



<u>Decision Ref:</u>	2018-0225
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Delayed or inadequate communication Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant became a member of her local credit union in May 1995 and, as a member, had the benefit of death benefit insurance under a policy of insurance held by the credit union.

On 9 March 2015 the Complainant's local credit union merged with the credit union which is the respondent Provider concerned in this complaint, and its members then became subject to the terms of the policy of insurance held in the name of the respondent Provider.

The policy held in the name of the respondent Provider does not include death benefit insurance for the respondent Provider's members.

The Complainant's complaint is that in 2015, in the context of the merger of the Complainant's previous credit union with the respondent Provider concerned in this complaint, the Provider wrongly removed the death benefit insurance relied upon by the Complainant as a benefit for members.

In bringing the complaint to this Office, the Complainant is represented by her local Citizens Information Service.

The Complainant's Case

The Complainant states that she is 74 years old, with no family to assist her financially, and that the importance of having sufficient funds to cover her funeral expenses has long been a concern of hers.

The Complainant states that, in 1987, she took out an insurance policy in her own name to cover the future cost of her funeral expenses. She states that she cancelled this policy in January 2000 on the grounds that, as a member of her local credit union at that time, she could avail of death benefit insurance of up to €3,000.00 at no direct cost to herself, and she believed that the amount of this cover was sufficient for her needs in terms of her funeral expenses.

The Complainant states that she was greatly dismayed when this death benefit insurance was removed in March 2015, following the merger of her credit union with the respondent Provider in this complaint. She submits that she was not made aware of this change to her member benefits, and that she discovered the change purely by chance following the merger.

The Complainant states that the Provider has informed her that the removal of this benefit was mentioned at an information meeting for members held in February 2015, prior to the merger in March 2015. The Complainant states that she did not attend the information meeting and that, in any event, she did not have the transport to do so. She states that a change of this magnitude, i.e. the loss of death benefit insurance for members, should have been communicated to all account holders in writing, and not just to those who were able to attend the information meeting.

The Complainant submits that she does not recall receiving any documentation from the Provider in relation to the merger, although she notes that the Provider has made reference to a Transfer of Engagements Booklet which it states was issued to all members prior to the merger. The Complainant states that, having had an opportunity more recently to read this booklet, she notes that it contains no reference to the removal of death benefit insurance.

The Complainant submits further that, even if she had been made aware of the change, it left account holders over the age of 70 years (like herself) *“with no way of plugging the gap, because other credit unions offering death benefit have an age limit on those able to avail of this benefit”*.

The Complainant submits that, even though she did not pay for the death benefit insurance with her old credit union in a direct manner, she paid for this benefit *“through the level of dividend [she] received”*. The Complainant states that, *“unlike banks, credit unions do not give interest on deposits, but instead declare a dividend based on the profit and loss account (retained profit from which the expense of the death benefit premia would have been debited), their requirements for future capital etc.”* The Complainant states that her death benefit insurance was *“not a product provided for free”* by the credit union. The Complainant states that she had been paying for/contributing to her death

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benefit insurance over many years, and that it was withdrawn without any compensation, leaving her without funds to meet her funeral bill.

The Complainant refers to another separate and unrelated merger of credit unions involving the respondent Provider, that she has become aware of locally, which she states also led to the removal of death benefit insurance for members. The Complainant submits that in the case of that merger also, members received no information in the transfer of engagement documentation about the removal of death benefit. The Complainant states that *“this would seem to be a deliberate attempt to misinform account holders over key details of the takeover”*.

The Complainant seeks to have her death benefit insurance restored in full.

The Provider’s Case

The Provider submits that the Complainant’s credit union merged with the Provider by way of a transfer of engagement on 9 March 2015, following a resolution of its Board of Directors on 9 February 2015. The Provider submits that the Board of Directors, elected by the credit union members, made the decision to merge with the Provider by way of transfer of engagement in the full knowledge that death benefit insurance would no longer be available to its members after the merger. The Provider states that this decision was made in the interests of all members of the Complainant’s credit union, including the Complainant.

The Provider states that a transfer of engagements booklet, pursuant to s.130 of the Credit Union Act 1997 (as amended), was sent to all members of the Complainant’s credit union prior to the transfer of engagements on 9 March 2015.

The Provider submits that, in addition, an information evening was held for members of the Complainant’s credit union in a Dublin hotel on the evening of 15 February 2015, at which it was announced to members that death benefit insurance would no longer be available to members following the merger with the Provider. The Provider notes that the Complainant has stated that she did not attend this meeting.

The Provider states that, upon the completion of the transfer of engagements on 9 March 2015, all former members of the Complainant’s credit union became subject to the policy of insurance held in the name of the Provider as policyholder. The Provider states that this policy does not, and never did, include death benefit insurance. The Provider states that it does not intend to take out death benefit insurance cover in the future.

The Provider submits that it is unable to grant the Complainant’s request to have death benefit insurance reinstated to her, and is consequently unable to resolve the Complainant’s complaint.

The Provider submits that it is “untrue” to suggest that the Complainant has been left without funds for her funeral, in circumstances where she continues to benefit from life

savings insurance, as a benefit to members of the respondent Provider, based on her savings balance.

The Provider states that any reference by the Complainant to other credit union mergers is not relevant to this complaint.

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 26 April 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.

Following the issuing of my Preliminary Decision to the parties dated 26 April 2018, the Provider made additional submissions under cover of its letters to this Office dated 17 May 2018 and 31 October 2018, copies of which were furnished to the Complainant who declined to comment further.

Having considered those submissions, I set out my final determination below.

As a preliminary issue, I note that the details furnished to this Office on behalf of the Complainant in relation to her complaint, included reference to advice allegedly given to the Complainant, in 2000, by a staff member of her former credit union to cancel the insurance policy she had incepted in 1987 to cover her funeral expenses, on the basis that the credit union offered a death benefit of €3,000.00 at no additional cost to credit union members.

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The jurisdiction of the Financial Services and Pensions Ombudsman is laid down in the ***Financial Services and Pensions Ombudsman Act 2017*** which was commenced on 1 January 2018 in the context of the merger of the Financial Services Ombudsman with the Pensions Ombudsman. The new legislation repeals the previous governing legislation set down in the ***Central Bank Act 1942 (as amended)***.

The time limits for making complaints are now set out in ***section 51*** of the ***Financial Services and Pensions Ombudsman Act 2017***. Complaints made to this Office in relation to any “*long-term financial service*” can be made outside the strict 6 year timeframe which was originally in place, but only subject to certain conditions. Life assurance is generally accepted to be a “*long-term financial service*” because of the manner in which this term is defined by the legislation.

Be that as it may, unless there are unusual circumstances which would persuade the Financial Services and Pensions Ombudsman to allow a longer period, because it would be just and equitable to do so, any complaint made in relation to a “*long-term financial service*” is subject to an overall condition which requires that any conduct complained of must have occurred during or after 2002.

In those circumstances, the Complainant’s complaint about the advice allegedly received from a staff member of her former credit union in January 2000 falls outside the jurisdiction of this Office, as the conduct sought to be complained about, occurred prior to 2002.

This Office wrote to the Complainant’s representative on 15 February 2018 to advise that, for the reasons set out above, that element of the complaint remained outside the jurisdiction of the Financial Services and Pensions Ombudsman and that this Office would not be in a position to proceed with that aspect of the complaint by way of formal investigation and adjudication.

The Complainant’s representative acknowledged the content of this letter by email dated 23 February 2018, and confirmed that the Complainant wished to pursue the remaining aspect of her complaint, which concerns the removal in 2015 of the death benefit insurance which had been relied upon by the Complainant as a benefit for members, following the merger of her former credit union with the credit union which is the respondent Provider concerned in this complaint. This is the complaint which is the subject of this investigation and adjudication.

I have carefully considered the submissions made by both parties to this dispute. In circumstances where the Complainant has submitted documentation which pertains to third party credit unions, other than the credit union concerned in this complaint, the Complainant has been advised by this Office, in its letter to the Complainant’s representative dated 15 February 2018, that such documentation does not constitute evidence and is therefore not of relevance insofar as the Complainant’s contractual relationship with the respondent Provider in this complaint is concerned.

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The complaint under consideration is that in 2015, in the context of the merger of the Complainant's previous credit union with the Respondent Provider concerned in this complaint, the Provider wrongly removed the death benefit insurance relied upon by the Complainant as a benefit for members. The quality of communication by the Provider about the withdrawal of the benefit has also been considered.

The submissions show that the Complainant became a member of her former credit union in May 1995. The Complainant's former credit union held a policy of death benefit insurance, underwritten by the credit union movement's own life assurance company (ECCU), until the credit union merged with the respondent Provider concerned in this complaint, on 9 March 2015.

The main purpose of the death benefit insurance which is offered by some credit unions, is to provide basic life cover to eligible members in order to lighten the financial burden of death. It provides eligible members with access to a benefit payment through the credit union's own insurance policy. The cover is offered as an addition (or endorsement) to the Life Savings insurance policy held by the credit union.

It is important to note that, while many credit unions offer death benefit insurance as a benefit to its members, not all credit unions do.

In the context of this particular complaint, I note that the financial statements for the Complainant's former credit union for the year ended 30 September 2014 (which are published in the Transfer of Engagement Booklet submitted by the respondent Provider), included death benefit insurance as a "Management Expense", along with General Insurance, Share and Loan Insurance, Audit Fees, Training Costs, Bank Interest and Charges, and Legal and Professional Fees, among other running costs. I accept that this reflects the position that the cost of death benefit insurance was taken on by the Complainant's former credit union as one of the expenses of operating/managing the credit union.

The submissions show that the decision to merge with the respondent Provider was taken by means of a resolution of the board of directors of the Complainant's former credit union, representing the interests of its members, on 9 February 2015. The Provider has submitted that the "Transfer of Engagement Booklet" was issued to all members, including the Complainant, prior to the merger. I note that this Booklet contains, for the information of members, notice of the resolution passed by the board, and the appropriate financial statements of each credit union concerned, to which I have referred above, as required under section 130 of the Credit Union Act 1997 (as amended).

Upon the completion of the Transfer of Engagement on 9 March 2015, all members of the Complainant's credit union (including the Complainant) became members of the respondent Provider and, consequently, became subject to the insurance policy held in the name of the respondent Provider as policyholder. It is acknowledged by the parties that this insurance policy does not include death benefit insurance.

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I accept that this was a disappointment to the Complainant in circumstances where she had previously enjoyed this benefit, and had done so since joining her former credit union in 1995. However, in circumstances where the merger of the two credit unions took place on 9 March 2015, on foot of a resolution of the board on behalf of the members, and in circumstances where the loss of death benefit insurance for members was a legitimate consequence of the transfer of engagements to the Provider, I can find no wrongdoing on the part of the Provider in this regard.

I note that the Provider has indicated that the Complainant continues to benefit from Life Savings insurance, based on her savings balance, **as an additional benefit for members who save regularly and maintain savings with the credit union**. This benefit is payable on the death of a member, in addition to the amount held in savings, based on the member's savings balance. This is relevant to the Complainant in circumstances where the availability of funds to cover her funeral expenses is a particular concern of hers.

I will now address the Complainant's complaint against the Provider that the Complainant was not informed of the change to her member benefits as a consequence of the merger, and that she discovered the change purely by chance following the merger.

I note that the Provider, in a letter to the Complainant dated 23 May 2016 in response to her written complaint of the same date, raised the issue of the information evening which was held at the Carlton Airport Hotel on 15 February 2015, and the nature of the information provided to members during that meeting, including the removal of death benefit insurance as a result of the transfer. This letter became part of the submissions in the complaint, and was commented upon by the Complainant, and those comments were in turn transmitted to the Provider for further consideration and response, in the normal way.

The issue of whether or not the Complainant was informed or adequately informed that the death benefit would be removed as part of the merger was addressed by the Provider in its response to the Complainant's complaint in May 2016.

In a letter to the Complainant dated 23 May 2016, the Provider states:

"I can confirm that upon transfer of engagement of [former Credit Union] to [Provider], all members were informed of an information evening being held in Carlton Airport Hotel on 15th February 2015. At that meeting members were informed of all new services available as a result of the transfer and the meeting was informed that Death Benefit Insurance would no longer be available. The then Chairman of [former Credit Union] informed the meeting that Death Benefit Insurance was paid for by the credit union as an operational expense and that it was unlikely that the credit union would be able to continue to do so into the future. It was therefore likely that members would lose the benefit regardless of the transfer to [Provider].

I trust this adequately addresses the issue raised in your complaint".

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In a submission to this Office dated 11 January 2017, the Complainant's representative stated the following:

"Key Issues

- *[Provider] appear to have sent out **no documents** about the takeover to [other Credit Union] or at least these have not been provided by the respondent. They have clarified that the removal of this benefit was mentioned at a public meeting held near the airport. [Complainant] did not attend this meeting, nor did she have any transport to do so.*

Clearly a change of this magnitude should have been communicated in writing to all account holders".

The Provider responded to "Key Issues" raised in the Complainant's representative's correspondence of 11 January by letter dated 22 March which included, among other things, the following:

"I wish to address the 'key issues' raised in that correspondence as follows:

- *A transfer of engagements' Booklet pursuant to S130 of the Credit Union Act 1997 (as amended) was sent to all members prior to the transfer of engagements on 9 March 2015. The lack of the DBI benefit in the [Provider] ECCU policy was discussed at the public meeting referred to - all members were invited to that meeting. It appears the Complainant did not attend this meeting ..."*

In a further response the Complainant's representative by letter of 15 May 2018 stated, among other matters:

- *"There was no intention to suggest that [third party credit union] offers DBI at present. **The point of this dispute is that it was withdrawn without advising customers on the takeover"**.*

[My emphasis]

- *It is not subjective to point out that the transfer of engagements document did not advise customers of the removal of DBI, ..."*

In a post Preliminary Decision submission received by this Office on 17 May 2018 from the Provider, it claimed that it was not put on notice that the alleged failure of the Provider to inform the Complainant of the change to her member benefits, consequent on the transfer of engagements from the other credit union to the Provider formed part of this complaint. While I did not accept that this was the case, I acknowledged the Provider's request to be put on notice in a more formal manner and I did so in a letter dated 17 October 2018,. In that correspondence I invited the Provider to submit its full response to the Complainant's

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complaint that the Provider failed to notify her of the change to her member benefits, consequent on the transfer of engagements.

That communication also invited the Provider to consider Mediation.

The Provider responded by letter dated 31 October 2018 stating, among other things, as follows:

“The respondent respectfully submits that the FSPO does not have jurisdiction to investigate and adjudicate on a matter which is not the subject of a complaint made under the 2017 Act ...

In the circumstances, it is submitted that the proposal as outlined in your letter under reply to proceed on the basis that such a complaint has been made, is an error of law and that the only adjudication which the FSPO is entitled to make is to refuse to uphold [the] complaint made, under Section 60(1) (d) of the 2017 Act”.

I am fully satisfied that I have jurisdiction to decide the complaint and furthermore I am satisfied that the Provider has had ample opportunity to consider and respond to all aspects of the complaint.

I have examined the contents of the Transfer of Engagement Booklet, which the Provider states was issued to all members prior to the merger, in accordance with the requirements of section 130 of the Credit Union Act 1997 (as amended).

The Complainant has submitted that it contains no reference to the removal of the death benefit insurance which had been a benefit to members prior to the Transfer of Engagement to the respondent Provider. I accept that that is the case.

It would appear that information in relation to the merger, including the loss of death benefit insurance, was transmitted to members of the credit union at a public information meeting which took place on 15 February 2015, prior to the merger, and which all members were invited to attend. The Provider has submitted that, at that meeting, the chairman of the board of directors of the Complainant’s credit union informed those attending the meeting that death benefit insurance would no longer be available to members following the merger with the respondent Provider. I note the Provider’s submission that the chairman also advised that, even if the merger with the respondent Provider did not go ahead, there was a strong probability that death benefit insurance would have been removed in any event as it had become too expensive for the credit union to continue, given the credit union’s financial position and declining income.

I note that the Complainant was invited to attend this information meeting but that she did not do so. However, I accept that it may not have been easy for her to attend the meeting, and I accept that it may have been more difficult for her in the absence of her own transport. Attendance at such meetings can prove difficult for people for a variety of reasons. For that reason I believe that it is important that important information should also be provided directly to members in such circumstances.

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While I believe the holding of such information meeting can be very useful, I believe they should take place in addition to providing information directly to consumers, not as an alternative.

It is my view that, in circumstances where the Transfer of Engagement Booklet made no reference to the loss of any member benefits as a consequence of the merger, it would have been prudent of the Provider to include, when issuing this booklet, or at another appropriate time, an information flyer containing the key points in relation to the merger and the key changes relevant to members and their benefits. I do not consider that it was adequate to rely on attendance at the public information meeting, other than the Transfer of Engagement Booklet (which contained no reference to the removal of the death benefit insurance), as a means of transmitting important information in relation to the loss/withdrawal of an important benefit.

Similarly, it would have been prudent to have leaflets available at the Provider's Offices, and/or notices displayed prominently in the public areas of the Provider's premises, drawing the members' attention to any changes in the member benefits upon which they might seek to rely, and upon which they may have been accustomed to rely in the past, including the removal of death benefit insurance.

I accept that if this constituted information sufficiently important to be disclosed and discussed at the public information meeting, the Provider should have ensured that it was brought prominently to the attention of all members, and not just those who were in a position to attend the public meeting on 15 February 2015.

As this is an important matter which I believe should be brought directly to the attention of credit union members on foot of such amalgamations, it is my intention to bring the details of this decision to the attention of the Central Bank for its consideration.

In summary, while I accept that the merger took place on foot of a board resolution, and that the removal of death benefit was a legitimate consequence of the merger, I consider that the consequences of the merger in terms of its impact on the benefits which had been enjoyed and relied upon by the Complainant, as a member of the former credit union, should have been more clearly brought to the Complainant's attention.

For the Provider's failure in this regard, I partially uphold this complaint and direct the Provider to make a payment of compensation to the Complainant in the sum of €750.00.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2) (b), (f) and (g)**.

Pursuant to **Section 60(4) 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 €750.00, to an account of the Complainant's choosing,

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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**

19 December 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) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.