dated 12 December 2013 and 4 December 2014.

The Complainants state that both letters are signed by different individuals on behalf of the Insurer. The Complainants maintain they never received a copy of either letter and the fact that two letters were sent highlights the importance of the cover being deleted. The Complainants state the only notification they received was a one line note in the covering letter regarding the 2014 renewal to the effect that Fatal Accident Cover C had been deleted. The Complainants argue that this was not adequate notification.

The Complainants further state that the Provider was in breach of its duty of care as it did not obtain further clarification on the issue nor did it raise the issue with the Complainants when one of its agents visited the Complainants' farm in January 2014, prior to renewal. The Complainants state they have no notes or recollection of the deletion of cover being discussed at the farm visit prior to the 2014 renewal. The Complainants acknowledge that the purpose of the farm visits was to verify that farm improvements had taken place. The Complainants assert that the Provider needs to show them how and what was negotiated on their behalf with the Insurer.

The Complainants state that the letter from the Insurer to the Provider is dated 4 December 2014. They state they are unaware if this was the only communication between the parties regarding the decision to delete the cover. If it was, they argue that the Insurer took an extremely high-handed approach and did not give a reason for its decision.

#### ***The Alternative Markets Complaint***

The Complainants state that they were not afforded an opportunity to reinstate the cover nor were they given an opportunity to consider alternative options. Only having approached [third party Insurance Company], the Complainants state that insufficient attempts were made by the Provider to seek out alternative cover.

#### ***The Suitability Complaint***

The Complainants point out that their farming business is centred around their livestock and it is not in their interests to have fatal injury cover removed. They state that had they been aware of its removal they would have negotiated a replacement or sought alternative cover, something which the Provider should have advised them of. The Complainants state that they were not advised of the "*best product to suit your needs*" and neither did the Provider advise them about the financial risk they were exposed to in light of the absence of fatal injury cover and how to deal with that risk.

#### ***The Advice Complaint***

The Complainants refer to details of claim settlements for livestock fatal injuries on 28 November 2011 and 29 August 2012 and that on foot of a letter received from their insurance claim consultants (the **Consultants**) a recommendation was made to increase the Livestock Sum Insured to a minimum of €230,000.

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Quoting from the Consultant's recommendation the Complainants state such an adjustment was needed *"to avoid the application of Average in the event of any future claim."* I note that these documents are not contained in the papers that I have been furnished with. The Complainants state that no such advice was ever received from the Provider. The Complainants argue that owing to the failure of the Provider to act on foot of this recommendation the latter of the above-mentioned claims was lower than it would have been had the recommendation been taken up by the Provider. The Complainants submit that even though there were no further incidents, they were still financially exposed in the absence of adequate advice.

## **The Provider's Case**

### ***The Notification Complaint***

The Provider states that it discharged its duty to the Complainants by communicating to them the removal of the Fatal Accident Cover C from the policy. The Provider states the 2014 Renewal Notice clearly recorded the removal of the cover under the heading 'Notes'. The Provider states that it would assume/it believes that the Insurer's letter dated 12 December 2013, removing the Fatal Accident Cover C addressed to the Provider was sent by its agent to the Complainant with the Renewal Notice dated 9 January 2014. It is further submitted that if this is not the case then the language of the Insurer's letter is essentially identical to the language contained in the Renewal Notice.

In respect of the letters dated 12 December 2013 and 4 December 2014, the Provider states that it is unable to clarify why the second letter may have been written. The Provider states this is due to either a typographical error causing the letters to be mis-dated; or the Insurer re-issued the same letter in December 2014 despite cover already having been removed from January 2014. The Provider also states in its timeline of events in Appendix 3 under the date heading 16/12/2013 that *"It doesn't appear that the 'Removal of cover' Letter itself was issued to the client as per [...] email to [...] dated 15/08/2017."*

While the Provider acknowledges that it cannot say what attempts were made to retain the Fatal Accident Cover C on the policy as its agent who handled the Complainants' policy no longer works for it, it states it can infer from its agent's attempts to source alternative terms/cover from another insurance company (the **First Insurance Company**) that the Insurer was not willing to reinstate the deleted cover.

Finally, in respect of a telephone conversation that took place between the Provider's agent and the first Complainant (a recording of which has been provided to all parties), the Provider states that when a reference is made to the deletion of cover the first Complainant states:

*"You know as well as anyone that you don't go looking for these things until something happens."*

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### ***The Alternative Markets Complaint***

In respect of alternative markets, the Provider states that the First Insurance Company was the only other market available at the time as the market for farm insurance in Ireland was very limited. The Provider submits that there was no underwriting appetite in the wider insurance market to provide fatal accident cover in circumstances where there had been a number of similar claims.

The Provider states that its agent sought a quote on 16 January 2014 but the First Insurance Company declined to quote for mortality for livestock. The Provider states that it has an agency with a second insurance company (the **Second Insurance Company**) but the Second Insurance Company does not transact farm insurance with brokers nor does it provide brokers with any information regarding their farm products. At the 2015 renewal, the Provider states that its agent again sought a quote from the First Insurance Company by email dated 29 December 2014 but this was again declined by email dated 30 December 2014.

### ***The Suitability Complaint***

With respect to the existence of the Statement of Suitability for the 2014 renewal, the Provider accepts that it may not have been completed and if it has, it was not scanned to the Complainants' file. The Provider states that it provided Statements of Suitability for the 2015 and 2016 renewals and has quoted from these.

### ***The Advice Complaint***

The Provider makes a number of points in response to this aspect of the complaint. First, the Provider states that it made the Complainants aware of the Livestock Sum Insured at every renewal and at no time did the Complainants indicate that such sum was inadequate. Second, the Provider points out that the Complainants had the benefit of an expert opinion regarding the Livestock Sum Insured and did not act on this advice. Furthermore, the Provider has no record of the Complainants raising the issue with it at any time. Third, no complaint was made by the Complainants to the Provider at the time of the second claim dated 29 August 2012. It is stated that had the matter been brought to its attention it would have raised it with the Insurer. While the Provider may not have been able to achieve an increase in the sum paid out, it states that it may have been able to have achieved an increase in the Livestock Sum Insured. Fourth, the first livestock claim (28 November 2011), occurred prior to the Provider taking over the Complainants' policy and the second claim occurred not long after the policy was handed over. The Provider argues that it was reasonable for it to assume the Livestock Sum Insured were adequate when it took over the policy and that the Complainants would have accepted those terms on their renewal. When the Provider invited the Complainants to renew their policy in January 2013, the Complainants did not raise any issue regarding the Livestock Sum Insured.

## **The Complaints for Adjudication**

I consider that there are four main issues to be resolved in this instance. The first issue is whether the Complainants were properly notified in respect of the revocation of the Fatal Accident Cover C from the policy. The second issue is whether the Provider made sufficient efforts to obtain alternative markets for the Complainants. The third issue is whether the Provider properly advised the Complainants with respect to the suitability of the policy. The fourth issue is whether the Complainants were adequately advised by the Provider in respect of the Livestock Sums Insured.

## **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 Complainants were 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 28 February 2019, 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, I set out below my final determination.

## ***The Notification Complaint***

The Complainants' policy was due for renewal on 27 January 2014.

By letter dated 12 December 2013, the Insurer wrote to the Provider in the following terms:

*"Please note that wefrnl 2014, Fatal Accident Cover 'C' hsa been deleted from section 3 [sic]*

*All other terms and condition remain unaltered*

*Renewal Papers to follow"*

A **Renewal Notice** dated 9 January 2014 was sent by the Provider to the Complainants and states:

*"The policy below falls due for renewal on the 27 January, 2014. We are pleased to invite renewal of your cover based on the following summary of details.*

...

**NOTES**

*Please note that with effect from renewal date 27/01/2014, Fatal Accident Cover 'C' has been deleted from the livestock section."*

The word 'NOTES' also appears to have been highlighted and a Post-It note is attached which states:

*"[First Complainant],*

*Give me a ring on the mobile to discuss ..."*

In the **Farm Insurance Policy Endorsement** issued on 10 February 2014, the first page contains the following:

*"AS FROM THE EFFECTIVE DATE THE COVER IS AMENDED AS SUMMARISED BELOW SUBJECT TO THE FULL POLICY DESCRIPTIONS, TERMS AND CONDITIONS EXCEPT AS THEY MAY BE EXPRESSLY VARIED HEREBY."*

Section 3 of that document deals with livestock and contains a table with a list of different types of livestock. Under the category dealing with cattle and under the heading 'COVER AS DEFINED' the letters 'ABD' are recorded. Immediately under the table it is stated:

*"FOR FULL DESCRIPTION OF COVER APPLYING REFER TO SECTION 3 OF POLICY BOOKLET"*

I note that identical endorsements are contained in Section 3 of the **Farm Insurance Policy Endorsement** for 2015/2016 and 2016/2017.

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In the Insurer's **Farm Policy**, Section 3 deals with livestock and states:

**"COVER**

*The following covers A to E are operative only where selected and so indicated on Policy Schedule"*

The following paragraphs define what the categories A to E cover. Cover C deals with accidental death. This is the cover that was removed.

In respect the Provider's agent's request that the first Complainant call him, it appears that this request was never followed up the Complainants or the Provider or its agent. In an email dated 22 June 2018 the Complainants state:

*"[The First Complainant] **would have** returned his call and [the Provider's agent] **should have** informed him then Fatal Accident C was being removed."* [My emphasis]

Later in the email it is stated:

*"They failed to inform the client of this significant change in the policy. There is no evidence that the note was followed up to ensure the client understood the changes."*

The Provider is unable to say whether any call took place and assumes that the removal of the cover would have been discussed. The relevant agent is no longer employed by the Provider and there is no recording of the call as the agent provided his mobile phone number on the Post-It note.

I note that neither party is in a position to say whether any call took place. No times, dates, call records or precise details of any conversation have been furnished in evidence by either party. In light of the language used by the parties and the absence of evidence, I am unable to conclude that any call took place.

The Complainants assert that they never received either of the two letters issued by the Insurer (dated 12 December 2013 and 4 December 2014) and that these letters demonstrate the importance of the cover being removed. The Provider has been unable to prove and has expressed doubt as to whether either of these letters were sent to the Complainants. Further to this, the Provider is unable to explain the precise reason for the different dates on the letters. On the basis of the evidence and submissions, I conclude that the letter dated 12 December 2013 was not sent to the Complainants by the Provider with the 2014 Renewal Notice. I further conclude that the reasons offered as to why two letters were issued by the Insurer are not relevant to my determination of this complaint. As I have set out above, the issue is whether the Complainants were adequately notified of the removal of cover. The existence of the two letters and the reasons for this are not relevant to my determination of that issue.

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I note that a recording of a telephone conversation between the Provider's agent and the first Complainant dated 23 January 2017 has been provided in evidence. Having considered this recording in full, I note that when being informed of and when discussing the removal of cover, the first Complainant states:

*"You know as well as I know that people down the country don't go looking for these things unless these happen ..."*

Before reaching a conclusion on the Notification Issue, I will now refer to certain of the provisions of the Consumer Protection Code (CPC) 2012. Section 4.1 states:

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

Section 4.4 states:

*"A regulated entity must ensure that the font size used in all printed information provided to consumers is: a) clearly legible, and b) appropriate to the type of document and the information contained therein."*

Section 4.22 states:

*"A regulated entity must provide each consumer with the terms and conditions attaching to a product or service, on paper or on another durable medium, before the consumer enters into a contract for that product or service. ..."*

Section 4.31 states:

*"A regulated entity must set out clearly in the quotation provided to the consumer any warranties or endorsements that apply to the policy. Where the quotation is provided on paper or on another durable medium, this information must not be in a smaller font size than other information provided in the document."*

Taking into account the requirements of the CPC, I conclude that the Complainants were made adequately aware of the removal of the Fatal Accident Cover C from their policy. First, the removal notification was clearly stated on the 2014 Renewal Notice and the Complainants have not disputed their awareness of this. Second, the Complainants were referred to the **Farm Insurance Policy Endorsement** which referred to and set out the description of the cover provided and the terms and conditions of the policy. In Section 3, the cover provided for by the policy related to ABD. Third, the Complainants were also referred to the Insurer's **Farm Policy** which sets out each category of cover.



Simply because the Provider has not taken the additional steps the Complainants assert it should have taken does not indicate wrongdoing. I note that the Provider has complied with the requirements of the Consumer Protection Code cited above.

On the Complainants' own admission, their animals are of extreme importance. With this in mind, the Complainants have an obligation to diligently consider and familiarise themselves with the nature and extent of their policy. The recorded telephone conversation further suggests that the Complainants did not familiarise themselves with the precise extent of the cover contained in their policies at each renewal.

The fact that the Complainants were not provided with the Insurer's letter dated 12 December 2013 or the reasons for the removal of cover does not undermine the foregoing conclusion. Neither does the fact that no follow up call was made on foot of the post-it note. It was not solely the responsibility of the Provider to follow-up in that instance. The fact that the removal of cover was not discussed at the farm visit is not a matter which changes my conclusion. As the Complainants acknowledge, the purpose of these visits was to ensure farm improvements had taken place.

### ***The Alternative Markets Complaint***

Prior to the renewal date in 2014, the Provider's agent emailed the First Insurance Company on 16 January 2014 regarding a farm insurance quote. By email dated 22 January 2014, the First Insurance Company replied in the following terms:

*"We can quote €3818 for [the Complainants] and as per our telephone conversation this would exclude mortality."*

No evidence has been submitted in respect of the telephone conversation being referred to. The Provider's renewal form ***Reason Why Not Re-quoted*** dated 27 January 2014, states:

*"Reason: Only market for this type of business [tick]"*

By email dated 29 December 2014, a similar request was made by the Provider's agent to the First Insurance Company:

*"Hi [...]"*

*Find attached sub for the above,*

*Had a few livestock claims, see attached claims summary."*

The First Insurance Company refused to provide a quote by email dated 30 December 2014 which states:

*"We will not be quoting for this risk."*

I accept the Provider's evidence that the market for farm cover is limited in Ireland. The Complainants have not produced any evidence to contradict this. I also note the Provider's

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observation that the quote provided by the First Insurance Company was approximately €600 more expensive than the cover being offered by the Insurer. Having considered the evidence and submissions on this aspect of the complaint, I conclude that the Provider did not fail in its efforts to seek alternative cover.

The Complainants submit that they were not given the opportunity to reinstate the cover nor were they given the opportunity to consider alternative options.

The Insurer's decision to withdraw the cover is not strictly a matter for the Provider and neither is the Insurer's reasons for such a decision. Moreover, I have concluded that the Complainants were adequately notified of the removal of cover. I have also concluded that the Provider made adequate efforts to obtain alternative cover but was unable to do so given the market for farm insurance. In light of this, the Complainants were at all times free to seek out alternative cover and I do not believe the actions or otherwise of the Provider prevented this.

### ***The Suitability Complaint***

The Complainants argue that had the Provider made them aware of the removal of cover they would have negotiated a replacement or sought alternative cover. The Complainants submit that this is something which the Provider should have advised them of. The Complainants state that they were not advised of the most suitable products nor did the Provider advise them about the financial risk they were exposed to in light of the absence of fatal injury cover and how to deal with that risk. The Provider rejects this.

At subsequent renewals the Complainants were provided with Statements of Suitability. In respect of the period January 2015/2016 the relevant statement is dated 30/12/2014; and in respect of the period January 2016/2017 the relevant statement is dated 29/12/2015. Both statements are effectively identical in their wording. The following passages are contained in the Statement of Suitability dated 30/12/2014:

#### ***"Important Notice – Statement of Suitability***

***This is an important document which sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.***

...

*Following an appraisal of your General Insurance requirements, having analysed the market taking into consideration your needs, objectives and personal circumstances, [Provider] recommends:*

*That you renew your policy with [Insurer].*

*We recommend this course of action for the following reasons:*

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**Price:**

*[Insurer] are competitive and provide the most value for money once the level of cover is taken into account.*

**Needs, objectives & personal circumstances**

*We enclose your account renewal schedule. Please check the sums insured and cover to ensure it suits your current requirements. ...*

**Cover:**

*Dwelling House, Farming property, Livestock, Liabilities, Agricultural vehicles, Personal Accident, Revenue Audit.*

*Please note: This is just a summary of the covers under your policy. Conditions and exclusions apply to all policies and you should read your policy documents carefully to familiarise yourself with the full terms & conditions.* [My emphasis]

I would also note certain provisions of the Consumer Protection Code 2012. Section 4.21 states:

*“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. ...”*

Section 5.1 states:

*“A regulated entity must gather and record sufficient information from the consumer prior to offering, recommending, arranging or providing a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows the regulated entity to provide a professional service ...”*

Section 5.17 states:

*“A regulated entity must ensure that any product or service offered to a consumer is suitable to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware. ...”*

In light of the evidence presented and the submissions made, I find that no Statement of Suitability was prepared/furnished by the Provider prior to the 2014 renewal. However, this cannot be considered in isolation. I have already concluded that the Complainants were adequately notified of the removal of cover. I have also concluded that appropriate efforts

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were made by the Provider to obtain alternative cover. In light of these conclusions, I believe that the Complainants were aware of the risks posed by the removal of cover. That being so, I note it was open to the Complainants to arrange for replacement/alternative cover.

Moreover, there is no evidence which shows the Complainants sought a Statement of Suitability or that they sought clarity as to the suitability of the policy at the 2014 renewal. The Complainants renewed their policy on two subsequent occasions and on each of those occasions they were provided with, and had the benefit of, Statements of Suitability. It is also worth noting that the Statement of Suitability provided on 29 December 2015 precedes the event that gave rise to the claim.

I conclude that the absence of a Suitability Statement for 2014 was not the cause of any misunderstanding of or failure to appreciate any risks associated with the removal of cover.

With respect to the 2015 Renewal and the 2016 Renewal, Statements of Suitability were provided to the Complainants by the Provider. Both statements set out what the Provider believed to be the most appropriate policy for the Complainants. As is clear from the wording of the Statements of Suitability, the Complainants are asked to consider the sums insured and the cover being offered to ensure it suits their requirements. The statements further state that the Complainants should read their policy documents carefully and familiarise themselves with the full terms and conditions.

I note that no evidence has been advanced by the Complainants which demonstrates that they communicated to the Provider, at each renewal, that they wanted fatal injury cover. It is clear from the wording of both statements that a certain level of engagement was required by the Complainants. I note that the Complainants have not provided any evidence which suggests that they engaged with the Statements of Suitability provided to them. Or if they did engage with the statements, they were satisfied with what was offered on each renewal and paid the relevant premium.

I would also note that leading on from my conclusion that the Complainants were adequately notified of the removal of cover, no evidence has been presented to demonstrate the efforts on their part to obtain alternative cover. In light of these considerations, I do not propose to uphold the complaint in respect of the 2015 and 2016 Renewals.

### ***Advice Complaint***

The Complainants assert that they were financially exposed under the policy due to the Provider's failure to advise them as to the value of the Livestock Sum Insured.

They state that the failure of the Provider to act on foot of Consultant's recommendation meant the claim dated 29 August 2012 was lower than it would have been had the recommendation been taken up by the Provider. The Provider is rejecting the Complainants' argument for the reasons set out above.

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From the evidence and submissions in respect of this aspect of the complaint I note that the first policy renewal provided by the Provider was for January 2013. The policies in respect of which the claims were made pre-date that Provider's involvement with the Complainants.

I note that no evidence has been offered by the Complainants which shows that the Provider was made aware of Consultant's opinion. Furthermore, I note that no efforts were made to bring this to the Provider's attention and neither is there any evidence that the Complainants made the Provider aware that they were dissatisfied with the level of the Livestock Sum Insured. I note that the value of the Livestock Sum Insured contained in each policy provided by the Provider is €150,000. The Complainants were advised to familiarise themselves with the various policy documents. On doing this they would have been aware of the value of the Livestock Sum Insured. Given their evidence surrounding the importance of their animals, I note that the Complainants took no action to amend their policy despite their knowledge of the recommendation made by the Consultant.

In terms of the provisions of the Consumer Protection Code 2012, Section 4.21 states: "Prior to offering, recommending, arranging or providing a product, a regulated entity must provide information ..." Section 5.1 states: "A regulated entity must gather and record sufficient information from the consumer prior to offering, recommending, arranging or providing a product or service appropriate to that consumer. ..." [My emphasis]. This clearly places the duty on the regulated entity to advise prior to inception of a policy, not during.

In light of the foregoing, I conclude that the Provider has not failed to advise in respect of the Livestock Sum Insured nor did it expose the Complainants to any financial risks in this regard.

For the reasons set out above, I do not uphold any of the complaints.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

**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**

27 March 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.