



<u>Decision Ref:</u>	2021-0416
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Hospital Cash Plan
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Delayed or inadequate communication Miscellaneous
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns a Hospital Income Insurance Plan and the Provider's stated cancellation of the Plan when the Complainant refused to change the way he was paying his premiums.

The Complainant's Case

The Complainant incepted a hospital income insurance plan on **26 November 1986**. The Complainant submits in the 32+ years since he took out the plan, the premiums were collected in accordance with condition No.6 as specified in the policy schedule. However, the Provider wrote to the Complainant on **15 February 2019**, stating that:

"Due to an ongoing administrative issue with the credit collection company which has affected [the Provider's] ability to collect your insurance premium from your credit card provider, [the Provider is] no longer able to accept Credit Card as a viable method of payment on your policy. In order for us to recommence collection of your monthly premium for your insurance policy, we need to transfer your payment method to direct debit."

In a submission to this Office dated **29 July 2019**, the Complainant contends that in this letter *there was an implied threat which effectively stated that if the direct debit was not provided, then the policy would lapse.*

In his submission dated **25 February 2019**, the Complainant asserts:

“Based on the facts I have outlined above along with those I have previously submitted, it is evident that [the Provider] think that they can re-write the terms of my Insurance Policy and it's attached Schedule in a manner to suit themselves (apparently for commercial reasons).”

The Complainant states that the policy specifies precisely:-

- (a) how the Provider was to collect the policy premiums and
- (b) the circumstances when the Provider could cancel the policy

The Complainant states that with respect to (a) premiums for his policy were to be collected by the Provider by *billing* the appropriate amount to his credit card account. The Complainant states that this method of premium payment put the onus on the Provider to bill / collect the monthly policy premium (which the Provider had been doing for in excess of 32 years and *as specified* in Section 6 of the policy schedule). The Complainant says that at no stage did he refuse to make a premium payment, but that it was the Provider who by *its own admission and for un-explained commercial reasons ceased billing* his credit card account. The Complainant submits that as a result of the Provider refusing to bill his credit card account, the Provider maintains that the monthly premiums were not paid and used this as an excuse to cancel his policy. The Complainant asks how he can be blamed for something the Provider did not do, and that it was the Provider who *for commercial reasons* refused to continue to bill his credit card account.

With respect to (b) the cancellation of the policy, the Complainant states that his policy outlines the methodology under which the policy could be terminated by the company, that is:

*“2 Termination by the Company
Subject to the provisions of this Policy, the Company may give notice of termination hereof by registered letter to the policy holder at his or her last known address. Such termination shall become effective seven days following the date of such notice”*

It is the Complainant's position that no such registered letter was ever received by him nor was any such letter issued by the Provider. The Complainant states that instead, the Provider maintain that letters sent to him in March 2019 and April 2019 were a substitute for such a registered letter. The Complainant submits that these two letters to which the Provider refers, are in effect one and the same and which he considers amount to a *threat* made by the Provider and contained the line *“If we do not hear from you by the 16th April 2019 then your policy will automatically cancel”*. The Complainant's position is that he is not aware, nor can he see any condition in his Policy or associated schedule which contains such a provision. The Complainant says that a further letter from the Provider dated **18**

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April 2019 states *“As we have not heard from you in order to transfer your payment method to direct debit, Your policy has automatically cancelled with effect from 16th April 2019”*. The Complainant states that there is no such provision / condition in his policy.

The Complainant submits that it has always been his understanding that a legal contract between two parties is based on a number of principles including (1) *Offer*; (2) *Acceptance* and (3) *Uniformity of Purpose* and consequently is a legally binding document based on the content of that contract, as with his policy and its attached schedule. The Complainant states that this contract between the Provider and himself, specifically stated the methodology by which the policy premiums were to be paid and was implemented in accordance with these conditions for a period of 32 + years. The Complainant says that the Provider now appears to believe it had the ability to rewrite the conditions of the policy / contract on the *basis of commercial viability*. The Complainant says he is personally not interested in the commercial affairs of the Provider, but he does insist that the Provider comply with the conditions specified in the policy: whether or not the method of premium payment outlined in the policy is commercially viable or not from the Provider’s point of view is of no concern to him.

The Complainant refers to a comment previously made by the Provider when it stated *“As circumstances change, maintaining this contract is a matter of ongoing negotiation”*. The Complainant submits that the Provider has therefore admitted that the contract is kept in place, but evidently the terms and conditions have in some way changed, the consequence being that the Provider made a *commercial decision* to dispense with policy premiums being billed to his credit card and yet refuse to furnish any details claiming that such information was *“commercially sensitive”*. The Complainant questions what the circumstances were which made the Provider make this decision, and asks if it was going to cost the Provider more to continue this method of premium payment. The Complainant states that no information whatsoever has been given by the Provider.

The Complainant submits that the Provider stated that: *“Even though our contract ended in 2018 it was agreed that payments would be processed until April 2019 to allow us to communicate with our customers”*. The Complainant’s response is that the Provider could if it had wished agreed with the Merchant bank to continue the method of premium collection that had previously been used except that the Provider had made the *commercial decision* to dispense with the method as it was no longer *commercially viable* from its point of view. The Complainant states that the Provider has refused to provide any evidence on any aspect of its dealings with the Merchant Bank or why the method of premium collection was no longer commercially viable.

The Complainant says that in effect it stated that if he did not sign-up to the new method of premium payment (Direct Debit), then his policy would automatically cancel. The Complainant states that the Cambridge English Dictionary defines a threat as *“A suggestion that something unpleasant or violent will happen, especially if a particular action or order is not followed”*. The Complainant submits that in this instance *“something unpleasant”* would be the cancellation of his policy while the *“particular action or Order”* would be signing the Direct Debit.

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With respect to the Provider's statement "*As previously detailed, we are able to offer a similar payment method and can cancel a policy if payments are not received*", the Complainant states that payment by Direct Debit is not similar to the method specified in the policy and it's associated schedule of conditions, but an *alternative*. The Complainant submits that the fact remains that the Provider made the commercial decision to cease using the method of premium payment claiming that this method was no longer commercially viable - details of which it refused to provide.

The Complainant's position is that the Provider did not keep to the terms and conditions of the policy in that :-

- (a) it did not offer a similar method of policy premium payment;
- (b) it did not cancel the policy in the manner specified in the policy.
- (c) for its own commercial reasons, it stopped billing the credit card account.

With respect to the Provider's comment "*as for any potential claim, we could only process a claim if the policy was in force at the time of the dates being claimed for*", the Complainant states that in the first instance he did not cancel the policy and secondly the Provider did not cancel the policy – so as far as he is concerned he believes his policy remains in force until such time as the Provider cancel it in the manner specified in the policy itself.

The Complainant states that the Provider refers to "*The legal basis for our cancelling is the fact that we will no longer be able to receive premium from the policyholder*" and says that yet the Provider has furnished no evidence to substantiate such a claim. The Complainant's position is that he is not aware, nor has he seen any condition in the policy which entitles the Provider to offer such a defence.

In resolution of his complaint, the Complainant wants the Provider to re-instate the policy in question and in accordance with the conditions set out in the policy schedule, in particular No.6 which specifies how the monthly premiums were to be paid and how in fact the premiums were always collected for the past 32+ years.

The Provider's Case

As regards the cancellation of the policy the Provider states that Letters were sent to the Complainant in February, March and April of 2019 and says it does not think this is in dispute as the Complainant did make a complaint, so it believes he received the letters.

The Provider states that the Complainant is aware that the payments have not been received, so the policy does not remain in force.

As regards the Complainant's queries about the Provider's negotiations with the Bank, the Provider states that it has confirmed that it is unable to collect the payment by credit card and have offered an alternative payment method. The Provider says that the

communication between it and the Merchant Bank is not something it can go into detail about, so will not be supplying any evidence as requested by the Complainant.

The Provider states that even though its contract with the bank ended in 2018, it was agreed that payments would be processed until April 2019 to allow it to communicate with its customers.

In response to the Complainant's assertion of a threat by the Provider, the Provider says it cannot agree that there was any implied threat. The Provider states it is able to offer a similar payment method and can cancel a policy if payments are not received.

As regards the cancellation of the policy the Provider states that its understanding is that the letters were not sent by registered post, however as previously noted letters were sent to the Complainant regarding the payment method of Credit Card no longer being accepted.

As regards whether the policy documentation set out the method of payment of premiums, the Provider states that it maintains that the Policy Schedule does confirm how the Complainant will pay his policy and this is simply a confirmation of how he would pay.

As regards the method of payment, the Provider states that the policy schedule does confirm how much the Complainant will pay and by which payment method. The Provider says this is not in dispute however as per policy wording, it asserts it can change the payment method to a similar payment method.

The Provider maintains that it has kept to the terms and conditions by offering the similar payment method of direct debit and that it has cancelled the policy in line with the terms of the policy: as after offering a similar payment method this was not taken up by the Complainant, so it states that the policy has been cancelled in line with the terms and conditions.

The Provider states that the terms which the Complainant says have not been defined by the Provider are generic terms and the Provider does not see that it needs to define them.

The Provider says as for any potential claim, it could only process a claim if the policy was in force at the time of the dates being claimed for.

The Provider states that this is a hospital cash product and is very clearly not a long-term product and asserts that it is under no obligation to keep renewing the policy. The Provider says there is no detriment to the policyholder who can easily find alternative cover of the same type elsewhere without being disadvantaged. The Provider submits that the legal basis for its cancelling the policy is the fact that it will no longer be able to receive premium from the policyholder.

Evidence

Policy Schedule

"6) Premium:- 12 monthly payments of IR£ 14.70 Billed to the Insured Cardholder's Bank ... Access Irish Pound Card Account when due"

Policy Provisions

Policy – Ref "HIP 9/86"

Part 5 – Premium states:

1. Consideration

This Policy is issued in consideration of the statements contained in the Enrolment Form and the agreement of the policyholder to pay the premium charged. Payment of Premium will maintain this Policy in force until the next Premium due date.

3. Premium Due Dates

3.2 Premium will be charged in a manner similar to that specified in Item 6 of the Policy Schedule"

Part 7 – Termination Of Insurance

"2 Termination by the Company

Subject to the provisions of this Policy, the Company may give notice of termination hereof by registered letter to the policy holder at his or her last known address. Such termination shall become effective seven days following the date of such notice"

"4 Termination for Non-Payment of Premium

...

4.3 Provided one or more premiums have been paid, non payment of any subsequent premium shall terminate insurance under this Policy as of the due date of such premium"

Part 8 - "4. Interpretation"

"This Policy, including the Policy Schedule and Enrolment Form and the endorsements, amendments and attached papers, if any, shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear."

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Part 10 - General Policy Provisions

"1. Entire Contract: Changes"

"This policy, including the policy schedule, Enrolment Form and Direct Debit Mandate, if any, and the endorsements, amendments and attached papers, if any, will constitute the entire contract between the parties. No change in this policy shall be valid unless approved by the Company and evidenced by endorsement or amendment hereon or attached hereto."

The Complaint for Adjudication

The Complaint is that the Provider has wrongfully refused to collect premium payments, wrongfully cancelled the Complainant's policy, wrongfully removed the Complainant's routine payment method, deviated from the contractual agreement outlined in the policy schedule, and communicated with the Complainant in a threatening manner.

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 11 **October 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.

On **28 October 2021**, the Provider acknowledged receipt, and acceptance of the Preliminary Decision.

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In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Analysis

The substantive issues raised in this complaint is whether the Provider is within its rights to withdraw the option for premiums to be paid by Credit Card Account deduction, and whether the Provider was correct in its cancellation of the policy.

I accept that the payment method did form part of the contract between the Complainant and the Provider. The Policy provisions make this clear, as follows:

"4. Interpretation"

"This Policy, including the Policy Schedule and Enrolment Form and the endorsements, amendments and attached papers, if any, shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear that specific meaning wherever it may appear."

The Policy Schedule which the above "Interpretation" states forms part of the contract, specifically sets out how payment is to be made, as follows:

"6) Premium:- 12 monthly payments of IRE 14.70 Billed to the Insured Cardholder's Bank ... Access Irish Pound Card Account when due"

While I accept that the above payment method forms part of the contractual agreement, I also accept that the policy gives the Provider some latitude as to the method of payment, as long as it was a "similar" payment method. In this regard the policy specifically states:

3.2 Premium will be charged in a manner similar to that specified in Item 6 of the Policy Schedule"

It is noted that there is disagreement between the parties as to the nature of the two methods of payment, with the Provider saying that they are similar, and the Complainant stating that direct debit is an alternative method of payment.

I accept that there are many similarities between the payment coming from a Credit Card Account and a deduction from an account by Direct Debit. I also accept that there are differences in the two methods of payments. So, I conclude that both parties have valid arguments in that regard.

Overall, I accept that the Provider could have acted in a more reasonable manner when it sought to introduce a new method of payment on a policy that had a payment method that was being used by the Complainant for over 32 years.

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In coming to the above conclusion, I am mindful of:

The length of time that the Complainant has been using this method of payment. The Complainant has paid his premiums by this method for 32+ years.

The Complainant has not argued any vulnerability. However, in the context that this was a policy arranged to cover medical expenses, I cannot ignore the Complainant's age (now in his 70s) and his potential need for this policy. I also note that this policy has an upper age limit of 75 years.

The Provider communicated that it was changing the method of payment to Direct Debits and if the Complainant did not accept this method, the policy would be cancelled. The Complainant saw this as a threat. While a threat may be a strong word for what the Provider was proposing, I accept the Provider was being unreasonable in its communications by using a 'take it or leave approach', with no alternatives being offered, and no engagement with the Complainant as to his preference or ability to pay by direct debit.

I accept that the Provider could reasonably have discussed the matter more openly with the Complainant as to what he considered would be a similar payment method and what similar payment method would be suitable to him.

As it was the Provider that was seeking to change a longstanding method of payment of premiums, the Provider could have offered some concession to the Complainant for any acceptance of the change. Alternatively, and as a minimum, the Provider could have explored alternative methods of payment with the Complainant or at least tried to understand what his concerns were.

Furthermore, I accept that in the circumstances where the Complainant was not refusing to make payment of his premiums, but where the Provider unilaterally decided not to use the longstanding method of requesting the payment from the Complainant's account, it was unreasonable for the Provider to invoke the automatic cancellation provision of the policy.

I accept that as the Provider did not follow the policy provisions regarding cancellation of the policy. That is by giving notice to the Complainant by registered post. Therefore, I accept that the policy remains in force, albeit with outstanding premiums owed.

Having regard to all of the above, I uphold this complaint and I direct the Provider to pay a sum of €1,000 in compensation. I also direct the Provider to give the Complainant the option, that upon payment by the Complainant of the currently outstanding and future premiums due (in one lump sum payment by cash or money order), he receives the benefits of the policy. Thereafter, after the premium has been paid, the Provider is to assess and make payment on any claims that have arisen to date, and maintain cover in place, until its end date.

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)** the Provider's conduct was improper.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to pay a sum of €1,000 in compensation and give the Complainant the option, that upon payment by the Complainant of the currently outstanding and future premiums due (in one lump sum payment by cash or money order), he receives the benefits of the policy. Thereafter, the Provider is to assess and make payment on any claims that have arisen to date, and maintain cover in place, until its end date.
- The Provider is to make the above compensatory payment to the Complainant in the sum of €1,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

11 November 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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.