



<u>Decision Ref:</u>	2019-0239
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Payment Protection
<u>Conduct(s) complained of:</u>	Mis-selling (insurance)
<u>Outcome:</u>	Rejected

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

Background

The complaint concerns the sale of three payment protection insurance policies by the Provider to the Complainant in 2002.

The Complainant's Case

The Complainant contends that he was mis-sold three payment protection insurance (PPI) policies by the Provider in 2002. These three disputed policies were taken out in conjunction with three separate lease agreement loans with the Provider. The Complainant contends that he had no choice but to take out the three PPI policies with the Provider in order to secure the lease agreement loans.

The Complainant claims that, at the time of taking out the three lease agreement loans with the Provider, he had advised the Provider that he already had insurance cover for Life & Critical Illness but that the Provider advised him that he was still required to purchase the three PPI policies. The Complainant also contends that he was self-employed when he took out the three disputed PPI policies in 2002.

The complaint is that the Provider mis-sold three PPI policies to the Complainant in 2002.

The Complainant seeks that the Provider fully refund him all premiums paid in respect of the disputed PPI policies, together with simple interest of 8% per annum as further compensation for being deprived of the money he paid for the PPI policies. The Complainant calculates this in the amount of €14,999.00 plus interest.

The Provider's Case

The Provider maintains that the PPI policies were optional and that the Complainant was aware of this and opted for the cover.

The Provider also asserts that the fact that the Complainant was self-employed would not have precluded him from making valid claims on the policies.

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 17 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, I set out below my final determination.

Before embarking on my analysis, it will be useful to set out the relevant terms from the policy before considering certain of the correspondence issued in this matter.

Policy Terms and Conditions

It is understood that Payment Protection insurance is optional and that the type of cover chosen may not be changed after this Agreement is signed.

Analysis

There are essentially two aspects to the Complainant's complaint. In the first part, he complains that he was "led to believe that taking out the policy would improve his chances of a successful application for a loan" and/or that he was told that "the cover was a condition to the agreement". Secondly, the Complainant alleges that the cover was of no use to him in circumstances where he was self-employed and in circumstances where he had separate adequate insurance in place. I will consider each of the two aspects of the complaint in turn.

The Complainant completed three 'Leasing Agreements', each dated 01/05/2002. Each of the three 'Leasing Agreements' contained a section entitled 'Payment Protection Plan' and, in each such section, a tick was included beside "Plan H: Life and critical illness cover". Each of the agreements is signed by the Complainant and each contains the following provision in the section immediately above the signature:

It is understood that Payment Protection insurance is optional and that the type of cover chosen may not be changed after this Agreement is signed.

The Provider set out the foregoing in correspondence to the Complainant of 23 October 2012 in response to the Complainant's initial complaint. The Complainant responded by a letter which carries the date '10 October 2012' but which is stated to have been sent on 30 October 2012. Certainly, this letter must have post-dated the letter of dated of 23 October 2012 insofar as it refers to the latter and indeed the Provider states that the letter was received on 31 October 2012. The Complainant's letter encloses an earlier letter from the Provider which is said to state that "in fact the Insurance cover was a condition of my agreement with them". The letter referenced by the Complainant would seem to be a letter of 8 May 2002. This letter included the following sentence:

With regard to Insurance Cover please note that it is a condition of your agreement with us that the above article be comprehensively insured.

The Provider responded (by letter of 2 November 2012) indicating that the foregoing was not a reference to the PPI but was rather a reference to the necessity for the Complainant to ensure, as per the terms of the lease agreement loans, that he had comprehensive insurance in place in respect of the machinery that was to be the subject of the Leasing Agreements. I am satisfied that the Provider's interpretation is correct in respect of this matter and indeed it is clear that Section 5 of the General Conditions of the Leasing Agreements required the Complainant to put in place the relevant insurance policies. The Complainant did not respond further to the Provider's letter of 2 November 2012.

The Complainant has advanced no other argument in support of his claim that the Provider communicated to him that the PPI was a condition precedent to securing the loans. In

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respect of the Leasing Agreements themselves, the Complainant disputes that he included the ticks in the PPI boxes, but he does not dispute that he signed the agreements, nor does he dispute that the agreements stated on their faces that the PPI was optional.

The Leasing Agreements clearly indicate the optional nature of the PPI and the supporting material produced by the Complainant does not alter this. Additionally, the Provider has maintained that the facilities were extended to the Complainant purely by reference to his successful track record relative to previous borrowings and by reference to his demonstrated repayment capacity. I accept that the facts bear out this proposition and that they do not support a claim that the loans were dependent on taking out the PPI or that they were more likely to be approved if PPI were taken out. Accordingly, I do not uphold this aspect of the complaint.

The second aspect of the Complainant's complaint relates to the suitability of the products. The Complainant suggests that the products were of no use to him as he was self-employed. This was not the case. The fact that the Complainant was self-employed would not have precluded him from making successful claims on the policies. The policies included life and critical illness cover for self-employed.

With regard to the Complainant's point that he had existing cover at the time of inception of the PPI policies, it is clear that these other policies did not cover the full extent of the potential repayment liability of the Complainant as regards the Leasing Agreements in the event of default. In addition, it would appear that the larger of the Complainant's two existing policies was assigned to a different bank. The PPI policies under consideration here were designed solely to address any future inability to repay the Leasing Agreements and I accept that the fact that the Complainant had other policies in place did not in any way undermine the validity of the inception of the PPI policies. In the circumstances, I do not uphold this aspect of the Complainant's 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**

9 August 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.

