



<u>Decision Ref:</u>	2020-0374
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Mis-selling (insurance) Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a mortgage protection policy with a named Insurer on **1 December 2009**, which provided her with life cover in the amount of €69,000 for a term of 10 years. This policy was arranged for the Complainant by the Provider, a Broker.

The Complainant's Case

The Complainant previously held a mortgage protection policy with a named Insurer on 1 October 2005, which had provided her with life cover in the amount of €76,305 for a term of 19 years. She incepted this policy when she was transferring a mortgage loan into her sole name and the policy term of 19 years was in line with the remaining term of the mortgage, which is scheduled to be repaid in full on 30 November 2023. This policy was also arranged for the Complainant by the Provider, her Broker.

The Complainant subsequently replaced this policy with a new mortgage protection policy with the same Insurer on 1 December 2009. This new policy provided her with life cover in the amount of €69,000 for a term of 10 years. This policy was also arranged for the Complainant by the Provider.

The Complainant, having been diagnosed with a terminal illness, telephoned the Provider in **February 2019** to query what was covered by her mortgage protection policy and was shocked to learn that not only did her policy not provide her with serious illness cover but that it would expire later that year in **December 2019**, four years before her mortgage was due to be repaid.

In this regard, the Complainant sets out her complaint in the Complaint Form she signed on **26 June 2019**, as follows:

"I was sold mortgage protection policy from [the Provider] in 2009 for a term of 10 years and my mortgage does not finish until 30th Nov. 2023. I was advised to take this policy and as I have dealt with [the Provider] for years, I presumed it was fine. I am a lay person and know nothing regarding policies except I required one for my mortgage ...

I have [terminal illness redacted] and only found out about my policy which expires in December 2019 when I contacted [the Provider] to see if I was covered for terminal illness. I was shocked when explained to me that my policy did not cover illness and that in fact my policy expired in Dec 2019. My mortgage is not finished until 2023".

In addition, in her email to this Office dated **15 April 2020**, the Complainant submits, *inter alia*, as follows:

"[The Provider] have stated that they had a previous policy that covered my mortgage term for the full term of loan before this one, that had lapsed. So they were aware of my mortgage term not ending until 2024. I understand that I as a person tried to get the best quote for my mortgage protection but surely [the Provider] should have never showed me a 10 year policy when their records show that my previous policy was for term ending 2024 that complied with my mortgage...I did not tell [the Provider] that my mortgage was 10 years left or even insisting on this new policy. For me the repayments were good and I trusted [the Provider] that they knew what they were doing. Surely they should have advised that this [policy] would not cover my mortgage term".

In her email to this Office on **1 May 2020**, the Complainant also submits, *inter alia*, as follows:

"[The Provider] knew from my previous policy the length of my mortgage. Really why would I say that my remaining mortgage term was less than it was...the fact is that [the Provider] should never have given me that [mortgage protection policy] that did not have sufficient cover. [The Provider] should have given me a [mortgage protection policy] for the term of my loan".

The Provider's Case

Provider records indicate that the Provider arranged a mortgage protection policy with a named Insurer for the Complainant that commenced on 1 December 2009, which provided her with life cover in the amount of €69,000 for a term of 10 years.

/Cont'd...

The Provider notes that the Complainant telephoned the Provider on 5 February 2019 looking for details of what was covered by this mortgage protection policy. The Agent advised the Complainant that she would forward a copy of the policy schedule to her and request a copy of the policy terms and conditions from the Insurer. The Agent also mentioned to the Complainant that the policy was expiring later that year, in November 2019. The Complainant commented that this was a mistake made by someone when setting up the policy as her mortgage was not scheduled to be repaid until 30 November 2023.

The Provider notes that its contemporaneous System Notes in relation to the sale of the mortgage protection policy to the Complainant in 2009 state, as follows:

"01/10/2009 [The Complainant] called into the office. She has received renewal notices for her Mortgage Protection policy no 12065719. She advised me that she is not renewing this policy as her mortgage details have changed and she needs a new policy for a term of 10 years. I asked if she had any documentation with her re. current mortgage and she confirmed no. She said her o/s balance is €69,000 with a 10 year term left to run. I advised that I would need to do a full financial fact find before I could offer her advice on a product. She advised that she does not want advice and requires the basic cover "no bells & whistles" to cover her mortgage. I advised I would run a quote on the open market based on the details given. Quote ran. [Insurer] cheapest @ €125.88pa. [The Complainant] thought this figure was expensive and asked if I could give her any sort of discount as [she] is unemployed and money is tight. I advised I could discount the 1st years premium only and reduce it to €90, however every yr after that would be €125.88 every year until the end of the policy term. She was happy with this and asked me to put cover in place. Completed MPR app with [the Complainant], F/find/Execution only waiver signed. Reasons Why letter signed, issued a copy of policy T&Cs to [the Complainant]. She advised she will send in payment next week. I advised in the meantime I will submit her proposal & will be in touch once I have a reply from [the Insurer]"

In this regard, the Provider says that the Complainant had advised it on 1 October 2009 that she did not wish to renew her then existing mortgage protection policy as her mortgage requirements had changed and she instructed the Provider to source the cheapest mortgage protection policy available to it for a term of ten years. The Provider acted as instructed, on an execution only basis. The Provider notes that it had no reason or incentive to sell the Complainant this policy, instead of her previous mortgage protection policy.

The Provider notes that it has arranged mortgage protection cover for the Complainant since 1996. During this time, the Provider acted in the capacity of a broker only and no advice was ever given to the Complainant in relation to the products that she purchased and she never requested any advice or any other financial product from it. In addition, the Provider notes that the Complainant never wanted to and never did furnish it with any correspondence from her mortgage lender regarding her mortgage loan and the Provider has never been privy to the details of the Complainant's personal financial information or her mortgage details save for the information provided by her in order to obtain a price and execute a policy.

/Cont'd...

In addition, the Provider takes the view that the Complainant “*was proficient in shopping her mortgage protection on a regular basis to achieve the best market rates*” insofar as she continuously sought cheaper alternatives to her existing mortgage protection cover. For example, in December 2013 the Complainant sought a mortgage protection quote for €45,000 for a six-year term to replace her then existing ten-year term policy (which only had six years left), however given that she was then four years older the quote was more expensive than her existing premium and she did not proceed with this option.

The Provider says that it never discussed with the Complainant, the option of including serious illness cover as part of her mortgage protection cover as she only ever requested the minimum life cover to satisfy her mortgage lender’s requirements. In this regard, the Provider notes that affordability was always a priority for the Complainant and it was a consistent annual trend from 1996 onwards, that she would request discounts and over the years, the Provider discounted premiums to facilitate such requests, by way of reducing its commission.

Accordingly, the Provider is satisfied that it arranged the mortgage protection policy for the Complainant in 2009, in accordance with her stated needs and requirements.

The Complaint for Adjudication

The complaint is that the Provider mis-sold the Complainant the mortgage protection policy that she incepted with a named Insurer on **1 December 2009**, insofar as this policy was not suitable to her needs and requirements at that time.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 1 October 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The complaint at hand is that the Provider mis-sold the Complainant the mortgage protection policy that she incepted with a named Insurer on **1 December 2009**, on the basis that this policy was not suitable to her needs and requirements. In this regard, the Complainant incepted a mortgage protection policy with a named Insurer on 1 December 2009, which provided her with life cover in the amount of €69,000 for a term of 10 years expiring in late 2019. This policy was arranged for the Complainant by the Provider, a Broker.

The Complainant, having been diagnosed with a terminal illness, telephoned the Provider in February 2019 to query what was covered by her mortgage protection policy and she submits that she was shocked to learn that her policy did not provide her with serious illness cover and that it would expire later that year, some four years before her mortgage was due to be fully repaid.

I note in this regard, that the Complainant had previously incepted a mortgage protection policy with a named Insurer on 1 October 2005, which had provided her with life cover in the amount of €76,305 for a term of 19 years to expire in 2023. She incepted this policy when transferring a mortgage loan into her sole name and the policy term of 19 years was in line with the term of the mortgage, which was scheduled to be repaid in full on 30 November 2023. This policy was also arranged for the Complainant by the Provider.

In this regard, the Complainant submits in the **Complaint Form**, amongst other things, as follows:

"I was sold mortgage protection policy from [the Provider] in 2009 for a term of 10 years and my mortgage does not finish until 30th Nov. 2023. I was advised to take this policy and as I have dealt with [the Provider] for years, I presumed it was fine".

However, I note from the documentary evidence before me that the Financial Planning Review document provides, *inter alia*, as follows:

"The purpose of this review is to ensure that the plans you have in place will meet your needs, and the needs of your dependants, now and into the future ...

The various sections requiring personal circumstances have however, been struck through and instead, the Complainant signed the following:-

/Cont'd...

Waiver option

I/We confirm that I/we do not wish to discuss my/our personal and financial details in connection with the attached application for a plan. I/we accept that I/we have not received any investment advice in relation to this transaction, and that I/we have been made aware of the investment risks associated with the transaction. I/We confirm that I/we wish to proceed with this transaction on an execution-only basis”.

In signing directly beneath this waiver option, I am satisfied that the Complainant indicated that she did not seek advice but instead she wanted the Provider to act on an “*execution-only*” basis, i.e. to simply sell her the product she wanted without giving her any advice.

I also note from the documentary evidence before me that the undated Reason Why Letter states, as follows:

“Further to our recent conversation I believe that you should effect a Mortgage Protection policy with [the Insurer]. I outline below my reasons for commencing this policy:

- *You require this cover in order to protect your Mortgage.*
- *[The Insurer] are the most competitive company on the market for this quotation.*
- *Cover is for €69,000 over 10 years as per your advices.*

Finally, if you feel our advice does not meet your current requirements, you should not proceed with the recommendation ...

I have read and I understand the above recommendation”.

I note that the Complainant signed this Reason Why Letter and though it is undated, it is reasonable to conclude from the details of the cover stated that this Reason Why Letter relates to the mortgage protection policy that the Complainant incepted on 1 December 2009.

In addition, in signing this Reason Why Letter, the Complainant indicated that she herself had informed the Provider that the cover she sought was for a term of ten years only, that is, “*Cover is for €69,000 **over 10 years as per your advices**” **[Emphasis added]**.*

I note that in her email to this Office dated **15 April 2020**, the Complainant submits as follows:

“As for signing that document I had no idea what this was, I just signed what they told me to sign for my mortgage protection as any person would”.

I take the view, however, that the Complainant is responsible for the documents that she signed and in that regard, the onus was on her to have read and understood the Financial Planning Review waiver and the Reasons Why Letter, before signing either or both of these documents.

/Cont’d...

It would have been prudent of the Complainant to have ensured that the term of her mortgage protection cover was at all times in line with the term of the mortgage loan itself. Having opted to avail of the services of the Provider on an execution-only basis (i.e. on the basis that she would not share details of her personal circumstances and she wanted no advice about the product she was seeking to purchase) I am of the opinion that it was the responsibility of the Complainant herself, to ensure that her mortgage protection cover being purchased was suitable to her needs and requirements.

Because the Complainant did not complete a full Financial Fact Find and did not share details of her personal circumstances with the Provider in 2009, I take the view that the Provider was not in a position to advise her that the product she had requested i.e. a 10 year life assurance product, was not suitable for her particular mortgage, as it would expire before the mortgage would be fully redeemed. As the Provider was not given an opportunity to advise the Complainant regarding this particular transaction, it was not in a position whereby it could alert her to the potential difficulty which in fact subsequently arose, as the mortgage policy expired at the end of 2019 and the mortgage has not yet been fully redeemed.

This is a difficult situation for the Complainant because she has been diagnosed with a terminal illness. On the basis of the evidence before me however, I am unable to make any finding that the Provider acted wrongfully in the services which it made available to the Complainant on an execution-only basis, in accordance with her request. Accordingly, I do not consider it appropriate to uphold this complaint.

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

23 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—

/Cont'd...

- (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.**

