



<b><u>Decision Ref:</u></b>	2020-0167
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Mortgage Protection
<b><u>Conduct(s) complained of:</u></b>	Failure to advise on key product/service features
<b><u>Outcome:</u></b>	Rejected

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

The Complainant and his late fiancée incepted a mortgage protection policy in **May 2016** on foot of advice received from the Provider, an intermediary, against which this complaint is made. Shortly after the policy was incepted, the Complainant's fiancée sadly passed away. He inherited her share of their home. This resulted in the Complainant incurring a tax liability and associated costs of approximately €33,000. The Complainant states that the Provider failed to take his circumstances into account when advising on and recommending the most appropriate type of cover which caused him to incur the above tax liability.

**The Complainant's Case**

The Complainant states that he is making this complaint in respect of the financial advice received by himself and his late fiancée from one of the Provider's advisers. The Complainant explains that the advice received caused him to incur a tax liability of €33,000 arising from the premature death of his wife.

On **9 March 2016**, the Complainant and his late fiancée had a meeting with one of the Provider's financial advisers at their home where a full financial review was carried out. The Complainant states that the financial adviser *"... asked us many questions, including our marital status during the review. We were cohabiting at the time and were in the process of applying for a mortgage, which he was aware of."*

The Complainant explains “[w]e were told that we had to get mortgage protection / life insurance as part of the lenders requirements during this review.” The Complainant states that he and his late fiancée placed their trust in the financial adviser to give them the best advice based on their specific needs. The Complainant advises that they took out a life insurance plan that was to be assigned to their mortgage lender.

The Complainant explains that approximately one month after drawing down their mortgage, his fiancée passed away. The Complainant states that “I was soon to learn that as we were cohabiting, I was left with an unexpected tax liability of €33,000. This was because, according to Irish law [my late fiancée] had gifted me her half of the house.” The Complainant states that he requested the Fact Find from the Provider “... but when it was eventually sent to me I realised that I had never seen this paperwork before.”

The Complainant points out that the Fact Find was not signed by him or his late fiancée and the *Married* box is ticked No. The Complainant submits that this infers the Provider was aware of their marital status. Commenting further on the Fact Find, the Complainant states:

*“On page two there are three points outlined under ‘Main Concerns’. Regarding the third concern, the adviser had written: ‘As you aren’t married you should get additional cover and do a will?’ Considering we were not in the financial field, this seems to be a very vague statement, i.e. what does additional cover mean? And why was this additional cover not offered if it was highlighted as a main concern?”*

The Complainant continues, stating as follows:

*“... under the ‘Notes Section’ the adviser has written: ‘Follow up with you once in the new house to look at more comprehensive cover. Again, as neither of us were in the financial field, what kind of comprehensive cover should we have been advised to pursue? And if our situation dictated a need for this more comprehensive cover why was this not offered immediately instead of waiting until we had entered into our new house?”*

In terms of the Statement of Suitability, the Complainant remarks:

*“... there is no mention of our legal relationship status which would surely dictate the structure of a protection policy for a recommendation. I assume this was established in the Fact Find but not carried to a recommendation. The adviser was aware of our cohabiting status. There is no evidence that [the insurer] offered the best policy on price or product. The suitability and recommendations paragraph looks like it is addressing the recommendation of mortgage protection only, yet the preceding paragraphs are reading as a recommendation for dual life term life cover with a conversion option. This is very confusing.”*

The Complainant further explains that:

*“The crux of this is the structure of the policy. The content of the Statement of Suitability appears to be confusingly blended between level term and a mortgage protection policy in my view. The obvious issue here is that the policy has not been structured correctly in relation to the linking of the Fact Find to the Statement of Suitability. What would clearly need to be established here is why I ended up with a taxation liability after receiving protection advice from [the Provider’s] adviser during a financial review that incorporated all the personal information that was required to recommend and execute a more comprehensive protection policy?”*

The Complainant advises that:

*“I have since learned that a foundational element of protection advice is the structuring of a Life of Another policy to avoid this substantial taxation bill. As aforementioned, it does not note our relationship status on your (sic) Statement of Suitability which would have dictated the type of protection policy we were to be offered, i.e. ‘life of another’, as we are not married and strangers in the eyes of the law at that stage. The Statement of Suitability clearly contains ambiguous information relating to a term cover policy and a mortgage protection policy. The price and product of [the insurer] is noted, but no demonstration of research is given. I would expect a qualified adviser in a regulated financial intermediary to recommend comprehensive financial protection to customers and therefore avoid crippling taxation when the unthinkable happens.”*

In a further submission to this Office dated **16 July 2019**, the Complainant states:

*“It has come to my attention since submitting my original complaint form that the address on the Statement of Suitability is incorrect and I can also confirm that I have never seen nor received this document. The address quoted is that of the house that my fiancée and I were in the process of purchasing [address] whereas the correct address at the time of the financial consultation was [address] (the house we were renting before purchasing the house at [address]).*

*As aforementioned in my original complaint, I have never seen the Fact Find or received a copy of same. In light of this and the fact that the incorrect address is on the Statement of Suitability I would strongly suspect that both of these important documents were completed only after I requested same from [the Provider].*

*I would also like to add that if my fiancée and I were afforded the opportunity to agree with or simply look over these documents we would have clearly seen the mention of ‘additional cover’ on both and would have immediately questioned why this ‘additional cover’ was not incorporated into the recommended life insurance policy ...*

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*The Statement of Suitability clearly states that the amount of cover offered through this recommended policy was €176,000. The financial consultation on the evening in question was not just to cover our proposed new mortgage but to provide my family and I with comprehensive financial insurance in the event of either of us dying prematurely. This is a very important point in my view as [the Provider] claim that this financial consultation was solely to provide a mortgage protection policy which I strongly contest. ..."*

In resolution of this complaint, the Complainant "... would like to be compensated for what I have lost financially in taxation due to a sub-standard financial consultation."

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

The Provider disputes that Complainant's contention that the financial advice given to the Complainant and his late fiancée was not suitable or adequate to their specific needs and circumstances at the time. The Provider submits that the sole purpose of the meeting in question was to provide the Complainant and his late fiancée with a mortgage protection policy in order to facilitate the drawdown of their mortgage.

The Provider also disputes the contention that the advice sought and given at the meeting was to encompass additional/comprehensive cover. The Provider explains that the meeting took place on **19 April 2016** at 5pm and "[t]he sole intention of the meeting was to finalise the Mortgage and the mortgage protection policy and look at the Pension Policy [the Complainant] had in place ..." The Provider states, referring to the Schedule of Evidence, that application forms were sent to the Complainant in **March 2016** for completion. The Provider also refers to email correspondence received from the Complainant's solicitors "... where you will see how urgent the property purchase had become and the pressure that was being put on the Bank and [the financial adviser] by [the Complainant's solicitors] to close the sale of the house." The Provider accepts that no Fact Find was completed on this occasion.

The Provider submits that the purpose of the meeting on **19 April 2016** was communicated to the Complainant prior to the meeting taking place. The Provider states that the email sent to the Complainant on **18 April 2016** "... specifies the finalisation of the mortgage and looking at the pension as the purpose of the meeting." The Provider points out that the Complainant responded to this email confirming that it "Sounds good". The Provider explains that the application form for the mortgage protection policy was sent in advance to the Complainant by the financial adviser in **March 2016**. The Provider states that the only secondary issue to be addressed was the Complainant's pension.

The Provider advises that the Complainant had been a client since **February 2014** and there had been a five year relationship between the parties. Its financial adviser called to the Complainant following the passing of his fiancée, firstly, to see how the Complainant was and secondly, to follow up on the death claim and to ensure the policy put in place was paid out.

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In terms of the Complainant's tax liability, the Provider submits that it cannot be held responsible for this. The Provider explains that the Complainant "... had a property in common with his brother and [the Complainant's late fiancée] had a child from a previous relationship. [The Provider is] not qualified and had no right to advise them on how to handle their personal situation."

The Provider explains that the policy put in place was a level term assurance plan and was not a standard decreasing mortgage protection policy. The cover under the policy was €176,000 and was a policy where the value did not decrease in line with the mortgage value. The Provider states that the policy paid out on the death of Complainant's fiancée and the mortgage was cleared. The Provider submits in this regard, that it has fulfilled its obligations to the Complainant. The Provider states that the balance of the mortgage at the time of the Complainant's fiancée death, which was cleared, was €171,699 and the excess on the policy, after the mortgage was cleared of €4,301 would have been paid directly to the Complainant. The Provider also states that it "...would question the tax liability of €33,000. Documentation [the Provider] received from [the Complainant] state the liability was €28,850."

### **The Complaint for Adjudication**

The complaint is that the Provider failed to properly advise the Complainant and/or recommend the most appropriate the form of life insurance which resulted in the Complainant incurring a tax liability of €33,000 following the death of this fiancée.

### **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.

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 23 March 2020, outlining my preliminary determination in relation to the complaint.

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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.

### **Correspondence**

The Provider wrote to the Complainant by email dated **25 November 2015** following a meeting that day:

*“Good to see you today.*

*Just to note I can get you basic decreasing mortgage protection for €28.66 per month in total for yourself and [the Complainant’s fiancée] on the new mortgage.*

*...*

*The income protection is done like this. ...*

*If the AVC starts at €50 Gross per fortnight €30 net then the net cost for everything, AVC, Mortgage Protection and PHI would be €116.75 per month. That would give you fully comprehensive protection and savings base and we can look at the other personal cover at a later stage.*

*I will discuss this in more detail with you tomorrow morning ...”*

The Provider emailed a number of forms from the insurer to the Complainant on **7 March 2016**. It is also mentioned in this email that the Provider would forward a quote to the Complainant. The forms were signed by the Complainant and his late fiancée and dated **9 March 2016**.

The Provider wrote to the Complainant by email dated **18 April 2016** to arrange a meeting regarding the Complainant’s mortgage and pension. This email states:

*“Would you be available to meet tomorrow around 5ish. We can finalise the mortgage and look at that pension.”*

The Complainant responded within minutes, stating:

*“Sounds good ...*

*Can you meet at the house?”*

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Following on from the meeting between the parties, the Provider emailed the Complainant on **20 April 2016**. The subject line of this email is "PRB Portfolio" an acronym I understand to stand for *Personal Retirement Bond*. This email states as follows:

*"Please find attached the recommended portfolio as discussed last night. In addition please note the base management fee for the PRB is 1%. We can review these funds every couple of months and remember they are not set in stone. That said the time to be aggressive with your investments is now and reduce risk as you get older. ..."*

The Complainant replied shortly after:

*"That looks perfect. Appreciate you meeting me yesterday evening. I'll tick that box on the [insurer] options letter I have ... and email it onto you."*

The Provider contacted the Complainant's bank by email on **20 April 2016** advising that:

*"Just in relation to this case the solicitor has sent back all the loan documents and I am in the process of issuing life cover and sending in the buildings and DD mandate. ... Can you let me know if there is anything else needed ..."*

The Complainant's bank responded on **21 April 2016** to advise that certain matters were still outstanding. The Provider alerted the Complainant to this on the same day:

*"... The life insurance is in hand by [me] and I have asked [our] House Insurance team to call [the Complainant's fiancée] on this today. ..."*

The Provider wrote to the Complainant on **11 May 2016** to advise that his life policy had issued that day to which the Complainant replied: *"Thanks for the update. I must also catch up with you about the investment chat we had."*

The Complainant's solicitors wrote to the Provider on **26 July 2016** following the passing of the Complainant's fiancée requesting a copy of their life assurance/mortgage protection policy:

*"... you might please advise of the proposed payment structure as this may have an impact on inheritance tax payable by the next of kin."*

A follow-up email was sent on **24 August 2016** stating:

*"I require this as a matter of urgency to be able to confirm the tax position for [the Complainant]."*

### **Fact Find**

A Fact Find was completed by the Provider and is dated **9 March 2016**.

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This document states as follows:

***“Main Concerns:***

*1 About to take new mortgage need cover*

*2 [The Complainant] has employee benefits with [Employer]. [The Complainant’s fiancée] has none*

*3 As you aren’t married you should get additional cover and do a will*

***Attitude to risk:***

*Not discussing investments at this meeting*

***Charges:***

*€176,000 life 28 years*

***Notes:***

*Follow up with you once in the new home to look at more comprehensive cover*

***Products Requested:***

<i>AVC</i>	<i>Death in Service</i>	<i>X</i>	<i>Income Replacement</i>	<i>X</i>
<i>...”</i>				

***Statement of Suitability***

The Statement of Suitability (**SoS**) is dated **10 March 2016** and, as per the Complainant’s submission, is addressed to the property he intended to purchase with his fiancée. The SoS states:

***“Introduction***

*Thank you for taking the time to meet with me to discuss your financial planning requirements. Following my research during which I carried out a fair analysis of the market, I have identified Convertible Term Assurance from [the insurer] as the most suitable product to meet your current requirements.*

***Needs & Objectives***

*You are required by [the Complainant’s bank] to have a protection policy to cover your new mortgage of €176,000 over 28 years. This is the minimum requirement for the bank. We discussed two options for you.*

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*The first was decreasing mortgage protection which only covers the outstanding amounts owing in the event of the first death with the policy then ceasing.*

*The second was Dual Level Contribution Term Cover which keeps the cover at the initial €176,000 for the 28 years. In the event of a claim being made the full €176,000 is paid out to the bank. They clear the loan owing and the balance of the policy (if any) is paid to the surviving policy holder. The cover on the second policyholder remains in force if required. In addition, the Conversion option will allow you to extend the cover beyond the initial 28 years term if needed without having to disclose any changes in your health during the term of the policy.*

### **Financial Situation**

*[The insurer] premium €43.45 per month. This remains the same throughout the policy term.*

*This premium represents the best price on the market at this time for the cover and term.*

### **Suitability and recommendations**

*This matches your needs and objectives and corresponds with your mortgage requirement. This policy only covers the mortgage borrowings and I recommend you consider additional cover for yourself and the family.*

### **Plan features and options**

*This plan includes a Conversion Option. This option allows you extend the term of your plan or convert to another plan without the need for further medical evidence. ...”*

### **Diary Note**

The Provider has furnished copies of the diary notes maintained in respect of the Complainant. There is an entry dated **19 April 2016** which states:

*“Meeting in [address]  
Pension Investment”*

### **Policy Schedule**

The policy schedule sets out certain information in relation to the Complainant’s policy. In particular, the policy schedule states that the type of cover being offered is *Dual Life* cover with a *lump sum on death* payment of €176,000.

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### **Final Response Letter**

The Provider wrote to the Complainant, in response to his complaint, by letter dated **27 August 2018** as follows:

*“Our understanding of the substantive issues raised, is that you should not have a tax liability on your house. You and [the Complainant’s fiancée], to our understanding, were with each other for over two years and have a child in common. You can double-check with your solicitor and/or Revenue; you would certainly have a strong case to make, in our view. ...*

*[The financial adviser’s] recollection of his meeting with you and [the Complainant’s fiancée], is that your main priority, on the night of the meeting, was to get draw down of the mortgage in the most expedient way possible. [The financial adviser] has also stated and recorded on his fact-find (sent to you recently), that he recommended, on the same night, you take additional cover for each other. You decided this was something you wished to leave until another date. This was confirmed by you to [the financial adviser] at a subsequent meeting, after [the Complainant’s fiancée] had passed away. He also recommended, as per his notes, that you talk to your solicitor re making a Will.*

*Furthermore, the liability seems to be attached to your property and covered, as you say, under Gift Tax. The policy put in place was paid out and your mortgage cleared. We cannot be held accountable for any liability arising thereafter. I would have thought it was your solicitor’s responsibility to advise you on the management of your estate, your Will etc. ...”*

### **Analysis**

The Complainant is dissatisfied with the type of insurance cover put in place by the Provider which the Complainants argues, resulted in him incurring a substantial tax liability and associated costs on the passing of his fiancée when he inherited her share of their home. The basis of this complaint is that the Provider failed to take into consideration the Complainant’s circumstances, in particular, his relationship status. The Complainant also points to the Fact Find and the SoS to support his argument that the Provider did not recommend the most appropriate form of cover. The Provider maintains the position that the cover put in place was in response to the Complainant’s need for a mortgage protection policy to allow the drawdown of the mortgage loan.

While the Complainant refers to a meeting with the Provider on **9 March 2016** in his complaint form, it is not clear from the evidence in this complaint that a meeting did in fact take place on this date. In the Provider’s submissions, the Provider refers to a meeting taking place on **19 April 2016** which appears to be acknowledged and discussed by the Complainant in subsequent submissions. Furthermore, I note from the correspondence outlined above, a meeting does not appear to have taken place on **9 March 2016**.

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In the timeline of events prepared by the Provider and which is not disputed by the Complainant, I note that mortgage approval was given in **November 2015**, a loan offer was received in **December 2015** and contracts of sale were signed in **February 2016**. The Provider forwarded certain documents from the insurer to the Complainant on **7 March 2016**. These forms appear to have been signed by the Complainant and his late fiancée on **9 March 2016**. A meeting was then arranged for **19 April 2016** to, in the Provider's words, "...finalise the mortgage and look at that pension." I note that in a responding email, the Complainant did not seek to add anything further to this agenda. The meeting took place as arranged however, I note that neither party have given an account as to precisely what was discussed at this meeting. In an email sent to the Complainant following the previous night's meeting, the Provider imparts certain advice regarding the Complainant's pension.

In a very short response to this email, the Complainant states "... I'll tick that box on the [insurer] options letter I have ... and email it onto you." When the Provider informed the Complainant on **11 May 2016** that his life policy had issued, the Complainant replied: "Thanks for the update. I must also catch up with you about the investment chat we had."

In response to the Provider's submissions, the Complainant wrote to this Office on **3 December 2019**, stating:

*"... Part of the meeting in question was to finalise the mortgage and this has never been denied. ... It is clear to me that this meeting on April 19<sup>th</sup> 2016 was to gather information on our personal circumstances and cover us with a life assurance policy that protected us from any financial shortfall in the event of one of our premature deaths with this policy also covering the mortgage, not solely covering the mortgage as [the Provider] are stating.*

...

*The main focus of this life assurance policy was to cover my financial liability incurred in the event of the premature death of either [the Complainant's fiancée] or I, not any other party or parties. ... Our entire circumstances were not taken into account for this life assurance policy and they simply should have been. ..."*

As noted above, the basis of the Complainant's argument that the Provider failed to recommend appropriate cover appears, for the most part, to emanate from the contents of the Fact Find and SoS. However, as the Complainant states, he never received these documents prior to the inception of the policy and the SoS was incorrectly addressed. I note that the Provider has not responded to this aspect of the Complainant's submission. In light of such considerations, I accept that these documents were not received and that the SoS was incorrectly addressed.

Notwithstanding this, the Fact Find identified one of the main issues as being "new mortgage cover needed" and that "[a]s you aren't married you should get additional cover and do a will." The Fact Find also notes that the Provider would "[f]ollow up with you once in the new home to look at more comprehensive cover."

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The SoS recognises that the Complainant was required by his bank to have some form of mortgage protection insurance in place. It goes on to summarise two types of cover that would satisfy the bank's protection requirements. As with the Fact Find, the SoS acknowledges the limited nature of the cover being recommended by the Provider and advises that the Complainant and his fiancée should consider additional cover.

While not received by the Complainant in advance of the inception of his policy, these documents tend to suggest that the advice required and given at the time, was predominantly in relation to the Complainant's mortgage. Furthermore, I consider that the issues identified in the Fact Find and SoS were matters that were required to be addressed at a future date and after the mortgage protection policy was put in place.

This does not necessarily mean the policy actually entered into was inadequate nor does it mean the Provider did not take the Complainant's circumstances into consideration. On the contrary, by identifying the specific purpose for which cover was required and the nature of the policies discussed in the SoS, it shows the Provider was aware of the Complainant's circumstances. I have been provided with no evidence to support the Complainant's contention that by incorrectly addressing the SoS, both the Fact Find and the SoS were prepared by the Provider in response to and after the Complainant requested them from the Provider.

Having carefully considered the evidence in this complaint, I accept the purpose of the Provider's engagement, in this instance, was to advise on and arrange mortgage protection insurance in order to permit the drawdown of the mortgage loan and also to discuss the Complainant's pension options. While very little policy documentation has been furnished, I note that the Provider sent certain documents from the insurer to the Complainant by email on **9 March 2016** and these were signed by the Complainant. I also accept that the Complainant was provided with a copy of the policy schedule. Furthermore, I note that the Complainant was provided with an *options letter* from the insurer as outlined in an email dated **20 April 2016**.

I accept that the Complainant would have been aware of the type of cover provided by the policy or at the very least, had sufficient information available to him prior to inception to understand the type of policy he and his fiancée were entering into despite not receiving a copy of the Fact Find or the SoS. Therefore, if matters other than mortgage protection and pension options were outstanding following the meeting on **19 April 2016** and prior to the inception of the policy on **11 May 2016**, particularly in terms of more comprehensive cover, there is no evidence of these matters being raised or discussed by either party. There is also no indication that the Complainant was unhappy with the policy that was recommended by the Provider or that he had any questions or concerns regarding the type of cover being offered or anything which suggests matters were outstanding prior to inception.

While the Complainant states that the Provider failed to take his circumstances into account when recommending a policy, he has not identified the precise circumstances that were not taken into account.

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The Complainant's argument is effectively based on the supposition that if his relationship status was properly considered by the Provider, a policy would have been incepted that would have avoided or reduced his tax liability. I believe the Complainant has not demonstrated that the Provider failed to consider his relationship status.

The amount being sought in resolution of this complaint relates to the tax liability incurred on the Complainant's inheritance of his fiancée's share in their home. I am not satisfied that the Provider was obliged to advise the Complainant as to the potential inheritance tax liability that either he or his fiancée would incur as a result of a disposition or inheritance of the mortgaged property on the others death. The Complainant appears to be arguing that the absence of cover for his inheritance tax liability makes the policy incomplete.

However, the Complainant has not produced any evidence to demonstrate what the correct cover should have been and if such cover had in fact been put in place, he would have avoided or reduced the tax liability the subject of this complaint. Therefore, I find that the Complainant has not identified any inadequacies with the policy he was offered and incepted.

I accept that by preparing and addressing the Statement of Suitability, the Provider intended to send it to the Complainant and his fiancée. I accept that this letter was addressed to the Complainants at the address of their new home which was the subject of the mortgage and the insurance policy.

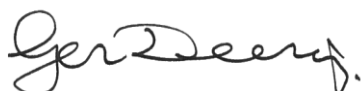
However, I do not believe this in any way prejudiced the Complainants. The key issue in relation to the interaction between the Complainant, his late fiancée and the Provider is that adequate cover was put in place that cleared the mortgage of over €171,699 outstanding and paid the excess of €4,301 to the Complainant on the unfortunate death of his fiancée.

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**

16 April 2020

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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.

