



<b><u>Decision Ref:</u></b>	2020-0045
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Mortgage Protection
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to the refusal by the Provider to indemnify the Complainants for a claim under their mortgage payment protection policy.

**The Complainants' Case**

The Complainants applied for and entered into a mortgage payment protection policy purchased through a third-party provider on **21 August 2002**. The policy was renewed annually. The Complainants were paying a monthly premium of €39.15. The policy provided cover for mortgage repayments in the event that the Complainants could no longer continue making payments either through disability, or involuntary unemployment.

The First Complainant states that she was employed for 13 months as a [details of role redacted] under an open-ended contract from **8 August 2016 to 29 September 2017**.

The First Complainant made an involuntary unemployment claim under the policy by way of a claim form dated **20 November 2017**. The claim was assessed and declined on **1 December 2017** by the Provider.

The First Complainant states in her complaint form submitted to this Office, that the Provider refused to accept her claim as her contract of employment was not renewed within her 13-month period of employment. The First Complainant states that she has explained to the Provider that in the public sector, such a renewal is not an option, especially on a temporary open-ended contract.

The First Complainant appealed the decision of the Provider to decline the claim by way of letter dated **8 January 2018**. The First Complainant asked the Provider to review its decision based on the fact that the opportunity for the renewal of a temporary contract within the public service, does not occur. The First Complainant also requested that the Provider take into consideration that she had been a customer of the Provider's for more than 14 years. Subsequent to the First Complainant's appeal, the Provider maintained its decision to decline the claim and communicated this to her in a letter dated **16 January 2018**.

By email dated **22 October 2018**, the First Complainant stressed that the responses received from the Provider to date, referenced a "Fixed Term Contract" whereas she was employed as a [details of role redacted].

On **12 November 2018**, the First Complainant sent a further email to this Office stating that she had tried to explain to the Provider how the public sector recruitment process operates but that the Provider was unwilling to listen. The First Complainant clarifies in this email that she entered into the public sector department in question on an open-ended contract on the understanding that she would be following normal practice, which in most cases means covering for a period of 13 weeks, however she was asked to stay on in a different section of the department for a further period of time.

The First Complainant believes that the attitude of the Provider is unfair and that the Provider is breaking the conditions of the mortgage payment protection policy, for reasons which are completely out of her control. She does not accept that the failure of the public sector body to renew her contract during the 13 month period when she was in employment, amounts to a valid reason to dismiss her claim.

Ultimately, the Complainants want the Provider to pay benefit under the policy, for the duration of the time during which the First Complainant was unemployed.

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

On **28 November 2018**, the public sector body which had employed the First Complainant, confirmed to the Provider via email that the First Complainant was employed from **8 August 2016** to **29 September 2017** on a Fixed Term Contract in a temporary, non-established position in the civil service and that her employment was never intended to be permanent.

The Provider's position in relation to the complaint is repeated in both its original decision to decline the claim on **1 December 2017** and its decision to decline the appeal on **16 January 2017**.

The Provider refers to the following conditions of the insurance policy:

*"Fixed-term contract*

*If your fixed-term contract of employment ends, whether you are working on a PAYE or self-employed basis, you will not be able to make an involuntary unemployment claim unless:*

*you have been in continuous work with the same employer for at least 12 months and your contract has been renewed at least once; or*

*you were originally employed permanently by the same employer for at least 12 months but were transferred to a fixed-term contract of employment by the employer without a break in employment and you had no reason to believe that it would not be renewed again.”*

On **15 March 2018**, in its final response letter, the Provider stated that

*“if your fixed term contract of employment ends, whether you are working on a PAYE or self-employed basis, you will not be able to make an involuntary unemployment claim unless: you have been in continuous work with the same employer for at least 12 months and your contract of employment has been renewed at least once.”*

### **The Complaint for Adjudication**

The complaint is that the Provider has wrongfully refused to admit the First Complainant’s claim for benefit payments.

### **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.

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A Preliminary Decision was issued to the parties on 15 January 2020, 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.

#### POLICY TERMS AND CONDITIONS

I note that the terms and conditions of the payment protection policy contain details from Page 14 onwards of “**Involuntary Unemployment Cover**” and at Page 16, under the heading “**Fixed Term Contracts**” the following details are made clear:

##### *“Fixed-term contract*

*If your fixed-term contract of employment ends, whether you are working on a PAYE or self-employed basis, you will not be able to make an involuntary unemployment claim unless:*

- *you have been in continuous work with the same employer for at least 12 months and your contract has been renewed at least once; or*
- *you were originally employed permanently by the same employer for at least 12 months but were transferred to a fixed-term contract of employment by the employer without a break in employment and you had no reason to believe that it would not be renewed again.”*

I further note that despite the First Complainant’s contract being one of a temporary nature, it was a fixed-term contract of employment.

I note that the terms of the payment protection policy as outlined above were clear. For the First Complainant to benefit from the protection policy for unemployment, she was required to have been in continuous work with the same employer for at least 12 months and to have had her contract of employment renewed at least once. While, I accept that the First Complainant was in employment for a period in excess of 12 months, I am unable to accept that her contract was renewed. In coming to this decision, I have placed particular reliance on the statement from the public sector body which employed the Complainant, to the effect that the First Complainant was employed for a period of 13 months, on a fixed term contract, as a temporary employee. Indeed, the Complainant herself does not suggest that the contract was renewed. Her own correspondence in January 2018 confirmed that:-

*“...the opportunity for a renewal of a contract did not occur within the Public Appointment Service.”*

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I also acknowledge that while the Complainant may have been under the impression when beginning her employment within the public sector, that she was entering into a contract for a 13-week period which was then subsequently extended, this belief is not supported by the documentary evidence and, given the correspondence referred to above, it is apparent that this was not in fact the position of the public sector department.

Accordingly, while I understand the Complainants' frustration, I must accept that the Provider was entitled, under the terms and conditions of the payment protection policy, to refuse to indemnify the First Complainant for her claim under the payment protection policy and accordingly this complaint cannot be upheld.

### **Conclusion**

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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.**

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

6 February 2020

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.