



<u>Decision Ref:</u>	2022-0250
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Variable Mortgage
<u>Conduct(s) complained of:</u>	Level of contact or communications re. Arrears Failure to process instructions in a timely manner
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

There are two complaints in respect of this matter. The first is that the Provider did not comply with the terms of a Personal Insolvency Arrangement (PIA) when it issued demands to the Complainant regarding her mortgage loan account. The second complaint is that the Provider proffered poor customer service in handling the Complainant's complaint.

The Complainant's Case

The Complainant submits that she is protected under a PIA which commenced in **November 2019**. She states that under this arrangement she pays €83 (eighty three euro) towards a mortgage loan account. She says that this mortgage account was transferred from the original owner to the Provider in **February 2020**. She states that she also pays €792 (seven hundred and ninety two euro) to a another financial service provider as part of the PIA.

She says that in **February 2020**, when the mortgage loan account was transferred to the Provider, she began getting monthly demands for €263.15 (two hundred and sixty three euro and fifteen cent) as the Provider stated there were insufficient funds in her account to pay them, claiming they were due by direct debit.

The Complainant stated she telephoned the Provider and explained the PIA. She asserts that an agent of the Provider stated that funds had been taken from her account, but in a later conversation "*staff informed me that this was not the case and money hadn't been taken. However they agreed that I was not supposed to be getting these demands whatsoever*".

The Complainant states that after contacting the Provider in **March 2020**, when she was in receipt of the first demand, she again received another demand in **April 2020** at which time she contacted her solicitors. After her solicitors had contacted the Provider she received a response on **23 April 2020** and got a Final Response Letter on **15 June 2020** stating that the Provider had "*resolved*" its mistake. However contrary to this, the Provider continued to send her demands for the same payment in **July, August, September, October, 2020**.

The Complainant states that "*on or around 21st October*" **2020** she spoke to a member of the Provider's team, who asked if she wished to make a complaint to which she stated yes. She was informed that she would have someone from the Provider contact her in five days, however, the Complainant states that this did not occur.

The Complainant wants the Provider to:

- Confirm in writing that it has corrected its mistakes and cease all correspondence in this regard.
- Correspond with the Complainant's insolvency practitioner in the future, if required.
- Acknowledge that it was incorrect and negligent when making attempts to contact her directly.
- Proffer compensation

The Provider's Case

The Provider states that the Complainant has two accounts with the Provider, mortgage loan account ending 210 and mortgage loan account 603. It acknowledges that the PIA was court approved in **October 2019** and was to remain in place until **October 2020**. The PIA required the Complainant to pay €83 per month at an interest rate of 0.5%, over a term of 252 months on account ending **603**.

The Provider states that following successful completion of the PIA, the contractual monthly repayment on account 603 was re calculated on a capital and interest basis with a variable monthly repayment of €836.

The PIA ordered a voluntary surrender of the property in relation to account **210**. This property was to be sold and after successful completion of the PIA, a total of €102,807.37 was written off by the Provider in respect of the Complainant's account 210 on **27 September 2021**.

The Provider submits that when the Complainant's accounts were transferred to it, the details transferred from the original owner did not indicate that the Complainant's account was part of a PIA. The Provider states it did not delay in implementing the Complainant's personal insolvency arrangement.

The Provider further states that it complied with its obligations under section 2.2 of the Consumer Protection Code (CPC 2012) during the telephone calls with the Complainant. The Provider states that the Complainant wished to make a payment during a telephone call, however, in doing so she quoted the incorrect account number, therefore the Provider's agent did not make the payment to account number 603, but rather it was made to another account, account number 210, which the Complainant had erroneously referred to.

The Provider makes specific reference to the Complainant's submissions to this Office stating that, contrary to the Complainant's assertion, it did not make any reference to a "*mistake*" in its Final Response Letters dated **15 June 2020** and **19 November 2020**.

In the Final Response Letter dated **15 June 2020** it states that the letters issued to the Complainant, detailing missed payments, were standard procedure, anytime a payment was not received. It states in the Final Response Letter that it is standard procedure to issue correspondence advising of unpaid direct debits. It also stated that the Provider was not made aware that the account was part of a PIA, when it was transferred to it.

In the Final Response Letter dated **19 November 2020** the Provider reiterates the points made in its previous Final Response Letter dated **15 June 2020**, adding that it complied with the Personal Insolvency Act 2012 ("the 2012 Act"). In this Final Response Letter, the Provider states that the agreed monthly bills of €83 had been paid to the wrong account. Therefore, it stated the sum of these payments made by Complainant totalling €498 (four hundred and ninety eight euro) had been transferred to account number 603 by the Provider, to correct this mistake by the Complainant.

The Provider states that when the PIA first came to its attention, it immediately put in place the correct payment in line with the PIA documentation. The Provider states that in the Final Response Letter dated **19 November 2020**, it took the opportunity to explain how arrears had accrued on the account.

The Provider further asserts that it contacted the Complainant's Personal Insolvency Practitioner (PIP) on **8 June 2020**, and requested the documentation applicable to the PIA. The Provider also asserts that there has been no detrimental impact on the Complainant's Central Credit Register records due to the details of the PIA not being transferred by the original loan owner. The Provider also submits that no information in relation to the Complainant's mortgage have been reported by the ICB.

The Complaint for Adjudication

The complaint is that the Provider failed to abide by the terms of the PIA in place when it took ownership of the Complainant's mortgage loan account, insofar as it issued demands to her for increased mortgage repayments. The Complainant also says in that regard, that the Provider proffered poor customer service in handling her complaint.

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

It is helpful to set out the chronology of events for this complaint as follows:

<u>2019</u>	
4 October 2019	PIA approved by Circuit Court and was to remain in place until October 2020 .
<u>2020</u>	
7 February 2020	the Complainant’s accounts transferred from original loan owner to the Provider
14 February 2020	Provider wrote to Complainant’s Personal Insolvency Practitioner (PIP)
18 March 2020	the Provider sent a letter to the Complainant stating that the debit for the monthly mortgage payment of €263.15 had been rejected due to insufficient funds
23 March 2020	the Complainant telephoned the Provider and asked that it contact her Personal Insolvency Practitioner (PIP) regarding the letter dated 18 March 2020

9 April 2020	the Provider sent a letter to the Complainant stating that the debit for the monthly mortgage payment of €263.15 had been rejected due to insufficient funds
16 April 2020	the Complainant telephoned the Provider and complained about the letter dated 9 April 2020 . The Provider says that it registered an internal complaint following this telephone call
17 April 2020	the Provider sent a letter to the Complainant stating that the debit for the monthly mortgage payment of €263.15 had been rejected due to insufficient funds
23 April 2020	the Provider wrote to the Complainant acknowledging the complaint made on 16 April 2020
5 May 2020	the Complainant telephoned the Provider in order to make a payment of €83 in accordance with her PIA
7 May 2020	the Complainant's solicitors wrote to the Provider requesting that it stop writing demand letters to the Complainant because the debt was the subject of the PIA
11 May 2020	the Provider sent a letter to the Complainant stating that the debit for the monthly mortgage payment of €263.15 had been rejected due to insufficient funds
14 May 2020	the Provider wrote to the Complainant stating that its investigation of the Complainant's complaint was taking longer than anticipated but that it would revert within the next 20 business days
19 May 2020	the Provider sent a letter to the Complainant stating that the debit for the monthly mortgage payment of €263.15 had been rejected due to insufficient funds
22 May 2020	the Complainant telephoned the Provider complaining about the correspondence she had received
8 June 2020	the PIP emailed Provider attaching full PIA after telephone conversation with one of its agents
9 June 2020	the Provider sent a letter to the Complainant stating that the debit for the monthly mortgage payment of €263.15 had been rejected due to insufficient funds
15 June 2020	The Provider issued a Final Response Letter (FRL).
22 October 2020	the Complainant telephoned the Provider to complain about two matters.
28 October 2020	the Provider sent a letter to the Complainant stating that the direct debit in place on her account had been cancelled
5 November 2020	the Provider sent a letter to the Complainant acknowledging the complaint made on 22 October 2020 and confirming it would respond to the Complainant within 20 days
19 November 2020	The Provider issued a Final Response Letter
<u>2021</u>	
1 April 2021	Direct debit set up for loan account number 210

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I note that in **October 2019** the Circuit Court approved the Complainant's PIA. As part of this PIA, the property which was the subject of mortgage loan account **210** was voluntarily surrendered to the original loan owner. This was provided for at page 58 of the PIA. Accordingly, as part of PIA, the Complainant was protected from creditors demanding payments in respect of this property.

The PIA further ordered the Complainant to pay €83 per month at an interest rate of 0.5%, over a term of 252 months in respect of the loan mortgage account **603**.

I note that the Provider wrote to the Complainant on **14 February 2020** in relation to (i) the Complainant's loan account number 603 and (ii) the loan account 210. The Provider stated that ownership of the accounts had been transferred to it. These letters also stated that:

"If you are making your payments via Direct Debit, you may need to take some action arising from the collection dates detailed below. From the transfer date, future direct debits will be collected by [the Provider] on the collection date detailed in the schedule below." [underlined in original document]

On **14 February 2020** the Provider also sent two letters, for mortgage loan account 603 and 210 respectively, to the Complainant's PIP stating that it noted from the original owner's records that it was the appointed PIP for the Complainant.

Therefore, although the Provider submits that when the Complainant's accounts were transferred to it, the details transferred from the original owner did not indicate that the Complainant's account was part of a PIA, it is clear from the evidence that the Provider knew that there was a Personal Insolvency Practitioner appointed. The Provider states that it was not made aware of the PIA in respect of the two specific loan mortgages.

Although the Provider has made this distinction, it has not supplied any evidence to show it made enquiries from the original owner regarding any potential PIA. This is curious in circumstances where it is clear from the letters in **February 2020** that it knew that there was a PIP involved on behalf of the Complainant.

Following the transfer of ownership in February 2020, the first demand letter from the Provider was sent on **9 March 2020**. This letter referenced mortgage loan account 210 and stated as follows:

"We have been advised by your bank that the direct debit for your monthly mortgage payment of €263.15 has been rejected with the reason INSUFFICIENT FUNDS.

We are making arrangements to represent this direct debit for payment and ask that you have sufficient funds available to meet their request.

If you think that payment will not be made please contact us immediately to make an alternative arrangement to pay the amount due this month and give instructions to set up new Direct Debit arrangements for future mortgage payments.

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If you are experiencing financial difficulties or think that you may experience financial difficulties and are not currently in contact with us then please phone our dedicated Arrears Support Team."

During what appears to have been the Complainant's first telephone call with the Provider in **March 2020**, she sought to pay the €83 on her account 603.

She stated during this call that she had attempted to pay the original loan owner; however, she had been told that the account was transferred, and payments would have to be made to the Provider. The Complainant quoted her original owner's mortgage account number to the Provider's agent, which ended in 578. The Provider's agent processed the payment but did not make any reference to the Provider's account number for the mortgage account, which ended in 603. I note that during this call, the Complainant had referenced the correct original mortgage account number which corresponded with the Provider's mortgage account 603.

I note that during the telephone call dated **23 March 2020**, the Complainant stated she had a demand letter for account number **210**. The Complainant outlined the position regarding her PIA and the payment of €83. The Provider's agent referred to the Complainant's PIP by name, and asked if she had spoken to him, to which the Complainant replied stating that she had not. The agent in question stated that he was not the case manager for the file, and was not involved in the personal insolvency team for the Provider. However, after speaking with a member of the personal insolvency team, the Provider's agent stated that it *"has not been set up on our system correctly yet"*.

During a telephone call on **2 April 2020**, the Complainant attempted to make the €83 payment. She quoted the original mortgage account number, stating that she did not know her Provider account number, but she had used this other account number to pay the money earlier. The Complainant stated that she wished the Provider *"to liaise with the third party"*. The Provider's agent simply stated that the payment had been made into the account but did not specify the Provider account number.

I note that during a telephone call on **5 May 2020**, the Complainant sought to pay the €83 for her mortgage account, per the PIA. During this telephone call, as the Complainant did not have her account number to hand, the Provider's agent located the loan account 210 as the relevant account and gave this account number to the Complainant. This appears to me to be why the incorrect account received the payment. The Provider's agent did not make any reference to the second mortgage loan account 603, which was in fact, the account which required the payments. Moreover, the Provider's agent stated that a direct debit had been set up on this account, to which the Complainant stated this should not be the case, as *"I did not sign a direct debit order, I don't think"* and she again raised the issue of the demand letters, despite her being protected in a PIA. The Provider's agent stated, *"I'll have that looked into"*. The Complainant pointed out that she had been told that, by a previous agent, yet was still receiving reminders.

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During a telephone call on **11 May 2020**, the Provider's agent spoke with the Complainant about the sale of a property, in relation the mortgage loan account 210, which was the subject of the PIA. The Provider's agent stated that the Provider had made numerous attempts to contact the Complainant's PIP, but he had not responded. The agent advised the Complainant to ensure that the PIP would "*get back to the Provider*" regarding the sale of the property.

I note that during the telephone call on **22 May 2020**, the Complainant stated that she wanted to lodge a complaint because she continued to receive communication about payments for mortgage loan account number 210. She stated that this was a derelict property and she should not be receiving mortgage demand payments in relation to this property. The Complainant informed the Provider's agent that this was not a mortgage account because it was a "*derelict property*" which was sold on by the original loan owner.

On **3 July 2020** and **4 August 2020**, the Complainant telephoned the Provider. During these calls, the Complainant made a payment of €83 to the mortgage loan account number 210. On both of these occasions, the Complainant had quoted the loan account number as 210 on the start of the calls, to the Provider's agents.

The Provider has submitted to this Office that the that the audio recordings of the telephone calls dated **22 October 2020**, **11 November 2020**, **7 December 2020** and **25 February 2021** are not available.

Therefore, the only record of the telephone call dated **22 October 2020**, when the Complainant set out her complaint, is provided in the internal notes taken by the Provider during the telephone call.

In the contemporaneous notes submitted by the Provider for the **22 October 2020** telephone call, it states that the Complainant raised a complaint in respect of two matters. Firstly, the Complainant stated that she had received a direct debit mandate letter. The Provider's agent apologised and stated that the Complainant should not have received any letters, as the system indicated that they should be "*suppressed*". The Provider's agent stated that he would ensure these letters would not be issued to the Complainant from then on. The Complainant stated that she had been told this before, by a Provider's agent, yet she still received a letter every month about it and the last time she called she got the same answer.

The second issue the Complainant raised was that she had received a letter from her PIP in relation to arrears on her home loan account, even though she had paid €83 every month as agreed, in her PIA. The Provider's agent stated he would review the matter and revert.

The Provider has stated in its submission to this Office "*To clarify the correspondence in question was not letters demanding payment, but were standard notifications of unpaid direct debits, letters such as these continue to issue to the Customers who are subject to PIAs in compliance with regulatory and statutory requirements.*"

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Analysis

In relation to the transfer of the Complainant's loan accounts, the following Provision 3.11 from the Consumer Protection Code 2012 (the "CPC 2012") is relevant:

"3.11 Where a regulated entity intends to cease operating, merge with another, or to transfer all or part of its regulated activities to another regulated entity it must:

- a) notify the Central Bank immediately;*
- b) provide at least two months notice to affected consumers to enable them to make alternative arrangements;*
- c) ensure all outstanding business is properly completed prior to the transfer, merger or cessation of operations or, alternatively in the case of a transfer or merger, inform the consumer of how continuity of service will be provided following the transfer or merger; and*
- d) in the case of a merger or transfer of regulated activities, inform the consumer that their details are being transferred to the other regulated entity, if that is the case."*

The Provider has contended that the details of the Complainant's PIA were not transferred by the original loan owner. The obligations under Provision 3.1 are applicable to the original loan owner which was responsible for the correct transfer of all relevant documentation to the Provider.

The Provider also seeks to rely on the fact that it was not told of the PIA when the Complainant's mortgage loan accounts were transferred to it in **February 2020**. However, the Provider has submitted letters from **February 2020** which it sent to the Complainant's PIP which had been appointed over the mortgage loans, so it was aware of the fact that there was a PIP from the date of transfer. In addition, it appears from the documentation supplied to this Office, that the Provider only sought the PIA from the PIP in **June 2020**, following a telephone call between the Provider's agent and the PIP (as referenced in the email) and after a letter on **7 May 2020** from the Complainant's solicitor. This was four months after the ownership of the loan had transferred.

Notwithstanding the Provider's submission that it was not given the details of the PIA by the original owner, once ownership of the mortgage accounts to the Provider had occurred, the Provider was bound by the PIA, approved by the Court in **October 2019**, as it became a creditor of the Complainant. Once it stepped into the shoes of the original loan owner, the Provider was obliged to comply, not only with the PIA, but also with the statutory requirements under the 2012 Act.

I further note that on **8 June 2020**, following a telephone conversation between the Provider and the PIP, the PIP sent an email attaching the PIA, to the Provider. I don't accept that it was reasonable for the Provider, to merely state that it was not told of the PIA when it was aware that there was a PIP appointed. It only sought the PIA as late as in **June 2020**. Moreover, for reasons unexplained, the Provider continued to send the demand letters up to **October 2020**, months after it had received clear details of the PIA.

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In particular Provision 116(3) of CPC 2012 states;

“(3) Where a Personal Insolvency Arrangement is in effect, a creditor who is bound by it shall not, in relation to a specified debt—

...

(g) contact the debtor regarding payment of the specified debt otherwise than at the request of the debtor;”

The Provider asserts that during the term of the Complainant’s PIA, and in compliance with CPC 2012, certain letters:

“are suppressed and do not issue to Customers accounts. However, account maintenance letters, including notification of unpaid direct debits, such as the ones that issued to the complaints [sic], continued to issue to the Complainant in compliance with Regulatory and statutory requirements. The issuance of these letters does not constitute a delay on the Providers [sic] part to implement the Complainants PIA.”

What I understand the Provider to mean in that respect, is that it was not making a strict demand of a debt as covered under Provision 116 (3) (g) of CPC 2012 above, rather, these letters were merely giving notification of unpaid direct debits. This, however, in my view is taking an overly narrow approach to the matter. Because the unpaid direct debit was for an amount greater than should have fallen due, in my opinion, these communications were inappropriate. There should have been no demand whatsoever for payment regarding the mortgage loan account 210, and I am satisfied that it is unreasonable for the Provider to state in the circumstances, that this was simply an “*account maintenance letter*”.

Moreover, if there were specific matters arising out of the mortgage loan account 210, these should have been addressed to the PIP, and not demanded from the Complainant.

Under Provision 4.1 of the CPC 2012 the Provider must:

“ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information. The method of presentation must not disguise, diminish or obscure important information.”

Therefore, though the Provider states that the demand letters were merely giving notification of unpaid direct debits, this overlooks the fact that the monies should not have been called for, as they were not due and owing at all, due to the PIA in operation.

Turning to the payment to the incorrect loan mortgage account, in the Final Response Letter dated **19 November 2020** the Provider states that the agreed monthly bills of €83 had been paid to the wrong account. The Provider explained that the total of these payments made by the Complainant of €498 (four hundred and ninety-eight euro) was transferred to account number 603 by the Provider.

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The Provider submitted to this Office that this was not its mistake, but rather this was a mistake by the Complainant. However, having reviewed the audio evidence of the telephone calls made available to this Office, I take the view that some of this confusion was not due to the Complainant.

Although I accept that the Complainant was sent letters in **February 2020** which outlined the correct Provider account numbers, the confusion during these telephone calls was contributed to by the Provider's agents.

In particular, during the telephone call on **5 May 2020**, when the Complainant was unable to retrieve the account number to pay the €83, the Provider's agent located the loan account number 210 as the relevant account and gave this account number to the Complainant. As a result, in my opinion, it is unreasonable for the Provider to solely attribute the blame for the mistake surrounding payments, to the Complainant.

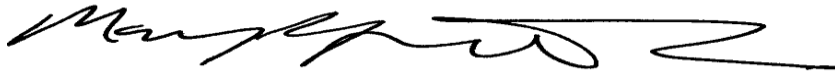
in addition, it is unfortunate that the Provider did not have audio recordings available for the very pertinent telephone conversations on **22 October 2020, 11 November 2020, 7 December 2020 and 25 February 2021**.

Having reviewed all of the evidence, I consider it appropriate to uphold the complaint as I take the view that the Provider's errors constituted conduct that was unjust, within the meaning of **Section 60(2)(b)** of the *Financial Services and Pensions Ombudsman Act 2017*. To mark that decision, I intend to direct compensation, as specified below, pursuant to **Section 60(4)(d)** of the *Financial Services and Pensions Ombudsman Act 2017*.

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)(b)**.
- Pursuant to **Section 60(4)(d) and Section 60 (6)** of the *Financial Services and Pensions Ombudsman Act 2017*, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €850 (eight hundred and fifty euros) 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.



MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

27 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.