



<b><u>Decision Ref:</u></b>	2021-0085
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Pet Insurance
<b><u>Conduct(s) complained of:</u></b>	Failure to advise on key product/service features Misrepresentation (at point of sale or after) Poor wording/ambiguity of policy Mis-selling (insurance)
<b><u>Outcome:</u></b>	Substantially upheld

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

The complaint concerns a pet insurance policy.

#### **The Complainant's Case**

The Complainant incepted a pet insurance policy with the Provider in respect of his pet, which the Complainant submits cost "over €1000". The Complainant's pet insurance policy was renewed on **3 December 2018** for a period of one year. The Complainant sets out that his pet fell ill and was ultimately euthanised on **11 January 2019**. He submitted a claim to the Provider in **early 2019**.

The Complainant submits that he is "now left with a Vet's bill that in my opinion the insurance should be covering".

In a letter to the Provider, the Complainant submits "I had to put [the pet] to sleep on the 11<sup>th</sup> of January 2019 and I called the helpline to enquire about death benefit". The Complainant stated that he "was told [the pet] was a 'select breed and not covered as [the pet] was 5 years old". The Complainant submits that during earlier contact with the Provider, he "had asked at renewal was [the pet] covered under the death benefit and was told she was". The Complainant submits that "[t]his was misleading as at the time of renewal [the pet] was already over this age limit".

In the Complainant's submissions dated **26 February 2019**, the Complainant refers to "page 2 of [his] policy schedule" (which appears to be a reference to the part of the policy schedule incorporating "**Policy Key Facts**") and he submits that:

*"Surely if [the Provider] are willing to inform customers of an increased excess then the policy schedule should clearly state that there is a decreased death benefit in place as well which would be more important to a pet owner than an increased excess. There is no mention in this policy schedule that select breeds are subject to less death benefit than other dogs. It seems the only reason the excess is mentioned is because it is an extra source of income for [the Provider]. My actual policy on page 4 states that under the [plan name] the death by illness benefit is €800.00 euros".*

The Complainant says that "in this policy schedule there is no mention of lesser death benefit for select breeds when in my opinion it should be clearly stated on this policy schedule". The Complainant also contends:

*"Then to make matters worse on the **15<sup>th</sup> February** I received a final settlement letter which stated that [Provider] was withholding €360.00 of the remainder of the policy premium from the final settlement. There is/was no mention of this in your policy documents. I have read the terms and conditions completely and can still find no mention of this deduction on any page of the terms and conditions as of today".*

The Complainant says that "a customer must delve into a 20 page document to find a single sentence that excludes [the Provider] from paying out a death benefit claim which ... is an unfair practice". He also says that "there is no mention of the remainder of a premium being deducted from a final payment in the event that a pet dies within the time frame of the insured period".

The Complainant states in his complaint form to this Office received on 11 March 2019:

*"As I paid the premium monthly I was under the impression that my dog was covered up to the month that she was insured and that the premium being paid monthly meant that all outstanding treatment would be paid up until that date without further deductions. I find this practice particularly underhanded especially at a time when we have lost a loving pet".*

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

The Provider has confirmed the policy inception date as **3 December 2012**. It also confirmed that the policy came to an end, as a result of the death of the pet, on **14 January 2019**. The Provider also advised this Office that the Complainant's breed of dog was a Newfoundland which was considered a "select breed dog", and it has referred in that regard to the terms and conditions including the definition of "select breed".

Insofar as the Complainant contends that at the time of renewal of the policy in December 2018, he received confirmation from the Provider that the policy included death benefit cover, the Provider confirmed its position that, having listened back to the telephone call in question in **November 2018**, no such query had been raised by the Complainant at that time.

The Provider confirmed however, that during a subsequent telephone call on **11 January 2019**, the Complainant asked if the death benefit was available and the Provider's agent at that point, explained to the Complainant that the death benefit was not applicable for select breed dogs over the age of 5 years.

The Provider agrees that the death benefit is listed as €800 on the policy schedule but it says that this amount is "your maximum benefit". The Provider points out that like all benefits, the death benefit is subject to the terms and conditions of the policy. It says that although the entire policy is 20 pages long, nevertheless the section headed "*Death By Illness*" is only half a page long, and it is satisfied that the content is written in plain English.

In a letter dated **15 February 2019**, the Provider advised at that point that "[the Complainant's] *claim has been accepted and processed*". The Provider set out in this letter to the Complainant that it had "*deducted the cost of euthanasia and cremation from your claim as these are not covered by your policy*".

The Provider explains that it also made deductions from the claim, arising from the age of the insured pet (over 5 years) and the remainder of the outstanding annual premium for 2019, which amounted to €360.00. The total amount payable to the Complainant after these deductions was **€152.53**.

### **The Complaint for Adjudication**

The complaint is that the Provider was "*misleading in its approach to informing customers that their pet may not be covered for death benefit*".

The Complainant says in that regard that the "*wording of the policy schedule itself is misleading in that there is no mention of select breeds being treated differently than other breeds of dog*".

The Complainant seeks "*payment of my pet's death benefit as outlined in my policy schedule*" in the sum of €800.00, and "*is willing to discuss*" the Provider's deduction of €360.00 premium from the Complainant's claim.

## **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 **12 March 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

## **Policy Terms and Conditions**

I note that under the section of the policy headed "**Death from Illness**" the following is made clear:-

### ***"What We Will Pay***

*We will pay you the purchase price of your pet as proven by you, if your pet dies from an illness or a disease or as a result of being put to sleep (but only if confirmed in writing by a vet as necessary to prevent the pet from suffering) because of an illness or a disease. The most we will pay in total is stated in your policy schedule.*

### ***What We Will Not Pay***

- *Any claim for dogs aged 8 years and older, Select Breeds aged 5 years or older or for cats aged 8 years and older ..."*

I also note that at an earlier page within the policy, the following are set out:-

### ***"Conditions of Cover***

*A) You cannot cancel the insurance if You have submitted a claim during the "free look" period or during the Period of Insurance. The free look period refers to the first 21 days of the policy during which You may examine the policy documents in full, and surrender the policy in exchange for a full refund of premium if not satisfied for any reason.*

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....

H) We reserve the right to deduct any outstanding premium from a claim. If a Vet, who has treated Your Pet or is about to treat Your Pet, asks for information about Your Insurance that relates to a claim, We will, at Our discretion, tell the Vet what Your insurance covers, how the amount We pay is calculated and if the premium is up to date....

[Emphasis added]

....

O) We reserve the right to cancel the insurance, for any reason, by notifying You in writing 14 days prior to the cancellation date. In this event We will refund any premium of any unused portion of the Period of Insurance.”

The Policy Schedule confirmed the following:

Details	Pet 1
Pet Name	[Dog Name Redacted]
Pet Type	Dog
Pure Breed	Newfoundland
Breed Type	<b>Select Breed Dog</b>
Microchip	Yes
M'Chip No.	[Microchip Number redacted]
Pet DOB	<b>21-09-2012</b>
Plan Type	[Plan Name redacted]

The policy schedule also set out certain “Policy Key Facts”, including:

<b>“What are the benefit levels?</b>		
<b>What is Covered</b>	<b>What is Covered</b>	
	<b>[Plan Name redacted]</b>	<b>Accident Only</b>
Vet fees	€4,000	€2,000
Death by Accident	€800	€800
Death from Illness	€800	-

I note the Complainant’s submission to this Office that he:

“contacted [the Provider] asking about death benefit and was told she was a “select” breed and not covered as she was 5 years old. There is no mention of this in the actual policy documents I was told to “read the terms and conditions” it’s actually covered in a single sentence on page 10”.

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The Provider maintains:

*"I can confirm the Complainant's breed of dog is a Newfoundland which we consider a "Select Breed Dog". As per ou[r] terms and conditions a "Select Breed" of dog is a dog breed listed as a "Select Breed". Select Breeds – Beauceron, Bulldog, Dogue de Bordeaux, Great Dane, Leonberger, Newfoundland, Pyrenean Mountain Dog, St Bernard, Bernese Mountain Dog, Deerhound, Estrela Mountain Dog, Irish Wolfhound, All Mastiff breeds, Old English Sheep Dog, Rottweiler".*

Although the Complainant stated in his submissions that he had a telephone conversation with the Provider around late 2018, and he had asked at renewal whether his dog was covered for death benefit, and was told that she was, the Provider made clear its position that no such assurance was given at that time. The Provider says that rather, the Complainant first queried cover for the death benefit during a subsequent call on 11 January 2019, when the agent explained to the Complainant that the death benefit was not applicable for select breed dogs over the age of 5.

Having listened to the call between the parties, during November 2018, I agree that the Complainant did not raise any query regarding death benefit at that time, and rather his focus was whether, following renewal, the dog would continue to be covered for the ongoing veterinary treatment which was being undergone. This was confirmed to the Complainant and there was some further discussion about the renewal premium, as a result of which the Provider's agent applied a small reduction. The final content of the conversation concerned another pet of the Complainant's and how he could apply online for cover for that different dog.

I note from the subsequent telephone call on the **11 January 2019**, between the Provider's Agent and the Complainant, that the Provider's Agent clearly pointed out that the Complainant's pet was a "Select Breed" and would not be covered for 'death benefit' as the pet was over the age of five years. The Provider's Agent also pointed out to the Complainant that this information was located on page 10 of the Policy Booklet. The Complainant was clearly upset about this. It seems that he had only just been told that day by the Vet, that he needed to consider euthanising the dog. I also note from the call that the Complainant told the Provider's Agent that it '*may be in the small print*', but it was his opinion that nobody reads the policy.

Having considered the evidence submitted to this Office, I am satisfied that the Complainant's dog was not covered for "*Death by Illness - Death Benefit*". It is clear to me from the Policy Terms and Conditions which I have quoted above on page 4, that "*Death by Illness – Death Benefit*" was not available for 'Select Breed' dogs over the age of 5 years.

The Complainant is however, unhappy because he believes that the policy schedule does not make it clear that select breeds are subject to less death benefit than other dogs. The Provider in that respect suggests that it is clear from the policy provisions, whereas the policy schedule details the maximum amount of benefit which can be recovered.

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In this instance, notwithstanding the death benefit amount of €800, confirmed on the face of the policy schedule, nevertheless because of the age of the Complainant's pet and the particular breed of dog, no such benefits were recoverable.

It is indeed somewhat surprising that given that the policy schedule itself identified the particular breed of dog, together with the date of birth of the particular pet, that the Key Facts of the policy schedule nevertheless included policy benefits for death by illness, which showed a figure of €800, without caveat. Having examined the evidence available, I am satisfied that the Complainant is correct that these details were in fact misleading, given that a dog of that particular breed and of that particular age, was not eligible for that benefit, in the event of death by illness.

I am conscious in this regard of the Provider's obligations pursuant to Chapter 4 of the "Consumer Protection Code 2012", as amended. The Provider, as a regulated entity, must ensure that all information it provides to a consumer is clear, accurate, up to date and written in plain English. Key information must be brought to the attention of the consumer and the method of presentation must not disguise, diminish or obscure important information. In light of the content of the policy schedule, for the reasons outlined above, I am not satisfied that the Provider has met its obligation to the Complainant pursuant to Chapter 4 of CPC 2012.

I am satisfied in that regard that the Provider has a case to answer to the Complainant and I accept that the policy schedule for this dog was indeed misleading as it specified a maximum amount of benefit, which was never going to be recoverable by the Complainant, based on the policy schedule details identifying the particular breed and age of the pet in question.

The Complainant is also unhappy regarding the deduction of the outstanding amount of premium due for the annual policy. The Complainant has stated in his submissions to this Office that:

*"on the 15<sup>th</sup> of February I received a final settlement letter which stated that [the Provider] was withholding €360.00 of the remainder of the policy premium from the final settlement. There is/was no mention of this in your policy documents".*

The Provider responded to Complainant's claim that the Provider was withholding €360.00, by explaining that policyholders who opt to pay by direct debit, are not afforded any advantage over policyholders who elect to pay for their policies upfront.

I note in that regard, I note that the Policy Terms and Conditions specified:-

*"H) We reserve the right to deduct any outstanding premium from a claim"*

Therefore, having considered the evidence submitted to this Office, I am satisfied that the Provider was entitled to deduct the remainder of the premium payable by the Complainant for the remaining policy period. I accept that because the Complainant had made a claim, he was not entitled to the yet unpaid portion of the premium, amounting to €360.00, for the rest of the policy period.

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For the reasons explained above however, I am satisfied that the précis of benefits identified in the policy schedule ran contrary to the manner in which the terms and conditions of the policy would operate and these details were therefore misleading to the Complainant.

Finally, I take the view that the Provider met its obligations under Provision 10.8 of the Consumer Protection Code 2012. I have listened to the telephone conversation between the Complainant and the Provider's agent on **14 January 2019** and I note that when the Complainant asked the Provider:

*"How do I go about making a complaint?"*

the Provider's Agent replied:

*"You need to submit that in writing and email or post it in to us"*

Although I am satisfied that the Provider guided the Complainant as to how he should proceed to make a complaint, nevertheless I am satisfied for the reasons outlined above that it is appropriate to uphold the Complainant's complaint that the information made available to him within the policy documentation was misleading.

To mark that decision I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant in the sum of €500.

I also consider it appropriate to recommend to the Provider that it review the details it includes in a policy schedule, so as to ensure that a policy schedule does not create a misleading impression that cover is available when, in circumstances such as this, the age of the pet as specified on the policy schedule or indeed the breed, or a combination of any such details are such that the policyholder will not in fact be eligible for such benefit. I also intend to refer 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 substantially 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**, in addition to my recommendation above, I direct the Respondent Provider (if it has not already done so since the Preliminary Decision of this Office issued on 12 March 2021) 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.

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- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



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

8 April 2021

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.