



<b><u>Decision Ref:</u></b>	2019-0162
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Other
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - late notification
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant, via his Broker, incepted a policy of insurance on his campervan with the Provider in 2009, which he renewed annually. The policy period in which this complaint falls, is from 1 April 2017 to 31 March 2018.

**The Complainant's Case**

The Complainant states that on 12 May 2017 a burst pipe in the shower area of his campervan caused damage to the vehicle, which cost €7,491 to repair.

The Complainant's Broker notified the Provider of the claim on 10 July 2017 and it appointed a Motor Engineer to inspect the vehicle. The Engineer examined the campervan on 18 July 2017 and again on 19 September 2017 and concluded that the loss was as a result of wear and tear, which is not covered by the terms of the Complainant's insurance policy. The Provider then offered to settle the claim by covering the portion of the costs that could potentially have occurred as a result of a leak in the shower area only, and not any additional works that had been carried out to the rest of the campervan. In this regard, the Provider offered to settle the claim in the amount of €1,775 (€1,900 less the policy excess of €125) but the Complainant does not accept this offer.

In his email to the Provider dated 27 March 2018, the Complainant submits, amongst other things, as follows:

*"I saw with my own eyes the water escaping from the burst pipe that caused the damage, my father did...who did the repairs...as did his brother...who helps him...I feel as if I am being called a liar and I am not.*

*This is the reason I am not accepting your assertion that the damage to my vehicle was caused by wear and tear, because it wasn't".*

In addition, the Complainant notes that the Provider-appointed Motor Engineer was first scheduled to carry out an inspection of the Complainant's campervan on 14 July 2017 but that this did not take place until 18 July 2017. In this regard, in his email to the Provider dated 27 March 2018, the Complainant submits, among other things, as follows:

*"The engineer claiming a mix up in the location of the vehicle is a downright lie. I took a day off work [on 14 July 2017] in order to meet him and he didn't turn up, he never even contacted me to let me know he wasn't coming. He then turned up to the garage, (2 miles away from my house) four days later without my knowledge. Again, he did not have the courtesy to let me know he was coming. On his second visit [on 19 September 2017], he was rude, confrontational and unpleasant, which I attributed to his displeasure of having to return".*

The Complainant also advises in his email to the Provider dated 1 November 2017 that *"your assessor did not arrive on the day he agreed [that is, 14 July 2017] and I dumped the fibre glass wool after his first visit as it never occurred to me there would be a second visit".* In this regard, in his email to this Office dated 16 November 2018, the Complainant submits, among other things, as follows:

*"The [Provider-appointed] engineer...had an appointment to meet on Friday 14<sup>th</sup> July [2017]. I took a half day from work but he did not turn up. He then inspected the vehicle without my knowledge on 18<sup>th</sup> July. On neither occasion, had he the courtesy to let me know. Had he turned up on the 14<sup>th</sup>, or indeed had he informed me he was coming on the 18<sup>th</sup>, I would have arranged to bring him to where the vehicle was repaired, crucially, I could have shown him the bags of sopping wet fibre glass wool which caused the damage".*

Furthermore, in his email to this Office dated 3 December 2018, the Complainant submits, among other things, as follows:

*"I fully accept that [the Provider's] position was compromised by the delay in reporting the claim, it was not my delay as I reported it [to the Broker] immediately.*

*Repair work was underway by the time [the Provider] sent out an engineer because I had a vehicle which had a large hole in it and I undertook repair work to prevent further damage to the inside of the vehicle as per my obligations and to minimise the damage (successfully).*

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*[The Provider] did indeed appoint a motor assessor and while I do not dispute his qualifications, I think it is clear that he acted in an unprofessional manner by not turning up when agreed and then again not even letting me know he was coming 4 days later.*

*I cannot understand how on one hand [the Provider] claim they were compromised as the vehicle was partly repaired but are on the other hand certain that it was as a result of wear and tear. I also appointed a similarly qualified assessor who could not ascertain the cause of the damage (as it was repaired) but could see that the vehicle was in excellent condition otherwise.*

*I contest the fact that [the Provider] has treated me reasonably, I think they have treated me and my word despicably.*

*There was evidence available had the assessor met me, there was also evidence from 4 witnesses which was not sought”.*

The Complainant seeks for the Provider to admit his insurance claim in the amount of €7,491.

The Complainant's complaint is that the Provider wrongly or unfairly assessed his insurance claim.

### **The Provider's Case**

Provider records indicate that it was first notified of the Complainant's loss by way of an email from his Broker on 10 July 2017. A Motor Accident Report which had been signed by the Complainant on 26 June 2017 was attached to this email, advising that the damage to his campervan had taken place on 15 May 2017. As such, the Provider was notified 8 weeks after the event. The Accident Report described the loss as *“side fell out of vehicle, subsequently discovered shower pipe leak which rotted body of vehicle and led to fall out”*. This email also contained photographs of the damage to the campervan and a repairs quotation from [a Fitted Furniture Company] dated 1 June 2017 in the amount of €2,724 (including VAT).

Based on the description of the incident and the photographs provided, the Provider initially considered that this type of damage would not be covered as the Complainant's policy excludes cover for wear and tear. The Provider registered the incident on its claims system on 12 July 2017 and telephoned both the Complainant and his Broker to advise of its position. The Complainant informed the Provider during this call that the repairs to his campervan were already completed. In addition, he disputed that wear and tear was at play and instead maintained that the damage to his campervan was as a result of a leak from the shower pipe and that he had witnesses to this.

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The Complainant did not provide statements or details of the witnesses he refers to but the Provider understands that these witnesses are his father, along with two members of the fitted furniture contractors who dealt with the repairs to the bathroom area.

The Provider did not seek any statements from these parties as, in order to establish the cause of the damage and verify the validity of the claim, it appointed an expert Motor Engineer to carry out a physical inspection of the campervan and to provide a professional opinion as to how the damage occurred.

By the time it had been first notified of the claim on 10 July 2017, repair work was already well underway and some parts of the campervan has been replaced, which the Provider states prejudiced its position from the outset.

The Engineer carried out an inspection of the campervan on 18 July 2017. The Provider had originally instructed the Engineer to inspect the vehicle at the Complainant's home address but then learned that the vehicle was actually located at the Repair centre in [another county], so the inspection had to be reassigned to a local assessor in that county instead. As a result, it states that there was a short delay insofar that the initial inspection that had been due to take place on 14 July 2017 but did not occur until 18 July 2017. The instruction that the Provider sent to the Engineer contained the description of the loss that had been detailed in the Motor Accident Report, thus he was aware from the outset that it was the Complainant's contention that the damage to his campervan was as a result of a leak from a pipe.

The Motor Engineer noted that at the time of the inspection the campervan was in the process of being restored, with vehicle repairs already well underway. In addition, no photographs of the burst pipe or the damage that was said to have resulted directly from that leak were available. However, the Engineer did complete a detailed inspection and in the ensuing Report dated 19 July 2017 stated, among other things, as follows:

*"At time of inspection camper was in the process of restoration, side panels replaced, small sections of floor panel replaced in preparation for waterproofing with fibreglass sheeting. On inspecting interior bathroom, we found vehicle is fitted with a wet floor to allow for shower use, indications are grouting on floor tiles has worn away over time which may have allowed water to seep past tiles allowing the plywood to absorb same. On inspecting undercarriage beneath shower room, we found some section of the floor has been replaced. It is our opinion that the shower floor may well have allowed water to pass by tiles and resulting damage to floor may have caused damage to ply wood directly beneath shower/bathroom, however this vehicle is being fully refurbished, resealed and painted and we cannot foresee how any of the exterior sidewall replacement is a result of shower room leaking. It is our view that the damage done to the floor is the result of wear and tear of tile grouting displacement over time and therefore not covered under policy conditions.*

*If the shower unit itself developed a leak it may have contributed to side wall plywood damage however due to the fact complete vehicle has been drylined it is our opinion that damage is not related to incident with shower unit or shower floor".*

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The Provider telephoned the Complainant on 26 July 2017 to advise that the Engineer considered the damage to be as a result of wear and tear and thus would not be covered under the terms and conditions of his insurance policy. The Complainant was not in agreement with these findings and the Provider advised that he had the option to appoint his own engineer, at his own expense, if he so wished.

The Complainant appointed a Loss Assessor who inspected the campervan on 11 August 2017 and furnished the Provider with its Report, dated 15 August 2017, on 12 September 2017. From the outset, this Assessor noted, *“At the time of the inspection the majority of repair and reinstatement works had been completed internally to the campervan...This report is based only on visual evidence available at the time of this survey”*. The Report gave a background to the timeline of events that had occurred up to the date of the inspection and made reference to the repair works that had already been carried out. The Assessor did comment that *“the inside of the vehicle was in pristine condition before the damage occurred”*, but this statement was not substantiated with any documentary or photographic proof. Overall, the Assessor did not provide any evidence that could specifically show that the full amount of the damage claimed for was directly caused by a leak or burst pipe from the shower, rather than by wear and tear.

In order to be fair and reasonable, the Provider states that it passed the Assessor’s Report to its Motor Engineer for his opinion and arranged for another inspection to be carried out on the campervan. This second detailed inspection took place on 19 September 2017 and in his ensuing Report dated 21 September 2017 the Engineer stated, among other things, as follows:

*“Inspection carried out of sink area of bathroom, sink fitting removed to access and view pipework to shower and sink. Insured supplied a photograph of damage to offside of vehicle. Given the fact that damage to vehicle was on the opposite side to shower room, sink where insured proclaims leak occurred we are in no doubt that you are dealing with wear and tear and therefore not covered under policy conditions. In the course of our inspection we inspected fibre glass sheeting that was removed from vehicle, it is clear that some of the sheeting has deteriorated over time which allowed dampness to develop. While Insured may have had a leak of some kind in the shower room, sink area we are of the opinion that damage due to dampness on the opposite side of vehicle is not related and it is more reasonable to conclude this is due to wear and tear. The [Complainant-appointed Loss Assessor’s] report put forward that there was absolutely no dampness found within vehicle is incorrect, at time of inspection rear roof opening was broken and was held closed with insulation tape, we found visible evidence of dampness around this fitting”*.

During his inspections, the Engineer attempted to ascertain how such extensive water ingress could have occurred from a leak in the shower area of the vehicle that would cause the walls on the opposite side of the campervan to collapse. The shower room was fitted with a wet floor as opposed to a shower tray set up, which would have provided a greater level of water leak resistance. Some of the tile grouting had become displaced.

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On inspecting the underside of the vehicle, the Engineer found that a small section of floor had been replaced. There was no underfloor protection to provide a waterproof seal from the wet floor arrangement and the floor section would be exposed to outside splash from the road surface. Some of the underside was covered with a light coating of sealant but this would not provide waterproof protection from the road surface. The damage to the side wall was on the offside of the vehicle but the shower room and sink were located on the nearside. The Engineer also found visible evidence of damage and dampness at the rear roof opening, with a section of plastic that was broken and held closed with insulation tape. This was on the offside of the vehicle, the side that collapsed. The Engineer was of the opinion that the dampness visible in this area came from the window seal and broken hatch door. Based on all of these facts, the Engineer could not conclude that the damage to the side of the campervan that collapsed was consistent with a leaking pipe from the bathroom at the other side of the vehicle.

The Provider states that it had been placed in a very difficult position from the outset of this matter as repair works were already well underway when it was first notified of the claim some 8 weeks after the event. As a result, the Provider never had the opportunity to examine the campervan in its damaged condition or inspect the leak that the Complainant advised had come from the shower pipe. Nevertheless, despite that it was only notified of the claim after repairs had already commenced, the Provider states that it wanted to resolve the matter in the fairest possible way for the Complainant. In this regard, it was the Complainant's contention from the start that the damage to his campervan occurred because of a leak in the shower area. As such, the Provider made the decision to cover the cost of the damage to the back of the sink area which could potentially have occurred as the result of such a leak, even though this was at odds with the Engineer's findings.

The Provider asked the Complainant by telephone on 29 September 2017 to provide an itemised list of repairs, the service history for the campervan and a copy of the Certificate of Roadworthiness. The Complainant advised during this call that the vehicle did not need a Certificate of Roadworthiness, however this would not be correct under the requirements of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act, 2012.

On 2 November 2017, the Provider received an invoice from the [Fitted Furniture Company] in the amount of €1,900 for the total amount of work that had been carried out in the bathroom area, that is, *"Removal of all bathroom tiles and fittings including shower unit, WC unit and wash-hand basin. Replaced plywood panels on shower walls, internal and external walls. All shower walls were covered with P.V.C. panelling and sealed. Refitted all shower fittings, wash-hand basin and WC units"*. This invoice was submitted to the Motor Engineer, who agreed the full amount of €1,900, subject to the policy excess deduction of €125.

The Provider telephoned the Complainant on 14 November 2017 to advise that it was willing to cover the repairs invoice that he submitted. The Complainant was not in agreement with the amount offered as he wanted the claim settlement to include the cost of replacing the fibreglass on the outside of the campervan.

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In this regard, the Provider had received a written estimate in the amount of €4,767 from [another Repair Company] dated 11 July 2017, *“To dryline exterior of Camper, waterproof with Fibreglass Sheeting, seal joints with Seamsealer, prepare and paint complete camper”*. The Provider referred the matter back to the Engineer, who advised that the replacement of the fibreglass sheeting on the full exterior of the campervan would not fall under the cover provided by the policy as the damage was caused by wear and tear. As such, no repairs were agreed for this element of the claim.

The Provider states that it has not been provided with sufficient evidence to show that the entire damage to the Complainant’s campervan was caused as a result of a leak in the shower area. As with all insurance claims, the onus is on the claimant to prove his or her loss. The Motor Engineer who physically inspected the vehicle on behalf of the Provider was firmly of the opinion that the damage was as a result of wear and tear and the Provider states that it has not been provided with any evidence to the contrary. Regardless, in order to be fair and reasonable to the Complainant and despite the fact that repairs were already well underway when the claim was first reported, the Provider agreed to cover the portion of the costs that could potentially have occurred as a result of a leak in the shower area only, and not any additional works. The full amount put forward for these repairs amounted to €1,900 and the Provider agreed to cover the full amount, less the €125 policy excess. Given the delay in the notification of the claim and the fact that repairs were already completed to some of the campervan, the Provider feels that it has acted fairly to the Complainant in this case. This claim settlement offer of €1,775 (€1,900 less the policy excess of €125) was not accepted by the Complainant, but it remains open to him to accept.

### **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.

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A Preliminary Decision was issued to the parties on 9 April 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.

Following the issuing of my Preliminary Decision, both parties made further submissions as follows:

1. E-mail from the Complainant to this office dated 17 April 2019.
2. E-mail from the Provider to this Office dated 1 May 2019.
3. E-mail from the Complainant to this Office dated 1 May 2019, a copy of which was transmitted to the Provider for its consideration. The Provider advised this Office under cover of its e-mail dated 3 May 2019 that it had nothing further to add.
4. The Ombudsman found it necessary to seek further clarification from the Provider on the 13<sup>th</sup> May.
5. Email from Provider to this office 14<sup>th</sup> May
6. Two emails from the Provider dated 16<sup>th</sup> May to this office
7. Email from Complainant to this office dated 17<sup>th</sup> May
8. Email from provider to this Office dated 22<sup>nd</sup> May stating they had nothing further to add

Following consideration of these additional submissions from the parties, together with all of the evidence and submissions furnished, I set out below my final determination.

The complaint at hand is that the Provider wrongly or unfairly assessed the Complainant's insurance claim. The Complainant, via his Broker, incepted an insurance policy with the Provider on his campervan in 2009, which he renewed annually. The policy period in which this complaint falls, is from 1 April 2017 to 31 March 2018.

I note from the documentary evidence before me that the Complainant's Broker emailed the Provider on 10 July 2017 to notify it of the Complainant's claim. In this regard, Section E, 'Accident Details', of the Motor Accident Report attached to this email detailed the date of the incident as 15 May 2017 and the loss as *"side fell out of vehicle, subsequently discovered shower pipe leak which rotted body of vehicle and led to fall out"*. I note that the Complainant had signed this Motor Accident Report on 26 June 2017.

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The Complainant's insurance policy, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that the 'General Conditions – All Sections' section of the applicable Scheme Policy booklet provides, among other things, at pg. 8:

***"Claims***

**2.** *You or any other person whose liability is covered...must:*

*(a) Immediately notify us in writing of any event which may give rise to a claim under this Policy with all the details we may require".*

I note from the documentary evidence before me that whilst the Complainant's loss occurred on 15 May 2017, the Provider was not notified of the claim until 10 July 2017, some 8 weeks later. In this regard, I accept that the Provider first being informed on 10 July 2017 of the Complainant's loss on 15 May 2017 constitutes late notification. Recordings of telephone calls between the Complainant and the Provider have been provided in evidence. Having considered a recording of the telephone call that the Provider made to the Complainant on 12 July 2017, I note that the Complainant advised *"you do know it's repaired at this stage"*. As repairs to the Complainant's campervan had already been completed or at least were well underway by 10 July 2017, I accept that it was reasonable for the Provider to determine that the late notification of the claim had prejudiced its position to examine the loss and establish the cause of the damage. In this regard, the delayed notification of a claim to an insurer will make it more difficult for the insurer to ascertain the exact cause and indeed extent of the original damage, and this is more so where repairs are already well underway or completed by the time of the late notification.

Notwithstanding this late notification, the Provider did appoint a Motor Engineer to inspect the Complainant's campervan, and he did so on 18 July 2017 and again on 19 September 2017.

I note from his ensuing Reports dated 19 July and 21 September 2017 respectively that the Engineer could not conclude that the damage to the side of the campervan that collapsed was consistent with a leaking pipe from the bathroom at the other side of the vehicle, as reported by the Complainant, but instead he concluded that the damage was as a result of wear and tear. In this regard, 'Section 1 – Loss of or damage to the Motor Caravan' of the applicable Scheme Policy booklet provides, among other things, at pg. 11:

***"Exclusions to section 1***

*We will not pay for*

*1. Depreciation, wear and tear, mechanical, electrical or electronic breakdown".*

Notwithstanding the late notification of the claim at hand and the fact that repairs to the campervan were well underway or completed by the time of this late notification, I note

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that the Provider agreed to cover the portion of the costs that it considered could potentially have occurred as a result of a leak in the shower area only, and not any additional works.

In this regard, I note the invoice from the [Fitted Furniture Company] dated 1 August 2017 in the amount of €1,900 for the total amount of work that had been carried out in the bathroom area, that is, *“Removal of all bathroom tiles and fittings including shower unit, WC unit and wash-hand basin. Replaced plywood panels on shower walls, internal and external walls. All shower walls were covered with P.V.C. panelling and sealed. Refitted all shower fittings, wash-hand basin and WC units”*. The Provider offered to settle the Complainant’s claim in the amount of €1,775, that is, €1,900 less the policy excess of €125. The Complainant refused this offer.

However, given the late notification of the claim and as repairs to the campervan were well underway or completed by the time of this late notification, both of which I accept prejudiced the Provider’s position from the outset to determine the exact cause and indeed extent of the original damage, I believe that this offer is a fair and reasonable approach to the matter by the Provider and it remains open to the Complainant to advise the Provider directly whether he now wants to accept this claim settlement offer.

In addition, I note that the Complainant complains that the Motor Engineer appointed by the Provider to inspect his campervan was initially due to do so on 14 July 2017 but did not carry out the inspection until 18 July 2017. In this regard, having considered to a recording of the telephone call between the Complainant and the Provider on 15 September 2017, I note that the Complainants advised, as follows:

*“Your assessor was supposed to come out on a Friday. I had taken a half day. I wanted to show him what happened, show the damage site, show him the fibre glass that came out, the insulation wool, how the damage had travelled by the water and he didn’t turn up on the Friday and then he turned up the following Tuesday and he never even rang me so he had been and gone before I knew it, if you know what I mean, and I was at work”*.

Similarly, in his email to this Office dated 16 November 2018, the Complainant submits, among other things, as follows:

*“The [Provider-appointed] engineer...had an appointment to meet on Friday 14<sup>th</sup> July [2017]. I took a half day from work but he did not turn up. He then inspected the vehicle without my knowledge on 18<sup>th</sup> July. On neither occasion, had he the courtesy to let me know. Had he turned up on the 14<sup>th</sup>, or indeed had he informed me he was coming on the 18<sup>th</sup>, I would have arranged to bring him to where the vehicle was repaired, crucially, I could have shown him the bags of sopping wet fibre glass wool which caused the damage”*.

In this regard, the Provider has advised that the Engineer had originally been instructed to inspect the vehicle at the Complainant’s home address but then learned that the campervan was actually located at [the Repairs Company] in [another county], so the inspection had to be reassigned to a different local assessor instead. As a result, the Provider advised that

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there had been a short delay insofar that the initial inspection that had been due to take place on Friday 14 July 2017 but did not occur until Tuesday 18 July 2017.

I appreciate that the Complainant was inconvenienced by the Engineer not attending to inspect his campervan as arranged on 14 July 2017. This appears to have arisen because of some misunderstanding as to the location of the vehicle to be inspected.

In any event, I note that the instruction that the Provider sent to the Engineer contained the description of the loss that had been detailed in the Motor Accident Report signed by the Complainant - that is, "*side fell out of vehicle, subsequently discovered shower pipe leak which rotted body of vehicle and led to fall out*" - thus the Engineer was aware from the outset that it was the Complainant's contention that the damage to his campervan was as a result of a leak from a pipe, however the Engineer was unable to conclude that the damage to the side of the campervan that collapsed was consistent with a leaking pipe from the bathroom at the other side of the vehicle.

In this regard, I am also mindful that the Complainant appointed his own Loss Assessor who inspected the campervan on 11 August 2017 and I accept that it was reasonable for the Provider to conclude that in his Report dated 15 August 2017 this Loss Assessor did not provide any evidence that could specifically show that the full amount of the damage claimed for by the Complainant was directly caused by a leak or burst pipe from the shower, rather than by wear and tear.

Based on the evidence before me and for the reasons outlined above, I do not uphold this complaint.

### **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**

30th May 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.

