



<b><u>Decision Ref:</u></b>	2021-0331
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Van
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues Maladministration Disagreement regarding Pre-accident value provided Failure to consider vulnerability of customer
<b><u>Outcome:</u></b>	Rejected

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

The Complainant holds a motor insurance policy with the Provider, against which this complaint is made. During **June 2018**, the Complainant's vehicle collided with a wall having rolled down a hill. The Complainant made a claim under the policy and is dissatisfied with the manner in which the claim was settled by the Provider.

**The Complainant's Case**

The Complainant's representative says that the Complainant is complaining about several matters regarding the Complainant's motor insurance policy. A linked, but separate complaint, has been made against his insurance broker (the **Broker**).

The Complainant's representative says the Complainant is complaining about the low settlement value offered by the Provider in respect of a claim made under the Complainant's motor insurance policy. The Complainant's representative says the open market value (**OMV**) of the Complainant's vehicle "*was not accurate even though many examples were given.*" The Complainant's representative says that the Provider was asked to explain "*... where they got the salvage amount. We searched and found salvage amount to be significantly higher for the engine alone.*" The Complainant's representative says the Provider also failed to tell them the number of salvage vendors the vehicle was offered to.

Based on their calculations, the Complainant and his representative estimate that the salvage amount should have been between €2,600 and €3,200 and refer to valuations and links to salvage amounts accompanying the Complaint Form.

The Complainant's representative says that the Complainant could not have handled the claim by himself as the Provider *"requested screen shots and many many e mails in dealing with this. This is against the consumer protection code vulnerable person [sic]."*

On three occasions, the Complainant's representative says the Complainant was provided with the wrong insurance disk, therefore rendering it illegal for his vehicle to be driven until **15 January 2019**. The Complainant's representative says: *"The Broker blames the Insurer [the] Insurer mention they were told the wrong information."* The Complainant's representative says this is a process failure within both the Provider and the Complainant's Broker.

The Complainant's representative says the Provider:

*"... seems to try and defend costs they have incurred when picking up vehicles and delivering them back. Had they offered the correct market value and correct salvage value this would have been resolved back in August. We accepted the claim offer without prejudice purely to get [the Complainant] back in a vehicle."*

This Office wrote to the Complainant's representative by letter dated **15 July 2020** requesting that he identify the precise conduct of the Provider which is subject to the complaint. In response to this, by email dated **15 July 2020**, the Complainant's representative set out the following:

- "1. Failed to offer OMV*
- 2. Failed to offer market value Surrender amount*
- 3. Failed to identify [the Complainant] as a vulnerable Consumer as per Central Banks Consumer protection code taking into account his age and digital capacity (e-mails, web pages etc). This is linked to us having to provide samples of similar vehicles as OMV examples.*
- 4. Failed to have checks in place to make sure correct Insurance disc was issued (3 separate occasions)*
- 5. Failed to provide us with information to where they got the salvage offers from."*

In resolution of this complaint, the Complainant is seeking the following:

*"...*

- Reinstatement of 5 months cover ... as you were instructed to freeze the policy*
- Car hire costs @ €17.57 per day for your office short comings in issuing ... an Insurance disc €316.26 (18 days). The Car was given by [the Complainant's] daughter for the duration of the total length of claim*

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- *Shortfall in Claim value received of €4500 euros ...*
- *Car Hire Costs from the date of First offer when you were contacted by [the Complainant's representative] informing you that the offer would not be accepted and we wanted you to act on his behalf @ €17.57 per day 75 days minus 18 days we fully expect [the Broker] to pay leaves €1001.49 balance*
- *A significant compensation gesture ...*
- *A payment to cover [the Complainant's representative's] costs related to dealing with this claim. Circa 16 hours €50ph. (€800) ..."*

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

The Provider says the Complainant's policy was originally inception on **17 May 2015** and renewed annually thereafter. The Provider says that two vehicles are the subject of this complaint, Vehicle A and Vehicle B. The Provider says Vehicle A is the subject of the claim that occurred on **23 June 2018**. The Provider says Vehicle B was substituted onto the policy on **5 October 2018**.

The Provider says that Vehicle A was damaged in a single vehicle incident on **23 June 2018**. The Provider says it arranged to have the vehicle assessed by a professional motor assessor, (the **Motor Assessor**). The Provider says the Motor Assessor declared the vehicle a Category B write off (the vehicle must not be used again but non-structural and roadworthy parts and components may be recovered). The Provider says the Motor Assessor placed a pre-accident value (PAV) of €12,000 including VAT, on the vehicle. The Provider advises that the vehicle's salvage value was valued at €1,667 by a named motor salvage company (the **Motor Salvage Company**).

The Provider says the Complainant rejected the PAV and made a complaint. The Provider says the Complainant's representative submitted advertisements of similar vehicles from a popular buy and sell website to challenge the PAV. The Provider says it asked the Motor Assessor to review the PAV again but their decision was unchanged at €12,000. The Provider explains that it described the process it and the Motor Assessor used to assess the PAV in a letter sent to the Complainant dated **18 September 2018**.

Whilst the Motor Assessor's decision was unchanged, the Provider states it referred the case to its in-house engineer and he considered a small increase in the PAV to €12,200 which was also rejected by the Complainant. The Provider says in an effort to settle the claim and the complaint, it agreed to increase the PAV offer to €12,500 and this was accepted by the Complainant.

Addressing the Complainant's policy, the Provider says it was a comprehensive policy and 'Section 2: Loss of or damage to your Van', was recorded as 'active' on the policy schedule. The Provider cites section 2 of the policy document as follows:

*"If You have chosen Comprehensive insurance, the cover under any part of this Section includes loss or damage caused by fire, theft, attempted theft, and by malicious or accidental means."*

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The Provider also cites the following passage:

*“We will pay for loss of or damage to Your Van, or any part of it or its accessories and spare parts while it is in any of the territories covered by this Policy, or while being transported by sea (including loading and unloading) between any ports in those territories.”*

The Provider says that the Complainant suffered a loss on **23 June 2018** by accidental means. In section 2 of the policy document, the Provider says, it describes what is not covered:

*“We will not pay ... more [than] the lower of either (i) the current Market Value [\*] of Your Van at the time of the loss or damage, or (ii) the most recent value of Your Van that You gave Us as shown in Your Schedule.”*

The Provider says the policy defines ‘Market Value’, as follows:

*“The amount of money You would have got for Your Van if you offered it for sale at the time of the accident, loss or damage.”*

The Provider says the value of the vehicle was stated on the 2018/2019 schedule as €15,000 and that this amount was not changed since it was placed on cover in 2016. The Provider says it also addressed this in its letter of **18 September 2018**.

In response to the Complainant’s position that the Provider did not advise as to the number of salvage vendors Vehicle A was offered to, the Provider says that salvage remains the property of the policyholder. The Provider says it pays for the loss (the damage) and deducts the salvage value from the PAV. In dealing with the damage vehicle, the Provider says it will source a salvage agent who is prepared to buy the damaged vehicle and pass the salvage monetary amount and name of the salvage agent to the claimant, who is under no obligation to sell the vehicle to that agent. The Provider says the property is the claimant’s, to dispose of as they see fit.

In all of its offers, the Provider says it explicitly set out the salvage amount and name of the salvage agent. The Provider says as this was an end of life vehicle, it also offered to have it collected and disposed of by its approved salvage agent. The Provider says the Complainant chose to retain the vehicle and sell it to a salvage agent he sourced himself. In an effort to resolve the complaint and as a goodwill gesture, the Provider says it paid for the transport of the vehicle to the Complainant’s nominated agent at a cost of €467.40, a cost the Provider says it would not normally bear.

In respect of the issuance of the Complainant’s insurance discs, the Provider says it is responding to this aspect of the complainant in relation to Vehicle B. The Provider has cited the Irish and UK registration numbers of this vehicle. The Provider says it requested an engineer’s report from the policyholder to confirm the ‘new’ vehicle (UK registration number) was roadworthy as it had been declared a write-off in the UK.

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The Provider says it received the engineer's report on **23 October 2018** and issued a certificate and disc for the UK registration number of the vehicle. From **5 October 2018** to **23 October 2018**, the Provider says the policy was operational having been reinstated at the request of the policyholder to facilitate the permanent change of vehicle.

The Provider says the first documents issued with an Irish registration number on **2 November 2018** were wrong as there was a typographical error in the registration number. The Provider says the Complainant's broker had incorrectly advised it of the Irish registration. The Provider has cited the incorrect number in its Complaint Response. The Provider says this was not noticed by the Complainant until the Provider pointed it out to him in **January 2019**. The Provider says this error would not have invalidated the cover and it issued the correct certificate and disc on **15 January 2019**.

The Provider says the Complainant was identified as a vulnerable customer when his representative cited his age as a vulnerability in a letter to the broker which was copied to and received by the Provider on **11 January 2019**. However, the Provider says that during the handling of the claim, it understood that the Complainant had nominated his representative because of his experience and understanding of claims handling, not because of age vulnerability. In its letter of **6 February 2019**, the Provider says it confirmed to Complainant's representative that it had recorded the Complainant as a vulnerable consumer requiring assistance from a friend/relative in any dealings with the Provider.

Regarding the settlement of the Complainant's claim, the Provider says that the policy covered the loss to the Complainant's vehicle resulting from the accident on **23 June 2018**. The Provider submits that it carried out a thorough investigation into the loss and arrived at the correct settlement offer. The Provider says it appointed a motor assessor to inspect the vehicle, employed the industry wide 'used Vehicle Management System' website, sourced a salvage agent, reviewed advertisements presented by the Complainant's representative challenging the PAV, referred the case to its in-house engineer and offered an amount of €500 over the inspecting engineer's PAV.

In respect of each aspect of redress sought by the Complainant, the Provider responds as follows:

*"[1] We understand this request relates [to] the policy being suspended between 15/08/2018 and 05/10/2018. The complainant believed that in suspending his cover the policy renewal date would extend out by the same amount of time. We explained to the complainant in our response of 06/02/2019 that suspension of cover does not affect the policy renewal date. The policy operates on a twelve-month term and suspension is permitted within the twelve months and a refund premium allowed where all the policy conditions are met. The policy condition in this instance was that a refund would be allowed if "there has been no claim made or incurred by you in the current period of insurance" Despite [the Complainant] having a claim, we refunded €84.73 for the suspended period. We are not prepared to amend the dates of cover or the suspension period.*

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[2] *We assume the claim for 18 days car hire relates to the period [the Complainant's representative] says [the Complainant] was without documentation for [Vehicle B]. We issued the Certificate and Disc for [Vehicle B's UK registration number] within 1 day of receiving the engineers report (23/10/2018). [Vehicle B] was deemed a write off in the UK and we required the engineers report before agreeing to cover this vehicle. In addition to this Driving of other vans extension cover applied in this time period. We will not pay or contribute to this outlay.*

[3] *There is no shortfall in the claim. The claim was settled in accordance with the policy conditions and the claimant accepted the settlement terms. There will be no further payments made by [the Provider].*

[4] *[The Complainant] availed of 5 days courtesy vehicle hire included on this policy. We are not prepared to contribute further in this regard.*

[5] *[The Provider] have already (1) increased the PAV by €500, contrary to the Motor Assessors recommendations (2) paid €467.40 to have [Vehicle A] moved to a salvage agent .... This cost is usually at the policyholder's expense and (3) refunded €84.73 in premium for the suspension of cover when it was not due.*

[6] *A policyholder has the right to appoint their own representative, however, any such instruction shall be at the policyholder's own expense. We will not be contributing to these costs."*

### **The Complaints for Adjudication**

The complaints are that the Provider:

Failed to offer open market/pre-accident value for the Complainant's vehicle;

Failed to offer the market value surrender amount for the Complainant's vehicle;

Failed to provide information regarding the source of the salvage offers;

Failed to identify the Complainant as a vulnerable consumer;

Failed to issue the correct insurance certificate and disc for Vehicle B and failed to have proper processes in place to prevent this from occurring; and

Proffered poor communication and customer service.

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## 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 6 July 2021, 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Vehicle A was involved in a collision on **23 June 2018**. The garage where the Vehicle A was taken following the incident contacted the Provider by telephone on **25 June 2018** to inform the Provider of the incident. The Provider contacted the Broker on **25 June 2018** to obtain a telephone number for the Complainant. The Provider then attempted to contact the Complainant but was unable to speak with him and a voice message was left. One of the Provider's claims handlers emailed an Inspection Instruction to the Motor Assessor on **25 June 2018**, which recorded the incident, as follows:

*"Reported by insureds garage who has recovered vehicle. Thinks was parked with no hand break on and rolled down a hill hitting a wall. Garage believes its written off.  
..."*

The Provider wrote to the Complainant on **25 June 2018**, requesting that he complete an enclosed accident report form and advised him of the appointment of the Motor Assessor.

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It appears that the Motor Assessor inspected Vehicle A on **28 June 2018** and forwarded a 'Status Report' to the Provider on **3 July 2018**. I note the following passages from this report:

*"The policyholder vehicle is a W/O salvage category B.  
Salvage offers awaited. ...*

*The damage to the policyholder vehicle is consistent with a heavy impact to the right hand side in the area of the right front door / A pillar. The direction of impact was diagonally from rear to front and right to left. There is further damage to the left rear corner care which is of a light nature. The nature of the damage would be consistent with the vehicle having been in contact with a wall or similar structure.*

*The damage items include the right front door, right front wing, bonnet, right front wheel, tyre, right front suspension, engine mountings, front bumper, windscreen and rear bumper. ..."*

The Motor Assessor sought instructions as to how to proceed with matter from the Provider on **4 and 6 July 2018**.

The Provider telephoned the Complainant on **9 July 2018**. At the beginning of this call the Complainant stated that it had not heard from the Provider in nearly three weeks. The Complainant also indicated that his garage had been in touch with him regarding the inspection of Vehicle A. The Provider's agent advised that it was waiting for its engineer to agree a PAV with the Complainant and a signed incident report form. The Complainant stated that he did not receive any forms from the Provider. The Provider's agent advised that it sent forms to the Complainant and his Broker. The Provider's agent explained that the Broker initially sent in an incident report form but it was not signed by the Complainant. The Provider's agent told the Complainant that the Provider reverted to the Broker in order to have the form signed and that the Provider had followed up with the Broker that morning as the signed form was not received. The Complainant advised the Provider's agent that he had spoken with the Broker that morning and that the relevant form was signed. The Provider's agent explained the form was not clearly signed. The Complainant explained that he signed the form the previous week. The Complainant advised that he would contact the Broker about the form. The Complainant also explained the events giving the rise to the incident. The Provider's agent then explained the process of agreeing PAV, salvage value, storage of the vehicle and van hire.

The Provider furnished the Motor Assessor with a telephone number for the Complainant on **9 July 2018** in order to agree a PAV on the vehicle. The Provider also noted that it awaited the Motor Assessor's advices on salvage and a final report.

The Complainant returned a call to the Provider on **23 July 2018**. During this call, the Provider's agent explained that the engineer had not yet reverted to the Provider with a final report in respect of Vehicle A. The Provider's agent asked if the engineer had contacted the Complainant "to agree the figures on the vehicle".

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The Complainant advised the Provider's agent that the engineer had been in contact but the parties did not agree on the figures.

The Motor Assessor furnished the Provider with a 'Final Report' on **26 July 2018**. I note the following passages from this report:

*"Have spoken to the policyholder ... regarding P.A.V. which had been offered of 12000.00 inc. vat. 9756.10 ex. vat. the policyholder rejected same and advised he is seeking a P.A.V. of 16000.00 inc. vat. or 1300.81 ex. vat. The P.A.V. had been reviewed by the QA team and no further increase was sanctioned therefore the P.A.V. has not been agreed for this reason.*

*The following salvage offers have been obtained but may be exceeded by the online salvage process. Salvage offer of 1677.00 from [the Motor Salvage Company] ... Other offers from [Salvage Company 1] who offer 470.00 and [Salvage Company 2] offer 400.00.*

...

***The engineer in this case has categorised this vehicle as 'B' (Heavy Damage, vehicle suitable for parts only)***

***No increased offer(s) have been obtained as a result of the Salvage Offer Process. ..."***

I note that the Provider has furnished the offers received by the Motor Assessor in response to its requests for salvage offers in respect of Vehicle A. The requests for salvage offers were sent on **3 July 2018** and all three responses were received the same day. While I am satisfied that the responses received from the Motor Salvage Company and Salvage Company 1 relate to Vehicle A, it appears that the offer received from Salvage Company 2 does not relate to Vehicle A and this offer appears to have been in response to a different vehicle. I also note that the offer received from Salvage Company 1 was €460 and not €470 as stated in the Final Report.

The Provider wrote to the Complainant in respect of his claim on **2 August 2018**, as follows:

*"We have now received the Engineers report following inspection of your vehicle. The Engineer has declared the vehicle to be a Category B write off and valued it at €12,000 including VAT or €9,756.10 excluding VAT. Our offer in settlement of your claim is broken down as follows;*

<i>Pre-Accident Value:</i>	<i>€ 12,000</i>	<i>or</i>	<i>€9,756.10</i>
<i>Less Salvage Value:</i>	<i>€ 1,677</i>		<i>€1,677</i>
<i>Less Policy Excess:</i>	<i>€ 250</i>		<i>€250</i>
<b><i>Net Settlement Offer:</i></b>	<b><i>€10,073 (including VAT)</i></b>		<b><i>€7,829.10 (excluding VAT)</i></b>

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*The Salvage offer listed above has been made by [the Motor Salvage Company] and is valid for a period of 30 days. If you wish to sell the vehicle to them they will collect the vehicle and pay you the salvage amount listed above. Alternatively, at your request, we can arrange for the vehicle to be collected by our own salvage agents for disposal, in this case you will receive payment of €11,750 including VAT or €9,506 excluding VAT directly from us ...”*

This letter also enclosed a document explaining each of the different vehicle category classifications.

The Complainant’s representative telephoned the Provider on **7 August 2018**. I note at the time of this call, the above letter does not appear to have been received. The Complainant’s representative advised that the Complainant would not accept a PAV of €12,000.

In response to this, the Provider’s agent advised the Complainant’s representative that if the Complainant wished to dispute the PAV, he would have to provide valuations for the Provider to send to the Motor Assessor and that it would be for the Complainant and his representative to show that Vehicle A was worth more. The Complainant’s representative explained that the Complainant could not replace Vehicle A for the amount being offered by the Provider. The Complainant’s representative explained that he could send a link to car sales websites showing the price of a vehicle equivalent to Vehicle A. The Provider’s agent explained that the Complainant’s representative would need to provide at least three valuations of a similar vehicle (same specification, year and milage), and the Motor Assessor would review the valuations. The Provider’s agent advised the Complainant’s representative to send screen shots of the valuations (and not hyperlinks) for IT reasons. The Complainant’s representative indicated that there was “*a lot of running around*” going on and that it may be more appropriate to refer the matter to this Office. The Provider’s agent explained this was normal procedure. However, the Complainant’s representative disagreed, stating that he was in the insurance industry. The Complainant’s representative also expressed dissatisfaction that the Complainant was without a vehicle 4/5 weeks following the incident. The Complainant’s representative explained that he would take some screenshots and send them to the Provider.

The Complainant’s representative emailed the Provider on **7 August 2018** explaining that the Provider’s settlement figure would not allow the Complainant to replace his vehicle like for like, particularly taking into account its low milage. This email attached three advertisements for the same model of vehicle as Vehicle A, advertised for sale on a car sales website. This email was acknowledged by the Provider the same day and the Provider advised the Complainant’s representative that the matter was being referred to the Motor Assessor for PAV advices. The Provider forwarded this email to the Motor Assessor for review the same day.

The Complainant’s representative sought updates from the Provider on **15 and 17 August 2018**.

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The Motor Assessor responded to the Provider on **15 August 2018**, as follows:

*"I have viewed the document submitted by the policyholder however the only one of the vehicle[s] on the list is advertised as plus vat. which was from [location] ... for 11750.00 plus vat at 23% would amount to 14452.50 inc vat. I did contact this firm and their price was confirmed to me.*

*I also contacted the other two firms [from] the list and both of them confirmed that their prices were vat inclusive at 1195[0].00 and 12250.00.*

*I am satisfied that the value placed on the policyholder vehicle is a fair reflection of the vehicle inspected at 12000.00 inc. vat. subject to policy conditions."*

The Complainant's representative telephoned the Provider on **20 August 2018** to follow up on the Motor Assessor's assessment of the PAV as he had yet to hear back from the Provider. The Provider's agent advised the Complainant's representative of the views expressed by the Motor Assessor, as outlined in the above email. The Complainant's representative requested that the matter be escalated to a complaint and also requested written justification for the valuations.

The Complainant's representative emailed the Provider's on **20 August 2018**, attaching further advertisements and also requested that a formal complaint be lodged. This email stated as follows:

*"I would now like this matter escalated to a complaint. Within the complaint response I would like the engineers justification on the value explaining miles, ownership condition number of seats and why he has not considered the more expensive of three vehicles originally provided. I also want the wider scope of vehicles included in all calculations going forward.*

*The engineer has made reference to a Dealership in Navan. Given the age of [the Complainant] yet again this engineer is taking nothing into account. Is he expected to travel to get a cheap van.*

*Can you please e-mail me the engineers response as we have had nothing.*

*I will reiterate [the Complainant's] standing on this. For him to replace his vehicle like for like he will only be accepting €14,000 ex his €250 ex. (€13,750)*

*We are extremely aggrieved that this engineer has yet again taken nothing into consideration and focused completely on the lowest price vehicle. There was a vehicle within the three I sent that was plus vat and this engineer has taken it upon himself only to investigate vat status and had no consideration to the miles, pre accident condition, location of dealer, seats in vehicle and number of owners.*

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*There is no clear price trend for model and mileage, so I've averaged a market sample, I now wish for all of these vehicles to be taken into account in this dispute and do not want an engineer to pick examples that suits his lowest price as he had done with the 3 examples I sent originally. ..."*

The Complainant's representative's email also contained a table setting out the details in respect of six vehicles and attached a document containing sales advertisements of ten vehicles all similar to Vehicle A. The Provider forwarded this email to the Motor Assessor the same day for review. The Provider responded to the Complainant's representative advising him that his email had been passed to the Motor Assessor for review and that the Provider would update the Complainant's representative once it received the Motor Assessor's response. The Provider also advised that the Complainant's representative would receive an acknowledgement of the complaint from the Complaints Department.

By letter dated **21 August 2018**, the Provider's Customer Services Team acknowledged the complaint made by the Complainant's representative.

The Motor Assessor responded to the Provider on **24 August 2018**, as follows:

*"... we again checked online websites for similar vehicles and located the attached advert from [website] where [car dealer] had a vehicles similar to the policyholder. The advertised vehicle is 3 door, 3 seat with one previous owner and 54256Km recorded (It is a 95ps model which is more expensive new than the insureds) and advertised for sale at €11550 including VAT. We contacted [the car dealer] to see if the vehicle was still available and were informed it was recently sold for €10,9000.00 including VAT. We are satisfied our PAV of €12,000 including VAT is reasonable."*

It appears that the Provider also sent the email received from Complainant's representative for internal review on **24 August 2018**. The Provider received a Valuation Report dated **24 August 2018** in respect of Vehicle A. The report returned a valuation of €12,200 and stated that four examples were used to derive this valuation, with links to the relevant advertisements being provided. The report also contained the following comments:

*"COMMERCIAL VEHICLE Valuation based on similar 2016 vehicles currently for sale. This vehicle's milage / kilometres, DOE Status, Engine Size, Fuel, Version and Transmission Type have all been taken into consideration and the price has been adjusted accordingly. Price inclusive of VAT."*

The Provider wrote to the Complainant by letter dated **29 August 2018** advising that it was increasing the PAV to €12,200. In this letter, the Provider advised, as follows:

*"We have now received the Engineers follow up comments in relation to the Pre-accident value of your vehicle and they are satisfied the pre-accident value is accurate and have not agreed any increase in value. However I can advise that we have liaised with our in house Engineer and completed a VMS search online, which has confirmed a pre-accident value of €12,200 including VAT. ..."*

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The Provider telephoned the Complainant's representative on **30 August 2018** to advise him that the matter had been referred to the Motor Assessor and the Motor Assessor was standing over its valuation. The Provider's agent then explained that the matter was referred to the Provider's in-house engineer who agreed with the PAV of €12,000. The Provider's agent explained that the Provider consulted the online 'Vehicle Management System' and this came back with a value of €12,200 and this was the revised offer. The Provider's agent advised this was set out in a letter that would be posted to the Complainant that day. The parties then discussed the Provider's assessment of the PAV. In respect of the model of the examples provided by the Complainant's representative, the Provider's agent advised that the model would have to be the same as Vehicle A. The Provider's agent also explained that dealerships would also include various costs in the sale price of the vehicles being offered for sale and that motor assessors do not consider dealership prices but refer to the 'book value' for what vehicles are selling for online. The Provider's agent advised that the Provider could go to a PAV of €12,500 if that would settle the matter.

Following this, the Provider wrote to the Complainant on **30 August 2018** advising that it was increasing the PAV to €12,500, "*In a bid to finalise this claim ...*"

I note that in this letter and the letter of **29 August 2018**, the Provider advised that its salvage value was based on an offer from the Salvage Company.

The Complainant's representative wrote to the Provider by email dated **2 September 2018**, as follows:

*"I spoke with [the Complainant] over the weekend as as [sic] far as he is concerned the offer still falls very short of his expectations and he does not feel that you are taking into account the Dealer Prices from this Irish market as were provided. I know on our call on Friday you mentioned that dealers charge more, which he understands but what angered [the Complainant] was the original 3 examples that were provided the engineer was quite happy to call them and check if prices included or excluded VAT.*

*However, given the length of time this has taken with little or no help from his Broker, [the Complainant] is prepared to accept the offer without prejudice simply so he can get himself back in some sort of vehicle ...*

*In addition to the above can we also have in writing response to the complaint that was raised with full details from yourselves and [the Motor Assessor] on the market value of the vehicle and why the claim offer could not meet [the Complainant's] expectations of €14,000 including vat less €250 excess."*

This was followed by a further exchange of emails between the parties. I note that in an email from the Provider dated **4 September 2018** to the Complainant's representative, the Provider advised that the complaint was with the Complaints Department.

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On **7 September 2018**, the Provider emailed the Motor Assessor to request a response to the aspect of the complaint raised in respect of the engineer's justification regarding the valuation of Vehicle A. A response was received on **11 September 2018**, which explained that:

*"When placing a PAV on a vehicle we will research the market for similar models offered for sale. We will seek to obtain models of similar year, specification, recorded kilometres / mileage and previous owners and based our value on these. Our valuation will be based on the straight deal price of the available vehicles and not the advertised price if the includes the discount that would be available in a straight deal. This is the procedure that was followed in this case.*

*When the PAV was initially disputed we also located a very similar vehicle to the insured's that had been recently sold of €10,900.00 including VAT by [car dealer] in [location]. The vehicle was a 3 door model, with 3 seats, one previous owner and had 54256km recorded which is 264 kilometres more than the insured's vehicle. It was a 95ps model which was €700.00 more expensive new than the insureds in 2016 and had been advertised for sale at €11,550 including VAT. (See Attached)*

*In view of the above we are satisfied our PAV of €12,000.00 including VAT is fair and reasonable in this case. ..."*

This was followed by a number of further emails regarding the salvage and collection of the Complainant's vehicle.

The Provider issued a Final Response letter in respect of the complaint made by the Complainant's representative on **18 September 2018**. Regarding the manner in which the Motor Assessor determined the PAV to attribute to the Complainant's vehicle, the letter states, as follows:

*"We are confident our appointed motor assessor, [the Motor Assessor], acted correctly and independently in the handling of this claim. We wrote to [the Motor Assessor] for a response to your grievance regarding their calculation of the pre-accident value (PAV). They responded as follows:*

[The Provider repeated the contents of the Motor Assessor's email dated 11 September 2018, cited above]

*We accepted the motor assessors professional and independent report and agreed the PAV to be the "Market Value" of the vehicle, as defined in the policy booklet (below).*

**Market Value**

*The amount of money You would have got for Your Van if You offered it for sale at the time of the accident, loss or damage.*

/Cont'd...

*However, we considered [the Complainant's representative's] opinion and the upset being experienced by the you (sic), the policyholder, and to progress the claim to settlement, agreed to offer a further €500. This was accepted, and settlement was processed on 10<sup>th</sup> September 2018. ..."*

The Complainant's representative made a formal complaint to the Complainant's Broker at the beginning of **January 2019**. This was subsequently forwarded to the Provider by the Complainant's Broker on **10 January 2019**. The Provider notified the Complainant on **15 January 2019** that it was re-opening the complaint as the Complainant's representative "*has raised issues regarding the handling of your claim and policy ....*" The Provider issued a Final Response letter on **6 February 2019**.

### **Analysis**

The first aspect of this complaint I propose to address is the Complainant as a vulnerable consumer. The basis advanced by the Complainant/the Complainant's representative for the Complainant being a vulnerable consumer relates to the Provider's requests for "*screen shots and many many e mails in dealing with this.*"

In correspondence dated **15 July 2020** it is further stated that the Provider failed to identify the Complainant as a vulnerable consumer "*taking into account his age and digital capacity (e-mails, web pages etc). This is linked to us having to provide samples of similar vehicles as OMV examples.*"

Chapter 12 of the **Consumer Protection Code 2012** (the **Code**), defines a *vulnerable consumer* as follows:

*"... a natural person who:*

- a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impairment or visually impaired persons); and/or*
- b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, persons with intellectual disabilities or mental health difficulties)."*

In light of the above provisions of the Code, I am not satisfied that age alone is sufficient to bring the Complainant within the meaning of a vulnerable consumer. Indeed, I believe it would be inappropriate to decide that a person was vulnerable simply because of their age. In terms of the Complainant's digital capacity, I note from the evidence that the requests for screen shots were first made during a telephone conversation with the Complainant's representative on **7 August 2018** and it was following this conversation that email communication began.

/Cont'd...

However, this email communication was between the Provider and the Complainant's representative and any correspondence issued to the Complainant appears to have been by post. Thus, I am not satisfied that there is any evidence to show that the Provider engaged in email communication with the Complainant or specifically required the Complainant to provide screen shots – this is what was asked of the Complainant's representative. I also note that the Complainant's representative began acting on the Complainant's behalf from the date of the above-mentioned telephone conversation.

Therefore, taking the circumstances of this complaint into consideration, I do not accept that the Provider was required to treat the Complainant as a vulnerable consumer.

The Complainant was dissatisfied with Vehicle A's PAV of €12,000. The Complainant considered that he was entitled to a PAV closer to the amount Vehicle A was insured for (€15,000) and also believed that the Provider's PAV did not represent the market value of the vehicle. Following extensive engagement between the Complainant's representative and the Provider, a PAV of €12,500 was offered by the Provider and accepted on a conditional basis by the Complainant.

In this respect, I note section 7.15 of the Code, states as follows:

*"A **regulated entity** must ensure that any claim settlement offer made to a **claimant** is fair, taking into account all relevant factors, and represents the **regulated entity's** best estimate of the **claimant's** reasonable entitlement under the policy."*

The Complainant's policy schedule indicates that Vehicle A was insured to a value of €15,000 with a policy excess of €250. The policy schedule also indicates that Vehicle A was subject to 'Comprehensive' cover under Section 2A.

Section 2, at page 20, of the policy document states, as follows:

*"If You have chosen Comprehensive insurance, the cover under this Section includes loss or damage caused by fire, theft, attempted theft, and by malicious or accidental means. ..."*

**2A Loss of or damage to Your Van**

*We will pay for loss of or damage to Your Van, or any part of it or its accessories and spare parts, while it is in any of the territories covered by this Policy, or while being transported by sea ..."*

At page 22, the policy document sets out what is not covered under section 2, as follows:

*"We will NOT pay:*

- 1. for the Policy Excess as stated in Your Policy document or Schedule;*

*...*

/Cont'd...



5. *more than the lower of either*
- (i) *the current Market Value of Your Van at the time of the loss or damage, or*
  - (ii) *the most recent value of Your Van that You gave Us as shown in Your Schedule ...”*

At page 23, the policy document sets out what is covered under section 2, as follows:

***“How We deal with and pay claims under this Section***

...

***Writing-off Your Van***

- A. *If We are treating Your Van as a total loss (writing-off Your Van), We can choose to:*
- (i) *give You an amount to replace Your Van;*
  - (ii) *pay an amount to the owner ...; or*
  - (iii) *replace Your Van.*
- B. *The most We will pay if We are writing-off Your Van will be the lesser of either:*
- (i) *the Market Value of Your Van, less the Excess, and less the value of any remains of it, or*
  - (ii) *the amount You insured Your Van for, less the Excess, and less the value of any remains of it. ...”*

Vehicle A was classified as a Category B vehicle following the collision which, in essence, meant it was a write-off and no longer road worthy. As such, the relevant policy provisions relating to the calculation of the Complainant’s claim are as follows:

***Writing-off Your Van***

- A. ...
- B. *The most We will pay if We are writing-off Your Van will be the lesser of either:*
- (i) *the Market Value of Your Van, less the Excess, and less the value of any remains of it, or*
  - (ii) *the amount You insured Your Van for, less the Excess, and less the value of any remains of it. ...”*

/Cont’d...

The policy defines the term 'Market Value' at page 11, as follows:

*"The amount of money You would have got for Your Van if You offered it for sale at the time of the accident, loss or damage."*

Having considered the evidence, it appears that the basis for the Complainant's disagreement with the Provider's PAV was based on the prices of vehicles similar to Vehicle A that were being offered for sale. The Complainant's representative was also dissatisfied with the level of consideration and scrutiny given to the advertisements provided and highlighted the need to identify vehicles with similar mileage to Vehicle A.

The policy definition of market value states that the appropriate valuation is calculated by reference to a sale by the Complainant, a private individual. Therefore, while advertisements of vehicles being offered for sale by dealerships for example would give an indication of the likely value of Vehicle A and while the parties were entitled to refer to these advertisements when estimating the PAV, I do not accept that such advertisements are sufficient to demonstrate, in the circumstances of this complaint, that the Provider's PAV was unreasonable.

The evidence shows that the Motor Assessor offered their professional opinion as to the PAV of Vehicle A, that the advertisements provided by the Complainant's representative were reviewed, a Valuation Report was sought and that the matter was referred to the Provider's in-house engineer.

While the Complainant's representative may have been able to provide advertisements of vehicles with a higher sales prices than the PAV, I accept that, on the basis of the information and expertise available to the Provider, it was reasonably entitled to arrive at the PAVs offered to the Complainant.

The Complainant is also dissatisfied with the surrender value offered by the Provider. I note that *"the value of any remains"* in clause B(i) above, is not defined in the policy nor is the term salvage value. The Motor Assessor prepared a Final Report dated **26 July 2018**. This included three salvage offers from three separate salvage companies, however, as noted above, one of these offers does not appear to relate to Vehicle A. The other two offers were €460 from Salvage Company 1 and €1,677 from the Motor Salvage Company. In the Provider's letter of **2 August 2018**, it listed the highest of these offers and identified the salvage company that made this offer, the Motor Salvage Company.

The Complainant's representative wrote to the Provider by email dated **7 September 2018** regarding the salvage value of Vehicle A, as follows:

*"[The Complainant] ... can get double the salvage amount you are offering him. ... The going rate is for over €2000 for an engine excluding the gearbox and all other parts that could be salvaged. ..."*

/Cont'd...

In the Complaint Form, the salvage value of Vehicle A was estimated at between €2,600 and €3,200. However, I note that the Complainant or his representative have not provided any evidence to support these estimates.

In any event, although the Complainant may have been able to obtain a higher salvage amount, I do not accept this means that the Provider's offer did not reflect market value. The evidence shows that the Motor Assessor sought salvage offers from at least two independent salvage companies operating in the salvage market. I also note that the Provider did not amend these offers or seek to derive a general salvage value in light of these offers. It simply passed the details of the highest offer to the Complainant.

A further aspect of the complaint relating to the salvage offers is that the Complainant considers that the Provider failed to provide information regarding the source of the salvage offers. I note that in the correspondence issued to the Complainant on **2, 29 and 30 August 2018**, the Provider identified the salvage company that provided the salvage offer contained in these letters. However, having considered the correspondence between the parties and the various telephone conversation, while there were certain discussions surrounding the salvage value, it is not clear when information regarding the source of the salvage offers was requested.

In light of the available evidence, I am not satisfied that the Provider failed to provide information regarding the source of the salvage offers. Further to this, I note that information regarding the salvage offers has been furnished as part of the Provider's Complaint Response.

Following notification of the claim, the Provider wrote to the Complainant regarding the claim on **25 June 2018**. The evidence also shows that one of the Provider's agents attempted to contact the Complainant by telephone on the same day but was unable to do so and left a voice message. While this call does not appear to have been returned, the Provider does not appear to have attempted to make any further telephone contact with the Complainant until **9 July 2018**. The parties discussed the Complainant's claim during this conversation. There was telephone contact between the parties again on **23 July 2018**. I also note that at some point between **9 July and 23 July 2018**, the Motor Assessor was in contact with the Complainant regarding the PAV. Following this, the Provider wrote to the Complainant outlining its claim settlement offer. As noted above, it appears that from around **7 August 2018**, the Complainant's representative began to act on his behalf.

Having considered the evidence, I accept that the Provider promptly wrote to the Complainant following the claim notification and also attempted to speak with the Complainant by telephone. While there was no contact between **25 June and 9 July 2018**, I do not consider an absence of contact during this period means that the Provider's conduct fell below the standard reasonably expected of the Provider. As can be seen, the Motor Assessor had been appointed and an inspection of the vehicle was arranged. The Provider then updated the Complainant on these matters on **9 July 2018**. Following this, there was engagement between the Motor Assessor and the Complainant regarding the PAV and a further conversation took place between Complainant and the Provider on **23 July 2018**.

/Cont'd...

A Final Report was received from the Motor Assessor on **26 July 2018** and a settlement offer issued to the Complainant on **2 August 2018**. This was followed by further engagement between the Complainant's representative and the Provider which gave rise to further increases in the settlement offer which was ultimately accepted by the Complainant on **2 September 2018**, though on a qualified basis.

Therefore, having considered the evidence, I am not satisfied that the Provider's conduct when dealing with the Complainant regarding the claim was unreasonable or that did not meet the standards to be expected of the Provider.

At a certain point, Vehicle A was taken to the Provider's Salvage Agent (**Salvage Agent 1**). From early **September 2018**, efforts were made by the Provider and the Complainant's representative to move Vehicle A from Salvage Agent 1 to the Complainant's nominated garage and, when this was not possible, to the Complainant's Salvage Agent (**Salvage Agent 2**).

Difficulties were encountered by the parties when attempting to arrange the removal of the vehicle from Salvage Agent 1's facility. This appears to have been because certain authorisation and certification was required to move Vehicle A as it was Category B vehicle.

A number of telephone conversations took place between the Provider and the Complainant's representative in an effort to resolve matters. I note that a number of telephone conversations also took place between the Provider and Salvage Agent 1 in an effort to arrange the removal of the vehicle.

Having considered the evidence, it appears the Complainant's garage was unable to receive the vehicle as it was not an Authorised Treatment Facility. There also appears to have been opposing positions maintained by Salvage Agent 1 and Salvage Agent 2 as to the type of documentation required to move Vehicle A and the appropriate time to issue this documentation. I note in particular that Salvage Agent 1 required certain documentation before it would transport or allow Vehicle A to be removed from its facility but Salvage Agent 2 was not in a position to issue this documentation until it arrived in its facility. There also appears to have been certain issues regarding the documentation required by the transport agent Salvage Agent 2 intended to use.

While these issues appear to have been ultimately resolved and the vehicle moved, I am not satisfied that the difficulties associated with the removal of Vehicle A from Salvage Agent 1's facility were the fault of the Provider and I accept that reasonable efforts were made by the Provider to facilitate the removal of Vehicle A.

On **4 October 2018**, the Complainant's Broker wrote to the Provider in respect of Vehicle B as follows:

*"Please note perm sub to [incorrect registration number] ... from 1.00pm 5/10/18".*

/Cont'd...

The Complainant's Broker emailed the Provider on **23 October 2018** regarding Vehicle B, as follows:

*"Please see attached Engineers report. Please cover from immediate effect and issue papers."*

However, I note that a copy of this report does not appear to have been provided by the parties.

It appears that the Provider issued insurance certificates and discs with a 'Date of Authentication' of **24** and **26 October 2018** in respect of Vehicle B but with the UK registration number. The Provider issued another insurance certificate and disc dated **2 November 2018** in respect of Vehicle B but this time with an incorrect Irish registration number and again in **December 2018** with the same registration number (due to a change in underwriter). An insurance certificate and disc with the correct Irish registration number appears to have been issued in **January 2019** with a Date of Authentication of **15 January 2019**.

The evidence shows that the Provider was given an incorrect Irish registration number in respect of Vehicle B on **4 October 2018**. However, it is not clear why the Provider subsequently issued an insurance disc with the UK registration number.

It is also unclear if this information was taken from the Engineers Report. In any event, it would appear that the Provider was in possession of an incorrect Irish registration number and a UK registration number when it first issued insurance documentation in respect of Vehicle B.

However, despite being in receipt of conflicting information regarding the 'correct' registration number for Vehicle B, the Provider does not appear to have sought to clarify the registration number with either the Complainant or the Broker. In this respect, in the Provider's Final Response letter dated **6 February 2019**, it states that:

*"We confirm we received the engineers report on the permanent replacement vehicle [Vehicle B] on 23<sup>rd</sup> October 2018. Certificates and Discs for [UK registration number] and [incorrect Irish registration number] were issued on 24<sup>th</sup> October 2018 and 2<sup>nd</sup> November 2018, respectively, to [the Complainant's broker]. On 13<sup>th</sup> December 2018 we again issued a Certificate and Disc for [incorrect Irish registration number] following a change of Provider .... It emerged during our recent investigations that the Irish registration number was incorrectly given to us as [registration number]. We immediately corrected this to [registration number] and released revised documentation on 15<sup>th</sup> January 2019. We apologise for this error. We failed to spot the inconsistency between the registration number given by [the Complainant's broker] ([incorrect registration number]) and the engineers report ([correct registration number]). We can confirm cover was operative from 23<sup>rd</sup> October 2018 16:10hrs. ..."*

/Cont'd...

However, based on the available evidence, the circumstances leading to the issuance of documentation to replace the UK registration documents are unclear nor is it clear how the discovery regarding the incorrect Irish registration number was subsequently made.

In any event, I am satisfied that the Provider should have noticed that it had conflicting registration details for Vehicle B when the insurance documents bearing the UK registration number were issued in **October 2018**.

The Provider wrote to the Complainant on **12 February 2019**, advising that his claim had been settled, as follows:

*“Please note that the claim has been settled in the sum of €16,849.04, broken down as follows:*

<i>Own damage</i>	<i>€10,765.13</i>
<i>Third party property damage</i>	<i>€4,710.00</i>
<i>Towage</i>	<i>€1,150.05</i>
<i>Own damage claim costs</i>	<i>€ 223.86</i>

*We are obliged to inform you that claim payments made under your policy may affect future insurance contracts of this type. Please note that ‘claim costs’ do not in their own right affect no claim bonus entitlements.*

*Please note that we will retain a record of this claim and may share certain information with other Insurers and interested parties ...”*

The Complainant’s representative emailed the Provider on **13 February 2019**, requesting a breakdown *“for the third party property damage”*. The Complainant’s representative was of the view that the amount claimed *“seems excessive for the corner of a garden wall.”*

In a submission dated **5 January 2021**, the Complainant’s representative stated, in respect of the Provider:

*“Please define what steps were taken to challenge these costs as per the challenges made to [the Complainant’s] vehicle valuation.*

*We feel this is extremely important to this complaint as we cannot see how a garden wall pillar costs €5325 and feel that the third party property damage was settled without any challenges unlike what [the Complainant] and his representative have had to provide.”*

Various vouching documentation and information was also sought by the Complainant’s representative in respect of the settlement of the third party claim which does not appear to have been furnished by the Provider. However, it appears from the above submission that the Provider furnished a breakdown of the third party costs on **12 February 2019** which comprised ‘Engineer’s Cost’ and ‘Builders Cost’ amounts.

/Cont’d...

In a submission dated **19 January 2021**, the Provider stated that it negotiated a lower settlement amount of €4,710. In a further submission dated **20 January 2021**, the Complainant's representative stated:

*"The reason [the Complainant] is challenging this is because two days after the accident [the Complainant] himself sent a builder on site as he was embarrassed that he had damaged a neighbour's garden wall. The job was valued between €600 and €900 inc vat depending on waste. [The Complainant's] Insurance had settled €4710 for a garden wall pillar without challenge and [the Complainant] has had to provide over 15 examples of vehicles all of which were dismissed and only received an increase in €500 as a gesture. ..."*

In response to this, in a submission dated **28 January 2021**, the Provider stated that it carried out proper investigations and sought supporting documentation and stated that it rejected the Complainant's position that it did not challenge the third party claim.

The Complainant's position for challenging the third party claim appears to be based on the perception that the Provider challenged the settlement amount offered in respect of Vehicle A. However, this is not the case. Following its assessment, the Provider offered an amount in respect of Vehicle A, this was then challenged by the Complainant and his representative.

Simply because the Provider did not alter its valuations based on the information provided by the Complainant's representative does not mean the valuations were challenged in the manner suggested by the Complainant's representative.

Further to this, I do not accept that when settling the third party claim that the Provider was required to challenge the settlement figures. I am satisfied the Provider's obligations are to ensure the claim was settled for a reasonable amount and to try to negotiate a lower settlement amount where possible, which appears to have occurred here. However, just because the Complainant does not agree with the settlement amount in respect of the third party claim based on his perception of the damage, does not mean the third party settlement figure was unreasonable. I also note that the Complainant's representative has referred to a repair estimate given by a builder. However, no documentation has been provided in respect of this estimate regarding the investigations carried out or the cost of the works involved.

In any event, it was a matter for the Provider, and not the Complainant or his representative, to settle the claim.

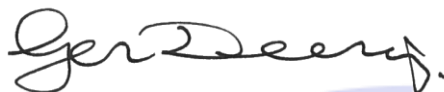
For the reasons set out in this Decision, I do not uphold this complaint.

### **Conclusion**

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

/Cont'd...

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**

27 September 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.