



<b><u>Decision Ref:</u></b>	2019-0264
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Mortgage Protection
<b><u>Conduct(s) complained of:</u></b>	Mis-selling (insurance)
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The complaint relates to the Complainants' mortgage protection assurance policy in connection with a mortgage loan taken out with the Provider in **2008**.

**The Complainants' Case**

The first Complainant submits that, in **December 2007**, when he was aged 65, the Provider insisted that he take out a life assurance policy as part of a loan taken out by his son, the second Complainant. (The first Complainant maintains that his understanding was that he was a guarantor of the loan rather than a co-borrower.) The first Complainant states that

*"I was most reluctant to agree to this but was left with no option as [the Provider] refused to release the mortgage money unless I did... In order to assist my son I had no option but to take out the life assurance at a monthly premium of €311.75".*

The first Complainant submits that he was unaware at the time that the Provider had no right to force him to take out the life assurance policy "under the regulations" as he was over 50 years of age. The first Complainant states that the Provider has "steadfastly refused to address the central issue of their regulations breach, preferring instead to trot out the fact that the issue was agreed by solicitors at the time".

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

The Provider submits that the Complainants were co-borrowers in a joint mortgage. The Provider acknowledges that there is no statutory obligation on it to ensure that a borrower over the age of 50 years has adequate mortgage protection however the Provider maintains that it is entitled to insist on mortgage protection nonetheless if it considers that appropriate.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully required the first Complainant to incept a mortgage protection assurance policy in circumstances where it was not necessary or appropriate for it to do so. The Complainants want the Provider to refund 62 monthly premiums paid totalling €19,328.50 in respect of the mortgage protection assurance 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 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 9 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.

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Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Prior to considering the substance of the complaint, it is useful to set out certain provisions of the relevant legislation:

***Section 126 of the Consumer Credit Act 1995***

*(1) Subject to the provisions of this section, a mortgage lender shall arrange, through an insurer or an insurance intermediary, a life assurance policy providing, in the event of the death of a borrower before a housing loan made by the mortgage lender has been repaid, for payment of a sum equal to the amount of the principal estimated by the mortgage lender to be outstanding in the year in which the death occurs on the basis that payments have been made by the borrower in accordance with the mortgage, such sum to be employed in repayment of the principal.*

[My emphasis]

*(2) Subsection (1) shall apply as respects all housing loans except—*

...

*(c) loans to persons who are over 50 years of age at the time the loan is approved*

**Analysis**

There is agreement in this complaint that the Provider insisted on the first Complainant taking out a life assurance policy. The Complainant argues that this was in breach of “regulations” and that the Provider should not have so insisted.

The first Complainant in this case maintains that, at all relevant times, he understood that he was acting as guarantor for the borrowing of his son, the second Complainant (for €266,000.00) and that he was not in fact a co-borrower with his son on a joint mortgage. The loan documentation does not however bear out this contention.

**Mortgage Application Form**

The mortgage application form, signed by the Complainants, includes the names of the second and first Complainants as the “*First Named Applicant*” and the “*Second Named Applicant*” respectively. The document lists the first Complainant’s net monthly salary as €6,000.00. This document also includes the first Complainant’s name in the ‘Guarantor Details’ section however immediately below this, a handwritten entry describes the first Complainant as “*Applicant 2*”.

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Loan Offer Letter

The 'Particulars of Offer of Mortgage Loan' document which ensued from the application and which was signed by both Complainants records the "*Customer name*" as both the first and second Complainant. The Special Conditions listed in the same document include the following:

*Although the Customers are jointly and severally liable for all obligations on the mortgage loan account, after receipt by the Bank of sums sufficient to reduce the balance to €172,000.00 on application in writing to the Bank, [the first Complainant] will be released from further liability for the mortgage loan.*

There is no reference in the mortgage offer documentation to any guarantee or guarantor. There is equally no 'Memorandum of Guarantee'.

The fact that the Complainants had the benefit of legal advice from a solicitor in the context of this application for loan facilities, is also a matter of some significance. Furthermore, a document submitted by the Complainants' broker (against whom the Complainants have not raised any complaint) to the Provider dated 14-11-07, having noted that the first Complainant was happy to act as guarantor, went on to state:

*So it is to be joint mortgage single title.*

In the circumstances, I am satisfied that the documentation rendered it clear that the first Complainant was acting as a joint borrower (as confirmed by his broker). I am also satisfied that the Provider in no way misled or "*conned*" the Complainants as to this fact.

This aspect of the parties' dealings sets the background to this complaint. The issue to be determined is whether the Provider was entitled to insist that the first Complainant take out a life assurance policy.

The first Complainant describes this a breach of regulations and states that the Provider "*had absolutely no right*" to adopt this position, which he characterises as a "*scam*". However, the Complainants do not identify the specific regulation said to be breached. There is a more general reference to "*age restrictions*", to a "*maximum allowable*" age of 50 years, and to advice received from 'MABS'.

It would seem to me that the unnamed 'regulation' invoked by the first Complainant is likely to have been **Section 126** of the **Consumer Credit Act 1995** as quoted above. I am not satisfied that the Provider's conduct can be viewed as a breach of this provision. The provision imposes an obligation on banks to seek life assurance policies from borrowers. An exception to the rule is provided in respect of persons over 50 years of age, as the first Complainant was at the relevant time. However, whilst there is no obligation on the Provider to seek life assurance cover if a borrower is over 50 years old, nevertheless, the provision does not in any restrict a bank from seeking such a policy from an individual over 50. The provision simply removes the statutory requirement for same.

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The Provider was still free, in its commercial discretion, to insist on the inception of the policy and indeed it can be argued, as the Provider has done, that this simply amounted to prudent management given the fact that the first Complainant was a co-borrower and given that the second Complainant qualified for mortgage in his sole name in a much reduced amount only (€172,000.00). [The first Complainant qualified for a loan in his sole name of €108,000 only, hence giving rise to the identification by the Provider of the amount of €110,000 as the sum to be assured by the first Complainant.]

There have been multiple references by the first Complainant to “*appalling coercive methods*” and “*bullying*” and “*dishonest*” conduct on the part of the Provider in ‘forcing’ him to incept the policy. I am not satisfied that this complaint has been substantiated in any fashion and indeed I have been furnished with no evidence supporting the allegations made.

The Provider in this case made it a condition of the loan (as it was entitled to do) that the first Complainant incept the life assurance policy. If that condition, or indeed any other condition, was not acceptable to the Complainants, they were free to decline the loan offer and seek finance elsewhere. The fact that the condition was required to be satisfied is not in any way inappropriate nor does it constitute inappropriate coercion.

In light of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainants, I do not consider it appropriate to 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.**

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

13 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.

