



<b><u>Decision Ref:</u></b>	2020-0219
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Variable Mortgage
<b><u>Conduct(s) complained of:</u></b>	Maladministration
<b><u>Outcome:</u></b>	Rejected

**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 original mortgage Provider subsequently transferred the Complainants’ mortgage to another financial service provider in **2015** (“the named third party Provider”).

By way of Mortgage Sale Agreement dated **17 August 2016**, the respondent Provider against which this complaint is made, purchased the Complainants’ mortgage from the named third party Provider.

The Complainants had executed an Assignment of Life Policy in favour of the original mortgage Provider in **2004** when they entered into the mortgage loan agreement.

This complaint relates to the Provider’s alleged failure to have the benefit of the Life Policy assigned to it when it purchased the Complainants’ mortgage in **2016**.

**The Complainants’ Case**

The Complainants state that the Provider failed to ensure that the benefit of the Life Policy was properly assigned to it when the Complainants’ mortgage was transferred from the named third party Provider to the Provider in **2016**.

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. They state that the Provider was “*completely unaware*” of this until the Complainants brought it to their attention in **May 2017**. They state that the Provider’s failure “*left us in a position that in the event of death [the Provider] would still be seeking full repayment from the surviving spouse, or the estate.*”

The Complainants submit that the Provider’s submission that the Complainants “*may have failed to fully understand*” that the beneficial interest in the Life Policy had been assigned to the Provider in **November 2016**, “*is patronising in the extreme.*” They submit that the insurer “*...repeatedly informed us ... that the only entity legally entitled to receive funds from them under this Policy until late September 2017 was [the first Provider]*”. They further detail that the Provider itself informed the Complainants during telephone calls on **3 May 2017** and **16 May 2017**, that “*no Home Life Policy was visible*” on its records and “*effective cover did not appear to be in place*”.

The Complainants state that the Provider’s correspondence to them dated **28 June 2017** was “*inaccurate and misleading*”. They detail that the Provider outlined in this letter that its communications with the insurer in relation to the assignment of the Life Policy were ongoing “*when, in fact, they were not*”.

The Complainants state:

*“[The original mortgage Provider] divested the mortgage lock stock to [the named third party Provider], who subsequently divested it to [the respondent Provider], and in neither case did the Life Policy travel in tandem when it was compelled to ... [the original mortgage Provider] themselves confirmed that it should have been reassigned via a Deed of Release and apologised for this in the ... letter of 10 October 2017.”*

The Complainants submit that the Provider’s actions are in breach of a number of provisions of the **Consumer Protection Code 2012** (“the CPC 2012”), as follows;

- **Provision 2.1** on the basis that the Provider did not act “*professionally*” in respect of the transfer of their mortgage by ensuring that the Life Policy was properly assigned.
- **Provision 2.2** on the basis that the Provider did not exercise due skill, care and diligence.
- **Provision 2.6** on the basis that the Provider did not disclose relevant material information to the Complainants.
- **Provision 3.8** on the basis the Provider did not “*oversee their duty of care in a reasonably practicable manner*” or exercise “*skill, care and diligence*”.
- **Provision 4.1** on the basis that the Provider has not furnished clear, accurate and up to date information to the Complainants.
- **Provision 4.2** on the basis that the Provider did not address the Complainants’ concerns as “*urgently*” as it should have.

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The Complainants further submit that in failing to ensure that there was adequate Home Life cover in place, the Provider has breached the following;

- **Section 126 of the Consumer Credit Act, 1995 (“the 1995 Act”)** and
- **Section 5(b) of the Central Bank Code of Practice on the Transfer of Mortgages.**

The Complainants were concerned that in the event that one or both of them died, the Provider would not be able to take up the proceeds of the Life Policy as the original mortgage Provider did not sign a Deed of Release. In addition, they state that if there was a surplus on the policy sum due and owing under the mortgage at the date of death, they would be deprived of their entitlement to recover that pursuant to **Section 126(5) of the 1995 Act** because of the Provider’s failure to ensure it was entitled to the benefit of the Life Policy.

The Complainants state that the Provider’s offer of €2,000 in full and final settlement of the complaint is *“grossly inadequate considering the harm and distress”* that the Provider has caused them.

The Complainants want the following;

- a) *“full indemnification”*
- b) For the Provider to *“rectify the problem”* and provide them with the relevant documentation to verify that this has been done.
- c) Suitable compensation *“for the tremendous stress this has caused”*.

### **The Provider’s Case**

The Provider submits that the Complainants drew down a mortgage with the original mortgage Provider in **2004** pursuant to an Offer Letter dated **13 May 2004**. It states that under the terms of the Offer Letter the Complainants were required *“to deliver an Original Life Policy”* to the original mortgage Provider and to assign the Life Policy to it as additional security for the loan. It states that the Complainants’ Life Policy was inceptioned on **13 May 2004** and the Complainants duly executed an Assignment of Life Policy in favour of the original mortgage Provider on **1 July 2004**.

The Provider outlines that the original mortgage Provider subsequently exercised its rights under the **Mortgage Deed** and transferred the Complainants’ mortgage loan account to the named third party Provider.

The Provider states that by way of Mortgage Sale Agreement dated **17 August 2016** and by Deed of Transfer dated **18 November 2016**, the named third party Provider agreed to unconditionally sell, transfer, assign and convey a portfolio of loans to the Provider, including all right, title and interest in the associated security including life policies.

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It states that this portfolio of loans included the Complainants' mortgage loan account. The Provider outlines that under the terms of the sale, the beneficial interest in the Assignment of Life Policy was transferred to it. It states that the transfer of the Complainants' mortgage loan to the Provider was completed on **21 November 2016**.

The Provider states that the original mortgage Provider has stated in its letter of **22 September 2017** that the loan sale operated to assign its beneficial interest in the Life Policy to the named third party Provider. It states that the named third party Provider has similarly stated in its letter dated **20 September 2017**, that the Mortgage Sale Agreement operated to assign its beneficial interest in the Life Policy to the Provider and that the named third party Provider has no further interest in the Life Policy.

The Provider states that under the Mortgage Sale Agreement all right, title and interest in the security associated with the Complainants' loan was passed to it upon closing in **November 2016**. It details:

*"Whilst the legal interest in the Life Policy was noted on 28 September 2017, the MSA operated to ensure that, upon closing in November 2016, the beneficial interest in the Life Policy was automatically assigned to the Bank. The importance of this, is that only the Bank were ever legally entitled to make a claim on the Policy from the closing date, 18 November 2016."*

The Provider states that accordingly, at all times, provided the Complainants continued to make their premium payments, life cover was in place and effective. In this regard the Provider denies that it has breached Section 5(b) of the Central Bank of Ireland Code of Transfer of Mortgages.

The Provider rejects the Complainants' submission that it has breached General Requirements 3.8 and 3.11 of the Consumer Protection Code 2012. It states that at no stage has it excluded or restricted in any communication or agreement, items listed in General Requirement 3.8. It further states that General Requirement 3.11 is not applicable to the Provider as it was the purchaser under the Mortgage Sale Agreement and therefore the onus is on the second Provider, as the seller, to fulfil the obligations under this provision.

In response to the Complainants' submission that it has breached General Requirements 4.1 and 4.2 of the CPC 2012, the Provider states that following its acquisition of the Complainants' loan in **November 2016**, it is satisfied that its communications to the Complainants are in plain English and it has not diminished, disguised or obscured important information. It acknowledges its delay in clarifying the situation regarding the information incorrectly contained in its letter of **28 June 2017** and has apologised for this.

The Provider acknowledges that its letters of **16 May 2017** and **28 June 2017** did not address the concerns raised by the Complainants, however it submits that it is clear that it has sought to resolve the complaint and it has acted in accordance with General Requirement 10.7 of the CPC 2012.

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The Provider acknowledges that the letter from the insurer to the Complainants dated **4 July 2017** advised that there had been no contact from the Provider to the insurer. The Provider stated that it wrote to the insurer on **12 July 2017**, after it had written to the Complainants on **28 June 2017** having already stated that it had been in contact with the insurer.

It states that while communications were ongoing with the insurer to facilitate a change in their records in relation to the portfolio of affected policies, this was not specifically in relation to the Life Policy in question. The Provider states that it has acted honestly and in good faith at all times, but acknowledges that there was a failure and delay in communicating its position to the Complainants in relation to its communications with the insurer. The Provider states that while its letter was not incorrect, it may have led to confusion for the Complainants. In light of this the Provider has offered the Complainants a gesture of €2,000 in full and final settlement of the complaint.

### **The Complaint for Adjudication**

The complaint for adjudication is as follows;

That the Provider failed to ensure the transfer of the benefit of the Life Policy on the date of transfer of the mortgage in **November 2016**; that the Provider misled the Complainants in respect of its communications with the insurer; that the Provider's actions have breached the Consumer Protection Code 2012; That the Provider's actions have breached the Consumer Credit Act 1995 and that the Provider's actions have breached the Central Bank Code of Practice on the Transfer of Mortgages.

### **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.

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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.

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

In order to make a determination in this matter it is necessary to review and set out the relevant provisions of the Complainants' mortgage loan documentation. It is also relevant to set out the Provider's interactions with the Complainants between **2016** and **2017** in relation to the Life Policy.

While I note that the Mortgage Sale Agreement has not been submitted in evidence, I accept the Provider's submission that it is not in a position to furnish it because it is commercially sensitive.

The Assignment of Life Policy executed by the Complainants in favour of the first Provider on **1 July 2004**, details as follows;

*"6.5 The Bank may at any time transfer the benefit of this Assignment to any person (including without prejudice to the generality of the foregoing any subsidiary or associated company of the Bank) on such terms as the Bank may think fit without notice to the Assignor or any other person whereupon all powers and discretions of the Bank shall be exercisable by the transferee. Without prejudice to the generality of the foregoing where the Bank holds the debt(s) in respect of which the security in the form of this Assignment is given on trust for a third party and/or where the Bank holds the debt(s) following an equitable assignment thereof to a third party the Assignor hereby acknowledges and agrees that the Bank may hold this assignment on the same terms and with the like effect as it holds the debt(s) in respect of which the security in the form of this Assignment is being given and this Assignment will be in full force and effect in respect of all such debt(s) and the benefit of the security created by this Assignment is intended by the Assignor and the Bank to be transferable in like manner and with the same effect as the debt in respect of which the security is given.*

...

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- 6.7 *The Assignor hereby irrevocably consents to any future legal or equitable transfer, assignment, sub-mortgage or sub-charge of the benefit of this Assignment and the security hereby created on the Policy and to any trust or administrative arrangement entered into by the Bank as part of a securitisation scheme with any consequential assurance, reinsurance or release under such securitisation scheme and the Assignor hereby acknowledges that the Assignor shall be bound by the provisions of the securitisation scheme."*

While the underlying documentation evidencing the sale of the Complainants' mortgage loan from the original mortgage Provider to the named third party Provider have not been furnished in evidence, it is not in dispute that the Complainants' mortgage was transferred from the original mortgage Provider to the named third party Provider in **2015**.

I note that under cover of letter dated **2 June 2017**, an extract from the **Deed of Assignment** was sent by the named third party Provider to the Complainants, at **paragraph 2.1** of which the original mortgage Provider assigned "*all such rights, title and interest in and to the Purchased Assets*" to the named third party Provider.

The Provider has furnished in evidence a copy of the **Deed of Transfer** between the named third party Provider and the itself, dated **18 November 2016** which details as follows;

1. *"It is agreed that for the consideration expressed in the Mortgage Sale Agreement ... the Sellers as beneficial owners free from Encumbrances and as the registered owner or, as applicable, the party entitled to be registered as owner, hereby grants, conveys, assigns, confirms, transfers and assures unto the Buyer absolutely, subject to the subsisting rights of redemption of the Borrowers and any Obligor and to the extent capable of assignment, all its right, title, interest, estate, benefit and entitlement (past, present and future) in and under each Security, Underlying Loans, and each of the Finance Documents and the Sellers's right, title and interest in and to the Ancillary Rights and Claims and including, without prejudice;*

- 1.1 *all right, title, interest, benefit, estate and entitlement of the Sellers in the mortgages, charges, security assignments and other security interests constituted by the Finance Documents together with any further mortgages, charges, security assignments and other security interests (including any other agreements to create or effect any of the foregoing) relating to the Underlying Loans and Finance Documents granted by a Borrower or an Obligor".*

I accept that the Deed of Transfer dated **18 November 2016** assigned the beneficial interest in the Life Policy from the named third party Provider to the Provider at the time it was executed, in circumstances where the transfer encompassed all of the seller's:

*"rights, title and interest in and to the Purchased Assets"*

I accept that this included the seller's interest in the Life Policy. The fact that the original mortgage Provider remained noted as the assignee of the policy on the insurer's records, did not affect the Provider's beneficial interest in the policy from the date of transfer as the Provider was entitled to be noted as the assignee from that date.

The Complainants have submitted that on more than one occasion, the Provider's response when they queried the position with regard to the Life Policy was *"inaccurate and misleading"*. A significant volume of correspondence between the Complainants, the Provider, and other relevant parties including the insurer and the first and second providers, has been furnished in evidence, details of which I have set out below.

The First Complainant 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 facilitated the reassignment of [the named third party Provider] as beneficiary of the appropriate (to above address) life home cover policy? Furthermore, why has no similar document since been issued by [the named third party Provider], as part of the transfer to [the respondent Provider], which, as stated by you, has been conclusively executed?"*

Audio recordings of the telephone calls between the Provider and the Complainants have been provided in evidence, I have considered the contents of these calls. During a telephone call on **3 May 2017**, the Second Complainant indicated that the Complainants were concerned that the Life Policy was not assigned to the Provider. The Provider's employee replied that the Provider had not yet received a response to a query it had raised with the insurer on that issue. The Second Complainant asked what would happen in a situation where the Life Policy remained assigned to the first Provider. The Provider's employee responded;

*"Well if it's still assigned to [the original mortgage Provider] and if you put in a claim on the policy, yeah the cheque would be made payable to [the original mortgage Provider] because they're down as the assignees of the policy."*

The Second Complainant asked if the Provider would continue to look for mortgage repayments in such circumstances and the Provider's employee replied *"yeah absolutely"*. The employee went on to state that the Life Policy was;

*"...doing nothing at the moment because it's not assigned to [the Provider] so God forbid, if something happened to you in the morning and you had to encash the policy, it's absolutely worthless to you because it'll be made payable to [the original mortgage Provider]..."*

The Second Complainant said that her concern was that if one of the Complainant died and the policy was made payable to the first Provider, the proceeds of the policy would be:

*"tied up for months, possibly years"*

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The employee replied:

*“oh, absolutely...a whole rigmarole to get [the first Provider] to endorse it even to send it back to you”.*

The Second Complainant asked whether there was a requirement to have a life assurance policy in place. The Provider’s employee responded that there was and:

*“at the moment, there’s no insurance, so you’re wide open”.*

As outlined above I accept that the beneficial interest in the Life Policy was transferred from the second Provider to the Provider at the time the Deed of Transfer was executed. Therefore the evidence shows that the Complainant was given incorrect information by the Provider’s agent during the telephone call on **03 May 2017**. While I accept that this was not the intention of the Provider’s employee, I have no doubt that the erroneous information provided was a source of significant worry and inconvenience for the Complainants.

The insurer wrote to the Complainants by letter dated **4 May 2017**, detailing as follows;

*“In order to assign your plan to a new lender, we first require a ‘Deed of Release’ from [the original mortgage Provider]. Once we are in receipt of this, we then require a ‘Deed of Assignment’ from the new lender to assign the plan to them.”*

The named third party Provider wrote to the First Complainant by letter dated **9 May 2017**, as follows;

*“...I can confirm that on the transfer of your mortgage account from [the original mortgage Provider] to [the named third party Provider] the interest in the associated security documentation was assigned to [the named third party Provider]...*

...

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

I note that in the audio recording of the First Complainant’s telephone call to the Provider on **16 May 2017** no information of note was provided by the Provider’s employee to the First Complainant during this call, other than to say that the matter had been referred to the “project team” and was “being reviewed”. I do not accept the Complainants’ submission that during this call the Provider’s employee informed the First Complainant that “no such home life cover is visible according to [the Provider’s] records.”

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The First Complainant wrote to the Provider again on **22 May 2017**, as follows;

*"On 3<sup>rd</sup> May last, your staff member, [name redacted], informed my wife, [the Second Complainant], that there was no home life cover policy relevant to these matters within your visible records.*

...

*On 16<sup>th</sup> May last, I spoke with [name redacted] from [the Provider], who also confirmed to me that no such home life cover is visible according to [the Provider's] records.*

*[The second Provider's] most recent response states that contrary to all this, the relevant policy was indeed reassigned to [the Provider] as it should have been.*

...

*The conflicting information is a matter of grave concern. I wish to have it clarified immediately"*

The Provider responded by letter dated **25 May 2017**, detailing that:

*"Your query has been passed to our life policy team who will respond in due course."*

The First Complainant wrote to the Provider again on **7 June 2017**, as follows;

*"...this urgent matter was brought to [the Provider's] attention in a letter dated 3 May 2017, almost six months after [the Provider] claimed to have acquired this mortgage. It is now over a month since that date, and [the Provider] has offered no tangible reassurance that the home life cover policy in question is as it should be.*

...

*To the best of my knowledge, in spite of paying a monthly premium for many years, it appears that the cover this payment is designed to provide cannot be assigned to [the respondent Provider], as it still remains with [the first Provider], and cannot be altered without their cooperation, which has not been forthcoming."*

The Provider responded to the Complainants by letter dated **28 June 2017**, as follows;

*"Pursuant to the terms of an Irish Law deed of transfer [the second Provider] dated 19 November 2016 (the "Assignment") and executed on the completion of the Mortgage Sale Agreement dated 17 August 2016 (the "MSA") [the second Provider] assigned its right title and interest in any insurance policies relating to the mortgages transferred pursuant to the Mortgage Sale Agreement. Accordingly, it is denied that [the Provider] has failed to transfer the benefit of the home life cover policy entered into with [the insurer] relating to the mortgage and the property. **Communications are ongoing with [the insurer] to facilitate a change in their records to record the fact that [the Provider] is now the beneficiary under the policy pursuant to the terms of the MSA and the Assignment.**" [My emphasis]*

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Contrary to the information outlined in the Provider's letter above, the insurer wrote to the Complainants on **4 July 2017** stating that:

*"there has been no communication between [the respondent Provider] and [the insurer] in relation to the above plan number."*

I note that the Provider has accepted that it *"incorrectly **confirmed**"* [my emphasis] in its letter of **28 June 2017** that it had been in contact with the insurer in this respect and accepts that:

*"there was a failure and delay in communicating the Bank's position to the Complainant in relation to communications between the Bank and [the insurer] in June 2017".*

The insurer wrote to the Provider on **13 July 2017**, as follows;

*"Unfortunately we will not be able to cancel or reassign the plan in question for [the Complainants] until we receive a Deed of Release from [the original mortgage Provider] as plan owners advising that they are agreeable to remove their interest from the plan."*

A letter of no interest from the original mortgage Provider dated **20 September 2017** has been furnished in evidence, which details as follows;

*"With effect from the 20 February 2015, the policy number [xxxxxxx-xx]/ [Complainants' Names] was transferred to [the named third party Provider] from [the original mortgage Provider]. Under the terms of the sale, the beneficial interest in the assignment attached to the above mentioned policy number also transferred to [the named third party Provider]."*

A letter of no interest from the named third party Provider dated **22 September 2017** has also been furnished in evidence and states as follows;

*"With effect from November 2016, the policy number [xxxxxxx-xx] [Complainant names] was transferred to [the respondent Provider] from [the named third party Provider]. Under the terms of the sale, the beneficial interest in the assignment attached to the above mentioned policy number also transferred to [the respondent Provider]."*

*Consequently [the named third party Provider] have no further interest in this policy."*

The Provider wrote to the insurer again on **26 September 2017**, enclosing the above mentioned letters of no interest from the first and second Providers, and detailing as follows;

**"I would be obliged if you would urgently confirm in writing that [the Provider] are now the correct legal & beneficial assignee of the above assignment"**.

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The insurer responded to the Provider on **2 October 2017** as follows;

*"I can confirm that plan number [xxxxxxx] has been assigned to [the Provider]. The plan was assigned on 28 September 2017 to mortgage account reference number [xxxxxxx]."*

While the Provider was not noted on the policy as the assignee until **September 2017**, it remains the case that the Provider was entitled to the benefit of the policy effective from the date of the transfer of the mortgage in **November 2016**.

**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 4.2 of the CPC 2012** details as follows;

*"A regulated entity must supply information to a consumer on a timely basis."*

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*In doing so, the regulated entity must have regard to the following:*

- a) the urgency of the situation; and*
- b) the time necessary for the consumer to absorb and react to the information provided."*

**Section 10.7 of the CPC 2012** provides as follows;

*"A regulated entity must seek to resolve any complaints with consumers."*

**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 that the Provider held the beneficial interest in the Life Policy from the date of transfer of the mortgage from the second Provider in **2016** and I accept that the Provider was not in breach of **section 126(1) of the 1995 Act** or **Section 5(b) of the Central Bank Code of Practice on the Transfer of Mortgage**. Further I note that the **Central Bank Code of Practice on the Transfer of Mortgage**, which was a voluntary code, appears to have since been revoked by the Central Bank of Ireland.

I accept that the Provider tried to resolve the Complainants' complaint pursuant to its obligations under **Provision 10.7 of the CPC 2012**. I also accept that the Provider did not attempt to limit its liability at any stage and accordingly I find that there no breach of **Provision 3.8 of the CPC 2012**.

However, it is clear that the telephone conversation which took place on **3 May 2017** led the Second Complainant to believe that the Provider would not have the benefit of the Life Policy in the event of either Complainant's death, and furthermore that the Provider would seek to recover the full sum from the surviving account holder. This, quite understandably, caused the Complainants significant concern and inconvenience. The Provider has also accepted that it miscommunicated the status of its contact with the insurer to the Complainants in its letter of **28 June 2017**, which resulted in a delay in the provision of accurate information to the Complainants.

The information that was provided to the Complainants by the Provider in relation to the Life Policy, on more than one occasion between **May** and **June** of **2017** was incorrect. The Provider has stated that it “understands and appreciates” that the Complainants may have failed to fully understand that in 2016 the respondent Provider was assigned the “beneficial interest in the policy”. I note the Complainants state that they found this to be “*patronising in the extreme*”. Given the poor and incorrect information given by the Provider, I am inclined to agree with the Complainants. It is most disappointing that the Provider was not clearer in its communications with the Complainants. Had it been clearer it could have more effectively reassured the Complainants that they had not lost the protection or benefits offered by the life policy.

While the Provider should have been clearer in its communication with the Complainants, I am of the view that it has taken reasonable steps to reassure the Complainants and to update the records of the insurer which held the life policy.

The Complainants, while inconvenienced by the communications of the Provider, did not lose the benefit of the life policy.


I note that the Provider has, in its submissions to this Office, offered the Complainants the sum of €2,000 “*in light of the confusion that the [Provider] may have caused to the complainants...*” I accept that the sum of €2,000 is a reasonable level of compensation in all the circumstances.

For the reasons outlined above, and on the basis that the offer of €2,000 remains available to the Complainants, 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**

19 June 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.