



<u>Decision Ref:</u>	2020-0124
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Whole-of-Life
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy (life)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to the Complainants' mortgage protection policy with the Provider.

The Complainants' Case

The Complainants drew down a mortgage loan with a bank (hereinafter 'the Bank'). They say that in **April 2007**

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

The Complainants' life mortgage policy was later cancelled by the Provider on **22 May 2018** due to non-payment of premium, following the cancellation by the Complainants of their direct debit. A letter dated **3 April 2018** signed by the Complainants and addressed to the Bank communicating the Complainants' desire to cancel the policy, also appears to have given rise to the cancellation of the policy.

The Complainants set out their complaint as follows:

“The ... Mortgage Cover was not cancelled when the mortgage was paid in full (early) ... we were not advised that we were paying into a policy that was not fit for purpose – [the Provider] accepted payment for three years for a policy that was effectively redundant - [the Provider] claim that they could not cancel any policy without our signatures, and yet they did so earlier this year in May 2018. Why did [the Provider] not cancel [the mortgage protection policy] when the mortgage was paid in full? [The Provider] cancelled the policy (without our signatures) three years too late, and took over-payments into a redundant policy, not fit for purpose, in the meantime.”

As a result, the Complainants seek for the Provider to refund the premiums that they paid from when they redeemed the mortgage loan in April 2015, until the mortgage protection policy was later cancelled in 2018, 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 against the Bank in respect of the same matter.

In more recent correspondence to this office, the Complainants complain that the Provider never made clear to them prior to the cancellation of the policy in April 2018, that the benefits of the policy remained available to the Complainants, notwithstanding the early redemption of the mortgage loan.

The Provider’s Case

The Provider advised the Complainants in its correspondence dated 2 August 2018 as follows:

[The Provider] would not hold details about the mortgage which you held with [the Bank]. In order to cancel your plan we require a written instruction signed by both of you. I would like to assure you that had a successful claim been made on your plan within this time [the Provider] would have paid out the claim even if you no longer had a mortgage in place.”

The Provider disputes that there was any obligation on it to cancel the Complainants’ mortgage protection policy in April 2015. The Provider maintains that it received a valid cancellation instruction for the first time in April 2018 and that it acted promptly thereon at that time.

The Complaint for Adjudication

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

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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 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.

It is useful to set out certain relevant terms and conditions of the policy.

Terms and Conditions

The Provider expressly relies on the following detail which was set out in the cover letter (dated 22 May 2012) to the 'Welcome Pack' which was sent to the Complainants following their inception of the policy:

Change your mind

Your Life Mortgage Cover plan is designed to meet your mortgage protection needs and we are confident it will meet those needs. However, if you do not wish to go ahead for some reason, you may cancel it by writing to [the Provider]. If you do this within 30 days from the date we send you this letter, we will refund any payment you have made. We would strongly advise that you discuss this with [the Bank], or our Customer Service Team before doing so.

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The terms and conditions of the policy also include the following on the second page:

Cooling-off period

If, after taking out this plan, you feel it is not suitable, you may cancel it by writing to us at the address shown above. If you do this within 30 days from the date we send you your plan documents (or a copy), we will return any payment you have made. We strongly recommend that you consult with your broker or [the Provider's] adviser before you cancel your plan.

Analysis

I note from the history of events that in **April 2007**, the Complainants incepted a mortgage protection policy with a different insurer (i.e. not with the Provider) at the time of drawdown of their mortgage loan. The respondent Provider to this complaint, is the insurer which provided a replacement policy to the Complainants in **May 2012**. Accordingly, insofar as the Provider is concerned, the policy at issue was incepted in 2012.

The Complainants' primary complaint is that the Provider failed to cancel the policy upon redemption of the mortgage loan in April 2015

The Complainants impute responsibility to the Provider for failing to cancel the loan following the mortgage redemption. The Provider, in response, simply states that it could not have cancelled the loan by reference to the redemption as it had no knowledge or notice of the redemption. In my opinion, this is logical. The Provider was not a party to the Complainants' mortgage loan and thus had no way of knowing that the Complainants had redeemed their loan early. In the absence of the Complainants notifying the Provider in some way as to the termination of the mortgage liability, there was no obligation on the Provider to take any particular action.

In addition to the foregoing it is clear that, at no point prior to April 2018, did the Complainants send an instruction in writing to the Provider requesting cancellation of the policy, as required by the terms and conditions of the policy in the event that cancellation was desired. Consequently, the Complainants failed to trigger the Provider's contractual responsibility to comply with a request from them to cancel the policy.

The Provider also points out that it regularly sent documentation (such as Annual Benefit Statements) to the Complainants that would have rendered it clear that the policy remained in force. I note in that regard the contents of the letters concerning this particular policy, sent to the Complainants by the Provider dated March 2016, March 2017 and March 2018 respectively. Furthermore, the policy premiums continued to be debited from the Complainants' account further reinforcing the fact the policy remained alive.

In light of the foregoing, this aspect of the Complainants' complaint is not upheld.

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In the course of the investigation of this complaint, the Complainants have also indicated their dissatisfaction that the policy, when ultimately cancelled, was cancelled in the absence of their express written instruction. I am not however satisfied that this has been substantiated.

The Complainants wrote a letter signed by each of them addressed to their Bank 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 Provider, though it seems that the copy followed later, as it was received by the Provider date-stamped 26 April 2018. The Complainants also sent an email on 3 April 2018 (digitally signed by both Complainants) in precisely the same terms as the aforementioned letter.

I note that the Provider wrote to the Complainants on 26 April 2018 explaining that it was proceeding to take a particular month's payment from the Complainants' bank account which could take up to 10 working days to clear. It also explained that it was unable to refund that payment because it could only cancel the plan from the date when the signed written request had been received.

I also note that, thereafter, on 5 May 2018 the Provider wrote to the Complainants confirming cancellation of the policy as requested, effective from 22 May 2018.

In those circumstances, I am satisfied that the Complainants gave clear instructions in April 2018 to cancel the policy.

More recently, the Complainants have expressed dissatisfaction regarding a failure on the part of the Provider to tell them, prior to the cancellation of the policy, that the policy benefits remained available to them post the redemption of the mortgage, notwithstanding the cessation of the mortgage liability

With regard to the continuing availability of benefits post-redemption, the Provider outlined as follows in its response to this office:

Question 5

Given that the Complainants repaid their mortgage loan early and in full in April 2015, what cover, if any, did the Complainants' policy continue to provide them after that date, until the policy was cancelled in May 2018?

As this was a decreasing mortgage protection plan the amount of cover available in the event of a successful claim was designed to decrease at an assumed payment rate of 6% per annum. On that basis the benefit available to the Complainants after April 2012 would have been in line with the Table of Protection Benefits which was part of the Policy Schedule Document, a copy of which is enclosed under Section 1 of the Schedule of Evidence.

Later in the same document, the Provider also stated:

In conclusion it is the Provider's position that it would be unfair for it to bear the cost of a refund of premiums paid to this policy since April 2015, when it continued to provide the benefits associated with the Complainants' Life Mortgage Cover Plan at a cost, on the basis that the Provider would have been obliged to pay out directly to the Complainants following any successful claim made after 2015 and before the plan was cancelled by the Complainants in March [sic] 2018.

In a letter dated 16 August 2019, the Provider further explained as follows:

With regard to the benefit payable with the mortgage related life assurance plan, the cover is paid on the death of one or other of the lives assured or the Specified Illness claimant. The level of the benefit payable at any given time, over the term of the plan, is based on a starting [sic] amount equal to the lives assureds' declared mortgage liability, reducing at a set rate of 6% per annum, in line with the expected reduction in the lives assureds' repayment of the mortgage.

...

In the event of a claim for one or other of the Complainants, this plan would have paid out the balance of the life cover benefit on the plan at the date of death or to the Specified Illness claimant. In this case the death benefit or the Specified Illness Cover would have been payable to the surviving life assured or Specified Illness claimant directly and not to the mortgage provider, whomever that may be. It would be up to the plan-owner to clear the remaining balance of their mortgage with the benefit payment claimed if they wished.

On that basis, it is somewhat immaterial whether the Complainants still had a mortgage or not for a payment to be made on the death of either of the lives assured or if a Specified Illness claim was made, once the plan continued to be paid and was in force.

If the Complainants had contacted the Provider prior to cancellation of the policy, in April 2018, seeking advice (as urged in the terms and condition of the policy) regarding cancellation as set out above, it seems likely that the Provider would have made this information available to the Complainants. The fact of the matter is, however, that the Complainants issued a valid cancellation notice (referred to above) to the Provider without ever seeking such advice. In fact, this cancellation notice was the first occasion on which the Provider was notified of the early redemption.

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In the circumstances, there was no opportunity for the Provider to make available any advice or information or to “*restore [the Complainants’] confidence in the policy*” given the manner in which the Complainants dealt with the matter.

It is also the case that prior to instructing the cancellation, the Complainants could have identified the precise nature of the benefits available under the policy, and in particular that the benefits remained available notwithstanding early redemption, if they had reviewed the policy documentation which had been made available to them. It seems however, that they did not do so.

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.

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.