



<u>Decision Ref:</u>	2020-0108
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Fees & charges applied
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint arises in the context of the Complainants' mortgage protection policy with a third-party insurer (hereinafter the 'Insurer').

The Complainants' Case

The Complainants drew down a mortgage loan with the Provider in **April 2007** and they say that:-

"as is required by [the Provider], we also commenced a Life Mortgage Cover plan with [the Insurer] at the same time".

The original term of the mortgage was 26 years. The Complainants repaid their mortgage loan early and in full on **8 April 2015**, but they say that they did not become aware until 3 years later, in **April 2018**, that monthly premiums for the mortgage protection policy were still being collected from their bank account by the Insurer.

The Complainants' life mortgage policy was later cancelled by the Insurer on **22 May 2018**, when the Provider, on the Complainants' instructions, cancelled the direct debit. A letter dated **3 April 2018** signed by the Complainants and addressed to the Provider communicating the Complainants' desire to cancel the policy appears to have given rise to the cancellation of the policy. The Complainants take issue with this.

The Complainants set out their complaint as follows:

“We are of the understanding that our Life Mortgage Cover payments should have been cancelled in April 2015 by [the Provider], when the mortgage was paid in full since this protection policy was no longer fit for its intended purpose.

...

We feel strongly that we have been paying money for apparently no reason whatsoever... after 8th April 2015. The money that we paid appears to be redundant / surplus to requirements, and we are simply asking for a refund of this amount.”

As a result, the Complainants seek for the Provider to refund the premiums that they paid since they cleared the mortgage loan in April 2015 until the mortgage protection policy was later cancelled, which the Complainants calculate to be in the amount of €2,876.30 (35 x €82.18 monthly premium). The Complainants have, separately, made a complaint to this office against the Insurer, arising from these events.

The Provider’s Case

The Provider advised the Complainants in its correspondence dated **6 July 2018** as follows:

“The onus is on the customer to cancel the Policy and the Direct Debit, as [the Provider] is not in a position to do this. It is the customer’s responsibility to manage [their] policies, as they can have as many active life policy [sic] as they wish.”

The Provider disputes that there was any obligation on it to cancel the Complainants’ mortgage protection policy and, indeed, it disputes that it was legally capable of cancelling the policy.

The Complaint for Adjudication

The Complainants’ complaint is that the Provider wrongfully failed to cancel their mortgage protection policy in April 2015 when their mortgage was redeemed.. The Complainants seek compensation in the amount of €2,876.30.

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.

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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 **6 March 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.

Analysis

The Provider in this matter submits that the mortgage protection policy was a policy held by the Complainants with a third-party insurer and that the Provider, accordingly, had no role in the management of the policy. The Provider maintains that the “onus” was on the Complainants to manage the policy and, in particular, to cancel the policy should the need for the policy end. The Provider advanced such a proposition in its letter of 6 July 2018 (as quoted above) when it also stated as follows:

The Bank is not in a position to cancel any life policies where customers are paying premiums directly to the insurance companies.

The Provider also relies upon on the content of a ‘Redemption Statement’ sent to the Complainants in advance of the final payment on the mortgage account. This ‘Redemption Statement’, enclosed with a letter of 27 March 2015, provided as follows:

IMPORTANT NOTES – AFTER THE REDEMPTION OF YOUR MORTGAGE

The Following notes are intended as a guide for you after you have redeemed your mortgage in relation to Life Assurance (Mortgage Protection), Buildings & Contents Cover, and Repayment Protection cover (where applicable):

Life Assurance and Buildings & Contents policies were required for the Mortgage Account for which a redemption figure has been requested. If you proceed with the redemption of the mortgage you can, depending on the individual policy terms and conditions, choose to retain or cancel your policies.

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You must cancel your Repayment Protector policy/policies (where applicable).

Retaining your policies

You may of course decide to continue your insurance policies following redemption. You should contact your insurance companies to advise them that [the Provider] no longer holds an interest in the policy.

Cancelling your policies

A letter confirming cancellation must be sent to the Assurance / Insurance Companies noting the dates of cancellation and requests for refunds, if applicable.

Please note: After you redeem your mortgage, the redemption or cancellation of your policies becomes your sole responsibility. [The Provider] cannot cancel insurance policies on your behalf.

For their part, the Complainants noted in their email of 11 April 2018 (addressed jointly to the Provider and to the Insurer) that they believed that the Provider would cancel the policy when the mortgage was paid in full "*since the Life Mortgage Cover plan was arranged by [the Provider]*".

Having considered all the material put before me, I am satisfied that the obligation lay on the Complainants to cancel any policy which they had incepted, if they no longer considered it necessary or appropriate to maintain it. Insofar as the Complainants maintain that they thought that the Provider would or should do this for them, I do not accept this. The policy in question was a contract agreed directly between the Complainants and the Insurer. The Provider had no function in the management of that policy.

In addition, where arguably, the Provider had some responsibility to take certain action (such as the provision of information) in and around the time of redemption of the loan, I am satisfied that the 'Redemption Statement' provided ample information to the Complainants as to the options open to them. This statement clearly highlighted the need for the Complainants themselves to cancel any policy that was no longer required. If the Complainants, prior to receipt of the statement, misunderstood that the policy would be cancelled by the Provider upon redemption, the statement clarified that this was a task that fell to the Complainants themselves to address, if they wished to do so. The fact that monthly premiums continued to be debited from the Complainants' account would equally have alerted them to the fact that the policy remained in force.

The Provider also points out that the Complainants had the benefit of the policy until it was cancelled in April 2018. In this regard, the Provider submits that the Complainants remained capable of benefiting from the policy after April 2015 notwithstanding the redemption of the mortgage loan. This is a significant feature, which the Complainants initially appeared unaware of.

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Finally, insofar as the Complainants suggest that the policy, when ultimately cancelled, was cancelled in the absence of the Complainants' express written instruction, I am not satisfied that this has been substantiated. The Complainants wrote a letter signed by each of them addressed to the Provider dated **3 April 2018** wherein the following was stated:

We are of the understanding that our Life Mortgage Cover [ref redacted] payments should have been cancelled in April 2015 by [the Provider], when the mortgage was paid in full.

We would be grateful if the payments could be stopped immediately.

This letter was expressly (ie on the face of the document) also copied by the Complainants to the Insurer.

The Complainants also sent an email on 3 April 2018 (digitally signed by both Complainants) in precisely the same terms as the aforementioned letter to a number of email addresses of individuals within the Provider and also to the Insurer.

Following its receipt of the email of 3 April 2018 from the Complainants, the Provider undertook, in an email of 3 April 2018 to the Complainants, to contact the Insurer "*to get them to cancel the policy with immediate effect*". The Complainants responded in an email of 11 April 2018 thanking the Provider for cancelling the policy. It would appear that, thereafter, the Provider forwarded its version of the signed letter of 3 April 2018 to the Insurer.

Whether the policy was cancelled on the basis of the copy letter of 3 April 2018 which may have been directly received by the Insurer, or whether it was cancelled on the basis of the Provider forwarding the letter of 3 April 2018 to the Insurer (an action which I am satisfied the Provider had sanction to do in light of the email correspondence passing between the Provider and the Complainants) or indeed whether, as requested by the Complainants, the premium payments were stopped by the Provider, I am satisfied that a valid cancellation instruction was made by the Complainants to the Provider. Indeed, it is arguable, by reference to the terms of the policy, that the email instruction alone was adequate.

In light of the entirety 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 am not in a position to uphold the complaint.

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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

31 March 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.