Decision Ref:	2018-0019
Sector:	Insurance
Product / Service:	Mortgage Protection
Conduct(s) complained of:	Lapse/cancellation of policy
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint arises on foot of the Provider's refusal, in August 2015, to issue the proceeds of a Mortgage Protection Policy to the estate of the deceased policyholder, who was also the life assured, on the grounds that the policy had lapsed for non-payment of premium prior to the death of the policyholder.

The Complainant is the executor of the estate of the deceased policyholder.

The Complainant's complaint is that the policy lapsed due to non-payment of premium by the deceased policyholder at a time when he was suffering from a serious mental disorder, and that the Provider has acted unfairly and unjustly in refusing to discharge the proceeds of the policy to the deceased's estate.

The Complainant's Case

The Complainant states that the deceased policyholder wrote to his bank on 23 November 2014, addressed from his home address, instructing the bank to cancel his monthly direct debt payment of €290.00 to the Provider, for his Mortgage Protection Policy.

The Complainant states that, at the time, the deceased was suffering from a serious mental disorder and was an involuntary patient under the Mental Health Act 2001, as amended, in an approved mental health centre for patients held involuntarily under the said mental health legislation.

The Complainant states that, following the death of the deceased in August 2015, the deceased's family sought to claim the proceeds of the Mortgage Protection Policy, in respect of which the deceased had been both the policyholder and the life assured.

The Complainant states that the Provider advised, in response, that the policy had lapsed without value with effect from 1 December 2014, as a result of non-payment of the policy premium. The Provider also advised that it had written to the deceased policyholder on two occasions, at the time that the premium payments stopped, notifying him of the unpaid direct debit and requesting that payment of the missed premium be made. The Complainant states that it is the understanding of the deceased's family members that the deceased did not receive these letters from the Provider and that, even if he had, he would not have fully understood their significance. The Complainant states that, while these letters advised of unpaid premiums, there was nothing in these letters to advise that the policy had lapsed. The Complainant states that even if a family member had seen these letters at the time, "*we wouldn't have known the policy was lapsed because this was never stated*".

The Complainant submits that the family members of the deceased policyholder feel very aggrieved and believe that they have been disadvantaged, and that the Provider has been advantaged, by the unfortunate and irrational act of the deceased policyholder in instructing his bank to cancel his monthly direct debit payment for his Mortgage Protection Policy, at a time when he was suffering from a serious mental disorder and was an involuntary patient in a psychiatric hospital.

The Complainant submits that the letter of instruction written by the deceased policyholder to his bank, dated 23 November 2014, "*was one which lacked legal effect in that the writer then lacked mental and legal capacity and is thus void, thereby nullifying cancellation by his bank of the direct debit payments and that cancellation of the Policy by* [the Provider] *with the Deceased is similarly void*".

In a letter to the Financial Services Ombudsman dated 6 June 2017, the Complainant submits that the conduct of the Provider, in refusing to discharge the proceeds of the policy, is unjust in the particular circumstances of this complaint, and that, while the conduct of the Provider may have been in accordance with established practice, it was unreasonable and unjust in its application to the Complainant.

The Complainant's complaint is that the policy lapsed due to non-payment of premium by the deceased policyholder at a time when he was suffering from a serious mental disorder, and that the Provider has acted unfairly and unjustly in refusing to discharge the proceeds of the policy to the deceased's estate.

The Complainant contends that, from a "*legal and moral*" perspective, the Provider should reconsider the matter and discharge the policy in full.

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The Provider's Case

The Provider states that the deceased policyholder's Mortgage Protection Plan commenced on 1 June 2003 with a term of 15 years and an initial sum assured of €135,000.00. The Provider states that the policy was a reducing term policy, meaning that the sum assured decreased annually, in accordance with the policy conditions. The Provider submits that the sum assured at the date of death of the policyholder in August 2015 would have been €40,315.23.

The Provider has no record of the policy being assigned to a third party.

The Provider states that the monthly premium was paid by the policyholder by direct debit, but that when the Provider presented the direct debit to the policyholder's bank to collect the premium due on 1 December 2014, the direct debit was returned unpaid.

The Provider states that it wrote to the policyholder on 28 November 2014 to advise him that his premium had been returned unpaid, because his direct debit mandate was no longer active, and enclosing a new direct debit mandate for the policyholder to complete and return. The Provider states that, in that letter, it drew the policyholder's attention to the policy terms and conditions regarding non-payment of premiums.

The Provider states that it wrote to the policyholder again on 16 January 2015, to advise him that his premium was still unpaid for 1 December 2014, and that the relevant policy provisions had been applied.

The Provider states that it received no response from the policyholder to either of these letters. The Provider states that the policy lapsed without value in accordance with the policy terms and conditions, due to non-payment of premium in December 2014 and subsequently.

The Provider submits that the payment of premiums is at all times a matter for a policyholder, and that the Provider had no obligation to contact the policyholder when premiums ceased to be paid.

The Provider rejects the Complainant's assertion that it has a moral duty to pay out death benefit in respect of a lapsed policy. The Provider states that it was not informed until after the death of the policyholder that he had been a patient in a psychiatric hospital at or about the time he cancelled the direct debit mandate. In addition, the Provider states that if the policyholder was periodically absent from his home at about the time that the premiums ceased, it was open to one of his carers or family members to make contact with the Provider upon receipt of the letters issued, to put the Provider on notice of the situation. The Provider states that no such notice was given.

The Provider submits that the deceased's policy was administered in accordance with the policy conditions which clearly provide that it is the policyholder's responsibility to ensure that premiums are paid, and that the policy will lapse if premiums remain unpaid after a certain period of time.

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The Provider states that it is not in a position to assess a claim in respect of an out of force policy.

Policy Provisions

POLICY CONDITIONS:

Section B – Details of the Policy

1. PREMIUM PAYMENT

The amount of the initial premium, the method of payment and the date each payment is due are shown in the Schedule.

It is your responsibility to ensure that all premiums are received by us. We allow one calendar month for late payments of premiums. If a claim arises during this time, any outstanding premiums will be deducted from any benefits payable.

If a premium is still outstanding at the end of the calendar month allowed for late payment, the policy will lapse.

If the policy lapses it may be reinstated within 12 months of the date of lapse. Reinstatement is subject to payment of all premiums outstanding, and satisfactory evidence of the good health of the life/lives assured.

2. REDUCING BENEFITS

The Sum Assured will reduce at monthly intervals. This reduction will be calculated with reference to the balance outstanding on the annuity mortgage for the same term and the same Sum Assured as this policy and as calculated by the Actuary using an annual interest rate of 9%.

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

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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 30 January 2018 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.

Additional submission were received on behalf of the Complainant, by emails dated 15 February 2018 and 19 February 2018. Having been given the opportunity to consider and respond to the Complainant's additional submissions, the Provider informed this office by email on 23 February 2018 that its position remained as previously set out.

Following the consideration of the additional submissions received from the parties, the final determination of this office is set out below.

This complaint arises on foot of the Provider's refusal to issue the proceeds of a Mortgage Protection Policy to the estate of the deceased policyholder, who was also the life assured under the policy, on the grounds that the policy had lapsed for non-payment of premium some 8 months prior to the life assured's death.

The complaint is that the policy lapsed due to non-payment of premium during a period of serious mental disorder of the policyholder, and that the Provider has acted unfairly and unjustly in refusing to discharge the proceeds of the policy to the estate of the deceased policyholder and life assured.

The Complainant contends that, from a "*legal and moral*" perspective, the Provider should reconsider the matter and discharge the policy in full.

The Complainant is bringing this complaint in his capacity as executor of the estate of the deceased policyholder, who was also the life assured under the policy, and whose death occurred in August 2015.

The submissions show that the policy in dispute was a Mortgage Protection Policy, issued on 7 May 2003, and commencing on 1 June 2003, with a sum assured of €135,000.00 (reducing at monthly intervals), and a term of 15 years. The Provider submits that the sum assured at the date of death of the policyholder in August 2015 would have been €40,315.23.

The Provider has submitted that it has no record of the policy being assigned to a third party, and I note that no third party interest is recorded on the policy schedule.

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The deceased's Mortgage Protection Policy was subject to the payment by the policyholder of a monthly premium by direct debit. The General Conditions of the policy (Section A – General Conditions, 2, Legal Basis) state that *"the Company will, subject to the payment of the premiums and the policy terms, pay the benefits provided by the policy".*

Condition 1 of Section B of the Policy Conditions, in relation to Premium Payment, states that *"the amount of the initial premium, the method of payment and the date each payment is due are shown in the Schedule. It is your responsibility to ensure that all premiums are received by us. We allow one calendar month for late payments of premiums…If a premium is still outstanding at the end of the calendar month allowed for late payment, the policy will lapse…"*

I accept that these policy provisions are clearly worded, and provide that the Provider will pay the benefits provided by the policy "*subject to the payment of the premiums and the policy terms*". It is clearly set out within the policy terms that responsibility for ensuring that all premiums are paid rests with the policyholder, and that if a premium payment is missed and remains outstanding after the calendar month allowed for late payment, the policy will lapse. I accept that, once the policy has lapsed, there is no obligation on the Provider to pay the policy benefits.

The evidence before me indicates that a copy of these policy terms and conditions was issued to, and received by, the policyholder when he took out the policy in May 2003, and that, as of that date, he was on notice of the operation of the provisions relating to premium payment.

It is not disputed by either party to this complaint that, some nine months prior to his death, the policyholder wrote to his bank instructing the cancellation of his monthly direct debit in favour of the Provider, which direct debit was used to pay the monthly premium for his Mortgage Protection Policy. A copy of this handwritten instruction from the deceased to his bank, dated 23 November 2014 and bearing the deceased's signature and home address, is included in the evidence before me, as follows:

> *"I wish to cancel forthwith my direct debit of c. €290 per month to [the Provider].*
> *Please arrange accordingly.*
> *Yours sincerely,*
> *Etc."*

The Complainant submits that the aforementioned letter of instruction dated 23 November 2014 "*was one which lacked legal effect in that the writer then lacked mental and legal capacity and is thus void, thereby nullifying cancellation by his bank of the direct debit payments and that cancellation of the Policy by* [the Provider]*] with the Deceased is similarly void*".

Any issue which the Complainant may have in respect of the written instruction which was issued by the deceased policyholder to his bank in November 2014, and the validity of that instruction in the context of the policyholder's mental capacity at that time, is a matter

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between the Complainant and the deceased's bank. It is not a matter for the Provider, against whom the Complainant has directed this complaint, to answer.

I accept that, as a result of the deceased policyholder's instruction to his bank on 23 November 2014 to cancel his monthly direct debit payment to the Provider, premium payments to the Provider in respect of the Complainant's Mortgage Protection Policy ceased. Subsequently, in circumstances where the premium payments did not resume, the policy lapsed in accordance with the terms and conditions of the policy.

The evidence shows that the Provider wrote to the policyholder, at his home address, on 28 November 2014, in respect of the unpaid premium, as follows:

> *"The direct debit in respect of the premium due on 1 December 2014 has been returned unpaid by your bank because your direct debit mandate is no longer active.*
>
> *Your premium should now be sent by bank draft or cheque directly to this office. Please enclose this letter with your outstanding premium…*
>
> *Please note that no further direct debits will be presented to your bank account.*
>
> *If you would like to pay future premiums by direct debit, please complete and return the enclosed mandate…*
>
> *We would like to draw your attention to the terms and conditions of your policy regarding non-payment of premiums and would be grateful if you could give this letter your immediate attention…"*

I note that the Provider wrote to the policyholder again, at his home address, on 16 January 2015, as follows:

> *"Premiums for your policy have been unpaid since 01 December 2014 and the relevant policy conditions have now been applied…"*

The Complainant has submitted that it is the understanding of the deceased's family members that the deceased did not receive these letters from the Provider and that, in any event, he would not have fully understood the significance of their contents. The Complainant submits that, while these letters from the Provider advised of unpaid premiums, they did not clearly advise that the policy had lapsed.

In circumstances where the Provider wrote to the policyholder at his home address, and there is no evidence that these letters were returned to the Provider undelivered, it is reasonable to assume that the letters were delivered to the postal address of the intended recipient. There is no evidence that the letters were sent by Registered Post but, indeed, there was no obligation on the Provider, under the terms of the policy, to issue this correspondence to the policyholder by Registered Post. Even in the case of Standard Post, if an item of post cannot be delivered, it will be returned to the sender undelivered.

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The correspondence in question clearly sets out the circumstances of the unpaid premiums, requests the policyholder's immediate attention to the matter, and draws the policyholder's attention to the terms and conditions of the policy regarding non-payment of premiums.

I note, however, upon reviewing the wording of the correspondence, that neither the letter dated 28 November 2014, nor the letter dated 16 January 2015, explained the specific effect of the relevant policy provisions that would apply in the event of non-payment of outstanding premium. I consider that there was a particular lack of clarity in this regard in the correspondence that issued to the policyholder on 16 January 2015, which advised him, not incorrectly, of the application of the policy terms as a result of the non-payment of outstanding premiums, but did not plainly state that the policy had lapsed.

Provision 4.1 of the Consumer Protection Code 2012 requires a regulated entity to ensure that all information it provides to a consumer is clear and accurate, and written in plain English. Key information must be brought to the attention of the consumer, and the method of presentation must not obscure important information.

I accept that the Provider's communication with the policyholder in January 2015 should have brought it more plainly to his attention that the policy had at that stage lapsed. It is important that communications of this nature with policyholders are particularly clear in cases of life assurance, where significant levels of life cover may be in place.

However, this does not negate the application of the relevant policy terms with regard to premium payment, or the onus that was on the policyholder to ensure that premiums were paid. Nor does it alter the fact that premium payments stopped as the result of the action taken by the policyholder to cancel his direct debit premium payment, without putting in place any other payment arrangement, indicating an intention on his part to end the policy.

The Provider has submitted that at no time, prior to the policyholder's death in August 2015, was it put on notice, either by the policyholder himself, by a carer, or by a member of his family, that the Complainant was away from his home for periods of time, receiving medical attention for a mental health illness, at or around the time that he cancelled his Direct Debit and stopped paying his premium payments, in late 2014. This is plainly acknowledged by the Complainant. Indeed, the Complainant has stated that it has never been the argument of the deceased's family members that the Provider was aware of any lack of mental capacity on the part of the policyholder.

If it is the case that the policyholder, who the Complainant has indicated lived alone, was absent from his home address during the period of time in question on account of intermittent involuntary hospitalisation on the grounds of mental illness, and did not receive the Provider's letters for that reason, the Provider cannot be held responsible for this in circumstances where it had not been informed of the situation by the policyholder, or by anyone on his behalf.

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Having considered the submissions, I accept that the deceased policyholder's Mortgage Protection Policy lapsed in December 2014 as a result of the non-payment of premiums due to the Provider. In circumstances where the payment of benefit was subject to the payment of the premiums, I accept that, once the policy lapsed for non-payment of premiums, the Provider was thereafter (and in this case 8 months thereafter) entitled to decline liability for any claim under the policy.

The Complainant has sought to argue that the Provider's conduct in refusing to pay death benefit under the deceased's Mortgage Protection Policy was, in the particular circumstances of this case, unjust. The Complainant also argues that, although the Provider's conduct may be in accordance with the law or an established practice or standard, this law, practice or standard is unreasonable and unjust in its application to the Complainant. The Complainant submits that, on these grounds, this complaint should be upheld and the Provider required to pay the policy benefits to the deceased's estate.

It is acknowledged, and not in dispute, that the Provider had no knowledge of any particular circumstances relating to the mental health of the policyholder in late 2014 and early 2015, prior to his death, which might have required some further consideration or inquiry on the part of the Provider. It is unfortunate that the Provider was not informed by the policyholder himself, or by anyone on his behalf, of any suggested mental infirmity of the policyholder in or around the time that he cancelled his Direct Debit and ceased paying his regular premium, or of any suggested periods of involuntary hospitalisation of the policyholder at that time.

The Complainant has referred to the immense pressures faced by the policyholder's family at that time, regarding the policyholder's health and medical needs. I note from the Complainant's submissions that inquiries were made into the possibility of obtaining a Power of Attorney in respect of the policyholder, but that ultimately a decision was made against this course of action on the grounds that it would be "*costly and realistically could take months, in which time we hoped* [the policyholder] *would have recovered sufficiently to handle his* affairs". I accept that family members do face significant challenges in handling the financial affairs of loved ones who may no longer be able to manage such matters themselves, and that the time for family members to take appropriate action may not always be immediately apparent.

However, in the absence of knowledge of any particular circumstances relating to the mental health of the policyholder in late 2014 and early 2015, prior to his death, which might have required some further consideration or inquiry on the part of the Provider, and in circumstances where the Provider had acted in accordance with the terms and conditions of the Complainant's policy in lapsing the policy and declining liability for the subsequent claim, I cannot find grounds upon which to determine that the Provider has acted unfairly or unjustly in this regard. Nor do I consider that the policy provisions themselves, which are plainly worded and which had been issued to the policyholder upon commencement of the policy, are unreasonable or unjust in their application to the circumstances as set out in this complaint.

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For these reasons, it is my Legally Binding Decision that this complaint is not upheld.

Conclusion

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

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 March 2018

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) in accordance with the Data Protection Acts 1988 and 2003.