



<u>Decision Ref:</u>	2019-0252
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Lending
<u>Conduct(s) complained of:</u>	Maladministration
<u>Outcome:</u>	Upheld

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

Background

This complaint is in respect of an investment product from a third party insurance provider which the Complainants sought to encash and the encashment was delayed, due to communications/document transfer and disputes over title between the Provider, against which this complaint is made, and third parties.

The Complainants' Case

The Complainants purchased an investment product on **22 April 2006**, with monies raised by the Complainants themselves and a loan from a third party bank.

The investment matured on **21 April 2016** with no loan repayments to the third party bank being missed in the interim.

The third party bank sold amounts owing in respect of the Complainants' loan to an Assignee Fund (which the Provider acts as an agent of). This was conducted by way of Deed of Sale on **21 November 2015** and the Provider commenced servicing on behalf the fund on **23 November 2015**.

On **19 April 2016** the Complainants' loan matured and on **23 April 2016** the Complainants wrote to the third party insurer to encash their policy and discharge their liability to the Assignee, of which the Provider was an agent.

The third party insurer responded advising that it required various documentation from the Complainants as well as from the Assignee, to which the third party insurer had written directly.

The Complainants forwarded the information requested from the third party insurer on **17th May 2016** and were then advised that there were "*legal complexities*" in respect of various legal documentation between the Provider and the third party insurer and the third party bank, which delayed them from gaining access to their fund by 6 months. In these six months the Complainants state that they received numerous "*threatening letters*" from the Provider. The Complainants contend that as part of the sale from the third party bank to the Assignee, the correct legal documentation was not in place to facilitate the release of the policy and the Complainants believe that the Provider did not provide the third party insurer with the documentation they had requested in a timely manner in order to facilitate the full surrender of the Policy.

The Complainants are further dissatisfied with the threatening letters received by them from the Provider during the period **May 2016** to **September 2016**.

The policy was ultimately encashed and payment from the policy was received by the Provider on **3 November 2015**. The Complainants are dissatisfied that the Provider did not encash the third party Property Bond Policy in a timely manner.

The Provider's Case

The Provider states that the third party bank, by way of a deed of sale dated **29 July 2015**, agreed to sell amounts in the Complainants' loan to the Assignee, of which the Provider is agent.

On **10 December 2015** the Provider contacted the third party insurer regarding the encashment of the property bond, the Provider was informed that in order to change the ownership on the Policy it required a Deed of Release from the third party bank and a Deed of Assignment from the Complainants to transfer the ownership to the beneficial owner.

On or about **7 January 2016** the Provider furnished the third party insurer with a redacted copy of the Deed of Sale, Deed of Assignment relative to the sale and the letters confirming the loan sales. On **8 January 2016**, the third party insurer confirmed to the Provider that it was changing the named interested parties to the policy. The third party insurer then sought sight of the original Deed of Assignment and further sought a certified copy when the original was not furnished.

On **2 February 2016** the Provider sent 43 cases to the third party insurer. The Complainants' policy was included. On **5 February 2016** the third party insurer indicated that it had changed

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its position and now required a Deed of Release from the third party bank and a Deed of Assignment over the Policy between the Assignee and the Complainants.

On **13 March 2016** the Provider engaged the services of solicitors to facilitate the transfer. On **5 May 2016** the solicitors sent the Deed of Confirmation to the third party insurer for review. On **9 May 2016** the solicitors liaised with the third party insurer regarding the information they required to be noted on the Deed of Confirmation and the Deed was finalised on **25 May 2016**. On **13 June 2016** the proposed Deed of Confirmation was highlighted to the third party bank for review. The third party insurer then placed a hold on the encashment of the policy. On **9 August 2016** the Solicitors executed the deed of confirmation. On **22 September 2016** the third party insurer requested further documentation from the third party bank.

The Provider asserts that it was unable to encash the secured policy in redemption of the loan upon its maturity due to issues posed by the third parties involved and these issues were not caused by the Provider.

The Provider states that the third party insurer and the third party bank were in possession of all required legal documentation pertaining to the sale of the loan and transfer of its attaching security allowing for the encashment of the policy at the maturity date. The Provider claims to have taken every action within its power and engaged all parties to ensure that the policy was encashed at the earliest opportunity.

The Provider furnished the third party insurer with a redacted copy of the Deed of Sale, Deed of Assignment relative to the portfolio sale and letters to customers confirming the sale from the third party bank and the Provider on **7 January 2016**. These documents were rejected by the third party insurer as it felt the documents were insufficient to encash its Property Bond Policies.

The Provider claims the letters issued to the Complainants were issued in accordance with the Provider's obligations under the Central Bank of Ireland's Consumer Protection Code 2012 (the "CPC"). The letters were issued to provide and update the Complainant's of the status of the loan. The letters were not issued with the intention of threatening the Complainants and the Provider contends the information contained within the letters met the Providers obligations under Chapter 8 of the Consumer Protection Code 2012. The Provider contends no action was taken on foot of the letters and there has been no negative impact to the Complainant's repayment profile recorded with the Irish Credit Bureau as a result.

Complaint for Adjudication

The complaint for adjudication is that the Provider caused the delay of the encashment of the Complainants' third party property bond and did not provide the relevant third parties with the required documentation in a timely manner in order to facilitate the encashment, that the Provider did not have the correct legal documentation in place in relation to the

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transfer of the loan and that “threatening letters” were sent to the Complainants in respect of their account.

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 Complainants were 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 22 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.

Having reviewed the documentation, it is clear to me that difficulties raised by the third party insurer for compliance purposes, whether necessary or unnecessary, led to the Provider being unable to encash the Complainants’ secured policy in redemption of the loan upon its maturity. These difficulties first became apparent in **December 2015**. The Complainants are dissatisfied with the delay on the encashment on the policy. The Complainants’ policy was sent to the third party insurer for encashment on **2 February 2016**. The Complainants’ loan matured on **19 April 2016**.

The Provider has acknowledged the delay in the encashment of the policy and recognised the inconvenience this delay caused, however it argues that it sought to have the policy encashed at an appropriate opportunity and it was due to the specific requirements demanded by the third party insurer in this instance that delayed the encashment.

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The Complainants believe that the Provider did not provide the third party insurer with the documentation they had requested to facilitate the full surrender of the Policy. The Provider attempted to expedite matters and engaged in correspondence with the third party insurer to facilitate the full surrender of the policy.

The third party insurer sought further documentation. It is submitted that this request was above and beyond what was required.

It is evident that the Provider was making attempts to resolve the legal issues involved in the encashment of the policy. It is clear that the Provider was in contact with the interested parties in an attempt to advance encashment. This involved retaining solicitors to prepare the legal documentation required. The Provider makes it clear that it provided legal documentation to the policy provider before the Brexit vote. It maintains that if the documents had been signed before then, it may have resulted in earlier encashment of the policy.

That said, the Complainant cannot be held liable for the delay in the encashment of the policy or any legal difficulties that arose. It is entirely the obligation of the third party that purchased the Complainants' loan to arrange for the orderly transfer of those assets and to ensure that it has proper evidence of the transfer of all the interests associated with those assets.

I find the encashment of the policy was in fact excessively delayed, and that this delay amounted to unjust and unreasonable treatment and has caused stress and inconvenience to the Complainants. It is clear to me that the sale of the Complainants' loan has played a significant part in the delays, frustration and inconvenience caused to the Complainants. It is evident from the correspondence that the Complainants received from the fourth party (the original loan provider) while they tried to engage with that party, it was informed "*The bank has no knowledge of the current position of the loan account since the date of sale. As such the agreement to the release of the assignment that you were seeking must be provided for by the purchaser and as such you will require to contact [the Provider], as previously advised, to resolve this matter*". While it may be the case that the fund to which the loan was assigned is in many respects the most appropriate respondent to this complaint, I note that in all of the correspondence, the Provider has indicated that it was acting on behalf of the assignee and that the complaint should be dealt with by the Provider. Therefore, I find that the Provider must take responsibility for the issues that resulted from the transfer of the loan to the fund, as I believe due diligence should have been carried out and the Complainants should not have been disadvantaged in the manner in which they were, as a result of the sale and transfer of their loan.

As regards the complaint in respect of the content and tone of the arrears letters sent from the Provider to the Complainant, I note that the Provider's contention that it is obligated under Chapter 8 of the Consumer Protection Code 2012 to issue these letters to the Complainant. Chapter 8.6 of the Code states that;

"Where an account remains in arrears 31 calendar days after the arrears first arose, a regulated entity must within three business days inform the personal consumer and

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any guarantor of the loan, on paper or on another durable medium, of the status of the account.”

However, I note that one of the Complainants had to enquire on his own initiative as to what the arrears letters were in relation to, in circumstances where the Complainants had sought to encash the policy previously. I also note that no explanation for the letters was forthcoming until the Complainants raised a query about the letters, having become distressed by the content of these letters. I note the Provider’s explanation that they were “system generated” letters. This was not reasonable considering the lack of follow up and/or explanation of the reason for the issuance of these letters.

Accordingly, I find it most unacceptable that the Complainants received arrears letters from the Provider at a time when the Provider was fully aware that it was its inability to encash the policy, which was causing the problem.

The Complainants had a specific “case handler” and the Provider should have taken the necessary course of action to inform and assure the Complainants that these letters were “system generated” and to put the respective Complainants at ease in relation to them.

For the reasons set out above, I uphold this complaint and direct that the Provider pay a sum of €8,000 to the Complainants. Notwithstanding that the Provider states that it did not report the “arrears” to the ICB, I propose to further direct that the Provider ensure that the Complainants’ credit record is not negatively impacted in any way by these issues.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2) (b), (c) 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 rectify the conduct complained of by (i) ensuring that the Complainants' credit record is not negatively impacted in any way by these issues and (ii) by making a compensatory payment to the Complainants in the sum of €8,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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**

14 August 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.