



<b><u>Decision Ref:</u></b>	2020-0466
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Payment Protection
<b><u>Conduct(s) complained of:</u></b>	Mis-selling
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to a payment protection insurance policy (“the policy”) on a credit card account which the Complainant opened in **late 2011**. The policy offered protection for credit card repayments falling due to the account, under the following headings:

*“Life Assurance, Disability, Redundancy (not applicable to self-employed), Hospitalisation (applicable only to self-employed persons).”*

The Complainant says that in **September 2011** she was mis-sold the policy by the Provider.

#### **The Complainant’s Case**

The Complainant says that she attended the Provider for the purpose of applying for a credit card. This was her first time making such an application and she required some assistance in completing the application form. She says that when completing the form, a staff member of the Provider referred the Complainant to three parts of the application form that required her signature and the date. The Complainant says that following the instruction of the staff member, she signed her name on the three parts of the application form.

The Complainant states that at no time during the application process was she given an explanation as to what ‘(policy optional)’ was or involved. She states that she was advised to sign her name at the relevant points on the application form and as a result of this, the policy was not optional for her.

The Complainant states that she was not aware that she had opted for this policy and she did not receive an information booklet, nor any renewal letters for this policy. The Complainant states that at the time of the application, she was a twenty-five-year-old woman with a credit card limit of €500. She states that she would have had no need for such a policy.

The Complainant states that she was aware of the charges on her credit card however as this was her first credit card, she thought that these charges were compulsory, in the same way as compulsory charges are applied to debit cards.

The Complainant states that she became aware of these charges in **2014** and she wrote to the Provider at that time, requesting an investigation into this. The Complainant says that the Provider denies that she raised this issue at that time. She also says that the Provider has no record of her initial query from 2014, but she herself retained a response from the Provider dated **7 July 2014** thanking her for her enquiry and advising that the Provider was currently investigating the matter on her behalf.

The Complainant states that she received a letter from the Provider dated **17 December 2013** advising that having participated in a review by the Central Bank of Ireland, of sales processes of Payment Protection Insurance (PPI) policies sold since the introduction of the Consumer Protection Code 2006 on 1 July 2007, the Provider had concluded that the sales process of the policy sold to the Complainant in late 2011, was in compliance with CPC 2006 and no further action was required. Following receipt of this letter, the Complainant says that she wrote on two further occasions to the Provider to inform it that she had been unaware that the policy was an optional product. The Complainant says she received no response to these letters.

The Complainant states that by letter dated **12 March 2017**, she indicated to the Provider that she had requested on a number of occasions, for the charges to her account to be investigated. The Complainant further stated that she was:

*“totally dissatisfied with the lack of communication given my previous letters went unanswered”*

The Complainant cancelled her policy on **2 June 2017**. She states that the Provider should not be permitted to use a signature on a credit card application form that also contains an application for a separate product, namely the insurance policy. The Complainant states that the credit card application form was designed in such a way to allow this second product, the policy, be sold to consumers without consumers being aware that there was a second product within the credit card application form.

The Complainant refers to the provisions of the Consumer Protection Code 2006 requiring that a Provider:

*“acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*

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She says that:

*“At no point throughout any of the process have the Provider acted in my best interest. The Provider repeatedly state they are satisfied with the purchase of this policy as it was self-selected...”*

*...it is interesting to note that under CPC 2012 this practice has been outlawed...”*

Secondly, she points to the CPC principle requiring that a provider:-

***“does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service”***

and she says in that regard that:

*“...the Provider were also negligent in their failure to provide any information whatsoever as to the advantages and disadvantages of the product...”*

The Complainant also refers to the CPC provision that a Provider should act in a way that:

***“does not exert undue pressure or undue influence on a customer”***

She says in that regard that:

*“I had absolutely no requirement for this policy, that I never asked for it, that it was highlighted to me where my signature was needed on the day of the application and that it took many years for me to even realise that this was a policy I had been tricked into buying”*

### **The Provider’s Case**

The Provider states that on **28 September 2011**, the Complainant completed a credit card application form in branch. The Provider states that part of the completed application form included a request to take out “PPI” to protect the credit card repayments, in the event of certain events including death, disability, redundancy (not applicable to self-employed) hospitalisation (applicable only to self-employed persons). The Provider says that the Complainant self-selected optional “PPI” to protect her monthly credit card repayment in the event of death, disability, redundancy or hospitalisation.

The Provider states that the completed application form was submitted to the Provider’s underwriters for assessment and based on the information gathered from the application form, the Complainant was deemed eligible for the policy.

The Provider states that the policy was available to the Complainant as an optional product. Furthermore, the Provider states that the Complainant signed to confirm her request to have the protection of the optional policy. The Provider states it offered no advice during this process.

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The Provider states that on **21 October 2011**, the credit card facility was approved and the card pack was issued to the Complainant. The Provider says that the credit card pack contained the credit card, a copy of the credit card terms and conditions and also included a copy of the policy document containing the Terms and Conditions of cover. The Provider states that the Complainant:

*“had the opportunity at that time to review the policy and that if deciding that it was of no benefit to her, cancel it and receive a refund of any “PPI” charged to the account”.*

The Provider states that it is satisfied that the optional nature of the policy was clearly outlined to the Complainant on both the application form which she signed, and also within the policy booklet that issued with the credit card. The Provider also points out that the narrative in the monthly credit card statements issued to the Complainant specified the charge associated with the policy. It says that it has no record of the Complainant ever contacting it to query the charge or what it referred to.

The Provider states that in **2012**, customers of the Provider who had availed of this optional PPI, post 2007, were informed by letter that a review of the sale of the policy was being undertaken under the directions and guidance of the Central Bank of Ireland. The Provider states that the Complainant was informed by letter in **November 2012** that this review of the sale of the policy was taking place. The Provider states that this letter put the Complainant on notice that she had availed of this optional policy and there is no record of the Complainant contacting the Provider following receipt of this letter.

The Provider also states that in **December 2013** another letter issued to the Complainant from the policy review panel, confirming that the review had taken place in relation to the policy and it had concluded that the sale of the policy was in compliance with CPC 2006. The Provider states that this letter also put the Complainant on notice, for a second time, that she had this policy attached to her credit card facility. The Provider states that it provided the Complainant with an address of where to send a cancellation request, should she no longer wish to avail of the optional policy but it has no record of the Complainant making contact, to query the policy in any way.

The Provider points out that the letter received from the Complainant dated **17 June 2014** was in relation to subscriptions that the Complainant wished to have assistance in cancelling, due to difficulties she was experiencing with the merchants involved. The Provider points out that the letter in question does not make any reference to the policy.

The Provider states that on **12 March 2017** the Complainant wrote a letter of complaint to the Provider requesting a full refund of the policy premium on the basis that the policy had been mis-sold. The Provider states that it acknowledged the complaint in writing and advised the Complainant that it would investigate the concerns she had raised. It also says that following an investigation into the sale of the policy, it was satisfied that the Complainant had self-selected the policy and had been provided with the policy terms and conditions and cancellation rights.

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The Provider states that in satisfaction of the requirements set out in CPC 2006, Common Rule 4:

*“the Complainant self-selected optional “PPI” when she chose to apply for a credit card. The Provider made no recommendation and the purchase of “PPI” was never a condition of granting a credit facility. If this had been the case, the Bank would not have given customers the option to cancel the policy within the first 30 days and receive a full refund of all premiums paid”*

The Provider states that in satisfaction of the requirements set out in CPC 2006, Common Rule 24:

*“the Provider only offered the optional “PPI” product ancillary to the associated credit facility. Detailed information was gathered from the Complainant in connection with her application for the credit card in order for the Bank to proceed with the application”*

The Provider states that in satisfaction of the requirements set out in CPC 2006, Common Rule 30:

*“the Complainant chose the Provider to apply for a credit card facility and during the application applied to have the benefit of “PPI” applied to the facility repayments if certain events occurred”*

The Provider states that in satisfaction of the requirements set out in CPC 2006, Common Rule 31:

*“the Complainant chose the Provider to apply for a credit card facility and during the application applied to have the benefit of “PPI” applied to the facility repayments if certain events occurred”*

The Provider denies the Complainant’s contentions.

### **The Complaint for Adjudication**

The complaint is that in **September 2011**, the Provider wrongfully mis-sold a policy of payment protection insurance to the Complainant, at the time when she applied for a credit card account.

### **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.

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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 **24 November 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 a *policy* to the Complainant when she was applying for a credit card facility. The Complainant, who was a first-time applicant for a credit card in 2011, says that she was not aware nor was she made aware at the time of completing the application form, that there was a secondary product on offer within the credit card application, i.e. the policy of payment protection insurance.

I note that the Complainant signed her name on the application form which indicated that she would like to avail of this policy. I also note from the documentary evidence before me that the Credit Card Application consisted of eleven sections. The section which is the subject matter of this complaint is section 8, containing the following heading and details:

***Payment Protection (Optional)***

*I would like to avail of Payment Protection cover and with my signature I confirm (having read the eligibility criteria in the attached brochure) that I am eligible and want to avail of this optional cover. I am signing in the place provided in this section to indicate this.*

I also note that just above the box where the signature was required, the following writing in block capital letters stated:

***“PAYMENT PROTECTION IS OPTIONAL”***

Section 8 did not require a box to be ticked to ‘opt-in’ to this policy. From the documentary evidence before me, instead, a signature was required to avail of the policy.

I note that the Complainant completed the application form with assistance from a member of staff who the Complainant says referred her to the three parts of the application form that required a signature.

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The Provider's position is that the Complainant placed her signature under section 8 of the application form, which indicated that she wished to avail of the optional PPI policy. The Provider further states that it also offered applicants an Optional Card Protection cover which the Complainant did not choose to have. I note from the application form that this Optional Card Protection did not require a signature but instead, in order to avail of the Optional Card Protection policy, an applicant was required to tick a box. From the documentary evidence before me, Section 9 of the application form was set out, in somewhat similar terms, as follows:

***Card Protection (Optional)***

*Please tick one box to protect ALL your cards if they are lost or stolen and to indicate the cover you require.*

€25  1 year single      €55  3 years single  
€40  1 year household\*      €85  3 year household\*

*The premium will be debited to your account now and subsequently at the prevailing rate until you tell us that cover is no longer required.*

***CARD PROTECTION IS OPTIONAL***

The Complainant maintains that she did not in fact require the payment protection insurance policy, which she incepted in **October 2011** on the basis of her application at the end of the previous month. I note that the following year, in **November 2012**, she was issued with correspondence advising her that the Provider was undertaking a review of the sale of payment protection insurance policies, including hers. It does not appear that the Complainant however took any action at that time to cancel the policy of payment protection.

During the intervening period, between December 2011 and October 2012, I note that the Complainant had been charged a monthly premium for payment protection insurance, which was described on the face of her credit card statement as "PAYMENT PROTECTION". This ranged in cost over that 10 month period from the lowest premium of €0.78 to the maximum of €3.53, averaging a monthly cost of €2.78.

I am also conscious that following the conclusion of the review conducted by the Provider, it sent a letter to the Complainant which I note was correctly addressed, advising her on **17 December 2013** as follows:-

*"The review has been progressing in accordance with the Central Bank of Ireland's Directions and Guidance. These included the appointment of an independent overseer deemed acceptable to the Central Bank, to assess whether the review was conducted appropriately. [The Provider's] review of PPI policies sold with your credit card in October 2011 has concluded that the sales processes were in compliance with CPC, and no further action is required regarding your policy.*

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*The cover provided by your PPI policy will remain in place until the policy term expires (subject to the policy terms and conditions). **Should you wish to cancel your policy at any time, you can do so by sending your request in writing to: [the Provider] [address].***

*We would like to thank you for your patience during this review. If you have any questions on the review or the contents of this letter, please refer to our FAQs enclosed. Your continued custom is greatly appreciated.” [My emphasis]*

I note that the enclosed one page of FAQs included the following:-

***“I want to cancel my policy***

*If you wish to cancel your policy, please send an instruction in writing to the addressed listed on your letter.”*

I note that notwithstanding these communications which the Complainant received from the Provider, no action was taken at that time to seek cancellation of the PPI policy in question, notwithstanding the Complainant’s indication more recently that she never wanted the policy to be in place.

It is accepted that the Complainant wrote to the Provider by letter dated **17 June 2014**. Having reviewed the contents of the letter however, I note that no reference was made to a payment protection insurance policy and rather the letter requested that certain subscriptions on her credit card, be stopped. I am satisfied accordingly, that there was no obligation on the Provider to consider the payment protection insurance policy, when it received that letter, as it referred to an entirely different matter.

It was the Complainant’s letter dated **12 March 2017**, which I note ultimately notified the Provider that she was unhappy with the existence of the payment protection insurance.

She advised at that time:-

*“I have noticed another payment protection fee being charged to my credit card. I have requested several times for this charge to be investigated as I believe I was mis-sold this product. I believe I am entitled to a full refund of all PPI charges since applying for this credit card. I am totally dissatisfied with the lack of communication or response in this matter...”*

I note that subsequently, in **June 2017**, the policy was cancelled by the Complainant.

I am satisfied, based on my review of the evidence before me, that the communications from the Complainant to the Provider between 2011 and 2017 disclosed no indication that the Complainant did not wish to continue with her payment protection insurance policy. Although she had indicated that she had complained on a number of occasions to the Provider and sought the cancellation of the policy, this is not borne out by the evidence available.

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I am also satisfied, based on the evidence available, that the payment protection insurance product was clearly marked “**Optional**” at the time when the Complainant signed the application requesting the cover in question.

The regulatory obligations on a financial service provider have changed since the Complainant purchased her PPI policy in late 2011, and indeed I note that a number of the Complainant’s submissions have referred to CPC 2012. I am satisfied however that it would not be appropriate to examine the sale of this policy against the more recent regulatory obligations of a financial service provider. Rather, the Provider’s conduct in selling the product to the Complainant in 2011, can be measured only against its regulatory obligations at that time, including CPC 2006.

Accordingly, on the basis of the evidence before me, I take the view that the Complainant’s complaint that the Provider mis-sold her a policy of payment protection insurance in 2011, is not borne out by the evidence and it would not be appropriate to 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.**



**MARYROSE MCGOVERN  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

17 December 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.