



<u>Decision Ref:</u>	2019-0065
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the administration of the Complainant's account, and in particular the implementation of a policy of death benefit insurance.

The Complainant's Case

The Complainant is a member of the Provider, a credit union.

He joined a third party credit union in May 1996. That credit union merged into the Provider in 2016.

His original credit union held a policy of death benefit insurance with an insurance entity. This policy of insurance ceased when the original credit union merged into the Provider.

The complaint is that the Provider has unilaterally terminated a policy of death benefit insurance from which the Complainant was entitled to cover indefinitely (in exchange for continued payment of premia).

In his complaint to this Office, the Complainant describes his complaint as "*breach of contract for unilaterally terminating the contract. They say it never existed*". He is seeking

a refund of the contributions of approximately €120 which he paid to the former credit union in respect of the insurance cover provided through the third party insurer.

The Provider's Case

The Provider states that the policy of insurance was between the original credit union and a third party insurer, and ceased when the original credit union ceased to exist.

It is the Provider's position that no death benefit policy is in place between the Provider and any insurer, the Complainant has not been charged premia for any such policy since the merger, and the Complainant is not entitled to a refund of premia paid into a policy prior to 2016 while his account was covered by that policy.

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 15 February 2019, 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, I set out below my final determination.

The original credit union held a policy for death benefit insurance with a third party insurance provider. The nature of such a policy is that, where a customer dies a fixed lump sum is paid to the member's next of kin / nominee to assist with funeral expenses etc.

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This is not to be confused with a life savings policy, whereby on death of a member the insurer would pay out the applicable proportion of the deceased member's credit balance (as a lump sum). It is also not to be confused with loan protection insurance, whereby on death of a member, the insurer would pay off the debit balance on that member's loan.

Credit unions maintain insurance policies with insurers for the benefit of all members – such a policy is a contract between the credit union and the insurer. This can be contrasted with, for example, a life policy a customer might take out in respect of a mortgage loan with a bank – such a policy is a contract between the customer and the insurer.

The Complainant was not a party to the death benefit policy. It was made between the original credit union and a third party insurer.

The Complainant has, however, made a complaint that having made payments towards this policy for a period of 20 years up until 2016 he should be permitted to either continue making payments into such a policy (and therefore be entitled to benefit from it if and when he dies), or he should receive a refund on the basis that he paid into the policy, but the policy was then terminated without notice or refund, thereby disentiing him (or his next of kin / nominee) to the benefit of the policy.

Analysis

The Provider has not collected premia for any death benefit policy from the Complainant. In reality, the complaint is in relation to the conduct of the original credit union in unilaterally terminating a death benefit policy and failing to refund premia paid into such a policy on termination.

It is important to note that neither the Complainant nor the Provider was a party to the insurance policy. It was a contract between the original credit union and the insurer. A person cannot claim breach of a contract to which neither he/she nor the alleged wrongdoer was a party.

The premia that were collected from the Complainant by the original credit union were not singularly applied to a policy solely for his benefit, but rather they were collected from many (if not all) members for the benefit of all of those members.

While the Complainant, happily, did not pass away during the 20 or so years he was paying into the policy, other members will have and thus their nominees would have received payment. If the Complainant had passed away during the applicable period, he (or his next of kin / nominee) would likewise have received the benefit of the policy.

A death benefit policy with annual premiums in the region of €7-€15 euro, but paying out over €1,000 on death, would be completely unsustainable if the risks (and benefits) were not spread across many members.

As the Provider has pointed out in its response to this office: the nature of these policies is that a majority of credit union members must pay into it, or none at all. It appears that the Provider maintains a life savings policy, but not a death benefit policy.

The situation is entirely different from one where a person has a policy in their own name with an insurer. The Complainant's reference to a "whole of life" policy is not applicable to the death benefit policy that he paid into while a member of the original credit union. It was not a "whole of life" policy.

For the reasons set out above, I do not believe it would be reasonable to expect the Provider to refund an insurance premium that it did not collect. Further, it is important to note that the Complainant had the benefit of insurance cover for the years in question.

For this reason, I do not uphold this complaint.

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**

14 March 2019

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.