



<b><u>Decision Ref:</u></b>	2020-0218
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Maladministration (mortgage)
<b><u>Outcome:</u></b>	Partially upheld

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

The Complainants incepted a life assurance policy (the “Life Policy”) with an insurer as a condition required to obtain a mortgage from a financial service provider in **2004** (“the original mortgage Provider”). The Complainants executed an Assignment of Life Policy in favour of the original mortgage Provider in **2004** when they entered into the mortgage loan agreement.

On **20 February 2015**, the Provider, against which this complaint is made, purchased the Complainants’ mortgage from the original mortgage Provider.

By way of Mortgage Sale Agreement dated **17 August 2016**, the Provider sold the Complainants’ mortgage to another financial service provider (“named third party Provider”).

This complaint relates to the respondent Provider’s failure to have the benefit of the Life Policy assigned to it from the original mortgage Provider at the date of transfer in **2015**.

**The Complainants’ Case**

The Complainants state that the respondent Provider failed to ensure that the benefit of the Life Policy was properly assigned to it when the Complainants’ mortgage was transferred from the original mortgage Provider to the respondent Provider in **February 2015**.

The Complainants assert that the Life Policy was not legally assigned to the Provider when it should have been in circumstances where the original mortgage Provider never executed a **Deed of Release** in respect of the Life Policy. They state *“When we queried this on more than one occasion with [the Provider] we were reassured falsely that there was no outstanding issue in this regard.”* The Complainants submit that they queried this with the insurer, who confirmed to them that: *“until 28 September 2017, the sole beneficiary of the Home Life Cover policy was [the original mortgage Provider]”*.

The Complainants outline that *“[the original mortgage Provider] had failed to present a Deed of Release to [the insurer] to reassign it to [the respondent Provider] in February 2015, and [the respondent Provider] failed also to oversee it as was their duty being party the transfer, leaving us in a compromised position.”* The Complainants state that the Provider was aware that the Life Policy was not assigned to it since approximately **February 2015**.

The Complainants state that the respondent Provider then sold the mortgage to the named third party Provider in **November 2016**. They state that by *“...purchasing, and subsequently selling the mortgage without addressing the Home Life Cover issue [the Provider] left us in a potentially catastrophic situation”*. They submit that this has led to a position where their current mortgage holder, the named third party Provider, will not receive the benefit of their Life Policy if one of the Complainants should die.

The Complainants state that the Provider’s actions are in breach of Provisions 2.1, 2.2, 3.8, and 4.1 of the **Consumer Protection Code 2012** (“the CPC 2012”). In addition they submit that the Provider has failed to comply with its obligations under Section 126 of the **Consumer Credit Act 1995** (“1995 Act”).

The Complainants are seeking;

- a) *“...reimbursement of all monies paid by us to [the Provider] on the grounds that their behaviour constituted repudiatory breach of contract”*; and
- b) Compensation for the stress caused by the Provider’s conduct, which resulted in medical treatment.

### **The Provider’s Case**

The Provider states that the Complainants’ mortgage transferred to it from the original mortgage Provider on **20 February 2015**. It states that as the registered owner of the charge following the transfer of the loan from the original mortgage Provider to it, all rights, title and interest including the related financial agreement transferred to the Provider, including the interest in the Life Policy.

The Provider states that on **22 September 2015** the Complainants contacted the Provider to discuss the assignment of the Life Policy, as the insurer had informed the Complainants that the original mortgage Provider was named as an interested party on the policy.

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The Provider states that it advised the Complainants that it would *“assess claims on a case-by-case basis should a potential claim arise”*.

The Provider states that a meeting then took place between the Provider and the Complainants at the Provider’s office on **23 September 2015**. It outlines that at this meeting the Provider confirmed that it held the beneficial interest in the policy since the date of transfer of the mortgage from the original mortgage Provider. It states that it issued a letter to the Complainants on **24 September 2015** to confirm the discussion held which confirmed that in the event of the death of either borrower, the proceeds of the Life Policy would be available to the Provider. The Provider states, *“While [the original mortgage Provider] remained noted as the assignee on the Life Assurance policy as per [the insurer’s] policy records our letter of 24 September 2015 correctly stated that the proceeds of the Life Assurance policy would be available to the Provider in the event of the policy falling due as the owner of the charge.”*

The Provider states that the Complainants requested the original Deed of Assignment by letter dated **17 June 2016** and it replied to this request on **23 June 2016** stating that the matter had been addressed at the meeting on **23 September 2015**. It states that it later offered to arrange a meeting with the Complainants for them to view the title documentation in its letter of **21 September 2016**.

The Provider states that the mortgage account was transferred to the named third party Provider on **18 November 2016** as part of the sale of a portfolio of loans.

The Provider states that it issued further correspondence to the Complainants on **9 May 2017, 2 June 2017** and **18 October 2017** stating that it was satisfied that the benefit of the Life Policy was correctly transferred from the original mortgage Provider to the respondent Provider on **20 February 2015**, and subsequently from the respondent Provider to the named third party Provider on **18 November 2016**.

The Provider states that it is satisfied that it has complied with its obligations under **Sections 2.1, 2.2, 3.8, 3.11 and 4.1** of the **CPC 2012**. It states that **Section 3.12** of the **CPC 2012** is not applicable as the Provider did not close, merge or move a branch.

The Provider states that it was not required to satisfy the requirements of **Section 126(1)** of the **Consumer Credit Act 1995** as it is not the *“originating lender”* of the Complainants’ loan.

The Provider details that the Central Bank of Ireland’s **Code of Practice on the Transfer of Mortgages 1991** is a voluntary code which does not have any legislative basis and may be applied on a voluntary basis by any institution. It states that the Provider is not obligated to adhere to this code. The **Code of Practice on the Transfer of Mortgages 1991** has since been revoked by the Central Bank of Ireland.

### **The Complaint for Adjudication**

The complaints for adjudication are as follows:

That the Provider failed to ensure that the benefit of the Life Policy was transferred to it from the first Provider when the mortgage was transferred in **February 2015**;

That the Provider failed to ensure that the benefit of the Life Policy was transferred from it to the third Provider when the mortgage was transferred in **November 2016**;

That the Provider misinformed the Complainants that the Life Policy had been transferred correctly;

That the Provider did not comply with its obligations pursuant to the **Consumer Protection Code 2012**;

That the Provider breached **Section 126(1) of the Consumer Credit Act 1995**.

### **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 28 May 2020, outlining my preliminary determination 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.

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In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

Paragraph 2.1 of the excerpt of the Deed of Assignment sent by the Provider to the Complainants under cover of letter dated **2 June 2017**, provided that the original mortgage Provider assigned “*all such rights, title and interest in and to the Purchased Assets*” to the Provider. The Provider states that this includes the benefit of the Life Policy. The Complainants have cited the absence of reference to the Life Policy specifically in this provision as a basis of their complaint. While I note that no specific reference was made in regards to the transfer of the benefit of the Life Policy to the Provider, in circumstances where the Deed of Assignment encompassed “*all such rights, title and interest in and to the Purchased Assets*”. I accept that such a declaration did include the interest in the Life Policy.

The Complainants submit that they were concerned about the insurer’s assertion that the only entity that would be entitled to the benefit of the Life Policy in the event of the death of one or both of the Complainants would be the original mortgage Provider. I note that by letter dated **February 2015**, the original mortgage Provider wrote to the Complainants informing them that “*all of our rights*” under the mortgage would transfer to the Provider. Whilst the insurer’s records showed that the original mortgage Provider remained noted on the policy in the absence of the execution of a Deed of Release by the original mortgage Provider, it would not have been entitled to the benefit of the Life Policy following the sale of the mortgage to the Provider in circumstances where the original mortgage Provider no longer held an interest in the Complainants’ mortgage.

The Complainants have submitted that they were “*reassured falsely that there was no outstanding issue*” by the Provider when they queried the position with regard to the Life Policy. I note that the parties engaged in a significant volume of correspondence in relation to this matter, details of which I have set out below.

The Provider has furnished a file note of a telephone call between the Provider’s agent and the First Complainant on **22 September 2015**, which details;

*“Mr called in ahead of meeting on the 23/09/2015. Mr advised that he has just got off the phone with his life company and they told him that the interest in his life policy remains with [the original mortgage Provider]. Mr was annoyed at this as his mortgage transferred to [the Provider] over 7 months ago and had to drag [the Provider] to get his charged on the land registry ... Mr requested that he view the deed of assignment, which he was refused previously due to the sensitive commercial information. I informed Mr that this was the deed of transfer. I told Mr that we have the document showing the transfer of charge from [the original mortgage Provider] to [the Provider] and that we have that ahead of meeting tomorrow. Mr asked about what is the situation with life policy. I told MR that with regards to the life policy that we are dealing with the life policy claims on a case by case basis when there is a potential claim on a life policy. Mr was not happy about this and said that this is a big big problem for him.”*

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The Provider has furnished in evidence a memorandum of the meeting between the Provider and the First Complainant which took place on **23 September 2015**, which details as follows;

*"[The First Complainant] also asked about the notice of assignment with regards to his life policy that is with [the insurer]. [The Provider's representative] confirmed to [the First Complainant] that his life policy is still assigned to [the original mortgage Provider] and that the beneficial interest in the policy was transferred over from [the original mortgage Provider] to [the Provider] when the transfer took place. [The Provider's representative] confirmed to [the first Complainant] that any life policy claims that present themselves to [the Provider] are being dealt with as they arise and that if there was to be a claim on his policy with [the insurer] that the same would be done with that claim.*

*Mr requested same in writing for reassurance that if a claim was to take place that [the Provider] would be able to apply any proceeds of his policy to his mortgage loan. [The Provider's representative] confirmed that she would get something in writing to confirm same. [The Complainant] seemed to be satisfied with this response."*

The Provider then wrote to the Complainants on **24 September 2015**, as follows;

*"With regard to your Life Policy (number XXXXXXXX-03) (the "Policy") with [the insurer] which was assigned to [the first Provider], we confirm that in the event of the death of either of you, that the proceeds of the said policy will be available to [the Provider] as the company entitled to be the registered owner of your charge (as per the Form 56 (Transfer of Charges) (attached) and as per the terms and conditions of your Assignment."*

I note that the Provider wrote to the Complainants on **23 June 2016** wherein it states;

*"I note your query regarding the notice of assignment with regard to your life policy was discussed and addressed in your meeting with our representatives on 23 September 2015."*

I note that the Provider informed the Complainants by letter dated **17 August 2016** that it had contracted to sell their mortgage to the named third party Provider.

The Complainants wrote to the Provider on **15 September 2016** as follows;

*"...we hereby request to be permitted to examine the original Deed of Assignment from [the first Provider] in full, as is our right under any contract".*

The Provider's Final Response letter to the Complainants dated **21 September 2016**, details;

*"We confirm that you can arrange an appointment to view your Title Documentation at your convenience at our offices".*

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The Complainants wrote to the Provider on **26 September 2016**, and expressed that;

*“Your continued refusal to produce an original Deed of Assignment for my inspection is and has, along with every previous refusal of same, both written and verbal, to the best of my knowledge, been breach of section 84, 2(a) of the [Land and Conveyancing Law Reform] Act [2009], 2(a) of the same Act, and accordingly, is, to the best of my knowledge, a breach of my rights under any such contract as claimed by [the Provider]...”*

...

*Referring to above, is [the Provider] willing to allow me to inspect the original Deed of Assignment? Please be clear in your response”.*

The Provider responded by letter dated **25 October 2016**, as follows;

*“... we are happy to clarify a number of matters as follows:*

- *The pending transfer to [the third Provider] remain as set out in our previous letters*

...

- *Your loan was properly transferred to [the Provider]*

*You advise that you were misinformed during a meeting with a staff member of [the Provider] in relation to what parties had an interest relating to your family home. To date you have not provided us with any evidence to back this up and our records do not bear this out.”*

The Complainants wrote to the Provider on **3 May 2017**, as follows;

*“Why has no Deed of Release ever been issued by [the original mortgage Provider] which would have allowed [the Provider] to be reassigned as beneficiary of the appropriate ... life home cover policy? Furthermore, why has no similar document since been issued by [the Provider] which would facilitate [the named third party Provider] becoming assigned as beneficiary of the same life home cover policy?”*

The Provider wrote to the Complainants on **9 May 2017**, as follows;

*“I can confirm that on the transfer of your mortgage account from [the original mortgage Provider] to [the Provider] the interest in the associated security documentation was assigned to [the Provider]. This included the interest in both your Life Assurance policy and Home Insurance policy.*

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*I can also confirm that on transferring your account from [the Provider] to [the named third party Provider] that a similar provision operated to assign the interest to [the named third party Provider].*

*We would be more than happy to assist [the named third party Provider] should they encounter issues in having their interest noted on both your Life Assurance policy and Home Insurance policy.”*

The Complainants wrote to the Provider on **23 May 2017**, as follows;

*“[The Second Complainant] spoke with [the insurer] on 02 May 2017 following receipt of our annual statement from them. During the conversation she was advised that the home life cover policy held by [the insurer] remains assigned to [the original mortgage Provider] – and no other entity.*

*The following day, 03 May 2017, [the Second Complainant] spoke with [an employee of the named third party Provider], who said that to the best of her knowledge there was no home life cover policy assigned in favour of [the named third party Provider] that would be relevant here...*

...

*On 04 May 2017, we received a letter from [the insurer] ... It states that no reassignment of the home life cover relevant here has taken place as the beneficiary remains [the original mortgage Provider].*

*On 17 May 2017, I spoke with [an employee of the named third party Provider], who confirmed to me that no home life cover policy – relevant here – has been assigned in favour of [the named third party Provider].*

...

*In your most recent letter you confirmed that the beneficiary had been transferred to [the Provider]. This conflicts with the information listed above.”*

Audio recordings of the telephone calls between the Provider and the First Complainant have been provided in evidence and I have considered the contents of these calls.

I note that during a telephone call between a representative of the Provider and the First Complainant on **26 May 2017**, the First Complainant stated:

*“I have confirmation from [the insurer] just in the door, saying categorically that [the original mortgage Provider] have not reassigned [the Life Policy]”.*

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The Provider's representative replied to this statement that:

*"...at present, right, the assignment that [the insurer] has is still for [the original mortgage Provider]...the issue being that that's the information [the insurer] know...what's actually happening is that, say when you took out that policy with [the first Provider] you would have assigned it to [the original mortgage Provider]...If for argument's sake, if something was to happen whilst you were with ourselves, right, then we would've got in touch with [the insurer] and said to them, look we are now the owners of this, we would have sent them over various documentation to say that we now own this policy, they would have changed it over to our name".*

The First Complainant responded to the Provider's representative's reassurance stating:

*"But [the insurer] have said to us twice that the only entity that can instigate a reassignment is [the original mortgage Provider] themselves."*

The Provider's representative again offers the Complainant reassurance stating:

*"We, I've worked on cases like this before in the past with [the insurer] and we've had it reassigned over, so it can be done. I assure you it can be done."*

The Complainant responded:

*"Well, with respect, both myself and [the Second Complainant] have spoken to [the named third party Provider] about this, right, now [the Second Complainant] asked the girls in [the named third party Provider] what would happen in the event of one of our demises and she was told that the policy would be ineffectual, that the money would be paid to [the original mortgage Provider]...That's what we've been told".*

The Provider's representative replied:

*"No, no, and I'm not saying that you weren't told that, it's not for me to say that but...The thing about it is, any documentation we would have got from [the original mortgage Provider] to ourselves would be a very similar process that would have went from ourselves to [the named third party Provider] so...you need to get on to [the named third party Provider]."*

The Complainant replied to the above statement noting that:

*"...with respect to you, this sounds like hearsay, you're telling me that everything is in order and that...everything will be OK, I'm not seeing this. We've spoken to [the named third party Provider], both myself and [the Second Complainant] have spoken to [the named third party Provider] and they told us that there's no policy in place".*

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In a further call on the same date, the Provider's representative made the statement that:

*"...we are going to send you out something...to say that we took over the Deed of Assignment...the other thing we're going to do is get in touch with [the named third party Provider] and let them know what they actually have to [do] to actually get this resolved for you...Again I'm not questioning what [the name third party Provider] have said to you."*

During this call the Complainant states that:

*"[The insurer], the people who I pay the money to every month has told us that the only beneficiary here is the original mortgage Provider ... you may have documentation, but that doesn't, ... you can reassure me all you want... but the problem that I have if something happens to me today or over the weekend [the insurer] has told me the only entity they are willing to pay is the original mortgage Provider".*

The Provider's representative further stated:

*"The procedure would have been that between... [the original mortgage Provider] and ourselves, they would have transferred over the rights and title and everything that would go along...Until the proof of the transfer is given to [the insurer] they are going to say that, they are correct in what they're saying, they've never been told differently."*

The Complainant replied:

*"But they should have been told differently."*

The representative responded:

*"Again at the time, that was the decision that was taken...I can assure you, if hypothetically speaking...something might have happened, because I've dealt with this in the past –"*

The Complainant interjected:

*"With respect, your verbal personal reassurance does not cut the mustard here."*

It appears to me from the above that in or around **May 2017** the Complainants had been informed by the named third party Provider, that the Life Policy was no longer effective in terms of providing the necessary cover for their mortgage. The Complainants' interactions with the named third party Provider are a separate matter which the Provider cannot be held accountable for, and therefore does not form part of the adjudication of this complaint. However, I have no doubt that receiving conflicting information was a source of frustration to the Complainants.

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It is clear from the call recordings provided in evidence by the Provider that the Complainants, having received conflicting information from both the respondent Provider, Insurer and the named third party Provider, quite understandably led the First Complainant to doubt the accuracy of what the Provider's representative was saying during the above telephone calls.

The Provider wrote to the Complainants on **2 June 2017**, as follows;

*"Please find enclosed a Deed of Assignment that assigned your [insurer] policy from [the original mortgage Provider] to [the Provider]. I draw your attention to point 2.1 of the attached Deed of Assignment which states all rights, title and interest including the related finance agreement have been transferred to [the Provider]."*

The Complainants wrote to the Provider on **13 June 2017**, as follows;

*"I also note that point 2.1 mentions nothing specific to home life insurance.*

*...*

*You mentioned forwarding documents that would show the life policy in question was assigned at a later date. Why are you not in a position to provide them now? This is most disconcerting."*

The Complainants wrote again to the Provider on **19 July 2017**, as follows;

*"We note your lack of response to the previous letter, sent by [the First Complainant], dated 13 June 2017. It was a simple request for you to expand on and clarify your position, given our pressing concerns relating to our home, which, to the best of our knowledge, at present, remains without the Home Life Cover facility that we have paid for since 2004, due to [the Provider's] apparent failure to oversee the Cover's appropriate reassignments on at least two occasions."*

A Final Response letter was issued from the Provider to the Complainants in **October 2017** which detailed as follows;

*"In considering your complaint we have reviewed your case and we can confirm that your life policy was transferred from [the original mortgage Provider] to [the Provider] on the 20 February 2015 and to [the third Provider] effective from the 18 November 2016. We are satisfied that the transfer to [the named third party Provider] was properly completed.*

*Please note that we have ... provided letters of no interest from both [the first Provider] and [the Provider] to enable [the third Provider] to resolve any issues you have relating to the assignment of the policy."*

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I acknowledge that Deed of Assignment sent by the Provider to the Complainants under cover of letter dated **2 June 2017**, shows that the original mortgage Provider assigned “*all such rights, title and interest in and to the Purchased Assets*”. This, in my view, demonstrated that the original mortgage provider had relinquished its rights to any such benefit from the Complainants’ life policy. However, I am also of the view that such a statement did not provide the Complainants with the reassurance and clarity, they had requested. After raising their legitimate concerns with the Provider, regarding the information they received from the insurer, they believed the benefit from the life policy was not correctly assigned as it was never updated to reflect the sale of the mortgage.

**The General Principles of the CPC 2012** detail as follows;

*“A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

- 2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market.”*
- 2.2 acts with due skill, care and diligence in the best interests of its customers.”*

**Section 3.8 of the CPC 2012** details as follows;

*“A regulated entity must not, in any communication or agreement with a consumer (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:*

- a) any legal liability or duty of care to a consumer which it has under applicable law or under this Code;*
- b) any other duty to act with skill, care and diligence which is owed to a consumer in connection with the provision to that consumer of financial services; or*
- c) any liability owed to a consumer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service.”*

**Section 4.1 of the CPC 2012** details as follows;

*“A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.”*

**Section 126(1) of the Consumer Credit Act 1995** provides as follows;

*“Subject to the provisions of this section, a mortgage lender shall arrange, through an insurer or an insurance intermediary, a life assurance policy providing, in the event of the death of a borrower before a housing loan made by the mortgage lender has been repaid, for payment of a sum equal to the amount of the principal estimated by the mortgage lender to be outstanding in the year in which the death occurs on the basis that payments have been made by the borrower in accordance with the mortgage, such sum to be employed in repayment of the principal.”*

As outlined above, I accept on the basis of the evidence before me that the Provider was entitled to receive the benefit of the Life Policy from the date of transfer of the mortgage in **2015** until the date the Complainants’ mortgage was transferred to the named third party Provider in **2016**. I also accept that **Section 126(1) of the 1995 Act** is not relevant to this complaint in circumstances where the Provider is not the originating lender.

It appears to me that confusion arose in circumstances where the insurer’s records showed that the original mortgage Provider continued to be noted as an interested party on the policy during the period that the mortgage was held by the Provider between **2015** and **2017**, and also where the Complainants were in receipt of conflicting information from the third party Provider in **2017** regarding the status of the Life Policy.

The Complainants sought the peace of mind and security of knowing that the benefit of the life policy was correctly assigned, so that the insurer’s records would reflect this.

The changing of the ownership of an individual’s mortgage loan can be a significant event in the life of a borrower. Having purchased the Complainants’ mortgage from the original mortgage Provider, the respondent Provider became responsible for the administration and handling of the Complainants’ mortgage. An important factor for the Complainants was having the knowledge that a correctly assigned life policy would, in the unfortunate event that one of the Complainants were to die, pay out to the relevant party and clear the outstanding amount.

The Complainants in the present case raised the concern that having not secured a Deed of Release from the original mortgage Provider, they were in fear that the life policy was not assigned correctly to the Provider. Once the Complainants’ mortgage loan was then transferred to the named third party Provider, they raised a similar concern. The Complainants feared they had lost the benefit and protection offered by the policy they had been paying for. Their inquiries with the insurer and the named third party Provider further supported the Complainants’ concerns.

While the Provider cannot be held accountable for the actions of the insurer and the named third party Provider, it did have a responsibility to resolve the Complainants’ legitimate concerns.

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The Provider, instead of seeking to address the Complainants' concerns by attempting to secure the formal Deed of Release which would allow the insurers' records to be updated, relied on the statement contained in the Deed of Assignment and attempted to offer the Complainants reassurance in the form of statements such as:

*"if for arguments sake, if something was to happen whilst you were with ourselves, right, then we would've got in touch with [the insurer] and said to them, look we are now the owners of this, we would have sent them over various documentation to say that we now own this policy, they would have changed it over to our name".*

I do not find such statements reassuring in such circumstances. The Complainants had a legitimate concern regarding the correct assignment of the life policy with the insurer and they sought and requested the Provider to correct this matter by reassigning the policy to the current mortgage holder. I believe the Provider's failure to do so amounts to a shortcoming in the Provider's customer service and communications.

While there has been a shortcoming in the customer service and communications of the Provider, I accept that the Provider acted in compliance with its obligations under the **CPC 2012**. I do not accept the Complainants' submission that the Provider "*falsely*" represented the position to them at any stage. It is important for the Complainants to be aware of the fact that even though a Deed of Release had not been executed by the original mortgage Provider at the date of transfer, and the Provider did not work to correct this, in circumstances where the Provider was the holder of the charge over the Complainants' mortgage from **February 2015** it was entitled to the benefit of the life policy from that date as provided for in the Deed of Assignment.

For the reasons outlined above, I partially uphold the complaint and direct the Provider to pay the sum of €1,000 in compensation to the Complainants.

### **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)(g)**.

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 €1,000, 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.

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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

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

19 June 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.