An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0117
Sector:	Insurance
Product / Service:	Whole-of-Life
Conduct(s) complained of:	Maladministration
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

On **30 September 2014**, the Complainant took out a mortgage life insurance policy with the Provider. On **29 April 2016**, the Complainant cancelled the policy. Between those dates, the Complainant had paid €614.46 to the Provider in insurance premia by way of direct debit.

As it happened, the Complainant never took out the mortgage that she had intended to. The Complainant understood that the policy would not issue if she did not proceed with the mortgage.

The Complainant's complaint is that the Provider wrongfully charged the Complainant premium payments of €614.46 even though she did not proceed with the mortgage. In response to this complaint, the Provider has offered to pay the sum of €614.46 to the Complainant, but this proposal has not been accepted.

The Complainant's Case

The Complainant notes that she applied for the mortgage life insurance policy, but that she did not proceed with the mortgage. She states that her understanding was that the mortgage life insurance policy was tied to the mortgage itself. On that understanding, the Complainant states that she did not think that the mortgage life insurance policy payments should have been debited.

The Complainant also states that she did not receive documentation after incepting the policy in **30 September 2014**. In particular, the Complainant states that a welcome letter dated **3 October 2014** was never received by her.

In all of the circumstances, the Complainant says that the Provider should not have charged the premium payments, as she did not proceed with the mortgage.

The Provider's Case

The Provider states that it received a valid application form from the Complainant asking it to issue a mortgage life insurance policy. The Provider notes that the plan was arranged by a third party financial advisor. On **30 September 2014**, the Provider received the application and issued the confirmation letter on **3 October 2014**. The Provider notes that this letter states that the Complainant could change her mind within 30 days and cancel the policy, but the Provider says that she chose not to do so. On **3 October 2014**, the Provider also sent a text message to the Complainant stating that the insurance policy was in place. All of the documentation submitted with the welcome pack indicated that the policy had commenced. The Provider states that it sent this documentation to the Complainant's address provided and that it was not returned undelivered.

The Provider also states that it commenced debiting the Complainant's account, in accordance with her instruction to do so. The Provider states that the Complainant did not contact the Provider to cancel the plan. On **29 July 2015**, the Complainant called the Provider to query the receipt of the 2015 Annual Benefit Statement. The Provider notes that she decided not to cancel the policy then, as she was considering a new mortgage application. Ultimately on **29 April 2016**, the Complainant called and cancelled her policy, which the Provider actioned the next day on **30 April 2016**.

The Complaint for Adjudication

The complaint is that the Provider wrongfully debited the monthly premium payments from the Complainant's account, in the period between October 2014 and April 2016.

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 Complainant was 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.

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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 13 February 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.

I note that the Provider received a valid application form on behalf of the Complainant and incepted the life assurance policy as it had been requested to do. The Provider is a separate and distinct entity, and is not part of the financial institution the Complainant and her financial advisor were dealing with, in respect of her mortgage application. There is no suggestion within the evidence made available, that the policy issued by the Provider was somehow tied to, or contingent upon, the mortgage application with a totally separate financial institution.

On **3 October 2014**, the welcome pack and associated documents were sent addressed to the address given by the Complainant in her application form. On **3 October 2014**, a text message was also sent to the mobile number given by the Complainant setting out that the insurance policy was in place. The Complainant must therefore have been aware that the policy was in place and was entitled to cancel the policy within 30 days, but chose not to do so. The Provider is not responsible for whatever dealings occurred between the Complainant and her financial advisor. In my opinion, the Provider incepted the policy and began debiting the Complainant's account as it had been instructed to do.

On **29 July 2015**, the Complainant contacted the Provider but I note that she decided not to cancel the policy at that point. During this call, the Complainant confirmed details of her address to which the policy correspondence had been sent. The Complainant also stated in this call that she did not check the relevant bank account which the premium payments were being deducted from. I note that the Complainant advised the Provider that her financial advisor had not told her that she did not need to proceed with the life insurance policy if she was not proceeding with the mortgage. On **8 April 2016**, 9 months later, the Complainant called again to query the payments, but said that she would call back. The Provider's representative specifically indicated that the policy could be cancelled whenever the Complainant wished. I note that during this phonecall, the Complainant also confirmed

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details of the phone number to which the text message on **3 October 2014** had been sent. The Complainant also changed her address to her new address during this phonecall.

The Complainant waited until **29 April 2016** to cancel her policy by phone call which the Provider implemented the following day, on **30 April 2016**.

I am satisfied that the Provider incepted the policy in October 2014, and was entitled to deduct the premium payments as it had been instructed to do. It has no obligation or duty to enquire as to whether or not the Complainant had drawn down the mortgage.

I note that notwithstanding this history, the Provider has offered the repayment of the sum of €614.46 to the Complainant. The Provider has indicted that this offer is still available to the Complainant and it will be a matter for the Complainant herself to contact the Provider directly if she wishes to accept this proposal from the Provider.

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

6 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.