



<u>Decision Ref:</u>	2020-0345
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Hire Purchase
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant entered into a hire purchase agreement with the Provider in **April 2017** to facilitate the acquisition of a car. The Provider repossessed the car in **October 2018** due to the Complainant's failure to make the scheduled payments and the accumulation of arrears. The Complainant has made a number of complaints in respect of the Provider's conduct. In particular, the Complainant submits that the car together with his personal belongings were repossessed without any notice or consent. The Complainant also asserts that the Provider's recovery agent spoke to him in a racist, threatening and abusive manner.

The Complainant's Case

The Complainant explains that he purchased a car under a hire purchase agreement on **21 April 2017**. However, the Complainant asserts that he did not receive a copy of this agreement for a further five months until **5 September 2017**. The amount financed €15,195, the interest charge was €6,494.40 and the total repayable was €21,639.40 (including charges). The Complainant submits that there were "... *lot's of wrongs in my contract ...*" The Complainant also states that he "... *found it like a trick as I can't cancel it or get my money back.*"

The Complainant states that he raised his issues with the Provider several times and in the process, dealt with several people. However, since **July 2018**, "... *my complaints were never dealt with.*"

The Complainant advises that he *"... started receiving calls from mobile no [number]."* He then contacted the Provider to try to identify this person and requested that any contact from the Provider be in writing or from a landline number.

The Complainant goes on to explain that the Provider threatened to repossess his car and failed to resolve the issues that he had previously brought to the Provider's attention. The Complainant remarks that *"... I sent them the detail of the payment's I made but they claim more money."*

The Complainant explains that on **9 October 2018**, he received a call which he states included racism, violent language and threats of breaking into his flat in order to repossess his car. He also asserts that this individual threatened to report the Complainant's car as stolen to An Garda Síochána. The Complainant states that he contacted the Provider to get an update regarding his six complaints and to find out who called him. The Complainant states that he spoke with one of the Provider's agents and wrote a letter of complaint. The Complainant also contacted An Garda Síochána in relation to the matter.

Following this, one of the Provider's managers contacted the Complainant on a mobile phone number. The Complainant advised this manager that he did not feel comfortable communicating by mobile phone. From the Complainant's submission, he appears to make the point that the Provider's manager informed him that his complaint was not important.

The Complainant continues his submission by stating that *"I paid over half of my car value for the period. [The Provider] does not want to provide me with the payment details even I sent them my bank statements."*

The Provider's Case

The Provider states that it categorically denies that it wrongfully repossessed the Complainant's car. On the contrary, the Provider submits that it retains title to the car until the final payment has been made and the change of ownership fee has been paid. The Provider explains that given the substantial level of arrears at that point in time, totalling €4,311.49, the Provider terminated the agreement and informed the Complainant of its intention to recover the car.

The Provider advises that the level of arrears is based upon the value of agreed repayments which remain outstanding at any point in time. The Provider advised the Complainant on a number of occasions of the amount that remained outstanding and stands over these figures.

The Provider explains that its preference is always to resolve cases by way of engagement and payment of arrears and will continue to engage with customers up to the point where an asset is repossessed. In respect of the contact made with the Complainant, the Provider states that such contact was made on behalf of the Provider by one of its recovery agents.

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The Provider states that mobile phone contact will be made by its recovery agents prior to the recovery of an asset in order to attempt to resolve the arrears one final time before recovering the asset in question. It is stated by the Provider that the role of a recovery agent is field based, therefore necessitating mobile phone communication.

In terms of providing the Complainant with a copy of the hire purchase agreement, the Provider *strongly deny* this aspect of the complaint; stating that its system records show that its Welcome Pack, including a copy of the Credit Agreement was issued to the Complainant on **21 April 2017**. The Provider submits that without any specific information regarding that issues raised by the Complainant in the context of the hire purchase agreement, they are unable to respond to this aspect of the complaint, pointing out that it appears to have been based on the non-delivery of a copy of the agreement. The Provider also adds that it is satisfied that it has complied with **section 58** of the **Consumer Credit Act 1995** (the **Consumer Credit Act**).

The Provider states that it has also complied with **section 64** of the **Consumer Credit Act**. As stated in the original agreement, the balance to be paid before the Provider would have to obtain a court order to repossess the car was €8,546.47. The deposit/part exchange paid by the Complainant at the time of the transaction was €3,800 and from the point of commencement of the agreement in **April 2017** to when the car was repossessed in **October 2018**, the Complainant had made payments totalling €1,520.96. This, combined with the deposit/part exchange, was still below the level which would have required the Provider to seek a court order to repossess the car.

The Provider advises that in respect of the personal items the Complainant claims were in the car at the time it was repossessed, it advised the Complainant by email dated **22 October 2018**, of the location and timeframe available for the collection of any personal belongings. The Provider submits that whether or not the Complainant did in fact collect any such belongings is not the Provider's responsibility.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to provide and/or delayed in providing the Complainant with a copy of the Hire Purchase Agreement;
2. Failed to engage and/or co-operate with the Complainant regarding certain issues he had with the agreement once he had an opportunity to review it;
3. Miscalculated the Complainant's arrears;
4. The Provider's Recovery Agent contacted the Complainant from a mobile phone having been instructed not to do so;

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5. The Provider's Recovery Agent spoke to the Complainant in a racist, threatening and abusive manner;
6. Wrongfully repossessed the Complainant's car;
7. Failed to inform the Complainant of the repossession of his car; and
8. Wrongfully and without consent, took the Complainant's possessions that were in the car when it was repossessed.

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 30 July 2020, outlining my preliminary determination 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 issue of my Preliminary Decision, the Provider made a further submission under cover of its e-mail to this Office dated 5 August 2020, a copy of which was transmitted to the Complainant for his consideration.

The Complainant has not made any further submission.

Having considered the Provider's additional submission and all of the submissions and evidence furnished by both parties to this Office, I set out below my final determination.

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Hire Purchase Agreement

The parties entered into a hire purchase agreement in **April 2017** in respect of a motor car. The Provider wrote to the Complainant by letter dated **21 April 2017** in respect of the hire purchase agreement and enclosed a copy of this agreement. The agreement was signed by the Complainant and is dated **21 April 2017**. I note the following clauses:

“2 Obligations of the Hirer

2.1 *The Hirer will*

...

(b) *pay punctually the instalments specified in Part 5 (Terms) of the Particulars on the dates shown without the Owner being required to demand such payment;*

...

(h) *return the Goods to the Owner on termination of the Agreement if the Hirer has no legal right to retain them;*

...

3 Motor Vehicle

3.1 *If the Goods are a motor vehicle*

(a) *the Owner or any person acting on behalf of the Owner may, subject to the provisions of section 64 of the Act, enter any property, other than the Hirer’s dwelling house or a building within the curtilage thereof, to take possession of the motor vehicle and will not be liable for such entry;*

...

5 Default

5.1 *If the Hirer*

(a) *failed to pay any instalment or other sum payable under the Agreement on the due date, or*

(b) *fails to perform or observe any of the terms and conditions of the Agreement;*

...

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(c) ...

then the Owner will serve a notice of default on the Hirer in accordance with section 54 of the Act.

5.2 *The notice will specify*

(a) *if the breach is capable of a remedy, the action required to remedy it and the date before which that action is to be taken, which date will not be less than 21 days after the date of service of the notice; or*

(b) *if the breach is not capable of a remedy, the sum required as compensation for the breach and the date before which it must be paid, which date will not be less than 21 days after the service of the notice.*

If the Hirer does not remedy the breach of the Agreement detailed in that notice or pay the sum as stated to be compensation for the breach, as applicable, within 21 days of the date of service of the notice on the Hirer, the Owner may terminate the Agreement.

6 Termination

...

6.2 *Termination by the Owner*

(a) *The Owner will be entitled to terminate the Agreement in accordance with Clause 5 (Default)*

(b) *On termination of the Agreement by the Owner:*

(i) *the Hirer will forthwith return the Goods to the Owner and deliver to the Owner all registration and documents relating to the Goods. If the Hirer defaults in returning the Goods the Owner will, subject to the Hirer's rights stated in the Statutory Notice and under section 64 of the Act, be entitled to repossess the Goods; ...*

7 Additional costs other than early termination costs

...

7.5 *The Hirer will be liable for the following costs and/or charges in addition to any other liabilities under the Agreement:*

(a) *a charge of €25.39 for each cheque/direct debit payment that is dishonoured or returned unpaid; ...*

/Cont'd...

8 General

...

8.4 *No failure to exercise, nor any delay in exercising, on the part of the Owner, any right or remedy under the Agreement will operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law."*

Part 7 of the agreement contains a *Statutory Notice* stating:

"Restriction of the owner's right to recover goods

1 *Without the Hirer's consent the Owner has no authority to enter the Hirer's premises for the purpose of taking back the Goods (other than a motor vehicle in the circumstances mentioned in paragraph 2 below).*

2 *The owner of a motor vehicle is entitled to enforce any right which he may have under the Agreement to enter any land of the Hirer other than his home or any buildings attached thereto.*

3 *After € 8546.47 has been paid, then, unless the Hirer has put an end to the Agreement without exercising the option to purchase the Goods, the Owner of the Goods cannot take them back from the Hirer without the Hirer's consent unless the Owner has obtained a court order or is taking the motor vehicle back in accordance with paragraph 4 below.*

..."

The *Signatories* section states as follows:

"(1) By signing the Agreement the Hirer acknowledges that:

- (a) he has examined the Goods ...***
- (b) he has read the terms and conditions of the Agreement before signing and, to the extent he thinks necessary, he has received independent advice regarding the performance, quality and condition of the Goods and the content of the Agreement;***
- (c) the information given by him in the Particulars is correct ...***
- (d) he consents to the use and disclosure of his data ...***

/Cont'd...

- (2) *This is a hire purchase agreement regulated by the Consumer Credit Act 1995 (as amended). The Hirer should only sign the Agreement if he wants to be legally bound by its terms."*

Default and Arrears

The Provider wrote to the Complainant on **21 June 2017** in respect of an unpaid direct debit as follows:

"We note from our records that the most recent Direct Debit presented to your bank in relation to the above account number had been returned unpaid marked 'Refer to Drawer'.

Please note as per your agreement we are entitled to recover these monies and the associated unpaid charge of €25.39 and will be representing to your bank €386.88 in 7-14 days from the date of this notice. Please ensure that sufficient funds are available to meet the direct debit on representation. ..."

I note that letters in similar terms were sent to the Complainant on **1 September 2017, 4 October 2017, 4 December 2017** and **20 December 2017**.

The Provider had written to the Complainant on **26 October 2017** noting that there was no arrangement in place to repay the arrears of €161.17 that had accumulated in respect of the agreement.

The Provider also wrote to the Complainant on **9 August 2018**, advising that it had not received a recent scheduled payment and requested that the Complainant remit the relevant funds immediately.

Section 54 Notices

The Provider wrote to the Complainant pursuant to **section 54** of the **Consumer Credit Act** on **19 December 2017**. This letter states:

"We note that you have defaulted in making payments due on foot of the above mentioned Agreement and that your account is in arrears in the sum of €773.76. If we do not receive this sum from you within 23 days of the date hereof, we propose at our discretion taking all or any of the following actions.

- 1. We will determine the agreement*
- 2. We will demand early repayment of all sums due and owing under the Agreement*
- 3. We will recover the vehicle*

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4. We will treat any right conferred on you by the Agreement as determined, or restricted or deferred

5. We will proceed to enforce any security we hold in this matter, in particular guarantees

If you fail to comply with this notice within the 23-day period referred to above, we will take the action set out herein.”

A second notice was sent to the Complainant on **29 May 2018**. The arrears stated on this notice amounted to €2,708.16.

Notices of Termination

The Provider issued a *Notice of Termination* dated **23 January 2018**, which states:

“In view of your failure to respond to our requests for payment of arrears, we write to inform you that the above Agreement is terminated forthwith in accordance with the terms and conditions.

As a consequence of such termination you are requested to:

- 1. Return the goods referred to above.*
- 2. Pay the arrears of instalments due under the Agreement.*
- 3. Pay any other sums due under the Agreement.*
- 4. Pay compensation for any damages resulting from any breach of the Agreement by you.*

...”

The Provider issued a further *Notice of Termination* dated **25 June 2018** in identical terms to those contained in the first notice.

Recovery Notice

The Provider issued a *Recovery Notice* dated **25 June 2018**, which states:

“We hereby give authority to [Recovery Agent]/his agents to act on behalf of [the Provider] on all transactions and dealings to the above named from the date of this letter until further notice.

/Cont'd...

The customer is instructed to provide the keys and documentation for the vehicle and remove all their belongings.”

Statements

The Provider has furnished two sets of statements in respect of the agreement. The first was issued on **1 November 2017** and covered the period **19 May 2017** to **31 October 2017**. The second statement was issued on **29 November 2019** and covers the period **21 April 2017** to **18 October 2018**. I note that no statement appears to have been issued in **2018**. However, it is clear from a review of these statements that the Complainant missed a number of scheduled repayments under the agreement.

Correspondence

A series of email correspondence was exchanged between the parties during **October 2018**, some of which I will set out below.

The Complainant made a complaint to the Provider by email dated **9 October 2018** in respect of the telephone call he received from the Provider’s recovery agent, describing this individual as *“... seriously abusive using threatening and unacceptable language ... as well as racism comments.”*

Later in this email, the Complainant states:

“I believe there is an issue s with payments but that does not allow your agents to threaten people with breaking houses and using abusive language.

Your agent had threaten to enter my flat and if not he will report me as thief to Garda that I stole the car ...

I will really appreciate if you take this an official complaints ...”

The Provider issued its final response to this complaint on **15 October 2018** stating:

“I am writing in reference to the above matter and your recent complaint that you raised in relation to the conduct of one of our Agents. I would like to apologise that you are unhappy about the manner in which the agent spoke to you. I would like to confirm that all agents are trained to be professional at all time.

I would like to confirm that an investigation was completed into your complaint however in this instance there is no evidence to show that the agent used unacceptable language when speaking to you therefore I am unable to uphold your complaint. ...”

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In an email dated **15 October 2018**, the Complainant expressed his dissatisfaction at the Provider's investigation of his complaint. He also advised the Provider that he did not wish to be contacted from a mobile phone number. The Complainant wrote a further email to the Provider on **15 October 2018** enquiring as to his arrears balance and seeking details of the person he should write to in order to resolve *any problems with payments*.

The Provider appears to have responded to this email on **18 October 2018** as follows:

"... I am sorry to hear that you have been unwell. I understand that you have raised matters with the Financial Services and Pensions Ombudsman therefore if you are able to provide any paperwork regarding this we can place this on the account.

With regards to your questions around the account I can confirm that the arrears balance here is €4,642.56 as of today's date. We require the full arrears to be paid. If not, then the car will need to be returned to us and this can be discussed with one of our agents over the phone on the numbers below. Please understand that the loan has been terminated and the arrears will need to be cleared. ..."

The Complainant advised the Provider in two emails dated **19 October 2018**, that his car had gone missing the previous day and that he had reported this to An Garda Síochána. The Complainant also asked if the Provider was aware and/or had any knowledge of this.

The Complainant contacted the Provider again by email on **22 October 2018** stating:

"After I had email you twice since last Friday and phoned you I still did not get any respond or any help with an email or phone call to advise me what I should do with you as finance company.

Are I am still have to pay for the car or what this legal [situation] in this lost or stolen car reg above.

Will much appreciate if you can respond to this email and advice me as my car reg above still missing since last Thursday."

The Provider confirmed in an email dated **22 October 2018** that the Complainant's car had been repossessed:

"... I would like to confirm that the car was recovered on Thursday 18 October and taken to the following auction house: ...

[The location of the Auction House]

If you have any personal belongings in the vehicle you need to attend the auction house to recover your possessions and hand over the vehicle keys before the 30th October 2018 when the vehicle will be auctioned."

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The Complainant responded on the same day querying why the Provider did not inform him of its intention to repossess the car particularly in circumstances where he was disputing the arrears balance that had accrued and that a complaint had been made to this Office in respect of the matter. The Complainant also advised the Provider that there were personal belongings in the car.

In a further email on **23 October 2018**, the Provider informed the Complainant as follows:

"I write further to your email and confirm that the vehicle was recovered in accordance with the terms of the agreement and as stated in my previous email you are able to recover any personal possessions from the auction house.

Finally I can confirm that our final response to your complaint was issued on the 15th October 2018 and the complaint closed. Following this the account was passed back to the team that manage these accounts."

Analysis

The First Complaint

The aspect of the complaint relates to the Provider's asserted failure and/or delay in providing the Complainant with a copy of the hire purchase agreement.

While the Complainant mentions during a telephone call which took place on **11 October 2017** that he did not receive a copy of the agreement for 3 months, I note that there is no evidence of any requests made by the Complainant that he be provided with a copy of the agreement during the period from when he entered into the agreement to when he says he received the agreement, whether that be 3 months or 5 months after it was entered into. Furthermore, and contrary to the Complainant's position, the Provider has furnished a copy of a letter addressed to the Complainant dated **21 April 2017** enclosing a copy of the *Credit Agreement*.

Therefore, on the basis of the evidence in this complaint, I do not accept that the Provider failed and/or delayed in furnishing the Complainant with a copy of the agreement.

The Second Complaint

The Complainant asserts that the Provider failed to engage and/or co-operate with him in relation to certain issues he had with the agreement once he had an opportunity to review it. While the Complainant has made this statement, he has not elaborated on it or provided any detail as to the issues he had with the agreement, or stated when they were brought to the Provider's attention or how the Provider failed to address these issues.

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The Complainant states that he “... found it like a trick as I can't cancel it or get my money back.” It is not entirely clear what the Complainant means by this statement. I note that the agreement was signed by the Complainant in **April 2017** and no issues appear to have been raised at that point in time. Furthermore, even if the Complainant's position as to when he received a copy of the hire purchase agreement is accepted, he had a copy of the agreement since **September 2017**. However, there is nothing to indicate that he was dissatisfied with the agreement once he was given the opportunity to review it. Finally, during conversations with the Provider's agent, when it was suggested that the Complainant return the car to the Provider, the Complainant asks how much he will receive from the Provider if he does this. Therefore, the Complainant appears to have been under the misunderstanding that if the car was returned to the Provider then he would be due some sort of a refund. This is not the case. Any money owing was owed by the Complainant to the Provider.

The Third Complaint

The Complainant states that the Provider has not calculated his arrears correctly. The Complainant remarks that “... I sent them the detail of the payment's I made but they claim more money.” The Complainant also explains that “I paid over half of my car value for the period. [The Provider] does not want to provide me with the payment details even I sent them my bank statements.”

During a number of telephone conversations between the Complainant and the Provider, the Complainant was advised as to the amount of arrears that were outstanding. However, it appears from the content of these calls that, through no fault of the Provider's agent, the Complainant did not understand how the arrears were calculated or the periods to which they related. The Complainant also expressed dissatisfaction that he was being charged for unpaid direct debits by the Provider and his bank.

The Provider has furnished account statements in respect of the hire purchase agreement. These statements indicate that a number of scheduled payments were returned unpaid and consequently incurred a fee of €25.39 as stipulated in clause 7.5(a) of the agreement. I also note that the Provider sent the Complainant a number of letters advising him that direct debits had been returned unpaid and also advised that a fee of €25.39 would be incurred because of this.

Having reviewed the evidence in this complaint and in particular the statements furnished by the Provider, it is clear that any extra costs incurred by the Complainant arose from the unpaid direct debit fees. Furthermore, while the Provider is entitled to charge interest on missed payment under clause 7.1, it does not appear that any such interest was applied to the Complainant's account. The Complainant also states that he paid over half the value of the car and that he sent the Provider bank statements to demonstrate this. I note that these statements have not been furnished by the Complainant as part of this complaint. Therefore I have been presented with no evidence that the Complainant has made payments totalling over half the value of the car, including any deposit. Taking this into account, the Complainant has not established that there has been a miscalculation of his arrears balance or that his arrears balance is incorrect.

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The Fourth Complaint

The fourth complaint relates to the Provider and/or the Provider's recovery agent contacting the Complainant on a mobile phone.

While the Complainant was unhappy receiving calls from a mobile phone number, the Provider explains that its recovery agent is field based and as such, mobile phone communication is necessary. I note that the Provider is not strictly obliged to contact the Complainant from a landline number and as the recovery agent is field based it may not always be practicable or possible to do so.

The Fifth Complaint

The fifth aspect of the complaint relates to the manner in which the recovery agent spoke to the Complainant during a call which appears to have taken place on **9 October 2018**. The Complainant states that this individual spoke to him in a threatening, abusive and racist manner, and also threatened to enter his flat and report him to An Garda Síochána for stealing the car.

The Complainant contacted the Provider by email and telephone on **9 October 2018** to report what had just occurred. The Provider subsequently advised the Complainant that it investigated this complaint and there was no evidence that the recovery agent used unacceptable language when speaking to the Complainant and that its staff are trained to be professional at all times.

I note that as the call in question was conducted on a mobile phone, the Provider does not have a recording of this call. I also note that while the Provider advised the Complainant that it investigated the matter, it has not provided any detail as to what this investigation involved. In addition to this, the Provider has not furnished a statement from the relevant recovery agent or given an account of what was said during the call. In light of this, the only account of the call is that provided by the Complainant.

While I am not sufficiently satisfied that the Provider's recovery agent spoke to the Complainant in a threatening, abusive or racist manner, or made the threats alleged by the Complainant, on the basis of the evidence available to me. However, the Provider has failed to demonstrate that its recovery agent acted professionally during this call.

The Sixth Complaint

The Complainant is obliged under the agreement to make his scheduled repayments on time. I accept on the evidence outlined above, that the Complainant failed to make his scheduled repayment and that arrears began to accrue on his account. If the Complainant fails to make a payment the Provider is entitled to serve a Notice of Default. The agreement and **section 54** of the **Consumer Credit Act** sets out the form that this notice must take.

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Having reviewed the agreement and **section 54**, I accept that the notices issued by the Provider are in compliance with these provisions. Once the notice is served, if the Complainant fails to comply with its terms, the Provider is entitled to terminate the agreement.

On termination of the agreement, the Complainant is obliged to return the car to the Provider unless he has a legal right to retain it. I accept that the Provider was entitled to terminate the agreement and that the Complainant had no right to retain the car. When the Complainant failed to return the car then the Provider was entitled to repossess it. It is clear that the Complainant did not return the car.

I note that there is no requirement, once the foregoing conditions are complied with, to obtain the consent of the Complainant to repossess the car if the amount repaid does not exceed €8,546.47. The Provider issued two *Notices of Termination*. The first on **23 January 2018** and the second on **25 June 2018**. Almost four months later the car was repossessed on **18 October 2018**. Taking the above matters into consideration, I accept that the Provider was entitled to repossess the car.

The Seventh Complaint

In light of my findings above, I find that once the Provider terminated the agreement and it was apparent that the Complainant was not going to return the car voluntarily, it was reasonable to expect the Provider to act with reasonable expedition to repossess the car. Given the passage of time from when the second *Notice of Termination* was issued and that fact that a notice had previously issued in **January 2018** which was not acted upon, I accept that it was reasonable to expect the Provider to issue a further notice or alternatively, write to the Complainant either to request that he return the car or explain the Provider's intention to repossess the car.

I note that when the car was repossessed, the Provider did not alert or notify the Complainant of this. Furthermore, the Complainant emailed the Provider on **Friday 19 October 2018** to inform the Provider that his car had gone missing and asked if the Provider knew anything about its whereabouts. Not having received a reply, the Complainant emailed the Provider again on **Monday 22 October 2018**. The Provider confirmed by email dated **22 October 2018**, that the car had been repossessed. I am satisfied that this email required a prompt reply and the Provider failed in this regard.

In the circumstances of this complaint, I am satisfied that the Provider failed to inform the Complainant and/or give him reasonable notice of its intention to actually repossess the car, or that it had, in fact, repossessed the car.

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The Eight Complaint

When a car is being repossessed, it is reasonable to expect to find personal belongings in the car. In such circumstances, the Complainant should be given a reasonable opportunity to remove or collect any such belongings. I accept that had the Complainant voluntarily returned the car he would have been able to remove any belongings beforehand. However, as noted above, the Provider's repossession was carried out four months after the *Notice of Termination* was issued and in unexpected manner. While I accept that the Provider was entitled to exercise its right to repossess the car, in light of the issues I have already identified, I believe that the Complainant should have been afforded a reasonable opportunity to remove his personal belongings prior to the car being repossessed given the length of time that had transpired since the notice was issued.

However, I do not consider that this would have been an issue if the Provider repossessed the car in a more expeditious manner or if the Provider notified the Complainant of when it intended to repossess the car.

I note that the Provider informed the Complainant on **22 October 2018** that his personal belongings could be recovered from the auction house where the car was located before **30 October 2018**. In the *Schedule of Communications* prepared by the Provider in response to this complaint, a note was entered on **22 October 2018** at 2.03pm which states that: "*Cust will be collecting belonging and handing over keys to [auctioneer].*" The next column in respect of this note contains an excerpt from an email which appears to have been sent to the auction house: "*Hiya ..., Just to give you the heads up our customer [the Complainant] will be coming to collect his personal*".

Once the Complainant was advised that the car was repossessed, the Provider updated him as to how to collect his personal belongings. It also appears that the Provider contacted the auction house to notify it that the Complainant would be collecting his belongings from the car. While the Complainant gave more precise detail as to what was in the car at the time it was repossessed in an email to this Office dated **28 November 2019**, it is not clear whether he recovered these items or made any efforts to do so.

The Provider stated in its post Preliminary Decision submission dated 5 August 2020 as follows:

"

- *The Garda is informed of the repossession at the time that a vehicle is recovered.*
- *Sometimes it is not possible to inform a customer of the repossession prior to it happening.*
- *Sometimes, as in this case, the keys to the vehicle are not returned therefore it is not always possible to do an inventory of any possessions in the vehicle at the time of recovery."*

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Notwithstanding that the keys were not returned, I believe it would be reasonable to expect that the Provider would have taken a record of what was in the car when it repossessed it. It should have kept any items of value in a secure location for delivery to, or collection by the Complainant, rather than allowing them to be delivered to an auction house where the Complainant was required to travel to retrieve them and where they were out of the care and custody of the Provider.

For the reasons outlined in this Decision, I partially uphold the complaint and direct the Provider to pay a sum of €300 compensation to the Complainant.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (b), (c), (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 €300, 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**.

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

8 October 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.