



<u>Decision Ref:</u>	2019-0188
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Car
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Upheld

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

Background

The First Complainant purchased a car insurance policy (referred to below as “the policy”) with the Provider on **24 February 2015**.

The First Complainant purchased the policy in his own name giving his contact details to the Provider. Subsequently, it became apparent that the Complainant’s contact details had been mixed up with the contact details of his father the Second Complainant, (who shares the same name as the First Complainant). In addition to the First Complainant’s grievance, the Second Complainant has articulated a complaint in respect of his own position, which arose when he received text messages and telephone calls from the Provider, and ultimately from a debt collection agency. He is represented in that regard by the First Complainant, his son.

The Complainants’ Case

The First Complainant purchased a policy with the Provider in February 2015.

On **20 December 2016**, the First Complainant telephoned the Provider to obtain a quote for a change of vehicle. When the Complainant was asked to verify his contact details, the details he gave did not match the details held by the Provider on its system. The Complainant

queried whether the contact details on the Provider's system belonged to his father (the Second Complainant) as they share the same name.

When the First Complainant gave the Second Complainant's date of birth and mobile telephone number to the Provider, those details matched with the First Complainant's policy. The agent thought that this was unusual and told the Complainant that when he first went into the file, it displayed the First Complainant's father's details however, when the agent clicked into the policy the First Complainant's own details appeared. The agent informed the First Complainant that the system must have amalgamated the two names at the same address. The agent said that he would refer the issue to the Provider's IT department to have the issue resolved. The Complainant was unable to receive a quote at that time from the Provider due to the error on the system.

The agent told the First Complainant that it did not have his mobile telephone number on file, and asked the First Complainant to provide his mobile telephone number to put it on his file.

On **22 December 2016**, the First Complainant again telephoned the Provider in relation to a change of vehicle on his policy. When he was asked to verify his contact details, he encountered the same problem as he had encountered during his telephone conversation with the Provider two days earlier, in that, the contact details that he gave did not match the details held on the system. The First Complainant told the Provider that this issue happened previously and enquired whether the IT department had updated the details. The Provider made the changes to the First Complainant's policy and issued a confirmation letter on 22 December 2016 enclosing new insurance documentation.

In **February 2017**, the First Complainant's policy was due for renewal. He received his renewal notice to his email address and upon receipt of his policy documents, the First Complainant says that he decided he was going to take out a policy with a different Provider. The First Complainant returned the certificate of insurance with a letter confirming that he wished to cancel the policy. The First Complainant did not receive any further correspondence from the Provider.

In **April 2017**, the First Complainant received a letter from a debt collection agency stating that it was pursuing him on behalf of the Provider in relation to unpaid premium in the amount of €37.59. The Complainant spoke to his father the Second Complainant in relation to the notice he received. The Second Complainant informed him that he had received telephone calls and text messages from the Provider and had told the Provider that there must be an error as he has never held, nor did he currently hold, a policy with the Provider.

On **13 April 2017**, the First Complainant telephoned the Provider to lodge a formal complaint. The First Complainant had first become aware that there was an issue in relation to an unpaid premium when he received the letter from the debt collection agency in April. He informed the Provider that it had been sending information relating to his policy to a third party (his father, the Second Complainant). Furthermore, the First Complainant said that he had made the Provider aware of the issue with the information on its system on numerous occasions months earlier, but that it had failed to rectify this.

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The First Complainant received a telephone call from an Assistant Supervisor with the Provider who apologised to the Complainant for the files merging on its system. The Assistant Supervisor agreed to waive the outstanding €37.59. The Complainant's main concern was that his details and his father's details had been referred to a debt collection agency; he feared that this would have a negative impact on the credit rating of one or other or both of them. The Assistant Supervisor assured the Complainant that she would get in touch with the debt collection agency, to remove his father's details from its system.

On **18 April 2017**, the First Complainant telephoned the Provider to inform them that the Second Complainant, his father, had received a telephone call from the debt collection agency despite the fact that the Provider had told him that his father's details would be removed from the agency's system. This demonstrated to the Complainant that it was his father's details and not his own, that were initially passed to the debt collection agency.

On **8 May 2017**, the First Complainant sent an email to the Provider to follow up on the complaint he lodged in April and asked for an update in relation to the investigation. The Complainant noted that:

"When I last spoke to the Assistant Supervisor she was to send me emails that she had sent, showing she had asked the debt collectors to remove my father's details from their system and the email showing my formal complaint was registered. The Assistant Supervisor advised she would send these emails but to date I have not received any emails"

On **9 May 2017**, the First Complainant received a response from the Provider confirming that it was investigating his complaint and could confirm the following:

"Your father's phone number was updated on your file some time ago due to system matching rules that we have in place..."

This was referred to our IT department in December 2016, and a fix was put in place and your father's details were removed from your file. Clearly something went wrong in April, as your father received notification from a debt collection agency in relation to your policy..."

Your father's details have been removed from the debt collection agency. You point out below that the Assistant Supervisor was to send you written confirmation of this, which she did promise on a call with you. I'm very sorry that this didn't happen, and this will be addressed. We requested that your father's phone number be removed from the debt collection agency's records on the morning of the 18th of April. We received confirmation of this at approx. 2pm that day. I know that a phone call was made to your father a couple of hours prior to this, but wish to assure you that your father's details have been deleted from their records. We have also updated your record internally..."

The Complainants are seeking confirmation from the Provider that all details in relation to the First Complainant and the Second Complainant have been corrected on its system. The

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Complainants are further requesting confirmation from the Provider that their details have been removed from any third party agency together with confirmation that this error will not have a negative impact on either the First Complainant's or the Second Complainant's credit rating. The Complainants also seek a sum of compensation as a result of this incident.

The Provider's Case

The Provider states that on 13 April 2017, the First Complainant lodged a formal complaint for a suspected data breach when he became aware that telephone calls and text messages intended for him, were sent to another party, by the Provider.

The Provider states that the First Complainant also received a letter from its debt collection agency in relation to an outstanding payment owed on his cancelled insurance policy, in the amount of €37.59. The Provider states that the outstanding payment was owed by the Complainant for time on risk, on a motor insurance policy which was held by the First Complainant with the Provider, until he cancelled the policy following its renewal on **8 March 2017**. The Provider states that the renewal date for the policy was **24 February 2017**.

The Provider states that it was aware of a file merge issue in 2016 and upon identification of this on 20 December 2016, the Provider escalated the issue to its IT department to investigate the error and implement a fix to prevent any further reoccurrence of the error.

The Provider states that when the First Complainant contacted the Provider on 22 December 2016 to place a permanent change of vehicle on his policy, the change was processed without confirmation from its IT department that the error with the Complainant's file had been resolved. When the change was processed, the Provider failed to update the correct details on the Complainant's portfolio.

The Provider states that the information contained on its system portfolio includes the First Complainant's name, address, contact details including telephone number, email and date of birth.

On **23 December 2016**, when the Provider's IT department corrected the First Complainant's record, it asked the customer experience team to confirm that the correct contact details had been updated on the portfolio. On **29 December 2016**, the customer experience team confirmed that the details were correct. The Provider states that it failed to check the contact details held on the First Complainant's portfolio. The Provider states that it only became aware that the contact details held on the First Complainant's file were incorrect, on **13 April 2017**, following his telephone call to the Provider. As a result, this led to telephone calls and text messages in relation to an outstanding direct debit, being sent to someone other than the First Complainant (i.e. to the Second Complainant).

The Provider states that the payment fell due as the First Complainant failed to inform the Provider that he did not wish to proceed with the renewal of his policy, which fell due on 24 February 2017.

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The Provider states that when the First Complainant inceptioned the policy in February 2015, he took it out on a "roll over direct debit" basis. The credit agreement that the First Complainant signed states:

"I/we understand that after the first year, premiums will be paid over 12 equal instalments with the first instalment due on the renewal date of the policy with no deposit payable"

The Provider states that the First Complainant was issued with his policy renewal documentation on **30 January 2017**. The Provider states that as the policy was paid on a direct debit basis the renewal documentation stated:

"As you are currently paying by continuous Direct Debit, we'll simply renew your policy for you. Your annual certificate and disc will be sent to you. If you don't want to go ahead with this policy please let us know at least eight days before your renewal date"

The Provider states that as it received no notification from the First Complainant prior to his renewal, the Provider proceeded to renew the policy as per the policy terms and conditions. The Provider states that when the First Complainant's direct debit was returned unpaid, it issued a letter to the First Complainant's home address on **2 March 2017**, requesting either payment in full, or cancellation of the policy.

The Provider states that it received a request from the First Complainant on **8 March 2017**, looking to cancel his policy.

The Provider states that as payment was due for time on risk from 24 February to 8 March 2017, it made its best endeavours to contact the First Complainant to inform him that there was an outstanding payment on his account.

The Provider states that it issued two letters to the First Complainant on the 10 and 20 March 2017 respectively, requesting the outstanding balance. The First Complainant was put on notice by letter dated 20 March that:

*"If payment is not received within 7 days we will have no choice but to refer the case over to our **Debt Collection Agency**"*

The Provider states that when it failed to hear from the First Complainant, his case was transferred to the Provider's debt collection agency, to recover the outstanding payment.

The Provider states that in addition to sending two letters to the Complainant, it also sent text messages and made two telephone calls to the mobile telephone number held on file. The Provider states that the mobile telephone number on file was incorrect, and this led to another party receiving a call from the debt collection agency.

The Provider states that when it identified that the number held on file was incorrect, it undertook to resolve the issue for the First Complainant. The Provider states that it waived the balance due on the First Complainant's account, as well as updating his contact details.

The Provider states that its offices were closed over the Easter holidays and as a result, the Complainant's details were not removed from the debt collector's system until Tuesday, 18 April 2017. The Provider states that it tried to resolve the issue for the Complainant in a timely and efficient manner.

The Provider confirmed with the debt collection agency that the only information it received in relation to this case was a telephone number and email address, which were recorded incorrectly on the First Complainant's portfolio. The Provider further confirmed that no other sensitive data in relation to a third party was shared with the debt collection agency.

The Provider refers to the Consumer Protection Code 2012:

"2.1 acts honestly, fairly and professionally in the best interest of its customers and the integrity of the market

We acknowledge this was a poor customer experience, but at all times agents dealing with the Complainant acted professionally. It is evident from reviewing the file that there was lack of follow up on a number of occasions, however as soon as this became evident the Provider worked to resolve the issue in a timely and efficient manner;

2.8 corrects errors and handles complaints speedily, efficiently and fairly

Once the Provider became aware of the error with the Complainant's file, it acted in the best interest of the Complainant to resolve the error and correct his record. This was done in a timely manner and in line with the Consumer Protection Code. However, there was a lack of follow up in December 2016 on the Provider's part to ensure the contact information was accurate and up to date;

10.7 A regulated entity must seek to resolve any complaints with consumers

10.8 When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process

In respect of the two provisions above, when the Complainant raised the complaint, both an Assistant Supervisor and a Supervisor attempted to resolve the complaint for the Complainant on the day in question. In addition and as per the Complainant's request the complaint was escalated to the Risk and Compliance team for a full investigation. This was fully investigated in line with the Provider's complaint process and a formal response issued to the Complainant"

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The Provider states that it accepts responsibility for the poor customer experience provided to the First Complainant and accepts that there were a number of errors which were preventable, in resolving the initial issue. The Complainants' respective details were unmerged by its IT Department and a permanent fix was put in place to prevent the 2 records merging again in the future.

The Provider states that it is regrettable that incorrect details were sent to the Debt Collection Agency, when a fix for the file merges had been sent some months previously.

The Provider states that it issued the First Complainant with his renewal invite by post and email on 30 January 2017 informing him if he did not wish to proceed with his renewal to contact the Provider eight days prior to the renewal date. The Provider states that a number of letters were issued to the First Complainant informing him of an outstanding payment due on his account. This was in advance of the file being sent to a debt collection agency.

The Provider has offered a goodwill gesture of €250 to each of the Complainants for the inconvenience caused.

The Complaints for Adjudication

The complaints are that:

1. The Provider's system wrongfully altered the First Complainant's contact details and it failed to correct those errors in a timely fashion;
2. The Provider was guilty of very poor customer service leading to the Second Complainant being issued with inappropriate communications, and ultimately, leading to the First and Second Complainants being contacted by a debt collector.

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

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Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 20 May 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, the final determination of this office is set out below.

The issues which have to be resolved in this instance, concern the Provider's conduct insofar as its systems incorrectly "merged" the First Complainant's information with that of a third party, in this instance, the Second Complainant, his father, who bears the same name and who, it appears had given his contact details to the Provider at an earlier time when seeking a quote for insurance. It appears however, that he did not incept a policy and his relationship with the Provider did not progress beyond that quotation.

The Complainants are also dissatisfied in relation to the time taken to correct these errors on its system. The Complainants say that the Provider's poor customer service led to them being contacted by a debt collector.

I note from the documentary evidence before me that the First Complainant telephoned the Provider on **20 December 2016**, and then again on **22 December 2016** to place a permanent change of vehicle on his policy. During the telephone conversation, the First Complainant brought it to the attention of the Provider that incorrect contact details were stored on its system for him. The Provider went ahead with the change of vehicle on the policy and sent new insurance details to the First Complainant on the same date. The statement of fact sent to the First Complainant contained his name, address and date of birth, among other details. The First Complainant's date of birth on the statement of fact was however incorrect and appears to have been the date of birth of his father, the Second Complainant.

When the First Complainant's policy came up for renewal in February 2017, a letter dated 20 February 2017 was sent to the Complainant's home address thanking him for renewing his policy with the Provider. I note that the Provider states in its letter that:

"We've also emailed your Policy Booklet and our Terms of Business to [email address]. These documents form part of your policy, please read and keep them safe"

It appears that the email address on the letter dated 20 February is not the First Complainant's email address but that of his father. I note however, that the statement of fact enclosed in the letter of February 2017 contained the First Complainant's correct details.

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These errors occurred repeatedly despite the First Complainant contacting the Provider on a number of occasions in an attempt to resolve the issue. It is not clear how the Second Complainant's details came to be "merged" with those of the First Complainant, given the two very different dates of birth. Such a matter however, falls outside the scope of this investigation and instead is a matter for the Data Protection Commission, if either of the Complainants takes the view that further examination of this issue is required.

I accept that the First Complainant's policy came up for renewal on 24 February however, both letters dated 30 January 2017 and 20 February 2017 sent to the Complainant did not contain the First Complainant's email address but that of his father, the Second Complainant.

The Complainants are aggrieved that their contact details were passed onto a debt collection agency. I note that the Provider has confirmed that the only information it shared with the debt collection agency in relation to this matter was a telephone number and email address. The Provider confirmed that no other sensitive data in relation to a third party was shared with the debt collection agency, though the sensitivity of the data, or otherwise, is a matter for the Data Protection Commission, and not for this office. I agree with the Provider's acknowledgment however, that it is indeed regrettable that incorrect details were sent to a debt collection agency, given that a fix for the file merge had been instructed by the Provider some months earlier.

The Provider accepts that the First Complainant experienced poor customer service and that there was a lack of follow up by the Provider on a number of occasions in relation to the First Complainant's file.

I note that the Provider has offered a goodwill gesture of €250 to each of the Complainants for the inconvenience caused. However, from what has been set out above, I do not believe that this amount accurately reflects the inconvenience and distress caused to the Complainants by the Provider's systems errors, and its failure to accurately correct the situation, once the issue was brought to its attention. The Complainants were each understandably concerned at the prospect of this error affecting their own and each other's respective credit ratings.

For the reasons set out above, I am satisfied that it is appropriate to uphold these complaints.

Conclusion

- My Decision is that this complaint is upheld pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, on the grounds prescribed in **Section 60(2) (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, in recognition of the frustration and distress the Complainants have encountered, I direct the Provider to review and if necessary correct its records, to ensure that no negative indicator has been registered by it with the ICB or the Central Credit Register, in relation to either Complainant's name, arising from these events during 2017. I also direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €600 each, to an account of each of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant/s to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payments, 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

12 June 2019

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.