An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0070
Sector:	Banking
Product / Service:	Interest Only
Conduct(s) complained of:	Maladministration (mortgage) Dissatisfaction with customer service Failure to process instructions
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's administration of an endowment home loan.

The Complainants' Case

In July 1996 the Complainants purchased a house, borrowing IR£54,000 from the Provider.

The Complainants state that an agent of the Provider set up an endowment policy with a life assurance provider at the time of the approval of the mortgage. They explain that the policy was set up to run from 1 September 1996 to 1 August 2016, in parallel with their mortgage. The Complainants explain that during the term of the mortgage, they paid interest only on the mortgage and it was their intention that the capital balance would be cleared at the end of the mortgage term using the proceeds of the endowment policy, when it matured in August 2016.

The Complainants have furnished this office with copies of the policy schedule and correspondence, both between them and the life assurance provider, and with the Provider. They say the endowment policy contained a provision whereby premiums payable would be increased annually by 2.5% so as to ensure that at the end of the mortgage term there would be a surrender value sufficient to clear the capital balance on the mortgage. The Complainants argue that the endowment policy was owned by the Provider and the Provider was contractually responsible to ensure that premiums paid into the policy were increased annually by 2.5%.

The Complainants further state that at times during the life of the policy, the Provider failed to ensure that the premiums were increased as required. The Complainants have furnished copies of letters from the Provider and they assert that the Provider has accepted that it failed in its responsibility to ensure that the 2.5% annual premium increases were applied consistently throughout the lifetime of the endowment policy.

The Complainants explain that in the autumn of 2015 they became aware that the likely proceeds of the policy would be insufficient to clear the capital sum owing to the Provider. In the documentation submitted they say that the amount of the shortfall was in the region of 30% (or €20,000).

The Complainants argue that a contractual relationship existed between the Provider and the life assurance provider and that the Provider was responsible for ensuring that the 2.5% annual premium increase, provided for in the policy schedule was applied consistently throughout the lifetime of the policy. The Complainants argue that the Provider failed to meet its obligation in this regard and that this failure has caused the shortfall referred to above. The Complainants also complain that the Provider did not notify them of the potential shortfall between the likely final value of the endowment policy and the capital sum owing to the Provider at the end of the mortgage term until 2015, which was close to the end of the mortgage term.

The Complainants also complain that there exists a discrepancy between the amounts that the life assurance provider says were paid to it and the amounts furnished in a table by the Provider to the Complainants.

The Complainants say that on 27 May 2016 they wrote to the named employee of the Provider with whom they had dealt, to seek an explanation as to how the loan account and endowment policy had been administered by the Provider. The Complainants say that they did not receive any response to that letter. The Complainants go on to say that they wrote again by registered post on 21 June 2016 and again they received no reply. The Complainants have furnished correspondence to this office which took place in November 2016, to which the Provider attached a copy of a letter dated 18 July 2016. The Complainants say they did not receive this letter. They also say that it confirms a number of errors on the part of the Provider over the life of the mortgage and associated endowment policy.

The Complainants also complain that after the end of the mortgage term, the Provider's arrears department was *"phoning us four times daily demanding continued payment into an expired policy"*. The Complainants argue that this was at a time when the Complainants were engaging with the Provider in relation the Provider's obligations under the policy.

The final element to the complaint relates to the Complainants' assertion that the Provider has unilaterally opened a loan account in the name of the Complainants in respect of the residual balance of the mortgage, being the shortfall between the capital sum owing at the end of the mortgage term and the proceeds of the endowment policy, as explained above.

/Cont'd…

When asked to identify the Financial Service Provider about whom this complaint is made, the Complainants have identified the Provider and the life assurance provider. However, no documentation has been submitted to indicate that any elements of this complaint have been notified to the life assurance provider. Nor has this office received any documentation to indicate that the life assurance provider has conducted any investigation or issued a Final Response Letter to the Complainants. For those reasons, this investigation will examine the complaint as maintained against the Provider alone.

When asked how they would like the Financial Service Provider to put things right the Complainants state as follows:

> *"Our research tells us that this is entirely a consequence of the negligence and maladministration of [the Provider] in making the required payments to the various insurance companies over the lifetime of the policy.*
>
> *It is our contention that they are fully liable for the shortfall and for all our costs in pursuing this complaint.*
>
> *We are seeking the deeds of [our house] unencumbered, and*
>
> *Legal costs to date discharged".*

The Provider's Case

The Provider states that it paid premiums to the life assurance provider by running a report for all policies held through it and making one lump sum payment to the life assurance provider each month. The cost of this lump sum payment is then passed on to each customer in accordance with their contractual monthly repayment.

The Provider has stated that the 2.5% increase was in fact paid to the life assurance company as and when it was due, but it was not passed on to the Complainants due to an administrative oversight. The Provider states that the result of this was that the Complainants were charged lesser sums than were in fact paid on their behalf towards the policy.

The Provider states that it has absorbed this shortfall (€5,822.72), and that this amount has never been sought from the Complainants.

The Provider states that the Complainants' letters of May and June 2016 were forwarded to the wrong department due to the Provider's error and the complaint was not received by the correct department until it received a letter from the Complainants' solicitor on 13 October 2016. It has apologised for this delay.

/Cont'd…

The Provider states that it has not opened a new loan account, and that on 9 November 2018 the proceeds of the endowment policy (€50,383.05) were lodged against the loan account leaving a remaining shortfall of €21,395.54. It states that this loan account remains active and repayments are being charged as interest only payments pending agreement of a new repayments arrangement or full repayment being made.

The Provider acknowledges that the account was referred to its arrears support unit (ASU). It explains that the Complainants' letters of May and June 2016 were not received by the relevant department before August 2016 – and this was the date that the loan had matured but had not been fully repaid. For this reason the ASU would not have been aware of a complaint at the time the account was referred to it.

The Provider has explained that the 2.5% increase was not applied to the Complainants' account as there was no automated process to do so and, while the Complainants' repayments remained static, the correct amount was always paid to the insurer on their behalf.

The Provider states that the Complainants have not in fact suffered any loss due to its actions, as their full premiums were paid to the life assurance provider.

The Provider notes that the performance of the endowment policy was managed solely by the insurance provider, that projections were not a guarantee, and that the Complainants received bonus notices in 1999, 2001, 2005, 2007, 2009, 2010, and 2014 which showed the minimum value at maturity of the policy. These notices would have shown that the value of the policy on maturity would have been insufficient to clear the outstanding mortgage value.

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.

/Cont'd…

A Preliminary Decision was issued to the parties 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, I set out below my final determination.

Owing to the application of the time limits in Section 51 of the Financial Services and Pensions Ombudsman Act, 2017, while the mortgage and endowment policy concerned with this complaint are considered to fall within the definition of a *"long term financial service"*, certain aspects of the conduct complained of, that can be described as specific events, and which took place prior to 2002, will not be examined in this complaint other than where the information regarding such events may assist in informing this investigation regarding the conduct of the Provider at a later date, which later conduct is within my jurisdiction to investigate and adjudicate.

By loan offer letter dated 26 July 1996 Provider offered to advance the sum of IR£54,670 to the Complainants by way of "endowment home loan" which would be repaid in full after 20 years.

The idea of an endowment home loan was, in essence, that the customer would make interest only repayments to the Provider and pay separately into an endowment policy (administered by an insurance company) that would mature in 20 years, the proceeds of which, it was hoped, would be sufficient to pay off the outstanding capital balance of the loan.

A transaction of this nature consists of two agreements – a loan agreement and an endowment policy.

The Complainants were responsible for making the agreed repayments to the Provider, consisting of interest and policy premiums. The Provider, for its part, was responsible for forwarding the endowment policy premium payments, every month, to the life assurance provider. The result being that the Complainants only had to make repayments to the Provider rather than having to make interest only repayments to the Provider and separate policy premium payments to the life assurance provider.

The endowment policy schedule describes the Complainants as the "insured(s)" and sets out the following terms:

> *"Low Cost Endowment IR£133.41 payable from 01/09/1996 until 01/08/2016"*
>
> *"Automatic increases in premium of 2.5% p.a. compound apply in accordance with General Provisions"*

/Cont'd…

> *"Monthly premiums must be paid to the [life assurance provider] via [the Provider]…."*

The policy of which the Complainants were "insureds" was in fact a block policy (or Group Policy), whereby the premiums of all the customers (each of whom was "an insured") of the Provider would be paid in one lump sum per month by the Provider to the life assurance provider. The Provider, in turn, would deduct the value of these premiums from the loan account of each customer.

The application form for the policy signed by the Complainants on 16 July 1996 states:

> *"Premiums will be paid by [the Complainants] to [the Provider] for onward transmission to [the insurer]."*

And contains the following information in block capitals at the bottom of the signing page:

> *"ENDOWMENT LOANS ONLY – THERE IS NO GUARANTEE THAT THE PROCEEDS OF THE INSURANCE POLICY WILL BE SUFFICIENT TO REPAY THE LOAN IN FULL WHEN IT BECOMES DUE FOR REPAYMENT."*

On 4 February 1998 the Provider wrote to the Complainants in the following terms:

> *"I wish to advise you that the monthly premium of £142.04 in respect of the above endowment policy increases by 2.5% annually in accordance with your policy provisions.*
>
> *We had not applied the increase in premiums to date but have now revised the premium with immediate effect. We will not charge the back premiums to you, however, we have forwarded these to [the insurer] thereby keeping your policy fully paid to date".*

On 3 March 2009 the Provider wrote to the Complainants in similar terms – that is telling them that it had not applied the annual 2.5% increase but would now revise the Complainants' repayments, their policy was fully paid up and the Provider would not seek the back payments from the Complainants. This scenario was repeated in January 2010.

In 2016, when the policy matured, the proceeds of the policy (€50,383.05) were not sufficient to discharge the full balance then owing on the loan – leaving a shortfall of €21,395.54.

The Complainants believe this shortfall was caused by the Provider's alleged failure to pay premiums to the life assurance policy provider.

/Cont'd…

This is not in fact the case. The Complainants' policy premiums were paid in full by the Provider to the life assurance policy provider. In the numerous documents furnished as part of this complaint from the life assurance provider, not one suggests that any premiums were not received by it.

The value of a policy of this nature can go down as well as up, many suffered due to the financial crisis in or around 2008 and never recovered. There is no evidence upon which I can find that the Provider bears any responsibility for any shortfall in the final value of the policy.

In fact, the administrative failings of the Provider (in not having an automated system to increase the payments taken from the Complainants) have resulted in the Complainants having the benefit of a fully paid up policy without having had to make payments totalling €5,822 which they in fact ought to have paid.

However, the Provider by its own admission failed to direct the Complainants' complaints of May and June 2016 to the correct department. The result of this was a delay in responding but also resulted in the account being transferred to its ASU, thereby causing the Complainants to receive phone calls about the account. While there is no evidence that the Complainants were being telephoned *"four times daily"*, I accept that those calls were an unnecessary inconvenience at that point in time. Such calls and contact can be very worrying and frustrating.

I am also satisfied that, while the Provider did ultimately furnish a satisfactory explanation to this complaint in its response to this office, its Final Response Letters (FRLs) to the Complainants were not as clear on the issue. The FRLs dated 8 November 2016 and 7 February 2017 did not deal with the issue of the 2.5% increases and whether or not they had been paid to the life assurance provider – this issue was not answered until 15 May 2017.

I have been provided with no evidence of wrongful conduct on the part of the Provider with respect to the endowment policy such as would have affected the final maturity value.

I am, however, satisfied that the Provider failed to respond to the complaints made in May 2016 and June 2016 in a timely manner (resulting in unnecessary contact from its ASU), and that an explanation for the Provider's conduct was not provided when it should have been (that is in either of its first two "Final Response" Letters).

I therefore partially uphold this complaint and direct payment by the Provider of €2,500 (two thousand five hundred euro) to the Complainants.

In doing so I take into account the fact that the Complainants had to engage the services of a solicitor in order to receive a clear answer from the Provider and the fact that the Provider has not (and will not) seek to retrospectively recover from the Complainants the €5,822.72 it paid towards their policy.

/Cont'd…

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (c) and (f).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €2,500, 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

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.