



<b><u>Decision Ref:</u></b>	2021-0144
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Other
<b><u>Conduct(s) complained of:</u></b>	Lapse/cancellation of policy Delayed or inadequate communication Failure to provide product/service information
<b><u>Outcome:</u></b>	Rejected

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

The Complainant was a partner in a now dissolved partnership. In **2009**, the partnership incepted a “Key Person” term assurance policy with the Provider on the life of the Complainant and also incepted a “Key Person” policy on the life of the other partner.

In **2012**, the Complainant arranged for the transfer of ownership of the policy insuring his life, to what he has referred to as “*my new company*”.

#### **The Complainant’s Case**

The Complainant explains that in **2009** he was a partner in a partnership (the **Partnership**) that took out ‘keyman cover’ for two partners. The Complainant states that the partnership used a financial adviser to set up this cover and the Provider was the insurer.

The Complainant explains that the partnership was dissolved at the end of **2010** and subsequently he established a company (the **Company**). The Complainant says the Provider sent him an email in **January 2012** which “*advised that the old partnership account paid costs during 2011 and then the product was transferred to my new company.*”

The Complainant explains that: “*I called [the Provider] to do this and followed up with an e-mail*”. He says that the Provider accepted monthly premiums from the Company from **January 2012** onwards. It seems in that regard that the Complainant is the sole director of the Company in question.

The Complainant explains that the financial adviser who introduced the product in **2009**, did not give advice during **2012** because this advisor was no longer dealing with this type of work. Referring to a letter from the Provider, the Complainant notes the Provider says that a broker took out the policy in **2009**. In respect of this, the Complainant says *“this was not the broker used.”* The broker referred to by the Provider, the Complainant advises, was appointed in **2018**.

The Complainant says that in **2019**, he was winding down the Company and was advised by his broker at that point, to cancel the policy, as it could not be transferred to the Complainant in a personal capacity

*“and it was not fit for cause as essentially as as (sic) single director company, I was not a keyman and the policy should never have transferred to [the Company].”*

The Complainant says that he did not receive advice in **2012** and the Provider accepted payments from the Company, from **2012** onwards. The Complainant says his phone call with the Provider

*“advised them of my new structure and while I tried to get advice, I did not from the original broker. [The Provider] never questioned the structure and took money from me for over 6 years.”*

The Complainant explains that:

*“My problem is that they should have advised me in 2012 that the policy should not be changed as my new criteria was not correct. I could have ceased the policy then and got a re-priced product personally ... they had a duty of care to ensure that the change I made was correct and suitable which I have been advised by [the broker] that this was not the case. ...”*

### **The Provider’s Case**

The Provider says its records reflect that the Complainant’s former Partnership took out a keyperson term assurance policy on the Complainant’s life. The Provider explains that the life cover benefit under the policy was €500,000 over a policy term of 26 years for a premium of €47.21 per month. The Provider advises that the policy commenced on **7 August 2009** and policy documents were issued to the Partnership as the owner of the policy, on **7 June 2009**.

The Provider says that its records indicate that the Complainant contacted it by telephone and email on **16 January 2012** to advise that the Partnership no longer existed. In the email, the Provider says the Complainant requested a new direct debit mandate in order to continue with the payment of monthly premiums.

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The Provider says that the Complainant also advised that once he had spoken to a financial adviser, he would then instruct the Provider as to whether the policy should be transferred to his Company or to a personally held policy.

The Provider says that in response to the Complainant's request, it emailed a new direct debit mandate to him and advised that it *"would revert to the policy ownership query."*

The Provider says that on **1 February 2012**, the Complainant sent a further email confirming that he wished to change the policy ownership to the Company, and that he would return the completed direct debit mandate in due course. The Provider advises that it received the direct debit mandate on **6 February 2012** from the Complainant and that it issued a letter to the Partnership on **7 February 2012** confirming that the bank account details had been updated. The Provider says it also emailed the Complainant on **7 February 2012** to advise that in order to change the ownership of the policy to the Company, a change of ownership form (which was included in the email) would need to be completed by the partners.

The Provider explains that at the time the change of ownership form was issued, the Complainant was advised that both partners in the Partnership would need to complete the form, however, on receipt of further information from the Complainant on **8 February 2012**, the Provider says it decided that only the Complainant needed to complete the form. The Provider advises that when the completed form was received, the policy owner was amended to the Company on **15 February 2012**. The Provider points out that, throughout the change of ownership process, the Complainant included his financial adviser in all email correspondence with the Provider.

The Provider says that in **2019**, the Complainant telephoned it on **27 March** and **3 April**, and also subsequently emailed it on **7 April 2019**. The Provider says the Complainant advised that he was in the process of winding up the Company and following a review of his policies with an independent broker, he believed that the policy was not suitable for him. The Provider says it understands that the Complainant's broker advised him that the policy should have been cancelled in **2012**, when the Partnership ceased.

In the circumstances, the Provider says the Complainant asked for the policy to be transferred to him personally. The Provider says that, in general, it does not accept a request to change a business owned policy to a personal policy. In addition, the Provider says that it has a discretion as to who it contracts with, when providing cover.

In reaching the decision to decline the request for a change in ownership, the Provider explains it took into account that the policy was a keyperson policy taken out by a business for business purposes. The policy, which commenced on **7 August 2009**, was designed to compensate an employer as policy owner, for the loss of a key person in the event of that employee's death.

The Provider says the change of ownership carried out in **February 2012**, which the Provider facilitated, did not alter the purpose of the cover i.e. it remained a business owned protection policy.

The Provider says however that it was not prepared to facilitate the Complainant's request in **April 2019**, to change the policy ownership from that of the Company to his name. Such a change would alter the purpose for which the policy was taken out. When responding to this Office in **August 2020**, the Provider advised that the policy had lapsed, more than a year earlier, owing to the non-payment of premiums.

The Provider remarks that it trusts the Complainant will have been informed by his advisers that it has always been, and remains, open to the Complainant to apply to take out a policy in his own name if he wishes to put cover in place for himself. The Provider advises that an application for a personal policy will be assessed in the usual manner and the Provider would be happy to do so.

The Provider states that it acceded to a request for change of ownership in **2012**, made on behalf of the Company, being the replacement employer at the time. The Provider says that it did not act as adviser to the Complainant or to the Company at the time of the change of ownership and it had no obligation to provide advice.

### **The Complaint for Adjudication**

The complaint is that in **2012** the Provider facilitated the transfer of ownership of a Key Person policy, that was not suitable for the Complainant's needs or for the Company's needs. The Complainant is also unhappy that the Provider refused in **2019**, to transfer the ownership of the policy, into his personal name.

### **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 **19 April 2021**, 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

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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.

I note that the Complainant was a partner in a partnership which in **August 2009**, incepted certain Key Person term assurance with the Provider. The Complainant was the life assured for one of those policies, but the partnership was the owner of the policies in question. During a telephone call with the Provider on **16 January 2012**, it was confirmed that the beneficiary of the policy was the Partnership. The Complainant asked the Provider's agent if he could designate the beneficiary of the policy, as he was no longer a partner, in circumstances where the Partnership had ceased. The Provider's agent advised that the Partnership was the owner of the policy and that any changes to the policy would have to be effected, on the instructions of the Partnership i.e. both partners would need to effect those changes.

In the course of this conversation, the Complainant asked who would benefit from the policy, if he died. The Complainant was advised that it would be the Partnership or the Complainant's estate if the Partnership was dissolved. The parties then discussed transferring ownership of the policy to the Company. The Complainant asked if could he set up the policy where the beneficiary would be his spouse. The Provider's agent advised the Complainant that, in such circumstances, the Complainant could make the policy a personal policy. I note that by email dated **16 January 2012**, the Complainant wrote to the Provider as follows:

*"I refer to our conversation this morning in respect of the above-mentioned policy.*

*The policy is a key-person policy in respect of my life and the policy is owned by [the Partnership]. There is a similar policy with my previous colleague ....*

*I can confirm that this partnership no longer exists – albeit direct debits were paid up to December 2011.*

*I would be grateful if you could send me a direct debit mandate so that the policy payments can be taken over by my service company – [the Company]. I will liaise with my adviser ... as to whether the policy is to be transferred into my company or personally with my spouse.*

*I have attached confirmation of the cessation of the partnership .... I will write to you separately with instructions as to how I wish for the policy to be changed this month and I will enclose a cheque for the January premium so that the policy benefits continue..."*

[My underlining for emphasis]

On **1 February 2012**, the Complainant emailed the Provider in respect of the changes to the policy, stating:

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*In respect of the policy change – I wish to confirm the following;*

<i>Beneficiary to be changed to</i>	[the Company]
<i>Key Person</i>	[the Complainant]
<i>Cover</i>	500,000

*...”*

I further note that the Complainant signed an ‘Ownership Declaration’ on **8 February 2012**, which states that:

*“[The Provider] does not accept any responsibility for the suitability of this form in any particular case or for its legal or tax consequences. In case of doubt, you should obtain independent professional advice before using this form.”*

The Provider wrote to the Company on **15 February 2012**, to confirm that a transfer in ownership of the policy had taken place and that the Company was the new owner of policy. This letter also advised that if the Company had any queries, to contact the Provider’s Customer Service team or the Company’s ‘Insurance Advisor’.

Having reviewed the documentary evidence available, I note that in **January/February 2012**, the Complainant sought to transfer the ownership of the policy which is the subject of this complaint. However, it appears that prior to the Complainant’s email of **1 February 2012**, he had not made any decision as to the precise nature of the transfer of ownership, although, it was ultimately the case that “his new” Company became the owner of the policy, such that in the event of the Complainant’s death, the identified beneficiary of the policy benefit payment was the Company.

I am satisfied that the evidence shows that in 2012, the Complainant had the benefit of independent financial advice at the time when he was seeking to effect the change in ownership of the policy or, at the very least, his financial adviser/broker was aware of his desire to do so. In my opinion, the evidence also suggests that the Complainant was not seeking, or seeking to rely on, any advice from the Provider. For instance, in the Complainant’s email of **16 January 2012**, he stated that: *“I will liaise with my adviser ... as to whether the policy is to be transferred into my company or personally with my spouse. ... [and] ... I will write to you separately with instructions as to how I wish for the policy to be changed.”*

I also note that a financial adviser/broker was cc’d on the Complainant’s emails to the Provider in respect of the change in ownership; in particular, the emails dated **16 January** and **1 February 2012**.

In addition, in an email dated **8 February 2012**, the Complainant says:

*“I have copied my agent again in respect of this correspondence.”*

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Further to this, the Ownership Declaration which the Complainant signed, made clear that the Provider took no responsibility for the suitability of the transfer of ownership process and that independent professional advice should be obtained before using that particular form. The Provider's letter of **15 February 2012** also advised the Company (as the new owner of the policy) to contact either the Provider or its Insurance Advisor, if it had any queries.

In a submission dated **8 October 2020**, the Provider acknowledges that its agent incorrectly informed the Complainant during a telephone conversation on **16 January 2012** that the policy could be converted to a personal policy. The Provider says that if the Complainant had submitted a request, at that time, to change the policy to a personal policy held in his own name, it would have advised the Complainant that it could not facilitate such a request because this would alter the purpose for which the policy has been incepted.

While I accept that during this particular 'phone call, the Provider's agent incorrectly advised the Complainant regarding this particular query and indeed the possibility of the Complainant's Estate benefiting on his death, having considered the matter, I am of the view that there is no evidence to suggest that the Complainant's decision to seek a change in ownership of the policy from the partnership to the Company, was necessarily influenced by the telephone conversation on **16 January 2012**, nor did the Complainant advise the Provider's agent during this call that he was considering changing the policy to a personal policy. It is clear from his email of that date that these issues were to be discussed directly with his advisor.

Based on the communications between the Complainant and the Provider in **January and February 2012**, I do not accept that the Provider was obliged to assess or advise the Complainant as to the appropriateness of his desire to seek to change the ownership of the policy from the partnership to the Company or as to the suitability of that step for either the Company or indeed for the Complainant in a personal capacity. Furthermore, I do not accept that the Provider indicated or approved the suitability of the ownership change simply by carrying out the Complainant's instruction in 2012.

The Complainant is also dissatisfied that in 2019, the Provider refused to transfer ownership of the policy into his personal name. It is clear that the Complainant in 2019 was in the process of winding up the Company and in the context of a review of various policies with his independent financial broker, the opinion was formed that the policy ought to have been cancelled in 2012 at the time of the dissolution of the partnership.

It seems that this information came as something of a surprise to the Complainant who, on the strength of independent advice he had received in 2012 from a third-party entity, had taken active steps to liaise with the Provider, in order to ensure that the ownership of the policy could be transferred from the partnership, to the Company.

It is in that context that it appears that the Complainant asked the Provider at that point to arrange for the ownership of the policy to be transferred to him personally. The Provider has however, explained that in general terms it does not change a business-owned policy to a personal policy and for that reason, it declined the Complainant's request.

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The Provider has explained that the policy as a Key Person policy had been incepted in 2009, by a business for business purposes, as it was designed to pay benefits to the business, as the policyowner, in the event of loss of a key employee, should that employee die. Whilst the Provider was willing to accede to the request in 2012 to transfer the ownership of the policy from one business (the partnership) to a different business (the Company) it was unwilling to permit a change of ownership in 2019 to the Complainant personally, owing to the very significant difference in the purpose of cover.

I take the view that it is appropriate to accept the Provider's position in that regard. The policy, since it was incepted in 2009 had been owned by and paid for by a business as is appropriate for a "Key Person" policy, the purpose of which is to ensure that a suitable benefit payment will be made to the business in the event of the death of a key employee. A "Key Person" policy of this nature is designed to be held by a business and is a different form of policy from a personally held policy of insurance.

It seems likely to me that these issues will, or should, have formed part of the Complainant's discussions with his advisor in early 2012, given the contents of his email to the Provider of 16 January 2012, which indicated that he would liaise with his advisor, to consider whether or not the policy should be transferred at that time from the partnership into corporate ownership or, alternatively, "*personally with my spouse*".

I do not accept in that regard, that as recently suggested by the Complainant that the Provider should have advised him not to effect the change of ownership which he requested in 2012 or that "*they had a duty of care to ensure that the change I made was correct and suitable...*". I am satisfied from the evidence that the Complainant had access to independent advice in that regard, and that it was not a matter for the Provider to seek to dissuade him from taking the steps he had decided upon, on the strength of that independent advice in 2012.

Accordingly, on the basis of the evidence before me, I take the view that with the exception of some poor/incorrect information which it gave to the Complainant in 2012, prior to his discussions with his independent advisor, there is no evidence of any wrongdoing by the Provider, such that it would 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**

12 May 2021

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.