



<b><u>Decision Ref:</u></b>	2020-0249
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Dissatisfaction with customer service Delayed or inadequate communication Failure to process instructions in a timely manner
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns a loan facility of €26,000 which the Complainants applied for in April 2018 to cover the cost of their upcoming wedding.

#### **The Complainants' Case**

The first Complainant argues that he had to remind the Provider to issue the Consumer Credit Agreement (**CCA**) after approval of a loan in April 2018. After the Complainants had signed the CCA, they argue that they were told by a branch manager (Mr H) in a local branch that the wrong documentation had issued to them so they would have to re-sign the documents and return again. The Complainants returned the documents and drew down the loan. On 2 May 2018, the first Complainant argues that a copy of the loan documentation had been sent to his home address in an unsealed envelope and the contents of the letter had fallen out on the postal journey and were attached to the envelope with a paperclip.

The first Complainant states that the loan agreement was initially viewed by his mother, who resides at the first Complainant's home address, as the envelope was addressed to the first Complainant only and not to both Complainants. The first Complainant has been clear that they share the same address but there are separate properties which they reside in. The first Complainant also submits that it should have been addressed to both Complainants with his name followed by 'junior' as this is his mailing label with the Provider. The first Complainant argues that his parents are elderly individuals who were quite stressed and agitated that the Complainants needed to borrow such a large amount, as they assumed they were financially secure.

The first Complainant indicates that his mother told the second Complainant's parents about the loan which caused a lot of stress for them and also to the Complainants concerning the issue of paying for the wedding. The Complainants have submitted that their families were impacted and, more worryingly, the Complainants do not know who in the locality (post office, post man etc) has seen or heard about the loan.

The first Complainant has submitted that from his close inspection of the envelope, it was clear that the envelope had never been sealed. He argues that there is no residue on the backside of the envelope which the seal should stick to. He further argues that there is no crease in the flap which indicates the Provider forgot to try to seal it.

The first Complainant attended the branch on **4 May 2018** to report the incident and was told by the customer service officer (Ms C) that the situation would be recorded as a complaint. He argues that Ms C acknowledged that the envelope had not been sealed or folded on its overlap, and further trivialised the fact that the loan balance, personal account numbers, and current account numbers were contained in the document. The Complainants argue that they received a call from Mr H apologising for the event and saying that the matter would be investigated but he did not indicate that he was the one who had posted the envelope. The first Complainant received a call from the Provider's customer complaints department seeking detail on what had happened. The first Complainant was aggrieved that the officer in question had not spoken to Mr H or the branch at that point.

After receipt of the Provider's final response letter on 24 May 2018, the Complainants state that they contacted the Provider on 31 May 2018 expressing their dissatisfaction with the outcome and requesting the return of the envelope in question. On 11 June 2018, the Complainants state that they contacted the Provider to state that they had not received the envelope. The Complainants state that they were assured on 12 June 2018 that the envelope had issued but were then told by the Provider on 15 June 2018 that it was being processed through the central mailing team which would cause delays.

The first Complainant argues that the CCA document had to be re-executed because a page of the loan offer that had been sent by email was missing and that this was well known by the branch manager. The first Complainant argues that the mailing label for his own personal account includes 'junior' so even allowing for leaving the second Complainant's name off the envelope, his correct details were not included on the envelope when they were handwritten on to it. He states that the reason why his mailing label for the Provider has 'junior' on it is because his father at the same address has the same name. It was for this reason he argues that the post was reviewed and checked by his parents.

The first Complainant notes the Provider's comments regarding the envelope and process as to how it was sealed, regarding the two sides pressed together to seal it. He argues that it is clear from inspection that there is no residue on the body of the main envelope so it is therefore clear that the envelope was never sealed. He argues that a sealed envelope would be significantly damaged if someone tried to reopen it after it was sealed and there would be residue on the main body of the envelope.

The First Complainant argues that it is clear from inspection of the envelope that it was in perfect condition because it was never sealed by the Provider. He states that he did not report the matter to An Post because he did not believe that his grievance was with them but rather with the Provider which issued confidential information without sealing the envelope.

The first Complainant states that he is greatly annoyed by the Provider's comments that his current account could be opened under a different account number, as this option was never offered to the Complainants at any stage by the Provider is to alleviate their concerns. He argues that it is disingenuous for the Provider to lay this accusation at his door when at no stage did it offer that service to him.

The Complainants are seeking financial compensation for breach of client trust, carelessness, negligence, and reputational damage caused by the Provider. They argue that they suffered a lot of pain and stress which was worsened by the false claim in the Provider's response which, they say, basically calls the first Complainant a liar. The Complainants are seeking €25,000 each from the Provider for the reputational damage, stress and hurt caused by the Provider. They state that they will not know who in the locality knows of their borrowings with the Provider or about rumours going around the local community because someone saw the document in the local post office or had access to it. They argue that they do not know if their current account numbers and signatures have been copied or any attempt made to steal funds from them in the future. The Complainants argue that the Provider has ruined a very important time in their lives by adding untold stress to what should have been a joyful time, not only to them but to their parents and families in relation to the borrowings. They argue that they were viewed as being financially secure but now their families are worried, wondering whether they need help with other payments.

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

The Provider accepts that the first Complainant applied for the loan facility on 17 April 2018 through the Provider's direct banking department. On 20 April 2018, it states that the first Complainant contacted the Provider and was advised that the loan was conditionally approved. The Provider states that the application was approved by its underwriting department on 23 April 2018. The Provider states that the first Complainant contacted it by telephone seeking a copy of the Consumer Credit Agreement (CCA). The Provider states that on 25 April 2018, the CCA was sent to the first Complainant by email and the Complainants were advised to sign and return the CCA to the local branch.

The Provider states that on 26 April 2018, the first Complainant attended the local branch and was assisted by Mr H. The Provider states that Mr H reviewed the documentation and cannot recall the specifics but required the CCA to be reprinted and signed. No material change was made to the CCA in relation to the amount of the loan, the term of the loan, the interest rate, or the terms and conditions at this point. The Provider states that the first Complainant subsequently signed the reprinted the CCA and returned it to the branch on 26 April 2018. The Provider states that on 27 April 2018, a copy of the signed CCA was sent to the Complainants for their records and the loan was drawn down on the same date.

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The Provider states that the Complainants' details were obtained during a telephone call between its direct banking department and the first Complainant on 17 April 2018. The Provider argues that for anti-money laundering purposes, 'junior' was not added to the first Complainant's name on the loan documentation as it was necessary for the loan to be opened in the true names of the individuals.

The Provider points to the statement of Mr H where he set out that it is his practice to seal all envelopes before they leave his desk. It also refers to the fact that external correspondence is sorted by the Provider's central mailing centre after being sent in the internal post from a branch and sent from that centre, to An Post. The Provider does not accept that the correspondence in question was unsealed when the envelope left the Provider's possession. It argues that if one of the staff members in the central mailing centre detected an unsealed envelope within the external correspondence, they would have ensured that the envelope in question was not dispatched to An Post for mailing and it would be returned to the relevant department that issued it. The Provider argues that it did not attach the signed customer copy of the CCA dated 26 April 2018 to an unsealed envelope and send in the post. The Provider argues that it did not report the incident to An Post as the envelope was sealed when it left its possession. It further argues that the envelope was sent by standard post which did not provide for any tracking ID or number and it was therefore unlikely that any escalation would have resulted in additional information becoming available.

The Provider acknowledges that when a copy of the signed CCA was being sent to the Complainants in this case, the envelope should have been addressed to both parties on the loan facility and not just to the first Complainant. It acknowledges that where there is more than one account holder on account, ordinarily correspondence is addressed to both account holders. It acknowledges that the correspondence was not addressed to both account holders and it apologises for the error. It argues, however, that given the fact that the CCA allegedly fell out of the envelope and was attached to the envelope with a paperclip, the fact that the envelope was not addressed to both parties is not pertinent to the third party reviewing the contents of the CCA.

The Provider states that it uses Ceadúnas 330 type envelopes where the adhesive is on the envelope and it is sealed by pressing the two parts together. It argues that a particular postbox number is given as the return postal address on all envelopes issued by the particular branch. If there had been any issue with the envelope after leaving the Provider, An Post had the option to return it to the Provider but no correspondence was returned.

The Provider argues that it takes its obligations of customer confidentiality and data protection very seriously. It argues that to the best of the knowledge of Mr H, the envelope was sealed before leaving his desk. The Provider also argues that the envelope went for a second check at the central mailing department before it left the Provider's possession. It argues that the Provider relies on a third party, An Post, to deliver its correspondence to customers and cannot be held accountable for events that occur outside its control. In relation to the accusation that the CCA was delivered by the postman attached to an envelope with a paperclip, the Provider argues that it does not have any control over the handling of the envelope by a third party once it leaves its possession.

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The Provider argues that it should not be held responsible for the envelope subsequently being handled by a third party prior to being received by the Complainants. It further argues that it is not aware of the environmental conditions to which the envelope was exposed once outside the Provider's possession.

With regard to the divulgence of information to third parties, the Provider states that it is not in a position to comment on the actions of the third party attaching the CCA to the envelope as asserted. Furthermore, the Provider cannot comment on the alleged actions of a third party divulging any other information to another third party. The Provider argues that the Complainants have at no point requested the closure of the loan account nor has the first Complainant requested that his current account (which is detailed on the CCA) be opened under a different account number due to any security concerns regarding disclosure of any information to a third party. The Provider states that it would have been happy to carry out such an instruction if it had been received from the Complainants.

The Provider states that the first Complainant lodged his complaint verbally when he attended the branch on 4 May 2018. The Provider argues that it complied with provision 10.9 of the Consumer Protection Code 2012 in respect of the complaint as it issued an acknowledgement letter to the Complainants on 11 May 2018 and issued its final response letter to the Complainants on 23 May 2018. The Provider states that when the first Complainant attended the branch on 4 May 2018, the customer service manager (Ms C) retained the envelope in her office to investigate the complaint. The Provider states that during this time, Ms C was working three days a week in a different branch and this resulted in a short delay in the return of the envelope to the Complainants. It argues that the delay by the Provider was an oversight and not an intentional delay.

The Provider states that it offered €5,000 to the Complainants in full and final settlement of the complaint on 24 April 2019 to resolve the matter amicably, without the requirement for a full investigation by this Office. This offer was refused by the Complainants. The Provider states that the settlement offer continues to remain open for the Complainants to accept. The Provider notes, however, that it does not accept liability for the condition of the envelope upon delivery to the first Complainant's address. It argues that on the balance of probabilities, there is no definitive evidence that the Provider was at fault given the fact that the envelope was outside the Provider's control from the date it was sent to the date of receipt by the Complainants.

### **The Complaints for Adjudication**

The primary complaint is that the Provider was guilty of maladministration in that it issued the Complainants' Loan Agreement for €26,000 to them

- without addressing both loan applicants,
- setting out the First Complainant's name incorrectly by omitting the "Junior"
- in an envelope which was unsealed with the contents thereof attached to the outside of the envelope with a paperclip.

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The Complainants are also unhappy that the Provider failed to deal with the complaint in a proper manner, including failing to return the envelope to them within a reasonable period of their request.

### **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 on **23 June 2020**, 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 consideration of additional submissions from the parties, the final determination of this office is set out below.

The primary complaint in this case is that the Provider allowed a copy of a signed loan agreement in the names of both Complainants to be sent by post to the first Complainant in an unsealed envelope addressed only to the first Complainant and omitting the 'junior' at the end of his name.

The consequences of this conduct, according to the Complainants, is that the loan agreement was delivered to them attached to the envelope with a paperclip, was potentially viewed by local post workers, and was read by the first Complainant's mother who thereafter informed the first Complainant's father and the second Complainant's parents that the Complainants had taken out a loan to pay for their wedding. The Complainants argue that this caused considerable distress and upset to them and their families.

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The Complainants applied for the loan in question over the phone to the Provider's direct banking service on **17 April 2018**. Both Complainants spoke to the Provider's representative and gave details in relation to their income and any other loans. The Provider states that the application was approved by its underwriting department on 23 April 2018, though the facility was conditionally approved by 20 April. The first Complainant contacted the direct banking department by telephone on **23 April 2018** seeking a copy of the Consumer Credit Agreement (CCA).

The Provider states that the loan was approved by its underwriting department on 24 April 2018. It appears that a copy of the CCA was emailed to the first Complainant on 25 April 2018 but when the loan documentation was signed and returned to the local branch on 26 April 2018, the branch manager, Mr H, indicated that the loan agreement had to be re-signed. Mr H does not recall the reason for this, but the first Complainant has clarified that it was because a page of the loan offer was missing from the emailed copy. As a result, the Complainants had to sign a reprinted CCA and this was returned to the branch on 26 April 2018. It appears that a copy of the CCA was sent by Mr H to the Complainants for their records on 27 April 2018, and the loan was drawn down the same day.

The Complainants have submitted the envelope and the CCA, that they say was delivered to them on 2 May 2018, attached with a paperclip. It is not suggested that the Provider sent the copy of the CCA in this manner, ie attached by paperclip to the outside of an envelope addressed to the first Complainant.

Rather, the Complainants have argued that the Provider failed to seal the envelope in question and that the CCA fell out at some point while the envelope was in the custody of the postal service. Presumably the suggestion is that an An Post worker then attached the contents of the envelope (the CCA) to the outside of the envelope rather than returning the contents inside the envelope. Neither party has contacted An Post for its explanation for the manner in which the letter was delivered.

The envelope itself is handwritten and bears the name of only the first Complainant. It is not addressed to the second Complainant. The Provider has acknowledged that the envelope should have been addressed to both parties, as the loan was a joint one and it has apologised for this oversight.

Furthermore, the envelope does not indicate a 'junior' at the end of the first Complainant's name. I appreciate that the first Complainant has argued that his mailing address in respect of his personal current account with the Provider contains 'junior' at the end of his name and he believes that this should have been used in relation to the loan correspondence. The Provider has argued that the loan itself issued in the first Complainant's name without the 'junior' as this is his proper name and therefore the correct name for the loan to have been issued in. This was the reason, according to the Provider, why the copy CCA was addressed to the first Complainant without the 'junior'. I accept this explanation from the Provider. So while I therefore acknowledge that the Provider ought to have addressed the envelope to both Complainants, I do not accept that it fell into error by omitting 'junior' from the first Complainant's name. The Provider posted the CCA to the first Complainant's address as this was given as the address for the loan account in the application.

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In my opinion, if the Provider had addressed the envelope to both borrowers, the absence of the word "junior" would not have had the same significance. Indeed the Complainants' position is that the Provider was severely negligent, in failing to address the envelope correctly.

In relation to the envelope itself, I acknowledge that the envelope is in good condition. The envelope that has been submitted to me certainly has been folded at the relevant crease where it would have been folded if an attempt had been made by the Provider to seal the envelope, though I am unable to say at what point this crease was made. I acknowledge that there is very little by way of residue from the adhesive side on the main body of the letter.

The first Complainant has strongly argued that the fact that there is no adhesive on the main side of the envelope and the fact that the envelope is not damaged means that the envelope was not sealed at all by the Provider before it was sent through An Post. I cannot however accept that this has been proven in the present case.

Firstly, in his statement Mr H confirms that

*"it is a matter of practice that I would seal all my envelopes before they leave my desk."*

This is coupled with the fact that the envelope was sent from the branch for sorting in the Provider's central mail centre before being forwarded to An Post. The envelope in question therefore went through two checks before it was sent to An Post and I accept that it is very likely that it would not have been sent to An Post, if either Mr H or the main centre workers had identified that the envelope was unsealed. In so noting, I am not suggesting that the Provider has definitively proven that the envelope was sealed before posting. Rather I believe that an unsealed envelope is not likely to have been forwarded to An Post, in the ordinary course, on the basis of the normal practices of Mr H and the central mail centre. Whilst it is of course possible that on this particular occasion, such an error escaped not only the notice of Mr H., but also that of the central mailing centre, but I don't accept that it is likely.

Secondly, the FSPO is not an expert in the sealing of envelopes or the adhesive marks left or not left on envelopes after they have been sealed. The FSPO cannot confirm whether it is possible to seal an envelope of this type and for the adhesive to fail at some point in its postal journey without residue of the adhesive remaining on the main envelope. It is of course perfectly plausible, in my view, that the letter was sealed by the Provider and the seal opened after it was sent through An Post, on the basis that the adhesive was not strong enough, or it was somehow badly sealed.

I do not believe however that on the basis of the evidence available, it is appropriate for this office to draw a conclusion on this point on the balance of probabilities. As there is insufficient evidence before me as to how the envelope opened or was opened in transit, I cannot uphold this aspect of the complaint.

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The Complainants seek to rely on a video of the envelope which they say was taken shortly after it was received and have suggested that this shows that:

*“The envelope is in very good condition per the video  
The flap of the envelope is not creased. It is in perfect condition. There is some damage to the envelope obviously from transportation but there is sufficient evidence to verify this envelope was never creased and therefore never sealed at this point.”*

I don't accept this. Whilst the FSPO is not an expert in forensics, nevertheless in my opinion, there is a crease visible within that video, which does not bear out the Complainants' suggestions.

In respect of the arrival of the envelope with the CCA attached to the outside, I do not believe that it would be appropriate to hold the Provider accountable for this occurrence even if it had been proven that the envelope was unsealed when it left the Provider. I consider it to have been a very unusual option for a third party to choose, to attach the contents of an envelope to the outside of that envelope using a paperclip, rather than using the same paperclip to close the now unsealed envelope with the contents inside it (even if the contents had fallen out at some point).

As regards the fact that the correspondence was read by the first Complainant's mother, I accept that the Provider contributed to this occurrence by the fact that the envelope was addressed to the first Complainant only rather than to both Complainants. It was not the sole cause of the fact that the correspondence was read by the first Complainant's mother, however, as I accept the Provider's argument that the fact that the CCA had been attached to the outside of the envelope by a third party in transit seems to also be a realistic cause of the occurrence.

In any event, the very top of the CCA makes it clear that the correspondence is in respect of the first and second Complainants, so it should have been apparent to the first Complainant's mother from the outset that the document was not intended for her husband of the same name, as she may have initially thought.

The decision by the first Complainant's mother to divulge the confidential banking information of the Complainants to a number of other parties after she incorrectly intercepted the relevant CCA is not something that can be laid at the feet of the Provider in the present complaint.

So while I accept that the fact that the Provider's failure to address the correspondence to both Complainants in the present case contributed to the fact that the correspondence was intercepted by the first Complainant's mother, I do not accept that this was the sole cause of the events giving rise to the Complainants' dissatisfaction.

There were a number of factors in this case, including:

- the identity of the names of the first Complainant and his father who were living at the same address,
- the fact that the first Complainant's address was the one used for the loan application,
- the fact that the letter was either unsealed or its seal failed at some point of transit
- the fact that an unknown party opted to attach the CCA to the outside of the relevant envelope at some point of transit,
- the fact that the first Complainant's mother opted to continue to read the CCA after it identified the Complainants as the borrowers at the top of the document, and thereafter
- the fact that the first Complainant's mother opted to divulge confidential banking information in respect of the Complainants to a number of other parties.

In my opinion, all of these factors contributed to the situation that the Complainants found themselves in. While I accept that the situation which unfolded was unfortunate for the Complainants who were entitled to keep their banking affairs confidential, I am also of the view that the impact of the incident as they have described it in their complaint, is somewhat disproportionate to the incident that occurred.

An oral complaint was initially made by the first Complainant, in branch on 4 May 2018. This was logged by the representative who accepted the complaint (Ms C) and an acknowledgement letter was issued to the Complainants dated 11 May 2018. Mr H phoned the first Complainant to discuss what had occurred from the first Complainant's perspective to allow Mr H to investigate the matter.

On **11 May 2018**, a representative of the Provider rang the first Complainant to discuss his complaint as she had been assigned the task of investigating it. Rather than assist the representative in question by confirming exactly the state in which the envelope had been delivered to him as she requested, the first Complainant repeatedly admonished the representative in question for not having spoken to the bank personnel that he had spoken to, in relation to this complaint before calling him.

In spite of the fact that the first Complainant had spoken to Mr H and Ms C at this stage, his reaction to this simple query, when he had raised a complaint, is difficult to understand. In any event, the representative in question did in fact investigate his complaint and issued a final response letter 23 May 2018, which upheld the complaint as regards the second Complainant's name being omitted from the correspondence received, but did not uphold the element of the complaint regarding the state of the correspondence received.

I accept that thereafter, the first Complainant requested that the envelope that he had brought into the branch when making his initial complaint, be returned to him. I further acknowledge that there was a short delay in this envelope being returned to him.

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This delay has been explained by the Provider on the basis that the fact that the individual with custody of the envelope, Ms C, only works at that branch, two days a week and the fact that external mail is processed through the Provider's central mail centre. In light of the short delay involved, I accept these explanations and I am not of the view that any harm resulted from it. I do not accept that there was any wrongdoing on the part of the Provider in relation to its response to the present complaint and accordingly, I do not consider it appropriate to uphold the complaint against the Provider, as regards how the complaint was handled.

I note that the Provider did not offer any compensation to the Complainants when it first investigated the matter, even though it partly upheld the complaint. Instead, an offer of compensation in the sum of €5,000 was made after the complaint was made to this Office, at the outset of the formal investigation of the complaint. This offer was rejected by the Complainants.

In light of the fact that I can only reasonably find that the Provider acted wrongfully in the present complaint, in its failure to address the envelope to both Complainants, I am of the view that this offered compensation is more than adequate to compensate the Complainants for the conduct of the Provider in the present case.

I am not satisfied that it has been proven that the Provider was at fault for the state of the correspondence delivered to the Complainants in early May 2018. The Provider has however long since acknowledged its error in failing to address the envelope to both Complainants, and on 24 April 2019 offered generous compensation to the Complainants in respect of its error, which it remains open to them to accept. Accordingly, I do not consider it appropriate or necessary to 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.**



**MARYROSE MCGOVERN  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23 July 2020

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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.

