



<u>Decision Ref:</u>	2019-0223
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Rejected

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

Background

The Complainant had a mortgage payment protection insurance policy (MPPI) covering his home loan with the Provider, which was incepted in **January 2008** and cancelled by the Provider on the **23 August 2013**. This complaint concerns the cancellation of the MPPI policy which the Complainant says he neither requested nor was informed about. The Complainant asserts that he did not receive notification of the policy being cancelled in **2013**. He states that its cancellation did not come to his attention until **2015** when he made enquiries about the policy. He was told that notification had been posted to him at the time. The Complainant contests this and states that he did not receive any notification in the post. He states that he has asked on numerous occasions that correspondence be emailed directly to him, as a lot of correspondence is not received. He says that the Provider has stated that it has no email facility.

The Provider states that from 2012, it carried out a review of the sale of payment protection insurance policies sold during the period from 1 July 2007 to 30 June 2012, as mandated by the Central Bank of Ireland.

With respect to the Complainant's policy, the review concluded that the sale in 2008, may not have been carried out in accordance with the Consumer Protection Code of 2006 (CPC 2006). As a consequence of the review, it states that the Complainant received a premium refund of €4,120.94 which was lodged to his account on **27 September 2013**. It further states that the payment protection insurance policy was cancelled at that point.

The Complainant's Case

The Complainant states that he took out an MPPI policy on **29 January 2008** but this policy was cancelled unknown to him. He states that he was not informed about the cancellation nor did he seek for the policy to be cancelled. He seeks an amicable resolution to this issue.

The Complainant states that he was given notice of temporary layoff of his employment on 11 April 2013. He states that he contacted the Provider immediately to inform it of the situation with a letter from his employer outlining the circumstances. The Complainant states that the Provider replied that his mortgage protection policy did not cover this, as it only covered permanent layoff and it then proceeded to cancel his policy without notifying him.

In 2015, when he brought the fact that he had not been notified about the cancellation of the policy, to the attention of the Provider, he states that it said that he had been notified by post, which he denies. He states that he did not receive any correspondence in relation to the cancellation of the policy. He further states that on numerous occasions he has asked for correspondence to be emailed to him, as he does not receive a lot of correspondence from the Provider. In response, he says that the Provider stated that it had no email facility.

The Provider's Case

The Provider states that in his application for a home loan in **August 2006**, the Complainant declined to avail of a MPPI policy. Subsequently, he took out a MPPI policy in **2008**. It states that the Complainant completed an application form for the MPPI, signed and dated on the **29 October 2008**. He further signed the suitability statement in respect of the policy dated same **6 November 2008**.

The Provider explains that the Central Bank of Ireland required all financial institutions to review policies of MPPI sold between July 2007 and June 2012. As the Complainant's policy was sold in October 2008, it formed part of the MPPI review project. The Provider states that after the review, it concluded that the Complainant's policy was not sold in accordance with the rules set out in the CPC 2006. It confirms that the Complainant had a stand-alone MPPI policy. It states that the policy review concluded that the Complainant's MPPI application form did not capture sufficient information to show that the Complainant met all of the eligibility criteria. The Provider states that the MPPI policy review began in 2012 and was completed in 2013. It states that all customers affected were informed on writing of the review of the policy, and were further informed of the results of the review.

The Provider states that it issued correspondence to the Complainant on **5 November 2012** informing him that his policy was in the scope of the Central Bank of Ireland Mortgage Payment Protection Insurance Review (MPPI Review). It states that in **September 2013**, correspondence issued to the Complainant informing him that after a review of his policy, it was found that the sale of his MPPI was not carried out fully in accordance with the rules set out by the CPC 2006 and a refund of premium was due to him. It states that on 23 October 2013, further correspondence issued to the Complainant advising him of the

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cancellation of his MPPI policy. It states that the letters contained a telephone number for a customer helpline for any queries a customer may have had on receipt of the relevant correspondence from the Provider. The Provider therefore argues that the Complainant received multiple letters in relation to the review of his MPPI policy. Further, it argues that correspondence accompanied the cheque which issued to the Complainant in September 2013 and the credits which was applied to his home loan account in September 2013.

The Provider states that a refund of €4,120.94 was applied to the Complainant's mortgage account by electronic transfer on **27 September 2013**. It further states that he was issued with a refund cheque in the sum of €418.09 on **27 September 2013**. The Provider confirms that the restitution cheque was cashed on **7 October 2013**. The Provider states that it is of the view that it is not possible that the Complainant was not aware of the refund, due to the correspondence received in relation to the MPPI review. The Provider draws attention to the fact that the refund of €4,120.94 was applied to the mortgage loan account.

The Provider states that the MPPI review was undertaken by it, as directed by the Central Bank and involved numerous customers. For this reason, it was not possible to keep individual customer letters. The Provider states therefore that it only kept template letters which were issued on file. Although it does not hold a copy of individual customer letters, its systems confirm that the relevant letters were issued to the Complainant.

The Provider states that with regards to the complaints procedure, all customers must be communicated with by way of formal written correspondence and not by email. It further states that its system provides it with a record of all contact with customers and of the activity under a customer's account. It states that it has no record on the system of the Complainant being advised that it has no email facility, and it refutes any such allegation.

The Complaint for Adjudication

The complaint is that the Provider wrongfully cancelled the Complainant's mortgage payment protection insurance policy on 23 August 2013 without notifying him, as a result of which he only became aware of the cancellation, in communications with the Provider 2 years later in October 2015.

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.

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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 8 July 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, within the period permitted, the final determination of this office is set out below.

The central issue in this case is whether or not the Provider informed the Complainant that it was proceeding to cancel his MPPI policy in September/October 2013 in response to the Central Bank mandated review of the sale of such policies between July 2007 and June 2012.

I am satisfied that the Complainant's policy fell within the relevant review. I have been furnished with a copy of the Complainant application for mortgage income protection insurance (MPPI). This application is dated 29 October 2008. I have also been furnished with a copy of a suitability statement dated 5 November 2008 which was sent by the Provider to the Complainant and signed by the Complainant on 6 November 2008.

I have been provided with a copy of the Complainant's loan account statement from 2013. On 27 September 2013, the following credit entry appears:

MPPI Refund Adjustment €4,120.94

A copy of the Provider's record of correspondence relating to the Complainant's account has also been furnished in evidence. There is an entry from 5 November 2012 of a letter sent to the customer in respect of "*payment protection review mailing*". In an entry dated **30 August 2013**, the record notes a further letter sent to the customer and is described in the following terms

"MPPI Project Update – PPI policy cancelled/amended as part of CBI review (week ending 30/8) – further communication will issue to customer by end of September 2013."

The record from **27 September 2013** notes a letter sent to the Complainant in relation to "*MPPI Restitution – cheque issued to customer*". A further entry from the same date notes a letter sent to the Complainant in relation to "*MPPI Restitution – credit applied to loan account*". The final entry note is dated **23 October 2013** and records a letter sent to the Complainant. This is recorded in the following terms:

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“MPPI Project – Ltr sent to customer to confirm cancellation of MPPI policy”.

I note that the Provider has explained that due to the scale of the MPPI review undertaken in 2012/2013, it has retained only records of letters sent to individual customers and the template of those letters, rather than copies of each individual letter sent to customers. I have been furnished with copies of some (but not all) of the templates letters from the relevant period.

In the template letter of September 2013, customers were written to the following terms:

“Dear Customer,

As you are aware a number of institutions, including [the Provider], were asked to carry out a review of all Payment Protection Insurance (PPI) sales between 1st July 2007 and 30th June 2012.

Your policy was included in this review. We wish to confirm that having reviewed the sale of your PPI policy it was found that this sale was not carried out fully in accordance with the rules set out by the Central Bank of Ireland in the Consumer Protection Code 2006.

As a result, you are due a refund of the total amount of premiums paid and compensatory interest. Please find attached a cheque for the amount due.

If you are currently in arrears on your mortgage, a compensatory amount has been applied directly to your mortgage to reverse the impact of any interest that would have been applied to your PPI premiums.

If you were in arrears on your mortgage any time during the review period but not arrears now, your cheque includes a compensatory amount equal to any interest that was charged on your PPI premiums during this time.

If you were in the receipt of a refund previously, this amount has been deducted from your overall cheque amount.

Please note that this refund does not affect any other arrangements you have entered into with [the Provider].

We apologise for inconvenience caused as a result of this issue. If you have any queries, please do not hesitate to contact our dedicated Customer Helpline”

In a further letter dated **23 October 2013**, customers were written to following on from the previous correspondence sent in September 2013 regarding the refund sent to them on their MPPI policies. In that letter, the Provider stated that it wished:

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“to confirm that your policy (or your associated portion of your policy) has been cancelled and as a direct result you no longer hold cover in relation to MPPI on the above-mentioned mortgage account.”

The Complainant has stated that he did not receive any correspondence relating to the cancellation of the MPPI policy. The Complainant has not made any response to the suggestion that a sum of €4,120.94 was applied to his mortgage loan account in September 2013 or to the Provider’s statement that the refund cheque sent to him in the sum of €418.89 was encashed in October 2013.

These compensatory payments had previously been referenced by the Provider in letters responding to the complaint, prior to the involvement of this Office.

It appears that the Complainant made a complaint to a representative of the Provider on **23 October 2015**, regarding the cancellation of his MPPI policy without his instruction to do so. The Provider responded by letter dated 16 November 2015 as follows:

“The PPI Review Team concluded that the sale of PPI to you on [the mortgage account] may not have been carried out in full accordance with the Consumer Protection Code of 2006.

Consequently, a refund of €4,120.94 which included compensatory interest was lodged to your current account on 27th September 2013 and your PPI cancelled.

We confirm that the PPI Review Project advised you, in their letter dated September 2013, that they found that the sale was not carried out fully in accordance with the rules set out by the Central Bank of Ireland in the Consumer Protection Code 2006 PPI and that you were due a refund. We enclose a copy of this generic letter together with a copy of your account statement dated 31st December 2013 which details the refund and a copy of the letter sent to you on the 23rd October 2013 confirming cancellation of the policy and that you no longer hold cover in relation to Payment Protection on your mortgage.”

By letter dated 5 April 2018, the Provider wrote to the Complainant and stated as follows

“I wish to advise of the above policy was in place from 29/10/2008 until 23/08/2013 when it was cancelled following the Central Bank Insurance review of Mortgage Payment Protection policies.

During our review of your PPI policy, we were unable to establish that you met all of the required eligibility criteria when he took out the policy based on the information available to us.

<i>The following refund was given: Cheque</i>	<i>€418.89</i>
<i>Refund to mortgage account</i>	<i>€4,120.94</i>
<i>Total</i>	<i>€4,539.83</i>

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I trust this answers your query to your satisfaction. If you have any further queries, please do not hesitate to call our Customer Contact Centre”

It is unfortunate in the circumstances of the present case that the individual letters that the Provider says that it sent to the Complainant, have not been retained by it. The obligations of the Provider in relation to retention of records are set out under provision 11.5 CPC:

“A regulated entity must maintain up-to-date records containing at least the following:

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- c) all information and documents prepared in compliance with this Code;*
- d) details of products and services provided to the consumer;*
- e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;*
- f) all documents or applications completed or signed by the consumer;*
- g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and*
- h) all other relevant information and documentation concerning the consumer.”*

I note that the CPC obliges a regulated entity only to retain records of correspondence sent to customers; it does not oblige regulated entities to retain copies of the correspondence itself. As a general proposition, therefore, I consider it sufficient that the Provider has kept a record only where template-style correspondence has been issued to a customer, rather than retained copies of the individual letters.

The Provider has furnished copies of two template-style letters in respect of the cancellation of the Complainant’s MPPI policy – one from September 2013 and one from October 2013. As set out above, the September letter explains that a refund of the premiums paid by each customer is being issued to them due to breaches of the CPC 2006 in the sale of the policies.

Notably, this letter advising of the refund does not confirm that the policy has been cancelled, even though the Bank’s records indicate that on 30 August 2015, the decision had been made that it was appropriate to cancel the policy. The crucial October 2013 letter issued the following month explains that that the MPPI policy has been cancelled and that the customer no longer holds MPPI insurance. Each letter encourages the customer to call a specific customer care number if they have queries in relation to the cancellation of the MPPI policy.

The Provider’s record of correspondence indicates that the following letters were also sent to the Complainant:

- 5 November 2012 – letter explaining that a review was to take place in relation to the Complainant’s MPPI policy; and
- 30 August 2013 – letter explaining that the review has been completed, the MPPI policy cancelled and further communications would issue.

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If the Complainant was in receipt of all the correspondence which the Provider has a record of having sent to him, I do not think that the Provider could be criticised for having cancelled the MPPI policy in question. The letters explain the reason for the cancellation, provide compensation for each customer, and encourage the customer to contact the Provider if any questions arise. Most importantly, the October 2013 letter emphasises that because the policy has been cancelled, the customer no longer holds MPPI insurance.

The difficulty in the present case is that the Complainant has denied receiving any notification of relation to the cancellation of the PPI policy. He has not made any particular submissions in relation to specific letters that the Provider claims were sent to him, but has made the general complaint that he did not receive any notification of the cancellation of the policy. In effect, the Complainant has suggested that despite the fact that four letters are recorded as having been sent by the Provider, in relation to the issue of the cancellation of the MPPI insurance, not one of these was received by him.

Central to resolving the discrepancy between the parties in this complaint, in my view, are two key facts. The first is that a credit to the value of €4,120.94 was applied to the Complainant's mortgage loan account on 27 September 2013. If the Complainant was not sure why this amount of money was credited to his loan account, he was in a position to query this but did not do so. It is unlikely that such a large credit would have gone unnoticed by him and if it was, it should not have been. Further, the description of the credit on his annual statement was entitled "*MPPI refund adjustment*". The Complainant therefore ought to have contacted the Provider for a further explanation of the credit if he did not understand its significance.

The second and even more crucial aspect of the present complaint is that the Provider has stated that the restitution cheque that it sent to the Complainant on 27 September 2013 in the sum of €418.89 was cashed on 7 October 2013. This has not been denied by the Complainant. Since the cheque was cashed by the Complainant, he must also have received the correspondence that the cheque was sent with. This appears to have been the temple letter from September 2013, set out in full above. This September 2013 letter does not refer to the cancellation of the MPPI policy (as the October 2013 temple does) but it does refer to the review, the refund of the total amount of premiums paid and compensatory interest, the attached cheque, and compensation applied to the mortgage account. Further, the letter provides a customer care number for customers to contact if they have any queries.

In my opinion, even if this was the only letter received by the Complainant (and I accept as a matter of fact that this letter was received in light of the encashment of the cheque) I consider that that Complainant was thereby armed with sufficient information by the Provider, such that he should have understood that the refund related to his MPPI, and in my opinion, he ought to have made enquiries for further information if he did not understand why the refund was made.

In light of the above, I do not consider it appropriate to uphold the complaint. Although I do not propose to uphold the complaint, I would encourage the Provider to conduct a review of its system of communications.

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Although there is no regulatory requirement for a regulated entity such as the Provider to send letters by email in addition to post, the email option may be worth considering for customers such as the Complainant who claim that they regularly fail to receive postal communications.

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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

30 July 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.