



<b><u>Decision Ref:</u></b>	2020-0059
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Mis-selling Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

The Complainants, a husband and wife, took out a mortgage loan with the Provider in 2006 for the purchase of a holiday home. One of the conditions of the drawdown of the funds was that each of the borrowers were required to take out a policy of life insurance. The Complainants thought that they had both taken out life insurance in 2006 but they discovered in 2016 that life insurance had in fact been taken out in respect only of the First Complainant (wife) and not in respect of the Second Complainant (husband). The Complainants are aggrieved by what they consider to have been lack of communication from the Provider in relation to this issue. They claim that they would not have taken out the mortgage if they had been aware that life insurance was not available in relation to the Second Complainant.

The Provider relies on a declaration form signed by the Complainants in 2006 which acknowledges that life insurance was not available for the Second Complainant and sought a waiver of the condition that both lives be insured. It argues that the Complainants were therefore aware that there was no life insurance available for the Second Complainant. The Provider further asserts that the life insurance product was organised through a third party provider and so it does not have access to the relevant documentation but assumes that it would have been clear from the policy documents and regular statements sent that the life insurance policy was taken out in respect of the First Complainant only. The Provider further asserts that as the property was not the principal private residence of the Complainants, there was no obligation under the Consumer Credit Act 1995 for insurance to have been put in place and that the waiver signed by the Complainants in effect requested that the Provider would waive the condition for life insurance in respect of the Second Complainant. The Provider was then entitled to waive the condition or not at its sole discretion.

### **The Complainants' Case**

In a complaint to this office, the Complainants explain that when the First Complainant was at a branch of the Provider in March 2016 going through certain paperwork, the Provider's representative that she was dealing with, pointed out to her that there was an issue arising in relation to her mortgage loan. It transpired that her husband, the Second Complainant and co-borrower, was not insured in relation to the mortgage. The First Complainant was encouraged by the branch manager to look into the issue. The First Complainant states that she could not believe that the Second Complainant was not insured. The First Complainant does not understand how the mortgage could have been approved if the Second Complainant was not insured as in her eyes, the Provider effectively broke its own rules by approving the loan without the necessary medical report for the purposes of the insurance. She states that she and her husband would not have gone ahead with the mortgage if they had been informed about the issue in relation to the Second Complainant's insurance cover in 2006.

Following the meeting in March 2016, medical tests were arranged for the Second Complainant and the Complainants were informed that insurance would be provided for the Second Complainant. The First Complainant states that she had been paying the sum of €70.33 per month for the last 10 years which she understood was a payment for herself and her husband but the insurer is now seeking a sum of €100 per month for both parties. The First Complainant states that the situation has been extremely stressful and that they have never missed paying any mortgage payments.

The First Complainant states that the Provider took it upon itself to approve the mortgage without informing them about the issue in relation to insurance cover for the Second Complainant. She reiterates that they would not have taken out the mortgage if she had been told about the issue. She states that they were asked to sign a lot of papers by the Provider but that this issue was not explained to them. She argues that if her husband had died during the last 10 years, it would only have been then that she realised that there was an issue and she would have lost the house. In relation to remedy, the Complainants state that it is very hard to provide a payment calculation to reflect the risk of the Second Complainant having passed away in the last 10 years.

The Complainants take issue with the Provider stating that the Complainants had planned to rent out their family home to their children as the reason why they were seeking to purchase the second property in 2006. The First Complainant says that this was never said by her or husband and the holiday home was purchased for themselves so that they could get away at weekends and holidays. She argues that both houses (i.e. their Dublin home and the holiday house) are their principal residences. She points out that the conditions of the loan state that a life insurance policy has to be put in place before the drawdown of the loan. In relation to any delay in getting a doctor's report for insurance purposes, the First Complainant states that their family doctor has a very busy surgery and that he provided a report as soon as he could.

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The Provider had a nurse sent out to the house to give the Second Complainant a medical. The First Complainant notes that the Provider has stated that the third party insurance provider informed it that it was not able to proceed with life cover for the Second Complainant in 2006, on the basis of the contents of the medical report. The First Complainant queries what came back in the report as the Complainants were never told anything about this report. There is also reference to an intention to have the Second Complainant reviewed again in three months and again that this was never explained to them.

The First Complainant states that this is shocking in circumstances where the Complainants were being exposed to a loss of €20,000. She states that the correspondence submitted from the Provider indicates that it was aware of the importance of the issue but chose to leave the Complainants exposed to a huge loss if anything had ever arisen that necessitated calling on the policy.

In relation to the disclaimer form that was signed, the First Complainant argues that they were just asked to come to the Provider's premises and sign papers but that it was not explained to them that the Second Complainant would not be insured. She argues that it is not satisfactory that the Provider would hand people paperwork to sign to conclude an agreement and not verbally inform people of any major conditions like the medical issue when people are organising an exceptional transaction like a mortgage. She argues that the Provider was the one providing the mortgage and it was on the basis of the joint earnings of herself and her husband. She questions how the Provider could approve the loan on the basis of her earnings alone without informing them or explaining this to them. She reiterates that they would not have taken out a mortgage without life cover on her husband's life. The Provider was the one that informed her of the need for a life insurance for both of their lives in order to process the loan and it made an appointment with the third party life insurance personnel so she questions which company is really at fault and wonders if they are not in fact the same company. She questions why insurance is now available for the Second Complainant when it was apparently not available in 2006.

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

The Provider states that the Complainants purchased the relevant property pursuant to a mortgage loan offer dated 12 May 2006 where €183,600 was advanced to them for a term of 20 years. General Condition 3 of the offer letter provides that the Provider must be furnished with evidence that the Complainants have an effective life insurance policy in place. Condition 3 further states that where the Provider, in its absolute discretion and strictly where permitted by law, agrees to waive the requirement to effect the life policy in respect of the borrower or any one of them, a disclaimer in the Provider's standard form must be completed and furnished to the Provider prior to drawdown of the loan. It accepts that at the time of drawdown, the Complainants purchased the life policy in the sole name of the First Complainant and that there was no life cover in place for the Second Complainant.

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The Provider states that at the time of the Complainants' application for the loan, they were living in their Dublin property and wanted to keep their existing primary dwelling house as it was mortgage free and they had family who wanted to rent from them. They were seeking to borrow 90% finance to purchase a property (the holiday home) which would be their new primary dwelling house and it was on this basis that the Provider approved the loan. The Provider notes that the Complainants are not living at the holiday home property and that they continue to reside at the Dublin property. The Provider argues that if the holiday home property is not the Complainants' principal residence, then there is no requirement for the Complainants to have life cover in place.

The Provider argues that it is not a party to the life policy and that the life policy is understood to have been underwritten by a third party life insurance provider which is a separate legal entity to the Provider.

The Provider therefore states that it holds no details in relation to the life policy nor does it hold any details of the Complainants' dealings with the third party insurance provider in relation to putting the life policy in place, or the cover which it did or did not provide to them. The Provider states that it can merely comment on the circumstances in which the Provider accepted the life policy as a condition of the offer letter.

The Provider has submitted certain internal notes which show that its credit department contacted a mortgage adviser at the Complainants' branch of the Provider on 16 June 2006 to advise that there had been delays in getting life cover put in place due to medical reports not being returned by the Complainants' doctor. This internal note states that neither Complainant was exempt for any reason under the Consumer Credit Act 1995 so the Provider could not waive the requirement and needed life cover in place at the time of drawdown and recommended that the Complainants keep pushing their doctor to return the relevant reports.

In an internal note dated 21 June 2006, the mortgage adviser in question contacted the credit department stating that word had been received from the third party life insurance provider that it was not in a position to proceed with life cover for the Second Complainant because of the medical report received and requested that the condition for life cover be waived in relation to the Second Complainant. He stated that life cover was in place for the First Complainant. He stated that life cover in relation to the Second Complainant would be reviewed again in three months by the third party life insurer and stated that the case was urgent as the Complainants would lose out on a deposit of €20,000 if the cheque was not issued by the following day. The Provider's credit department requested that the mortgage adviser forward on the letter of refusal from the third party life insurer.

On 22 June 2006, the mortgage adviser in question faxed a copy of a "Disclaimer Form Mortgage Protection Insurance" to the Provider's mortgage department. In this form, the Second Complainant acknowledges that he has been approved for a housing loan by the Provider and that the Provider has offered to arrange a life assurance policy for him under section 126 of the Consumer Credit Act 1995. The form states that the Second Complainant confirms that he would not be acceptable to an insurer because of a letter of refusal from the insurer.

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The form further contains an acknowledgement by the Second Complainant that he has been advised by the Provider to obtain independent legal advice prior to signing the disclaimer and that he acknowledges that the Provider has no obligation to arrange insurance on his behalf. The Provider highlights that the disclaimer form in question was signed by both the Complainants in the presence of the Provider's official, the mortgage adviser.

The mortgage adviser in question contacted the credit department of the Provider later on 22 June 2006 stating that the third party life insurance company had confirmed it was declining life cover for the Second Complainant and that a new policy was being created in the sole name of the First Complainant. He further advised the credit department that he had received the original disclaimer signed by both Complainants and undertook to forward the original overnight. A cheque was then printed on 22 June 2006 in the amount of €183,600 resulting in the mortgage loan being drawn down on 26 June 2006.

The Provider rejects the Complainants' assertion that they were unaware that the Second Complainant was not insured and points to the fact that both Complainants signed the disclaimer form which clearly stated that the Second Complainant would not be acceptable to an insurer.

The Provider notes that this form was signed by the Complainants prior to the cheque being printed and issued by the Provider. The Provider therefore submits that both Complainants were aware that the Second Complainant was not insured as they confirmed this to the Provider in writing. The Provider argues that the Complainants have a duty to review the life cover which they put in place and to satisfy themselves with the cover provided thereunder. The Provider states that it has to assume that any life cover which was put in place was addressed to the First Complainant and in her sole name and that the life cover policy schedule evidenced that the First Complainant was the only life assured. The Provider assumes that there was no reference to the second named Complainant being insured and that annual benefit statements would have also evidenced this. The Provider therefore does not accept the Complainants were unaware that the Second Complainant was not covered under the life policy and suggests that the Complainants had a duty to review the life cover in place. In relation to references to medical appointments and reports which have been carried out, the Provider assumes that these are in relation to arrangements for the Complainants to put life cover in place with the third party insurance provider and as a result the Provider is not party to these appointments or reports and cannot comment on them.

The Provider reiterates that it was not a party to the life cover provided so it cannot comment on any allegation of maladministration in relation to that. The Provider states that it accepted the life cover provided by the Complainants and was entitled to waive the life cover on the Second Complainant pursuant to section 126(2) of the Consumer Credit Act 1995.

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## 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 10 January 2020, outlining my preliminary determination 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.

At the outset, I note the Provider has on a number of occasions suggested that the Complainants intended to rent the house to their children. In response, the First Complainant has stated:

*"I don't know how someone can say we were going to rent the house to our children as our children at the time were aged [between 23 and 15]. This comment has been made twice... which was never said by [Second Complainant] or myself. This is not true".*

I don't know where this suggestion or comment emanated from. I have been provided with no evidence that the Complainants ever stated this and I accept their position on the matter.

It is useful to start with the contract entered into between the parties to the dispute. General Condition 3 of the loan offer provides as follows:

*"Prior to drawdown of the Loan the Lender must be furnished with evidence that the Borrower has affected the Life Policy . . . .*

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*The borrower must pay all premiums on the Life Policy . . . when due and must maintain the Life Policy . . . in full force and effect until all money owing to the Lender in connection with Loan has been repaid in full.*

*The original Life Policy . . . must be furnished to the Lender prior to drawdown of the Loan. Where the Lender, at its absolute discretion and strictly where permitted by law, agrees to waive the requirement to affect the Life Policy in respect of the Borrower (or any one or more of them) a disclaimer in the Lender's standard form must be completed and furnished to the Lender prior to drawdown of the Loan."*

I note that the Complainants signed and accepted the offer letter on 30 May 2006 and thereby agreed to be bound by the relevant terms and conditions.

I have been provided with a copy of a disclaimer form signed by the Complainants in relation to mortgage protection insurance. This form is extremely important in the context of the current complaint so it is worth setting out in some detail. The form provides as follows:

*"I [the Second Complainant] of [Dublin address] hereby acknowledge that I have been approved for a housing loan by [the Provider] and acknowledged that the [Provider], in compliance with section 126 of the Consumer Credit Act 1995 (the "Act"), has offered to arrange a life assurance policy providing, in the event of my death before the housing loan made by the [Provider] has been repaid, for payment of a sum equal to the amount of the principal estimated by the [Provider] 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 principal.*

...

*Please tick the relevant box below:*

...

- *I would not be acceptable to an insurer because (see attached letter of refusal from insurer)*

...

*I acknowledge that I've been advised by the [Provider] to obtain independent legal advice prior to signing disclaimer form. I acknowledge that arising from the above, the [Provider] has no obligation to arrange mortgage protection insurance on my behalf."*

This form is signed by both Complainants and each of their signatures is witnessed by the mortgage adviser of their local branch. By his signature, the Second Complainant confirmed and acknowledged that he was not acceptable to an insurer because of the letter of refusal and that the Provider had offered to arrange a life assurance policy for him. By her signature, the First Complainant, as joint borrower, acknowledged that she was aware that the Second Complainant will not have mortgage protection insurance.

The Complainants have suggested that they were requested to sign paperwork by the Provider to complete the mortgage transaction and they do not dispute the presence of their signatures on the relevant document.

On the basis of their submissions, it would appear that the Complainants either did not read the relevant documentation which they signed in 2006 or did not understand it. While I have considerable sympathy for the Complainants in this regard owing to the importance of the document in question, the fact remains that the disclaimer form was in fact signed by them. Regardless of whether it was read and/or fully understood, by their signatures the Complainants confirmed that they were both aware that life insurance had been denied in respect of the Second Complainant.

Section 126(1) of the Consumer Credit Act 1995 (CCA 1995) provides that a mortgage lender must arrange a life assurance policy providing for the payment of a sum equal to the amount of the mortgage in the event of the death of a borrower before a housing loan is made. Section 126(2) carves out exceptions to this general obligation where: (a) the house in respect of which the loan is made is not intended for use as the principal private residence of the borrower; or (b) the loan is to persons who belong to a class of persons who would not be acceptable to an insurer. The Provider seeks to rely on section 126(2)(b) i.e. that the Second Complainant belongs to a class of person who would not be acceptable to an insurer. This is supported by the declaration form by which the Complainants confirmed, through their signature to that form, that the Second Complainant would not be acceptable to an insurer. It appears from the records available that the third party life insurance provider had declined to provide life insurance in 2006 in respect of the second named Complainant, though no detail or no record of this has been provided to me.

I must accept the argument of the Provider that the Complainants are not entitled to claim that both the Dublin property and their holiday house are their principal private residence. There can only be one principal private residence and it appears from papers available that the principal private residence of the Complainants is the Dublin property and not the holiday home in respect of which the loan was drawn down in 2006. It appears that the Provider may have been under the impression in 2006 that the Complainants intended that the holiday house would become their principal private residence at some point but this does not appear to have occurred. In such circumstances Provider may also have been able to rely on section 126(2)(a) as an exception to the requirements of the CCA 1995, though this issue does not have to be definitively determined as I accept that the exception set down in section 126(2)(b) applies. In the circumstances, I accept that the Provider is not in breach of its obligations under the CCA 1995.

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The circumstances of the present complaint are unusual. The Complainants have suggested that they received no communication or correspondence from the third party life insurance provider to indicate that the Second Complainant had been denied cover pursuant to their application. The Provider, against which this complaint is made, argues that it was not a party to the life insurance agreement and therefore holds no documentation in relation to it. While it would appear on the basis of the records of the internal communications provided to me that there was some communication from the third party life insurance provider to the Provider to indicate that cover had been denied to the Second Complainant, I accept that the two providers are separate legal entities. I also accept that the Provider is not obliged to and cannot account for communications that did or did not occur between the Complainants and the third party life insurance provider.

In this regard, I note that the Complainants question which company is really at fault and they have raised a number of questions in relation to the actions of the third party insurance company.

For example, in response to a query I raised with the Provider in relation to communications it received from the third party insurance company, the Provider stated as follows:

*"... (i) The Bank encloses a copy screenshot (Appendix 1) of an email from [third party insurance company] to the Bank on 19 April 2016 in which it states the following:*

*'We didn't refuse cover on [Second Complainant]. We [were] underwriting the customer [from March to June 06 and further medical tests were outstanding. However, they then instructed us not to proceed with the application in July. It looked like the male life would be postponed. So, it's likely that the agent was giving them the update verbally at which point they instructed us to withdraw the joint application. We wrote on 3/7/05 confirming the application was withdrawn".*

The First Complainant takes "grave exception" to this statement and states:

*"We did not draw down this mortgage until 26/6/06 why they underwriting us from March to June 2006?*

*Who are they referring to when they say "however, they then instructed us not to proceed with the application in July".*

While these are legitimate concerns and questions on the part of the Complainants, they are more appropriately directed to the insurance company which is not being investigated as part of this complaint.

This is because the comment in question is a comment from the third party insurance company to the Provider. I cannot hold the Provider responsible for those communications.

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I accept that further information on what exactly transpired at the relevant time may be available through this third party. However, the conduct of the third party insurance company does not form part of this investigation or adjudication.

Based on the evidence before me, I have to accept the submissions of the Provider that the application that was latterly made in respect of the life insurance cover actually put in place in 2006 specified life cover for the First Complainant only. It also stands to reason that all subsequent documentation that has been received from that life insurance provider by the Complainants, including the policy schedule and benefit statements, have been addressed to, and stated to be in respect of the First Complainant only.

It is troubling that it has been suggested by the Complainants that they were simply asked to sign a document or documents by the Provider's representative but that no explanation was provided for the requirement to fill out the relevant disclaimer form or what it entailed. It is hard to understand how a situation could have arisen whereby the official in question did not allude at least in general terms to what was happening and why an additional document was required to be signed by the Complainants in his presence. However, I have no reason to doubt the Complainants' version of events and at the very least it would seem that the Complainants did not understand what was happening.

On the other hand, there is no legal requirement for a mortgage lender to explain documentation in relation to a mortgage loan or to provide advice where a mortgage has been applied for. The law is clear in this regard that persons are bound by the documentation that they sign, subject to very limited exceptions which do not arise in the present case. The document in question is clear and, in signing, the Complainants acknowledged that the Second Complainant had been refused insurance and that the Provider had complied with its obligations under the Consumer Credit Act 1995. I note that the form was signed on a different date to the acceptance of the loan offer. I also note that the Consumer Protection Code 2006 was not in force at the time that the conduct in question occurred.

Pursuant to General Condition 3 of the mortgage offer, the Provider was entitled at its own discretion to waive a requirement for life insurance in respect of the borrowers on receipt of the relevant disclaimer form. In this case it waived the requirement in respect of the Second Complainant only and not the first. If this condition precedent had been waived with no input whatever or disclosure to the Complainants, there may have been an argument available to them that the condition precedent in question was designed for the benefit of both parties to the contract and not just the Provider, despite the wording of the clause in question. In circumstances where the relevant declaration form has been signed by the Complainants, however, this argument cannot be made. The Provider was therefore entitled to rely on the declaration form and to waive the condition for life insurance in respect of the Second Complainant.

I appreciate that this has been a very stressful experience for the Complainants. It is extremely fortunate that the lack of life cover in respect of the Second Complainant was discovered in 2016 before any harm or damage in fact occurred as a result of the confusion that has arisen in the present case. I am glad to note that insurance cover has now been put in place to cover both of their lives as originally envisaged.

For the reasons outlined above, I do not 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.**

**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

5 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.**