



<b><u>Decision Ref:</u></b>	2019-0123
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Credit Union Loan
<b><u>Conduct(s) complained of:</u></b>	Off set savings/shares to loan
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint relates to the benefit paid out under a loan protection policy for the benefit of the Complainant but the failure to pay a benefit for the Complainant's wife's loan account, in respect of which the Complainant is a guarantor.

**The Complainant's Case**

The Complainant retired from work due to ill-health. The Complainant held a loan account with the Provider. Separately, the Complainant was a guarantor in respect of his wife's separate loan account with the same Provider. Prior to his ill-health, the Complainant states that he was the sole earner in the marriage in circumstances where his wife has not been in employment since 1990.

Following the onset of his illness, the Complainant realised that he might be covered by a Loan Protection Policy associated with all accounts held with the Provider and which is maintained free of charge to customers of the Provider. The Complainant duly claimed on this policy and, following an initial rejection, his loan account was "*cleared in full*" insofar as the policy paid off the Complainant's debt in the amount of €11,870.48 in circumstances where it was accepted that the Complainant qualified as 'disabled'. The Complainant states that when his loan was cleared, his intention was to take his shares (to the value of circa €6,000) out of the account but that he was prevented from doing so owing to the fact that

he is guarantor of his wife's borrowings (the borrowings on this account stood at €4,359.20 as of March 2018).

The Complainant contends that both loans for which he was/is responsible should have been "*treated equally and both cleared*" in the context of the claim on the Loan Protection Policy. He also complain that he was not advised that he could be prevented from liquidating his equity in the Provider (his shares) because he was guarantor of his wife's debt.

The Complainant seeks that the Provider "*clear*" his wife's loan.

### **The Provider's Case**

The Provider maintains that the Loan Protection Policy "*does not extend to the guarantor*" of loans but rather is a product, the benefit of which is available to "*the member taking out the loan*" only. The Provider also maintains that the Complainant was made aware of the fact that his shares would be held as security for his wife's loans at the time the Complainant executed the Guarantee.

### **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 29 April 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.

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In the absence of additional submissions from the parties, I set out below my final determination.

Prior to considering the substance of the complaint, it will be useful to set out certain provisions from relevant documents:

### **Memorandum of Guarantee**

The Guarantee signed by the Complainant provided as follows:

*I note that all paid shares, all payments on account of shares and all deposits, other than SSIA's, which I am now signing. [sic] I now have or hereafter may have in this [Provider] may be applied, at the discretion of [the Provider], as security for repayment of this Loan together with interest, costs and expenses, in accordance with Section 35 (b)(8) of the Credit union Act 1997.*

Section 35 (8) of the Credit union Act 1997 provides as follows:

*Subject to its rules, in respect of a loan, a credit union may accept, in addition to other forms of security—*

*(a) a guarantee by a member, or*

*(b) a pledge by a member of shares in or deposits with the credit union*

### **Guarantor Information Document**

This document was annexed to the Guarantee document and provided as follows under the heading 'Implications of Guaranteeing a Loan':

*As a guarantor and a member of [the Provider], your shares will be held as security against the other member's loan and you may not withdraw shares unless your balance exceeds the combined balance of both loans.*

The Complainant's signature appears on the same page as this statement.

### **Loan Protection Policy Terms and Conditions**

The Loan Protection Policy held by (and paid for by) the Provider with an assurance company for the benefit of its members includes the following provisions:

#### **11 INSURED**

*Only one member shall be insurable with respect to each Account under this Contract and that Member shall only be insurable under this Contract or provided that he is an Eligible Member*

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The 'Disability Benefit Rider' to the Loan Protection Policy provides as follows:

*“Loss” means one loss arising to an Eligible Member resulting directly and solely from Disability*

...

*“Insurable Balance” means the loan balance Debited against an Eligible Member’s Account*

...

**6.3 BENEFIT**

*The Benefit payable by [the assurance company] to [the Provider] under this Rider on the occurrence of an Eligible Member suffering a Loss shall be the Insurable Balance of the Member at the time that the Member suffers the Loss...*

...

**6.9 INELIGIBILITY FOR LOAN PROTECTION COVERAGE AFTER BENEFIT IS PAID**

*Once any benefit under this Rider has been paid by [the assurance company] arising from a Disability suffered by any member, such Member shall not subsequently be eligible for Cover by [the assurance company] for any new or additional indebtedness by that Member to [the Provider]. No further loan protection Coverage shall be provided in relation to such a Member by [the assurance company] under the Contract or any other contract for death or disability unless [the assurance company] in its sole discretion determines otherwise in writing to the [the Provider]. Even if such affirmative approval for Coverage is granted by [the assurance company], such Coverage shall always exclude coverage and benefits for death or Disability resulting from sickness or injury for which Benefit was previously paid.*

**Analysis**

The Complainant is aggrieved that he is unable to access his shares in the Provider due to the fact that these have been ring-fenced by the Provider as security for the Complainant’s wife’s loan because he is Guarantor for that loan. Specifically the Complainant complains that he was not advised that this would be the case. He also complains that his wife’s borrowings were not included in a successful application for benefit under the Loan Protection Policy, by reference to the Complainant’s disability, given that he is “responsible” for that loan also.

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The terms of the guarantee executed by the Complainant in respect of his wife's borrowings entitle the Provider to hold certain of the Complainant's shares as security. The Guarantor Information Document, as reproduced above, makes it clear that the guarantor's shares will be held as security. This document was signed by the Complainant. I note the Complainant disputed ever signing either document (ref phone call of 03/11/2016 "*I signed nothing*") until he was provided with copies of the documents.

I note that it is not correct that the Complainant is unable to access *all* of his funds. The Provider's response to this office in March 2018 noted that the Complainant's wife's loan balance was €4,359.20 but that this was offset by the Complainant's wife's share balance in the amount of €3,081.45 leaving €1,277.75. It was shares owned by the Complainant in the value of this amount that were ring-fenced and held as security.

Of his balance at time of €2,413.24, the Complainant had access (in March 2018) to a "*withdrawable balance*" of €1,135.49 but not to the remaining €1,277.75. The figures cited render it clear that the Complainant had already withdrawn a significant amount of the shares which became available to him at the point at which his own loan was cleared. He withdrew €3,273.50 on 03/11/2016 albeit that he wished to withdraw €4,700 but was not permitted to take the full amount.

The Loan Protection Policy does not provide for any benefit beyond a benefit to an account holder relative to his or her own 'Insurable Balance'. It is a benefit that is available to an account holder or member that has become disabled in respect of his or her account. As stated by the Provider in its letter of 18 May 2017, "*Guarantors are not eligible for any insurance arrangements that the borrower may enjoy*".

In this case, it is the Complainant (and not his wife) that has been deemed 'disabled'. As such, the only benefit that is available is one referable to the Complainant's 'Insurable Balance', and that has already been provided. There is no benefit available to the Complainant in respect of any debts he has guaranteed, regardless of the fact that he may consider himself to be "*responsible*" for these debts. This information was communicated to the Complainant as far back as 22 April 2015 in the course of his first discussion with the Provider about the Loan Protection Policy ("*The only thing is, it wouldn't apply to [Complainant's wife's name], is that ok? It would just be for your own account.*"). Additionally, in the course of the phone call of 21 July 2016 in which it was communicated to the Complainant that his claim had finally been accepted, there was no suggestion by the Complainant at that point that the claim should have extended to encompass the Complainant's wife's borrowings.

The Complainant accepts that his wife does not qualify as 'disabled' - he acknowledges in a phone call of 30 September 2016 (when the suggestion was first made that his wife's debt should also be covered under the policy) that she would be capable of working.

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The true essence of this aspect of the Complainant's complaint is articulated in his email to this office of 24 April 2018 wherein he stated as follows:

*The insurance policy held by the credit union should also cover my other liability as a member.*

This is a policy taken out by the Provider for the benefit of its members. While the Complainant is entitled to his view as to what he would like the policy to cover, I must consider his complaint in light of the policy provisions and what is in fact covered under the policy.

The terms of the policy do not cover the loan guaranteed by the Complainant. I also note that Clause 6.9 (reproduced above) would have prevented the Complainant from recovering under two separate headings.

Insofar as the Complainant raises any issue regarding the criteria employed in the process of granting his wife the loan (and no such issue is clearly expressed in the Complaint Form), any such complaint would need to be made by the Complainant's wife rather than the Complainant. Therefore, this has not formed part of this investigation and adjudication.

For the reasons set out above, 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**

27 May 2019

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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.

