



<b><u>Decision Ref:</u></b>	2020-0365
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Repayment Mortgage
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

The complaint concerns the legibility of legal documentation required to be signed by the Complainants to complete a mortgage application to the Provider.

**The Complainants' Case**

The Complainants state that they were furnished with documents to sign by the Provider as part of an equity release mortgage application. They argue that one of the forms they were asked to sign was a Deed of Assignment of Life Policy issued by the Provider. The Complainants argue that this form is completely illegible but had to be signed by them to complete their mortgage application.

The Complainants indicate that they made a complaint in respect of the wording of the document as they believe it was not written in plain English as required by Provision 4.1 of the Consumer Protection Code 2012 (CPC). The Complainants argue that the Provider should ensure that all of its documentation can be understood by customers of all levels of ability. Further they argue that the Provider is in a position of power such that it is likely that customers will sign certain documents without understanding them when they are not written in an easily accessible manner. The Complainants indicate that when they rang the Provider for assistance, the Provider's agent explained the document in one sentence.

In a later submission, the Complainants argue that the Provider has acknowledged that the document in question is not written in plain English and argue that this is done deliberately to protect its own interests and not the interests of the customer.

They reject the Provider's argument that the document does not contain "*information*" in the sense contemplated by the CPC. They argue that information is, by definition, knowledge or facts which are imparted to someone else and that the document would not be presented to customers to sign if it did not contain information. The Complainants reject the Provider's argument that information in this context refers only to explanatory documentation or guides. In is the Complainants' submission that the CPC obligation covers all information and does not limit the type of information that it relates to.

In respect of the Provider's argument that the first Complainant did not seek an explanation of the document on the call as indicated, the Complainants accept that their main concern at the time was how to complete the relevant form as they were under serious time pressure to complete the application prior to drawdown of the mortgage in time to pay their builder. They accept that the first Complainant's recollection of the call was impaired but they argue that this, and the fact that no complaint was raised on that phone call, in no way precludes them from submitting a complaint in relation to the legibility of the document. They further argue that they had no time to obtain legal advice. The Complainants maintain that the only relevant issue is whether the document in question is legible and whether it breaches the CPC obligation to impart information in plain English or not.

The Complainants are requesting that the Provider re-write the document in language that can be easily understood by the average mortgage applicant.

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

The Provider has set out a timeline for the mortgage loan application and highlights several phone calls between the first Complainant and its representatives. The Provider argues that on these phone calls, any queries raised by the first Complainant were answered by it and that she at no time raised any concerns in relation to the legibility of the Deed of Assignment. In fact, the Provider highlights that on a call on 5 November 2019, the first Complainant indicated that she had no difficulties with documentation that included the Deed of Assignment after a query as to the correct manner of execution of the document had been dealt with. The Provider points out that it was later that same day (this is, 5 November 2019) that a complaint was raised in relation to the legibility of the Deed of Assignment. The Provider argues that the Complainants raised a complaint relating to the intelligibility of the Deed of Assignment without first having sought clarification from the Provider on the meaning and importance of the document. The Provider further argues that on a phone call on 8 November 2019 when a specific query was raised by the first Complainant in relation to the life insurance policy, she was advised by the Provider's agent in general terms in relation to the policy and ultimately referred to the life insurance company in question to clarify any policy issues. It states that no specific issue in relation to the Deed of Assignment was raised at this time.

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The Provider accepts that Provision 4.1 of the Consumer Protection Code 2012 (**CPC**) obliges a regulated entity to ensure that all information it provides to a consumer is clear, accurate, up-to-date, and written in plain English.

It argues, however, that the Deed of Assignment does not constitute “*information*” as contemplated by Provision 4.1. Rather, the Provider submits that the “*information*” contemplated by Provision 4.1 comprises explanatory documentation, guides, and other matters which are required to be written in plain English.

The Provider argues that at numerous points and in plain English, it set out the effect of the Deed of Assignment in its correspondence with the Complainants. In particular, it highlights that the requirement for the mortgage protection/life assurance policy and the assignment of these was brought to the attention of the Complainants in the letter of approval in principle dated 24 October 2019 and in the cover letter and Letter of Offer dated 30 October 2019.

The Provider argues that contracts for insurance are technical agreements and that in order to assign the beneficial interest in such a contract, a technical legal instrument needs to be executed in the form of a deed of assignment. It argues that these instruments are inherently complex. The Provider argues that while it is obliged in general terms to explain the effect of legally significant documents to customers, it is not for the Provider to explain in granular terms the effect of every clause and sub-clause of same. The Provider highlights that the Complainants were advised to seek independent legal advice before completing the mortgage loan application. It argues that if they did not understand the import or effect of the Deed of Assignment, they ought to have sought legal advice in respect of this.

The Provider does not accept the Complainant’s submission that the Deed of Assignment is deliberately drafted in obscure language to protect the Provider’s interests at the expense of its customers. The Provider argues that the interests of all parties are served by the Provider having enforceable security, effective life policies included. The Provider states that in general terms, the death of the borrower is an event of default permitting a lender to call in the monies due under the mortgage loan before it has reached maturity. It indicates that life policies provide that where a borrower dies during the term mortgage loan, the policy will mature and allows the mortgage to be fully redeemed from the proceeds of the policy. The Provider argues that the effect of the Deed of Assignment is to assign the beneficial ownership in such a policy from the Complainant to the Provider. It argues that if the Deed of Assignment was not legally robust, in the event of the death of one or both of the Complainants, there would be a risk that the Provider would not be entitled to apply the proceeds of the life policy towards the redemption of the mortgage loan. In such circumstances, the Provider argues it would be obliged to seek to enforce the mortgage loan agreement against the surviving spouse, or against the estates of one or both of them. The Provider argues that the mutual interests of the Provider and customers in avoiding such a situation takes precedence over “*the casual interest of person without legal qualification in understanding a technical legal document*”. The Provider argues that the Complainants were advised that they were at liberty to seek independent legal advice in the event that they did not understand the meaning or import any of documentation relating to the mortgage loan.

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The Provider does not accept the Complainants' submission that the "*information*" referred to in provision 4.1 CPC encompasses the deed of assignment. As the term is not defined in the CPC, the Provider argues that it must be given its ordinary meaning which is "*the imparting of knowledge in general*". The Provider argues that the purpose of the Deed of Assignment is not to impart knowledge. Rather, it is a technical legal instrument that performs an important function of assigning the beneficial interest in the life policy to the Provider. The Provider argues that numerous notices were provided to the Complainants explaining in general terms the requirement to assign a life policy and advising them to seek independent advice. The Provider states that it is satisfied that it is in full compliance with the CPC in the circumstances.

The Provider argues that the request that it rewrite the Deed of Assignment into plain English is an unreasonable request. It argues that the Deed of Assignment has not been drafted in order to obscure its true meaning. Rather it states that it has been drafted to protect the Provider's security. The Provider argues that as a matter of practical reality, it is more important for the Deed of Assignment to be legally robust than for it to be intelligible to laypersons as any difficulty in this regard can be remedied by customers seeking independent legal advice. The Provider argues that it would be disproportionate to require the redrafting of the Deed of Assignment as this would put the Provider in an unacceptable position with regard to risk and the enforceability of security.

The Provider is of the view that its standard warnings to mortgage applicants to seek independent advice before signing the mortgage loan Offer Letter has a bearing on this complaint. It argues that where customers do not understand the effect of legal documents, and where they have been advised to seek independent legal advice, there is an onus on them to seek advice before signing.

### **The Complaint for Adjudication**

The complaint is that the Provider issued the Complainants with documentation in the form of a Deed of Assignment of Life Policy that is not written in plain English and is illegible to an average customer.

### **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 September 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.

The complaint relates to the asserted intelligibility of the Provider's Deed of Assignment of Life Policy. The Provider has accepted that this is a pro forma document drafted by its legal advisers. The intended effect of the Deed of Assignment is to assign to the Provider the beneficial interest in a life assurance/mortgage protection policy to be taken out by potential borrowers with a third party company as security for a mortgage loan which has been applied for by those borrowers.

The Complainants made an online application for mortgage funding to part-fund an attic conversion in their family home. A letter approving the mortgage loan in principle issued to them on 24 October 2019. On 30 October 2019, a mortgage loan offer letter issued to the Complainants in the sum of €32,000 over a period of 28 years. This was signed and accepted by the Complainants on 4 November 2019.

On 5 November 2019, the first Complainant phoned the Provider querying the documentation that the Provider required in relation to life and home insurance. She explained there was an urgency in relation to the drawdown of funds. In relation to the Deed of Assignment, the first Complainant's query concerned the execution of the document. The Provider's agent explained that the Deed needed to be signed and witnessed but that the Provider could fill in the remaining details. The first Complainant was asked to insert her mortgage application number if it did not appear on the first page of the Deed. Other queries raised by the first Complainant in relation to home insurance and valuation documentation were comprehensively explained to the first Complainant. The first Complainant indicated that the documentation required by the Provider to be completed, which included the Deed of Assignment, had already been filled out and that she did not have any issue with any of them. She was informed that originals of the signed Deed of Assignment and Offer Letter were required by the Provider for the 'wet signatures'.

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The first Complainant was encouraged to call her named case manager regularly to ensure that the application was progressed promptly due to the urgency from the Complainants' perspective. Later the same day, the Complainants lodged a complaint in relation to the legibility of the Deed of Assignment. In a call on 8 November 2019, the first Complainant advised the Provider's agent that she had signed the Deed of Assignment but did not raise any issues in relation to the document. There were several other issues discussed on this and on subsequent phone calls in relation to outstanding documentation but none that I consider particularly relevant to the subject matter of this complaint.

In its submissions, the Provider has placed reliance on the fact that no issue was raised by the first Complainant in relation to the legibility of the Deed of Assignment on the phone call of 5 November 2019 or in any subsequent phone call, and on the fact that she indicated that she did not have any further issues in relation to the documentation. I accept the submissions of the Complainants that they were entitled to raise the complaint in whatever manner they deemed most appropriate. They chose to raise a written complaint and not deal with the issue on a telephone call. That was a matter for them to decide. I would note, however, that any queries that were raised by the first Complainant on that and every subsequent phone call with the Provider were answered capably and helpfully by the Provider. If the Complainants were concerned by the technicality of language in the Deed of Assignment such that they were unable to understand its purpose and effect, it would have seemed prudent to seek to have it explained to them by the Provider, at least in general terms. The Provider was not given this opportunity. In any event, the complaint that has been raised is not answered by whether or not the legibility issue was brought to the attention of the Provider during telephone calls between the Complainant and the Provider.

The complaint lodged on 5 November 2019 was acknowledged by the Provider by letter dated 11 November 2019. A further letter issued on 2 December 2019 informing the Complainants that further time was needed to properly investigate the complaint. A final response letter issued to the Complainants on 16 December 2019 indicating that the Complainants' concerns regarding the legibility of the Deed of Assignment would be referred to the Provider's legal department but no further action was proposed in respect of the complaint. The Provider was in full compliance with its obligations under the Consumer Protection Code 2012 (CPC) in the manner that dealt with complaint in question.

I accept that the dual requirement for the Complainants to: (i) have a mortgage protection/life assurance policy in place for the term of the loan; and (ii) to assign the benefit of that policy to the Provider, was brought to the attention of the Complainants before the loan was made to them.

General Condition 2(a) the Letter of Offer dated 30 October 2019 provides as follows:

*"The 'Lender's Security' is...*

*(ii) the legal assignment of mortgage protection policy for the term of the Loan, which will repay the whole of the Loan if the borrower dies before the loan is repaid (the 'Life Policy')..."*

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General Condition 3(a) provides that the lender must be furnished with evidence that the borrower has effective life policy in place prior to drawdown of the loan. Further, the offer letter was accompanied by a European Standardised Information Sheet dated 30 October 2019, section 7 of which highlighted the requirement of keeping the mortgage protection policy in place for the term of the loan as one of the lending conditions.

The requirement for a mortgage protection policy was also indicated to the Complainants in the letter of approval in principle dated 24 October 2019 which informed the Complainants that they needed to arrange home insurance and mortgage protection or life assurance cover in advance of drawdown of the mortgage.

I therefore accept that the Complainants were informed of the requirement to furnish evidence of an effective life policy as well as the assignment of their interest in the policy to the Provider prior to the completion of the mortgage loan.

I accept that the assignment of the beneficial interest in the required mortgage protection or life assurance policy was to be effected by the signing and execution of the template Deed of Assignment. I further accept that this was indicated to the Complainants by letter dated 30 October 2019. This letter provides as follows:

*"I have also enclosed some documentation that needs to be completed and returned to us. This documentation will help you comply with the conditions detailed in your Offer Letter. These are called 'Conditions Precedent', and can be found in Part 3 of your Offer Letter. There are also some 'General' and 'Special Conditions' applying to your loan, and these can be found in Parts 4 and 5 of your Offer Letter.*

*The Bank is not insisting that you engage a solicitor to act on your behalf in respect of the Loan. It is, however, recommended that you obtain independent legal advice before proceeding with the Loan."*

The Offer Letter itself also contained a notice in bold type that "***This is an important legal document. You are strongly recommended seek independent legal advice before signing this.***"

I have examined the template Deed of Assignment that was enclosed with the Letter of Offer dated 30 October 2019. I accept the Complainants' contention that the document in question may not be easy to decipher for a layperson. I do not doubt the sincerity of the Complainants' submissions that they found the language of the document confusing and are of the view that other mortgage applicants would have found it difficult to understand as well. From my examination of the relevant document, however, I accept that the template Deed of Assignment had the effect of assigning the interest of the borrower or joint borrowers in a mortgage protection or life assurance policy to the Provider.

I accept that contracts for insurance are technical agreements and that in order to assign the beneficial interest in such a contract, a technical legal instrument needs to be executed in the form of a deed of assignment.

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I further accept that these instruments are inherently complex. While there is an increasingly prevalent view that legal documents ought in general to be drafted in plain language, responsibility for the current state of such documents and the (at times) archaic contained language therein cannot be placed on the Provider. I accept that the Provider's interest is in having an enforceable security over the proceeds of the mortgage protection/life assurance policy should either or both joint borrowers pass away during the term of a mortgage and not in trying to confuse its customers.

I further accept that the enforceability of such security is not purely in the interests of the Provider but that it is in the interests of both borrowers and financial service providers that enforceable security is provided as per the conditions attaching to the mortgage loan. This reduces the risk that mortgagors will default resulting in the mortgage in full becoming due and owing in circumstances involving the early death of one or both borrowers. The importance of mortgage protection insurance for all mortgage customers is highlighted in relevant consumer protection legislation.

The Provider accepts that it is obliged in general terms to explain the effect of legally significant documents to customers, but argues that it is not for the Provider to explain in granular terms the effect of every clause and sub-clause of such documents. I accept this submission. The purpose of independent legal advice is to explain such legally complex documents to customers when they are unable to understand the details contained in such documents. The Provider is a lending institution and is not obliged to act as a legal adviser to mortgage applicants. I accept that the Complainants were advised to seek independent legal advice before completing the mortgage loan application. I further accept the Provider's argument that if the Complainants did not understand the import or effect of the Deed of Assignment, they ought to have sought legal advice in respect of this. At the very least, they ought to have raised a query directly with the Provider in respect of the effect of executing the Deed of Assignment which they did not do. The fact that the Complainants were under time pressure to complete the mortgage application process to pay their builder is not a valid reason why they failed to seek advice on the meaning of the Deed of Assignment and is purely a matter for themselves.

In respect of Provision 4.1 of the CPC, the relevant provision provides 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."*

The term "*information*" is not defined in the CPC. There are many definitions of the word but in common parlance, "*information*" might be said to signify "*knowledge obtained from investigation, study, or instruction*" or "*the communication or reception of knowledge*". I also accept the definitions provided by the parties to the complaint of "*information*" as "*the imparting of knowledge in general*" or "*knowledge or facts being imparted to someone*". The provision in question is set out in Chapter 4 CPC which is entitled "*Provision of Information*".

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While Chapter 4 does not define what is meant by “*information*” in this context, I am of the view that the other provisions in Chapter 4 provide a context for the intended meaning.

Certain Chapter 4 provisions require specified information to be given to consumers about the regulated entity and regulated activities, such as the name of the group entity or its data protection policy. Other obligations involve detailed requirements in respect of products, such as the obligation under Provision 4.21 for the Provider to provide information to a consumer about the main features and restrictions of a product before offering, recommending, arranging or providing a product.

There are detailed obligations in respect of information on the impact of credit agreements, and about charges and remuneration. There are further obligations in respect of information concerning insurance products, such as an explanation to a consumer on the consequences of a failure to make full disclosure of relevant facts a proposal stage. In respect of mortgages, specific obligations exist in relation to information on lifetime mortgages and home reversion agreements and, in particular, the consequences of entering into each agreements. In respect of investment products, information is required to be provided in respect of matters such as capital security, risk, leverage and minimum investment periods. What ties these provisions together, to my mind, is that they seem to envisage a regulated financial service provider issuing information by way of guidance to a consumer, by way of letter or other explanatory document. I am not proposing that the term “*information*” is necessarily so confined rather that, as a general rule, this seems to be what is envisaged by the relevant CPC provisions.

So does the pro forma Deed of Assignment of Life Policy in question constitute “*information*” for these purposes? In my view, it does not. A Deed of Assignment a legal document that transfers the ownership of a property from one party to another. I accept that the purpose of the impugned Deed of Assignment of Life Policy is not to impart knowledge. Rather, it is a technical legal instrument that performs the specific function of assigning the beneficial interest in a life policy to the Provider. The more general “*information*” provided to the Complainants were those letters notifying them that they were obliged to put in place a policy of mortgage protection or life assurance and to assign the benefit of that policy to the Provider as a condition of their mortgage approval. The legal deed that they were required to execute to do this in order to legally assign the policy cannot be regarded as “*information*” as envisaged by Provision 4.1 CPC.

I am of the view that the Complainants were provided with sufficient information by the Provider to allow them to understand the significance of executing the Deed of Assignment in question. If the Complainants had further concerns as to the meaning of precise clauses of such a document, they should have sought independent legal advice or at least raised a specific query with the Provider. The Provider may not have felt it appropriate to provide such legal advice but, in this case, it was denied the opportunity to even explain in general terms the effect of the Deed of Assignment as the issue was not raised by the Complainants. The time pressure that the Complainants were operating under in respect of the drawdown of funds was not the fault of the Provider.

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While I accept that the language contained in the Deed of Assignment is not always written in plain English and that the *'legal jargon'* therein may be a source of confusion to laypersons, I do not accept that there is any obligation on a financial service provider to draft technical legal documents in plain English. The purpose of a Deed of Assignment of Life Policy is to validly assign the beneficial interest in a borrower's life policy to the Provider. I do not accept that the Deed of Assignment constitutes *"information"* of the type contemplated in the Provision 4.1 CPC.

For the reasons outlined in this Decision, 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**

20 October 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.**