An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0389
Sector:	Banking
Product / Service:	Personal Loan
Conduct(s) complained of:	Failure to process instructions in a timely manner Delayed or inadequate communication Failure to process instructions
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainant's attempts to redeem a life assurance policy and use part of the proceeds to pay off a loan originally taken out with the Provider.

The Complainants' Case

The Complainants incepted a loan of €150,375.00 on 18 July 2005 for the purpose of investing in a policy offered by a life assurance provider ("the life assurance provider"). In a letter dated 1 September 2016 the Complainants submit that the *"policy was taken out in 2005 with an investment of €200,000 comprising a loan of €150,000 from [the Provider] and €50,000 from our own resources. The policy was assigned to [the Provider]".* The Complainants state that *"over the past 10 years we re-paid €111,000"*. The Complainants submit that the outstanding loan balance of approximately €40,000 was sold to a third party ("the transferee") in November 2015. The Complainants set out in a letter dated 1 September 2016 that in *"April 2016 we agreed to re-pay the outstanding loan plus interest of €42,622.17 from our policy. The value of which at that time was approx. €198,000. Unfortunately this is when things became quite complicated as [the life assurance provider was] unable to process the request because [the Provider / the Transferee or its credit servicing firm] could not provide the appropriate legal documentation"*.

In their letter dated 1 September 2016, the Complainants submit *"Since April we have received no communication from [the Provider], [the Transferee] or [the credit servicing firm] despite numerous letters sent to them. Meanwhile the value of our plan has fallen by approx. €12,000."*

The Complainants submit that *"the main elements of our complaint are as follows:*

1. *That [the Provider] had a responsibility and duty of care at the time of the loan sale to notify [the life assurance provider] that the policy assignments could be released;*

2. *That because the above did not happen [the Transferee] would not deal with [the credit servicing firm] on the surrender of any portion of the policy. This resulted in an excessive delay in the encashment of our policy and the resultant difficulties in dealing with the parties involved;*

3. *Because the policy assignment was not released by [the Provider] there was a delay to us as policyholders accessing our money from April 2016 to September 2016. We think it is important to note that the loan amount outstanding at this time was approx. €42,000 but the value of the policy was approximately €200,000 so the non release of the assignment meant we were denied access to approx €160,000 of our money;*

4. *There is no acknowledgement by [the Provider] of the stress and difficulties the non release of the policy assignment caused us during the months from April 2016 to September 2016".*

The First Named Complainant submits that as he *"was unable to surrender the policy in February 2016 and access the policy proceeds I had to extend the period of the loan until September 2016 and this cost me an extra €3,000 in interest".*

The Complainants' complaint is that the Provider wrongfully caused a delay in the encashment of the Complainants' policy between April 2016 and September 2016, by failing to notify the life assurance provider of the transfer of the Complainants' loan account to the Transferee, and failing to confirm to the life assurance provider that *"the policy assignment could be released"*, and by failing to process and sign documentation relating to the release of the policy assignment in a timely manner. Also, the complaint is that the Provider has failed to acknowledge the stress and difficulties the delay in encashment caused the Complainants.

The Complainants submit they *"would see the complaint being resolved by a payment of €5,000"* consisting of €3,300 to offset *"additional interest"* incurred by the Complainants and a *"Stress/Anxiety payment of €1,700".*

The Provider's Case

In a letter to the Complainants dated 21 September 2016, the life assurance company states *"on 6 April 2016, we received your instruction to withdraw €42,622.17 from your plan and pay this directly to [the credit servicing firm]. As your plan was assigned to [the Provider], we required confirmation from them as the plan owners that they were agreeable to this instruction"* and *"on 13 June 2016 we received your instruction to fully encash your plan".*

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The Provider sets out that *"it appears that following the sale by [the Provider] to [the Transferee], after which the [Provider] had no legal or other interest in the loan facility or its released security, the Complainants sought to encash their policy. It appears that the Complainants made a full encashment request to [the life assurance company] on 13 June 2016 (having previously requested a partial encashment in the amount of €42,622.17 in April 2016 which the Complainants apparently intended to use to repay the balance of their loan)"*. The Provider also states *"that on or around 21 September 2016 we understand [the life assurance provider] issued a cheque to the Complainants for €155,693.04 which was the remaining value of the [the Complainants'] bond"* and that the Complainants' loan was redeemed in or around 30 September 2016.

The Provider submits that *"we understand that [the life assurance provider] agreed to value the bond as at the date of the encashment request on 13 June 2016"* and that *"[the credit servicing firm] further agreed to refund all interest accrued on the Complainants' loan account since [the credit servicing firm] started servicing the loan (on or around 19 November 2015). The total amount of interest accruing on the Complainants' loan account waived by the [credit servicing firm] was, we understand, €1,379.77"*.

The Provider states that the credit servicing firm approached it on 4 July 2016 seeking a deed of release and deed of assignment, and it furnished both documents on 9 August 2016.

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 9 October 2020, outlining 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.

By facility letter dated 18 July 2005 the Provider agreed to advance €150,375 to the Complainants for the purposes of investing in a bond with a life assurance company. The Provider sold the loan to a third party provider (the Transferee) on 20 November 2015 – the Provider wrote to the Complainants to notify them of this loan sale. After the loan transfer, the Provider had no further involvement in the 'day to day' administration of the loan.

However, the Complainants began dealing with the Transferee and ultimately agreed to repay the loan during 2016. To do so, they wished to encash their policy with the life assurance provider and use those proceeds to repay the loan.

Despite the loan having been transferred to the Transferee, the documentation associated with the policy still reflected an assignment to the Provider.

The Complainants essentially contend that the Provider had a duty to assign the policy to the Transferee as part of the loan sale. The Provider, correctly, contends that no such duty is established, either on the contractual documentation or at all. Ultimately, once the loan sale has proceeded it is for the transferee to ensure the underlying securities are in order. It is doubtful, however, whether that extends to having all securities assigned at the same time as the loans are purchased. I am not aware of any authority for that proposition.

A failure to assign security will generally operate to a transferee's detriment – where the loan defaults and the security is not properly in place. Where a customer seeks to redeem a policy that is security for a loan (as in this case), once that request is complied with within a reasonable period of time (or within the timeframe set out in the contractual documentation) that is all that any party can be required to do. There is no entitlement for a redemption to be processed immediately – the policy proceeds are not cash on deposit, but rather a bond value that requires certain steps to be taken for redemption.

There are a number of differed providers involved in the background to this dispute. However, this complain and investigation relate to the conduct of the Provider against which this complaint is made. I am only in a position to consider and adjudicate the conduct of the named Provider to this complaint.

I will therefore examine the conduct of the Provider in relation to the matters complained of.

The Complainants have stated (and letters from the Transferee and credit servicing firm confirm) that they were in contact with the Transferee and/or the credit servicing firm regarding a redemption of the policy from February 2016. However, the Provider states that it was not approached by the credit servicing firm until 4 July 2016 when a deed of assignment and deed of release was sought.

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Up to July 2016 the Provider appears to have had no involvement in this process, nor could it be expected to have known what was happening with the account. Having been approached by the credit servicing firm on 4 July 2016, the Provider furnished the deed of assignment and deed of release on 9 August 2016 – just over one month later.

I am not satisfied that just over one month – from 4 July 2016 to 9 August 2016 – is an unreasonable period of time to furnish deeds of the nature sought. Particularly, given that the documents had to be drafted and executed.

Furthermore, I have been furnished with no evidence of any loss suffered by the Complainants – it appears that the life assurance provider paid out the balance of the policy as at 13 June 2016. Any fall in policy value up to September 2016 was thereby remedied. Similarly, I can see no justification for a claim of €3,300 "additional interest", especially where it appears that the credit servicing firm refunded interest that had been applied to the account since it began administering it in November 2015. I note further that, in addition to waived interest and a refund of overpayment to the credit servicing firm (totalling over €2,500) the Complainants were also given €4,000 by way of resolution of the issues between them and the credit servicing firm.

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

2 November 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.