



<b><u>Decision Ref:</u></b>	2022-0226
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Critical & Serious Illness
<b><u>Conduct(s) complained of:</u></b>	Lapse/cancellation of policy Delayed or inadequate communication
<b><u>Outcome:</u></b>	Rejected

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

This complaint concerns a critical illness policy which the Complainant holds with the Provider.

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

The Complainant submits that he held a critical illness policy with the Provider since **1993**. He submits that he paid his monthly premium payments on his policy until **1 September 2018** and that he paid a final monthly premium payment on his policy on **1 August 2018**.

The Complainant states that in or around **August 2018** he was re-organising his affairs because he had significant financial commitments in relation to the educational requirements of his children. He submits that he was experiencing extreme financial pressure, and in that context, he made the decision to cancel his policy with the Provider.

The Complainant submits that shortly after cancelling his policy with the Provider he regretted doing so, in particular in light of the number of premium payments he had already paid and the short time during which the cover remained on the policy. Therefore, the Complainant wanted to reverse his instruction to cancel the policy.

The Complainant states that he rang the Provider and requested to speak to the Provider's representative, Mr. M, with whom he had previously communicated in relation to his policy.

He states that Mr. M informed him that the cancellation could not be reversed, and that he would have to apply for new cover and that the premiums for the same type of cover, would be higher. The Complainant submits that he pointed out to Mr. M that he had not defaulted on any premium payments on his policy, and that the conversation they were having (regarding him wanting to reverse the cancellation) was taking place during **August 2018** and should be viewed in the context of the Complainant having paid the **1 August 2018** premium. The Complainant submits that Mr. M informed him that the Provider was not going to allow his policy to remain in force. He states that the Provider was unfair to him in that regard.

The Complainant submits that in **2016** he had previously requested the Provider to cancel the policy and that he subsequently requested the Provider to reverse that cancellation. He states that with the assistance of Mr. M, this request to reverse in **2016**, was granted. The Complainant does not understand why this **2018** request has been dealt with differently from the **2016** request.

The Complainant submits that he contacted Mr. M in **August 2018** and pleaded with him to reinstate the policy prior to **1 September 2018** when the next premium payment was due. The Complainant received a letter from the Provider on **22 August 2018** which stated that the Complainant's policy was cancelled from **1 September 2018**.

The Complainant in his letter of **29 June 2020** stated that he suffered a heart attack in **November 2019** and that he had to have two different medical procedures following his heart attack. He stated that the operations/procedures were a success. The Complainant states that he is dissatisfied with the Provider's service and contends that:

- he should have been afforded a period of time to reflect on and/or reverse his decision to cancel the policy.
- the Provider could have requested a declaration of health in **August 2018** if there was a concern about any change in his condition at that time.
- consideration should have been given by the Provider to the fact that he had been a customer of the Provider & had paid premiums for **25** years and that there was only two years cover remaining on his policy.
- his decision to reverse the cancellation of the policy was timely;
- his decision to reverse the cancellation of the policy did not adversely affect the Provider.
- the Provider allowed him to reverse the cancellation of this policy in **2016** and that he had a reasonable expectation that he would be treated the same way in **August 2018**.

The Complainant states that the Provider acted in an unfair manner towards him in respect of these events. He states that he was an individual running his business and a father of four children. He states that in **August 2018**, the Provider was in a much more powerful position that he was in at the time, and he believes that the Provider acted in a manner wherein that dominant position was used for the benefit of the Provider to his detriment.

The Complainant made a further submission to this Office by way of email dated **23 March 2021**. He states that he had made numerous efforts to get proof of his call to Mr. M during **August 2018** but has not been able to get proof of same from his mobile phone company. He states that he

*“made [the **August 2018**] call in desperation to [Mr. M] trying to convince him to ignore the letters from our brokers and to continue with my contract with the next direct debit due in early **September 2018**.”*

The Complainant made further submissions dated **22 May 2021**, stating that he did not follow up his phone call with Mr. M, because Mr. M left him *“in no doubt”* that the Complainant’s letter requesting cancellation of the policy could not be retracted. The Complainant states that he was *“under immense pressure at the time and felt completely brow beaten by the conversation with [the Provider]”*.

The Complainant wants the Provider to make payment to him of **€217,000** (two hundred and seventeen thousand euro) which is the payment he contends he would have received, if the policy had still been in existence in late 2019, arising out of the heart attack and medical conditions he suffered at that time.

### **The Provider’s Case**

The Provider acknowledged receipt of the Complainant’s complaint on **6 July 2020**.

The Provider in its Final Response Letter dated **17 July 2020**, states that it reviewed the Complainant’s policy and that the Provider acted in accordance with the Complainant’s instructions at all times.

It states that on **16 August 2018** it received an email containing cancellation instructions signed by the Complainant. It states that after carefully reviewing the Complainant’s file and after having discussions with Mr. M, it can find no record of any communication between the Complainant and Mr. M in **2018**, regarding a request to reverse his request/instruction to cancel the policy.

/Cont’d...

The Provider confirms that in **2016** the Complainant did request for his policy to be cancelled and that he subsequently asked for this request to be reversed, and this was approved.

The Provider made submissions to this Office on **19 January 2021**. The Provider states that it *“at all times acted on the Complainant’s requests in a timely manner”*. It re-iterated that it had no record of any communication with the Complainant in **2018** and that it had searched the outgoing calls of its representative (Mr. M) who was dealing with the Complainant, for **July 2018** and **August 2018** and could see no calls made to the Complainant.

The Provider states that Mr. M was unable to obtain data on incoming calls from his mobile phone provider. The Provider also states that it did a search on calls from the Complainant’s mobile phone to the Provider’s customer service team in **July 2018** and **August 2018** and there was no record of any calls.

The Provider states that after the cancellation was completed in **2018**, there were *“still options open to the Complainant”*. The Provider submits that its cancellation procedure states that:

*“... if we previously received a request to cancel or fully surrender the policy and all requirements to cancel or fully surrender the policy were received, if we subsequently receive a request to revive the policy, we require the following:*

- *A Declaration of Health form if the request to cancel or fully surrender was received less than one month ago*
- *A Proposal form if the request to cancel or fully surrender was received more than one month ago”*

The Provider states that it is satisfied that the Complainant’s complaint was dealt with in line with the provisions of the **Consumer Protection Code 2012** (as amended).

The Provider made further submissions dated **6 June 2021**. The submission consists of a letter from Mr. M stating that he has *“no recollection”* of the Complainant calling him in **2018**. Mr. M also queries why the Complainant did not email/write to the Provider or to customer services, if he wanted the policy to be reinstated at that time and/or write to customer services if he was unhappy with Mr. M’s refusal to reverse the cancellation and/or write to Mr. M’s manager and/or revert to his broker to try to reinstate the policy.

### **The Complaint for Adjudication**

The complaint is that in **2018**, the Provider wrongfully and/or unreasonably failed to reverse the Complainant's cancellation instruction regarding his policy and/or to accede to his request/instruction to reverse his earlier request/instruction to cancel his policy.

The Complainant also maintains that the Provider furnished him with poor customer service during his time/throughout these events.

### **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 **15 March 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant incepted a critical illness policy with the Provider during the **1990s**. The evidence shows that on **16 August 2018**, an insurance broker acting for the Complainant sent an email to the Provider requesting that the insurance policy be cancelled "*with immediate effect*". Attached to this email was a cancellation instruction signed by the Complainant.

/Cont'd...

I note that on **22 August 2018**, confirmation of the cancellation of the policy (to take effect from **1 September 2018**) was sent to the Complainant.

There is no other documentary evidence supplied by the parties after **22 August 2018**, until the complaint letter dated **29 June 2020** sent by the Complainant almost two years later, disputing the cancellation of the policy.

I am conscious, in particular, that despite efforts on his part, the Complainant has not been able to supply any evidence of the suggested phone call between himself and the Provider's representative during which he says the Provider's representative told him that the cancellation instruction could not be withdrawn. He has enlisted the assistance of the Data Protection Commissioner, but this avenue did not yield the evidence that he has been seeking. The Complainant says in that regard that:

*"It now appears most likely, that in August 2018, I made a phone call to Mr. M's work mobile number, rather than to the land line of [Provider]"*

*As you are aware, I cannot access records from my provider, [redacted]. I understand that Mr. M cannot find a record of the call because, possibly, he has changed his phone in the intervening time and, in any event, the call logs provided do not log incoming calls.*

*My submission is that this is a patent flaw in the operation of [Provider's] business. If my phone call to Mr M. was incapable of being logged or recorded, then I should not have been provided with Mr M.'s mobile number in the first place.*

*I have clearly been served very poorly by [Provider] in this regard. Had my call to Mr. M been recorded, as I reasonably believed it to be, then I would be in a much more favourable position today. Instead, it appears that [Provider] is, in effect, being rewarded for the lack of records, and I, in contrast, am being made to bear a devastating loss."*

The lack of any evidence to support the occurrence of this call, is particularly important because the Provider strenuously denies that this call ever took place and further denies that there were ever any requests made to it during **2018**, to reverse the cancellation of the policy.

The Complainant points out that *"Not being able to secure the record, does not mean the call was not made."* Neither however does it mean that the call was made. In this instance, there is simply no evidence that the call happened, and to compound the absence of any record of the call, there was no follow up in writing, either by the Complainant seeking to have Mr M. confirm the position in writing, or by the Complainant maintaining a challenge to or a complaint about the position he says was adopted by Mr. M.

/Cont'd...

I note that in its submissions to this Office dated **19 January 2021**, the Provider referenced its “*cancellation procedure*”. I also note that it is accepted by all parties that the Provider acceded to a previous request in 2016, to reverse a cancellation of the policy which the Complainant had instructed.

Notwithstanding this, there is simply no evidence that the Complainant ever made a request to the Provider in **2018**, to reverse his cancellation of the critical illness policy, or to revive/reinstate it. In this regard it is notable that there is no written communication from the Complainant or his broker requesting for the policy to be revived or requesting that the suggested decision by the representative of the Provider, Mr. M, not to reinstate the policy, be given fresh consideration by the Provider. Given that the Complainant says that the telephone communication took place in August, whilst the the policy was still in existence, it is indeed surprising that having received the response that he recalls, the Complainant did not follow up in writing to the Provider. He did not however do so at that time.

Accordingly, on the basis of the evidence available, I do not accept that there is any reasonable basis upon which it would be appropriate to uphold this complaint that the Provider wrongfully and/or unreasonably failed to reverse the Complainant’s cancellation instruction regarding his policy and/or to accede to his request/instruction to reverse his earlier request/instruction to cancel his policy.

Although the Complainant was certainly unfortunate, giving the timing of his decision to terminate the critical illness policy, having clearly instructed the Provider to terminate the policy, there is no evidence available of his subsequent interactions with the Provider during 2018, to substantiate his recollection that he sought to alter that cancellation decision very shortly after the policy was cancelled.

With regard to the complaint that the Provider provided poor customer service to the Complainant, in my opinion there is no evidence to support this contention. The Complainant has not demonstrated any instances of poor customer service and I note that the complaint was handled in accordance with the procedure as outlined in the ***Consumer Protection Code 2012 (as amended)***. The complaint was acknowledged by the Provider within five business working days of being received and within forty business working days, a Final Response Letter was issued by the Provider.

### **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.



MARYROSE MCGOVERN  
Financial Services and Pensions Ombudsman (Acting)

5 July 2022

## PUBLICATION

### Complaints about the conduct of financial service providers

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.

### Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.