



<u>Decision Ref:</u>	2021-0258
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Retail
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Maladministration Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a limited company trading as an off-licence, referred to in this decision as ‘the Complainant Company’, incepted a commercial insurance policy ending 2640 with a named Insurer. The policy was incepted on **8 August 2011**, through a Broker, referred to in this decision as ‘the Provider’. This policy lapsed on 7 August 2012.

The Complainant Company then incepted commercial insurance policy ending 3272 with the same Insurer, through the Provider, on **9 August 2012**.

The Complainant Company renewed this policy through the Provider each August, up to and including August 2017. This policy lapsed on 8 August 2018.

The Complainant Company’s Case

The Complainant Company, which trades as an off-licence, says it understood that the Provider had arranged policy ending 2640 in August 2011, and policy ending 3272 in August 2012, with the Insurer, in a way that those policies, in addition to providing full business cover for its off-licence, also included property owner’s liability in respect of its unoccupied public house premises next door, that it used for the storage of off-licence stock.

On or around early **August 2018**, the Complainant Company engaged the services of a new Broker and following a review of the then existing policy ending 3272, this new Broker advised the Complainant Company *“that the policy as provided was not fit for purpose”*.

For this reason, on **14 August 2018** the Complainant Company incepted a new commercial insurance policy ending 6975 with the same Insurer, through the new Broker, and the attendant Policy Schedule stated:

*"It is hereby noted that 60% of the total roof area is a flat felt roof.
It is hereby noted and agreed that property owners liability is extended to cover an unoccupied public house at the above risk address".*

The Complainant Company says that the *"felt on timber roof covers part of [the] public house only"*, and as an endorsement was not noted on its previous policies (ending 2640 and ending 3272) that this confirms its complaint that those policies which the Provider had previously arranged for it, did not properly include property owner's liability for the unoccupied public house premises next door.

In this regard, the Complainant Company emailed the Provider on **13 August 2018**, as follows:

"I am given to believe through our [new] broker...that [the Insurer] have said that the policies we have had with them were "not fit for purpose".

It is my understanding that in the event of a claim, we would not have been covered as the policy sold to us was for a Shop only and that furthermore a [Registered Electrical Contractors of Ireland] cert was not provided, something that was never requested of us.

The crucial point is that [the Insurer] have come back to us, having been made aware of our insurance requirement, with a renewed quote which is over €1,000 more than the original, and they require a [Registered Electrical Contractors of Ireland] cert within 30 days of the policy going live.

I'm genuinely confused. If we were covered before now, and no material facts have changed, how can they justify the extra charge and requirement?"

Having received no response to this email, the Complainant Company emailed the Provider again on **28 August 2018**, as follows:

"I wish to establish whether I have been insured over the last several years or not. If the answer is yes, then I require answers as to why [the Insurer] have introduced new requirements of me that will potentially cost me several thousand euro, and hugely upped my premium. If it is established that I have been paying a premium for a policy that would not pay out in the event of a fire or other circumstances where I believed myself to be covered, then I would reasonably expect retrospective recompense".

The Complainant Company says that the Provider did not acknowledge or respond to either of these emails.

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The Complainant Company sets out its complaint in its **Complaint Form** to this Office, as follows:

"In August [2018], I decided to change my broker...The insurance on my Pub and Off Licence was due for renewal. Upon receipt of the documentation from [the Provider], [my current Broker] rang me and advised me that the policy as provided was not fit for purpose. They contacted...the insurer, who confirmed that this was the case. [The Insurer] renegotiated the policy with [my current Broker] and increased the premium by over €1,200. [The Insurer] agreed to provide the cover at this increased premium subject to us providing [Registered Electrical Contractors of Ireland]/[Periodic Inspection Report] reports. These were never requested before and have cost me €2,800. I emailed [the Provider] on [13 August 2018], making an official complaint and asking for definitive word as to whether I had been insured over the previous several years or not (insurance is a prerequisite of my lender [bank]). I queried why, if I was insured, [the Insurer] hugely increased my premium, and if I was not insured, I was seeking redress".

In its letter to this Office dated **18 January 2021**, the Complainant Company says:

"We believed we had full insurance cover before minus public liability for pub premises [under the Provider-arranged policies ending 2640 and 3272].

Our new [Broker] advised us that our policy was not fit for purpose, this was confirmed when [the Insurer] initially refused to quote us. Subsequently, in view of the fact we had been with them for so many years, [the Insurer] agreed to quote us but with strict conditions [certification of electricity] with which we complied. The quote was substantially higher than previous years, although it was the same company".

In addition, as part of the complaint papers it supplied to this Office, the Complainant Company included an email it received from its new Broker on **1 October 2018** stating:

"Upon receipt of an agency transfer agreement, we reviewed your policy which has been held with [the Insurer] since 2011. The buildings were noted as being occupied as an off licence and the unoccupied pub at this premises was not noted on the policy. We note also that it was not noted that the roof of the premises was 60% flat roof".

In order to resolve this matter, the Complainant Company advises in its Complaint Form that:

"If I was not insured over the years, I am seeking return of the premiums paid [from the Provider] for a service which I did not receive".

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The complaint is that in the period from 2011 to 2017, the Provider arranged commercial insurance cover for the Complainant Company which it later learnt had in fact been unsuitable to its stated insurance needs and requirements. The Complainant Company says that the Provider then provided it with poor customer service when it later raised a complaint with it, in relation to this matter.

The Provider's Case

Provider records indicate that the Complainant Company incepted commercial insurance policy ending 2640 with a named Insurer, by way of the Provider, on **8 August 2011**. This policy lapsed on 7 August 2012. The Complainant Company then incepted a new commercial insurance policy ending 3272 with the same Insurer, also by way of the Provider, on **9 August 2012**. The Complainant Company renewed this policy via the Provider each August, up to and including August 2017. This policy lapsed on 8 August 2018. The Provider says that each of these policies was what it refers to as, a package policy, incorporating wide ranging covers suitable to a business in the retail sector.

The Provider is satisfied that following its discussion by telephone with Mr B. of the Complainant Company on 5 August 2011, it was fully aware of the Complainant Company's insurance requirements and in that regard, that the cover offered by policy ending 2640 and later, by policy ending 3272, was suitable for the Complainant Company's stated insurance needs and requirements.

The Provider says the occupied portion of the Complainant Company's premises is an off-licence and that it had made the Insurer aware that the public house part of the premises was for sale or letting at that time. In this regard, in its letter to this Office dated **23 July 2020**, the Provider states that both the Complainant Company's off-licence premises and unoccupied public house premises:

" ... were covered under a blanket policy covered a total buildings sum insured for both the pub and the off licence".

The Provider says it also made the Insurer aware of the construction details of the risk. In this regard, its letter to this Office dated **23 July 2020**, the Provider states that:

"Due to the assumptions contained in the Statement of Fact "the property to be insured is of standard construction (constructed of brick, stone or concrete and roofed with slates, tiles, asphalt, metal or concrete)", we confirmed with insurers that they were aware that there was a flat roof at the property.

Flat Roof noted on hand written note as being 65%

Remaining was standard construction 35%

This is noted on a hand written note taken at the time of inception.

The construction was taken as an overall view of both the off-licence and the pub".

The Provider notes from its records that it spoke with the Insurer on **3 June 2016** and again confirmed at that time that the roof at the rear of the Complainant Company's premises, is felt on timber. The Provider says that it has always acted in the Complainant Company's interest and that it endeavoured to obtain the best terms and conditions for the Complainant Company always, and that it cannot be responsible if the Complainant Company choose not to read the policy documents that it received at inception, and at each renewal thereafter.

The Provider notes that the Complainant Company says in its email of **13 August 2019** that it is *"given to believe through our [current] broker...that [the Insurer] have said that the policies we have had with them were "not fit for purpose"*". The Provider says that on **8 January 2020** it spoke with Mr C. of the Insurer and he advised that this is not so. In any event, the Provider says if this statement was correct (that the cover provided by policy ending 2640 and policy ending 3272 was *"not fit for purpose"*) then it asks why the Insurer then handled the Complainant Company's claim of November 2011, regarding the contamination of a neighbour's property, following an escape of oil at the Complainant Company's property.

The Provider also says that the Insurer had to have known that the public house portion of the Complainant Company's premises was unoccupied, given that when the Complainant Company advised of its intention in **July 2012** to bring its pub back into operation, that the Provider then arranged (with the Insurer) leisure insurance policy ending 2426 in respect of a *"Public House"*, with the same risk address as policy ending 2640 in respect of the *"Off licence"*. The Provider says that this pub policy was for liability only for that part of the business, as the then existing commercial insurance policy always provided for cover for the buildings for both the off-licence and the unoccupied pub premises. This pub policy was shortly thereafter cancelled as the Complainant Company changed its mind regarding the reopening of its public house, and did not pay the policy premium.

The Provider says that it did not reply to the Complainant Company's email complaint of 13 August 2018, because this email went to its junk mail folder. The Provider accepts that this junk mail folder should have been checked on a daily basis, but once it became aware of this complaint, it says that it sought to address the matter quickly and fairly and issued its Final Response Letter in relation to the Complainant Company's complaint on **17 December 2018**. The Provider confirms that since this incident occurred, it now checks its junk mail folders on a daily basis.

Accordingly, the Provider is satisfied that it was aware of what the insurance requirements of the Complainant Company were in August 2011 and that the commercial insurance policy ending 2640 and later policy ending 3272, that it arranged for the Complainant Company were both suitable to its stated insurance needs and requirements. In addition, the Provider is satisfied that it appropriately addressed the Complainant Company's concerns in this regard, when it first became aware of these concerns.

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The Complaint for Adjudication

The complaint is that between 2011 and 2017, the Provider arranged commercial insurance cover for the Complainant Company which it later learnt had been unsuitable to its stated insurance needs and requirements. The Complainant Company says that the Provider then provided poor customer service when it later raised a complaint in relation to this matter.

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 Company 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 **22 June 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that on **8 August 2011** the Complainant Company incepted commercial insurance policy ending 2640 with a named Insurer, through the Provider, a Broker. This policy lapsed on 7 August 2012.

The Complainant Company then on **9 August 2012**, incepted a new commercial insurance policy ending 3272 with the same Insurer, by way of the Provider.

The Complainant Company renewed this policy annually each August, through the Provider, up to and including August 2017. This policy expired on **8 August 2018**.

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I note that the Complainant Company, which trades as an off-licence, says that it was its understanding that the Provider had arranged policy ending 2640 in August 2011, and subsequently the policy ending 3272 in August 2012, with the Insurer, so that those policies, in addition to providing full business cover for its off-licence, also included property owner's liability in respect of its unoccupied public house premises next door, that it used for the storage of off-licence stock. It says however that around early August 2018, it engaged the services of a new Broker and that following a review of the then existing policy ending 3272, that this new Broker advised the Complainant Company "*that the policy as provided was not fit for purpose*".

I note that the Complainant Company then on 14 August 2018, accepted a new commercial insurance policy ending 6975 with the same Insurer, but did so through the new Broker.

I note that the Policy Schedule for this new 2018 policy ending 6975 states:

"Endorsements

Notes:

It is hereby noted that 60% of the total roof area is a flat felt roof.

It is hereby noted and agreed that property owner's liability is extended to cover an unoccupied public house at the above risk address".

In this regard, I note that the Complainant Company says that as the "*felt on timber roof covers part of [the] public house only*", and as an endorsement was not noted on its previous policies, that this confirms its opinion that both of these policies that the Provider had arranged for it, did not properly include property owner's liability for the unoccupied public house premises next door.

The Provider however says that following its telephone discussion with Mr B. of the Complainant Company on **5 August 2011**, it was fully aware of the Complainant Company's insurance requirements and in that regard, the Provider is satisfied that the cover offered by the previous policies, was suitable for the Complainant Company's stated insurance needs and requirements.

I note from the documentary evidence before me that the Provider sent the Complainant Company the Insurer's Compact Retail Combined Policy Schedule on **14 August 2012** in respect of its then new policy, ending 3272.

I also note that the 'Statement of Fact' section of this Policy Schedule provided, at pg. 1, as follows:

"You were not asked to complete a written proposal form to arrange Your policy. Instead You have confirmed the following Statements of Fact which together with the Details of Your Business included in this Schedule, form the basis of this contract of insurance.

If any of these facts or details are inaccurate, You must advise Your insurance broker immediately. Failure to do so could invalidate Your policy, and seriously expose You in the event of a claim.

You have agreed the following Statements of Fact that: ...

6. the property to be insured is of standard construction (constructed of brick, stone or concrete and roofed with slates, tiles, asphalt, metal or concrete)".

I also note that '**The Details of your Business**' section of this Policy Schedule stated as follows:

"Full Business Description: *Off licence".*

Having read the Insurer's Policy Schedule and noting both the full business description was detailed as "*Off licence*" and the Statement of Fact as to the property construction, I take the view that it would have been prudent of the Complainant Company to have contacted the Provider, as advised in the Policy Schedule itself, to query whether the policy cover extended to the unoccupied public house premises also, if that was the cover that it had required and anticipated.

That said, I note the Provider states in its letter to this Office dated **23 July 2020** that both the Complainant Company's off-licence premises and unoccupied public house premises:

" ... were covered under a blanket policy covered a total buildings sum insured for both the pub and the off licence".

The Provider, as recently as in **July 2020**, confirmed that it remains satisfied that these earlier policies both included cover for the Complainant Company's unoccupied public house.

It is therefore reasonable to suppose that if the Complainant Company had raised any concerns with the Provider (when it first incepted policy ending 2640 with the Insurer on 8 August 2011, or later when it incepted ending 3272 with the Insurer on 9 August 2012, or indeed anytime thereafter) that the Provider may have advised the Complainant Company that its policy included cover for its unoccupied public house. Alternatively, the Provider may have sought to secure written confirmation from the Insurer of its opinion in that respect. No such query however arose.

Having considered the contents of the Provider's responses to this Office of 15 January and 23 July 2020, this Office considered it appropriate to write directly to the Insurer itself on **25 November 2020** in relation to this complaint, in an effort to clarify matters.

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In this regard, **Section 47** of the **Financial Services and Pensions Ombudsman Act 2017** prescribes:

“(3) In conducting an investigation, the Ombudsman may,

(a) require any person, who in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his or her power or control, that is relevant to the investigation, to -

(i) provide to him or her that information either orally or in writing

(ii) produce to him or her that document or a copy of the document”.

In its response to this Office dated **4 December 2020**, the Insurer advised that:

“The [previous policies ending 2640 and 3272] policy type is Shop/Retail and the Business Description on the policy is Off licence. The buildings cover provided was in respect of an off licence.

No information was provided to indicate if the buildings were unoccupied or occupied however our scheme is for trading businesses and does not cater for unoccupied premises ...

The acceptance criteria for the policy states: the property to be insured is of standard construction (constructed of brick, stone or concrete and roofed with slates, tiles, asphalt, metal or concrete).

No individual endorsements were specifically applied to this policy. All standard policy endorsements are noted on the policy schedules and/or policy wordings ...

[The Insurer] only became aware of the flat roof when policy ending 6975 was incepted on 14/08/2018. The following special term was noted on this policy: ‘It is hereby noted that 60% of the total roof area is a flat felt roof’”.

It was at this point also that the following special term was applied to [policy ending] 6975: ‘It is hereby noted and agreed that property owners liability is extended to cover an unoccupied public house at the above risk address’”.

This Insurer letter was forwarded to the Provider on **25 January 2021**, inviting it to submit any comments it had in relation to the contents. The Provider did not respond.

I note that the Insurer stated that the buildings cover provided by the original policies was in respect of an off-licence and that it was unaware during the terms of these policies, that part of the Complainant Company’s premises was unoccupied.

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In this regard, I note that the more recent August 2018 and August 2019 policy schedules for the Complainant Company's new policy ending 6975 state:

"It is hereby noted and agreed that property owners liability is extended to cover an unoccupied public house at the above risk address".

I also note that the Insurer has stated that it was unaware during the terms of the previous policies that part of the Complainant Company's premises has a flat roof.

I note again in that respect, that the more recent August 2018 and August 2019 policy schedules for the Complainant Company's new policy ending 6975 state:

"It is hereby noted that 60% of the total roof area is a flat felt roof".

It is important to note that the previous policies clearly did provide the Complainant Company with some insurance cover, given that the Insurer assessed and settled a claim previously made in **November 2011**. In this regard, the Insurer advised in its letter of 4 December 2020 that:

"The circumstances of this [claim] are that heating oil leaked from our policyholder's oil storage tank and contaminated the neighbour's property. The claim remained open in November 2018 as the claimant issued proceedings and therefore the claim took longer to finalise. The claim closed on 07/10/2019 with a total claim cost of €91,635.90".

I note that the Complainant Company appears to have had no cause, during the terms of the previous policies, to make a claim in relation to the unoccupied public house premises itself. Happily, therefore, the insurance cover which the Provider says it believed to have been adequate (on the basis of its handwritten note regarding its discussions with the Insurer in relation to the roof, rather than on the basis of any specific endorsement reflecting the contents of such discussions) was not in fact put to the test.

I am satisfied however, that the Complainant Company was in a vastly improved position from 2018, as a result of the endorsements which specifically noted the flat roof and the unoccupied/storage use of the public house portion of the premises, bearing the same risk address. It is disappointing that whatever the Provider's understanding of the information which it had given to the Insurer, it clearly overlooked to ensure that such a basis for the insurance cover, was reflected in the Policy Schedules. This is unsatisfactory.

In relation to the second element of the Complainant Company's complaint, that is, that the Provider provided the Complainant Company with poor customer service when it later raised a complaint in relation to this matter with it, I note that **Chapter 10, 'Errors and Complaints Resolution'**, of the Central Bank of Ireland's Consumer Protection Code 2012 provides as follows:

“COMPLAINTS RESOLUTION

10.7 *A regulated entity must seek to resolve any complaints with consumers*

10.9 *A regulated entity must have in place a written procedure for the proper handling of complaints ... 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;*
- d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman ...”.*

I note from the documentation before me that the Complainant Company emailed a complaint to the Provider on **13 August 2018**, with a follow-up email on **28 August 2018**, but that it received no response from the Provider to either email, prior to the Complainant Company contacting this Office in early November 2018 in order to initiate a complaint. As a result, this Office had cause to write to the Provider on **23 November 2018** to assist the Complainant Company in procuring a Final Response Letter, so that the Complainant Company could then proceed with pursuing its complaint.

I note that the Provider says that it did not reply to the Complainant Company’s email of 13 August 2019 as this email went to its junk mail folder. The Provider accepts that this junk mail folder should have been checked on a daily basis, but it says that once it became aware of this complaint, that it sought to address the matter quickly and fairly and it issued its Final Response Letter on 17 December 2018. The Provider makes no reference to the Complainant Company’s follow-up email of 28 August 2018.

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It is disappointing that the Provider advises that it managed its receipt of emails in such a manner that emails from its own clients could, and in this instance did, go unnoticed. In so doing, the Provider ran the risk of failing to identify complaints that were emailed to it, as happened in this instance, and thus it also ran the risk of being non-compliant with its obligations under the Central Bank of Ireland's Consumer Protection Code 2012, as also happened in this matter.

I take the view that the failure of the Provider to acknowledge, investigate and respond to the Complainant Company's complaint that it first emailed to the Provider on 13 August 2018, constituted an unsatisfactory level of customer service toward the Complainant Company. Taking into account all of the evidence before me, and for the reasons I have outlined above, I am of the opinion that the Provider provided the Complainant Company with poor customer service throughout this matter.

Insofar as the substantive complaint is concerned, it is clear that the Insurer met a significant claim made on the policy ending 2640, in November 2011, following an escape of oil. As a result, it cannot be said that the previous policies offered no cover to the Complainant Company. The evidence available leaves open the question as to whether any other claim which might have encompassed the unoccupied portion of the premises, would have placed the Complainant Company in difficulty, or whether rather, on the basis of the Provider's handwritten notes of its discussions with the Insurer, such difficulties would have been resolved, in that event. At this remove, it is simply impossible to say.

I do not accept that the Complainant Company should recover all premiums paid over the relevant years, on the basis of its suggestion that the policy cover was not fit for purpose, or because it is now exposed to paying a higher premium than it paid for the previous policies during the years 2011 – 2018. This Office may direct compensation when the evidence discloses loss, inconvenience or expense suffered by a Complainant. In this instance however, with the exception of the Provider's poor complaint handling, there is limited evidence of inconvenience, loss or expense to the Complainant Company, although I acknowledge that some inconvenience must have arisen as a result of the concerns the Complainant Company experienced regarding the adequacy of the previous insurance arrangements which had been in place.

Accordingly, to take account of all of the evidence of the manner in which the Provider administered the Complainant Company's policies and its poor complaint handling in 2018, I consider it appropriate to direct the Provider to make a compensatory payment of €3,000, to the Complainant Company, in order to conclude all aspects of the matter.

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

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 Company in the sum of **€3,000**, to an account of the Complainant Company's choosing, within a period of 35 days of the nomination of account details by the Complainant Company 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.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

27 July 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.