An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0372
Sector:	Insurance
Product / Service:	Household Buildings
Conduct(s) complained of:	Misrepresentation (at point of sale or after) Maladministration
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant, through the Provider, his broker, incepted a home insurance policy with a named insurer on **26 May 2014**. This policy was renewed in **June 2015**.

The Complainant's Case

The Complainant states that in **May 2015** he telephoned the Provider to request *"a quote only"* for home insurance.

The first element of the Complainant's complaint concerns the Provider's renewal of the home insurance policy that he had incepted the previous **May 2014**, without his permission.

The second element of his complaint concerns the Provider's arrangement of a premium finance loan with a named premium finance firm on behalf of the Complainant. The Complainant says that in addition, he did not consent to any direct debit mandate for the purpose of repaying any such loan.

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

> *"*[The Provider] *claim I gave them permission to set up home insurance in 2015. This was not the case as a copy of telephone recording will show …*

There is a call missing from Friday the 17th of June 2016 and also call 11 on the CD provided has in my view been cut.

My bank confirmed to me a new direct debit mandate would have been needed to set up this new household insurance as I had paid in full the previous year. [The Provider] *claims I gave verbal permission over the phone yet there is no call to back up this assertion.*

In May 2015 I requested a quote for household insurance – a quote only. I did not give [the Provider] *any permission to set up, as they say, a rolling direct debit mandate.*

In a telephone call dated Friday 17th of June 2016 I was accused by a [Provider] *employee of owing €258 by missing 10 direct debit payments. This was never the case...*

This call is missing for some reason. Call 11 is not fully furnished for some reason. I spoke by telephone and email with [the Provider] *regarding these points and* [it] *offered no answers or reasons to why this had happened"*.

The Complainant submits *"I would expect to be financially compensated"* and in this regard advises, *"I believe €1,000 would be fair and reasonable"*.

The Complainant's complaint is that in May/June 2015, without his permission, the Provider wrongfully renewed his home insurance policy and arranged a premium finance loan in his name, to facilitate this.

The Provider's Case

Provider records indicate that the Complainant, via the Provider, as his broker, incepted a house insurance policy with an insurer on 26 May 2014.

In advance of the policy renewal date, the Provider issued a renewal invoice to the Complainant on 13 May 2015. Having not heard back from him on this matter, the Provider telephoned the Complainant on 17 June 2015 to discuss his outstanding renewal. The Provider is satisfied from its records that the Complainant agreed during this call to proceed with the renewal as offered at a cost of €265 and to pay this premium by way of a premium finance loan.

Following this verbal agreement, the Provider arranged for a new premium finance loan in the amount of €265 and this was added to the Complainant's existing valid mandate with a premium finance firm.

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The Provider issued the Complainant with the home insurance policy renewal documents on **17 June 2015**, including a schedule of payments. The Provider notes that the premium finance firm also wrote to the Complainant on 17 June 2015 confirming the loan and setting out the schedule of monthly repayments.

The Provider notes that the premium finance firm then wrote directly to the Complainant on 30 July, 14 August and 1 September 2015 advising him of defaults on the payment.

The Complainant telephoned the Provider on **7 September 2015** in order to obtain a motor insurance quotation and during this call advised that he may want to cancel his existing house insurance policy in October 2015 and replace it with a new home insurance policy, in order to give him a common renewal date with his motor insurance.

The Provider notes that the premium finance firm then wrote directly to the Complainant on 8 September 2015 advising that as it had not received payment for the defaults, the loan had been terminated. As a result, the premium finance firm debited the Provider's client premium account in the amount of €237.88, the balance outstanding for the Complainant at the time of the cancellation of the loan. Despite this, the Provider did not cancel the Complainant's home insurance policy and it ran for its 12 month term, from May 2015 to May 2016.

As its financial year end was 30 June 2016 and in an effort to tidy up outstanding monies, the Provider was contacting customers prior to this date and following a telephone call to the Complainant regarding the outstanding €237.88 and due to his longstanding relationship with the Provider, it agreed to write-off the monies due to it at that time, as a gesture of goodwill.

The Provider notes that the Complainant complains that he did not give the Provider permission to renew his home insurance that was due for renewal on 26 May 2015, however it is satisfied that the Complainant instructed it to do so by telephone on 17 June 2015. In addition, the Provider also notes that this cover was maintained for the policy term and that monies owed following the cancellation of the premium finance loan were written off.

The Provider notes that the Complainant complains that there is a telephone call recording missing from 17 June 2016 and that a particular telephone call recording on the disc of call recordings provided to him *"has…been cut"*. In this regard, the Provider added an additional phone extension in its office in October 2014 and did not realise that this extension was not linked to its call recording system, until such time as the Complainant requested his file and a recording of his telephone calls. The Provider then contacted the company that supplies this service and it explained that the new extension had not been included onto the call recording system, a matter that has since been rectified.

The Provider notes that the Complainant complains that he paid his home insurance premium in full in May 2014 and yet there was an overlapping of monies being requested for some months that were already paid for. The Provider confirms that the Complainant's home insurance premium was paid in full in May 2014.

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Prior to the premium finance loan that began in June 2015 in respect of the home insurance policy effective from 26 May 2015 to 25 May 2016, the Provider notes that the previous agreement the Complainant had with the premium finance firm was in relation to a motor insurance premium, which ended in July 2014. In this regard, the Provider has no record of any monies taken by the premium finance firm thereafter until the first payment for his house insurance in June 2015.

The Provider also notes that the Complainant states that his bank has confirmed that it would never allow for a rolling direct debit mandate without written permission. Whilst it cannot comment on what the Complainant was advised by his bank, the Provider can confirm that the premium finance firm, where it has a valid mandate on file for a customer, will allow for a loan to be renewed/rolled over or a new loan to be set up for another policy where the Provider has confirmation from the customer for it to do so.

The Complaint for Adjudication

The Complainant's complaint is that in May/June 2015, without his permission, the Provider wrongfully renewed his home insurance policy and arranged a premium finance loan in his name, to facilitate this.

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 5 November 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.

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Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The complaint at hand is that without his permission, the Provider wrongfully renewed the Complainant's home insurance policy and also arranged a premium finance loan in his name, without his consent.

In this regard, the Complainant, through the Provider, his broker, incepted a home insurance policy with a named insurer on 26 May 2014 and he paid the annual premium upfront, in cash. This policy was due for renewal on 26 May 2015. I note from the documentary evidence before me that the Provider issued the Complainant with a Household Renewal Notice Invoice dated 13 May 2015 which advised, *inter alia*, as follows:

> *"**Household Renewal Notice Invoice***
>
> *As Authorised Advisors we have broked your policy and having regard to your circumstances as advised to us and taking into account your policy cover and pricing we find the following placement is appropriate. Please sign and return the declaration below"*.

The Complainant did not sign and return the said declaration but he advises that he telephoned the Provider in May 2015 to request *"a quote only"* for home insurance.

I note that the Provider advises that as it had not heard back from him regarding the renewal, it telephoned the Complainant on 17 June 2015 and that he agreed during this telephone call to proceed with the renewal as offered at €265 and to pay this premium on a monthly basis by way of a premium finance loan. In this regard, the Provider has furnished its records that include the following notation:

> *"17/06/2015 14:34:04 [Staff member's name]*
> *rang insd re o/s rnl*
> *same r/over on cpfi*
> *This loan is now active"*.

I note from the documentary evidence before me that the Provider then wrote to the Complainant on 17 June 2015, as follows:

> *"Please find enclosed the policy documentation for the above policy.*
>
> *Please examine the enclosed documents, giving particular attention to Terms, Conditions and Exclusions, and if it does not meet your requirements, please return for amendment.*
>
> *Many thanks for placing the business with us"*.

The enclosed Policy Schedule clearly indicated the renewal of the original policy dated 26 May 2014 for the period from 26 May 2015 to 25 May 2016.

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In addition, I note that the premium finance firm in question also wrote to the Complainant on 17 June 2015, as follows:

> *"**Your insurance finance with*** **[the premium finance company]**
>
> *Thank you for choosing* [the premium finance company] *to fund your insurance premium and any associated costs, arranged through* [the Provider]".

The Complainant submits that

> *"my bank…have informed me they would have insisted on a new direct debit mandate being set up and signed, they would not have allowed a rolling direct debit to go ahead following a year gap"*.

Nevertheless, it appears from the documentary evidence before me that the premium finance firm was able to collect the first loan repayment instalment in the amount of €60.15 on 29 June 2015 from the Complainant's bank account. In this regard, the premium finance firm later wrote to the Complainant on 30 July 2015 to advise that it had been unable to collect the second loan repayment instalment in the amount of €30.09 that had fallen due on 27 July 2015. I note that it was also unable to collect any further monies from the Complainant's bank account.

Upon receipt of the notification from the Provider dated 17 June 2015 confirming that his home insurance policy had been renewed, or upon receipt of the notification from the premium finance firm also dated 17 June 2015 that premium finance had been set up in his name, or upon identifying that a loan repayment instalment in the amount of €60.15 had been collected from his bank account on 29 June 2015 from his bank, it would have been prudent of the Complainant to have contacted the Provider to query these events, if these communications did not align with his understanding of the position.

I am mindful that the home insurance policy ran for its 12 month term, from May 2015 to May 2016 and that in June 2016 the Provider agreed to write off the balance outstanding for the Complainant at the time of the cancellation of the premium finance loan, that is, €237.88.

That said, I note that the Provider has no recording of the telephone call on 17 June 2015 which is the very telephone call which it says was the one during which the Complainant agreed to proceed with the home insurance renewal and to pay the premium by way of a premium finance loan. In any event, as the Complainant had paid his home insurance premium the previous year upfront in cash to the Provider, it would have been prudent of the Provider, given that the premium payment for the renewal was, as it asserts, to be paid in an entirely different way (by way of a premium finance loan) to have sought written confirmation of this from the Complainant. It was certainly not best practice for the Provider to have set up a premium finance loan on foot of a verbal instruction, without also ensuring that it held either a recording of the Complainant's instructions to do so, or that it obtained signed paperwork confirming any such verbal instruction.

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I note that **Chapter 11, 'Records and Compliance**', of the Consumer Protection Code 2012 provides, *inter alia*, as follows:

> *"11.1 A regulated entity must ensure that all instructions from or on behalf of a consumer, including the date of both the receipt and transmission of the instruction, are recorded"*.

In this regard, I note from the documentary evidence before me that the Provider has not furnished any acceptable record indicating that the Complainant instructed it to arrange a premium finance loan in his name in June 2015. As a result of its failure to do so, I believe that it is appropriate to uphold this complaint, and to mark that decision, I intend to direct that the Provider make a compensatory payment to the Complainant in the amount of €500.

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

I have noted the absence of adequate records held by the Provider, regarding its interactions with the Complainant in June 2015. I have also noted the Provider's actions in creating a new premium finance loan in the Complainant's name, without any contemporaneous records of the Complainant's consent to do so at that time in January/June 2015. As these issues raise a concern that there are potentially systemic issues at play, I consider it appropriate to send a copy of this decision to the Central Bank of Ireland for such action as it may consider to be appropriate.

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) (f) and (g).***

- 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 €500, 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.***

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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

27 November 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.