



<u>Decision Ref:</u>	2020-0474
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Van
<u>Conduct(s) complained of:</u>	Premium rate increases Delayed or inadequate communication Dissatisfaction with customer service Failure to provide correct information
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint arises from a motor insurance policy and the suggested poor customer care, communication and complaint handling of the Provider, which is a motor insurer.

The Complainant's Case

The Complainant purchased a motor insurance policy held with the Provider that was inception on **19 April 2018** through an insurance broker.

The Complainant states that he contacted the broker on 17 April 2018 to obtain information and a premium quote for insuring a second-hand van that he was looking to purchase. The Complainant states that he purchased the van on **19 April 2018** and the policy came into force that day. The Complainant had a discussion with the broker regarding his ability to "mirror" his current no claims bonus which existed on another vehicle which was also driven by his daughter. The Complainant states that the broker agreed that this would be done.

The Complainant submits that he was initially given a premium cost of €729.72 at inception but this was shortly thereafter increased to €1,513.88 by the Provider.

In addition, the Complainant submits that when he contacted the broker on 17 April 2018, he informed the broker of his plans to drive in Europe and he agreed to pay a surcharge of 7.5% onto his premium for this. He states that he was assured that the Provider had all the necessary documentation and that a full policy document would be issued to him.

The Complainant states that on **25 April 2018**, he was contacted by the broker and he became aware that the Provider was looking to remove his daughter from the existing insurance policy applied to the motor car. In the alternative, he was being asked to pay an additional sum onto the insurance premium in relation to the new van.

The Complainant asserts that he continued to receive inconsistent information in respect of how long he was actually insured to drive outside Ireland. In addition, he had yet to receive the policy document booklet. The Complainant states that he subsequently received a registered letter from the Provider on **22 May 2018**, informing him that cover on his van would be cancelled with effect from 29 May 2018, on the basis that he had failed to produce documentation.

The Provider's Case

The Provider accepts responsibility for many of the errors and oversights on its part. It says that as a gesture of goodwill, the Provider offered the Complainant a sum of €200 in recognition of the poor customer service and inconvenience caused to him.

The Provider has accepted culpability for this complaint, and it has explained that the broker incepted the policy in accordance with the Provider's terms and that it was the Provider which erroneously and incorrectly challenged this, at a later stage.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration insofar as it:-

1. Incorrectly quoted and accepted cover but then sought an increased insurance payment, due to its own errors;
2. Failed to provide clarity to the Complainant regarding what European travel was covered on the insurance policy and incorrectly applied a surcharge;
3. Failed to deal with the Complainant's grievances within the provisions of the Consumer Protection Code 2012.

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.

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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 **17 November 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.

I note that the Provider has accepted that the cancellation letter of 22 May 2018 was issued. On foot of a complaint lodged by the broker to the Provider, the Provider then reviewed the policy and agreed to maintain the policy, as accepted. It seems clear that while the quote that was accepted by the Complainant was not incorrect, the subsequent attempt by the Provider to re-rate the policy and then cancel it was, by its own admission, wrong.

It is important to note that this was a cause of significant inconvenience and stress for the Complainant who at that stage was already driving abroad, when he received correspondence regarding the pending cancellation of this policy, though happily I note that ultimately the policy was not in fact cancelled. I accept the Complainant's submission in that regard that the cancellation of a policy can have a huge impact on the life of a consumer.

The Complainant says that the Provider failed to provide clarity to him regarding what European travel was covered on the insurance policy. I have considered an audio recording of a telephone conversation on **1 May 2018** between the broker and the Provider during which it was confirmed that at the time of the inception of the policy, it was the Provider which incorrectly advised the broker of the terms of the European travel conditions, prior to that detail then being relayed to the Complainant, by the broker.

I am satisfied that this phone call also evidences that the Provider subsequently informed the broker that in fact there was a 31 day travel limit for driving abroad. It also transpired that the 7.5% surcharge was not a requirement for the policy, unless that 31 day limit was to be exceeded, which was not the case in respect of the Complainant; therefore the surcharge was incorrectly applied to the policy at the inception, as a result of the Provider's incorrect information.

Having considered the documents and the audio recordings, it is clear that the Provider was guilty of failing to provide clarity in respect of the European travel cover on the policy.

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Furthermore, having examined the policy document, I note that there is very little detail set out in section 5 of that document as to the applicable conditions in relation to foreign use. The Policy says:

“Temporary use in Europe

The minimum indemnity required to comply with the laws relating to the compulsory insurance of motor vehicles applies for the vehicle is used in Europe (or in transit by C between any port therein.”

There does not appear to be any further information available in respect of foreign use and nor does there appear to have been a separate policy document or Appendix, created regarding such use. Given the apparent restriction applied to foreign use and the surcharges if those restrictions are exceeded, I am satisfied that there was a wholly inadequate level of information and clarity provided to the Complainant in this respect, and that this confusion and lack of clarity emanated from the Provider. On that basis, I take the view that the Provider has a case to answer to the Complainant.

I note that Provider’s confirmation that all decisions of the FSPO are considered, and this can lead to changes in the way in which it conducts its business. It is surprising however that there was no acceptance of wrongdoing by the Provider at the conclusion of the complaint process, when these errors should have been abundantly clear to the Provider. I also agree with the Complainant that the issues raised in this complaint have the potential to affect other customers and for that reason, I intend to refer this decision to the Central bank of Ireland, for such action as it considers to be appropriate.

In relation to the complaint that the Provider failed to deal with the Complainant’s grievances within the provisions of the Consumer Protection Code 2012, I note that Provisions 10.1 and 10.9 of the Consumer Protection Code 2012 state:

10.1 ***A regulated entity must have written procedures in place for the effective handling of errors which affect consumers. At a minimum, these procedures must provide for the following:***

- a) the identification of the cause of the error;*
- b) the identification of all affected consumers;*
- c) the appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;*
- d) proper control of the correction process; and*
- e) escalation of errors to compliance/risk functions and senior management.*

10.9 ***A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the Complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:***

- a) the **regulated entity** must acknowledge each **complaint** on paper or on another **durable medium** within five **business days** of the **complaint** being received;
- b) the **regulated entity** must provide the Complainant with the name of one or more individuals appointed by the **regulated entity** to be the Complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be progressed any further;
- c) the **regulated entity** must provide the Complainant with a regular update, on paper or on another **durable medium**, on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**, starting from the date on which the **complaint** was made;

I am not satisfied therefore that the Provider complied with its obligations in this respect under the relevant provisions of the Consumer Protection Code 2012.

Taking account of all of the evidence, and the errors by the Provider in this matter, I consider it appropriate to uphold this complaint and to direct the Provider to pay the Complainant the sum of €800 (to include the sum of €200 already offered).

It is important to note that although the Complainant has indicated that he wishes for the amount of “*penalty*” to be paid by the Provider, to be increased “*to a level that might stand a chance of getting the attention of the Board of [the Provider]*”, the FSPO has no role to play in the imposition of any penalties. Rather, this Office may direct compensation for loss, expense or inconvenience sustained by the Complainant as a result of the conduct complained of, which I consider to be appropriate at a figure of €800, as outlined above.


For the reason outlined above I also intend to refer this decision to the Central Bank of Ireland, as the regulator, given that the issues complained of may potentially affect other consumers.

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)(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 €800, 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 December 2020

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.