



<u>Decision Ref:</u>	2021-0189
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Direct Debit
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint refers to the Complainants' two life policies, which were administered through the Provider. The policies were assigned to mortgages held by the Provider. The complaint arose when the Complainants realised in July 2018 that a request to change their existing life insurance Provider, which they had made in October 2015, had not been implemented by the Provider at that time.

The Complainants' Case

The Complainants submit that they wrote to the Provider on 27 October 2015. In their letter, they state that they wished to change their current life policy from Provider A to a new life insurer, Provider B. The Complainants state that they sent the new policy details to the Provider and asked that it "cancel" the existing life policies with Provider A. The Complainants argue that the Provider did not cancel the policies until 18 July 2018, with the result that the Complainants paid from October 2015 to July 2018 the sum of €12,237 to Provider A. The Complainants argue that this resulted in them paying for two sets of life policies for the same mortgage.

In support of their argument, the Complainants have provided a copy of the letter of 27 October 2015 in which they requested that the Provider cancel the policy, as well as an email from their financial adviser confirming that she brought the letter to a local branch of the Provider.

The Complainants want the Provider to refund the premiums that they paid to Provider A between October 2015 and July 2018 in the sum of €12,237.

The Provider's Case

The Provider states in its final response letter of 23 July 2018 that it has no record of receiving the Complainants' letter dated 27 October 2015. The Provider submits that its standard practice is to image documents received that pertain to a client mortgage. It argues that it has no evidence of receiving policies in respect of the new life insurer, Provider B, relating to the Complainants' mortgages in 2015. The Provider further argues that a Deed of Assignment was not presented along with the policies and concludes that it would not have been in a position to assign the new policies to the mortgages without a completed Deed of Assignment for each new policy/mortgage. The Provider states that the Complainants' life policies with Provider A have now been cancelled and the life policies with Provider B have been assigned in respect of the mortgages from 18 July 2018.

The Provider states that the Complainants' policy with Provider A was inceptioned on 27 February 2006 in reference to the mortgage loan account on the Complainants' family home and another property. A further policy with the same provider was inceptioned on 1 February 2008 in reference to a second mortgage loan account on the Complainants' family home, another property and a third property.

The Provider states that the issue was initially raised with it by the second Complainant on a call dated 4 May 2018. On receipt of the call, the Provider states that it logged a formal complaint so the matter could be investigated. It states that several attempts were made to contact the Complainants to discuss the matter but they could not be reached. The Provider states that it issued correspondence to the Complainants on 31 May 2018 requesting that they follow-up with the Provider at their earliest convenience. The Provider states that the Complainants issued correspondence to it dated 30 May 2018 and following a full investigation, a final response letter to the Complainants was issued on 23 July 2018. The Provider notes that in the complaint to this Office dated 28 February 2019, the Complainants state that they first became aware of the issue on 27 May 2018.

The Provider states that it is satisfied that it did not receive any notification of the Complainants' request regarding the cancellation of the policies with Provider A in October 2015. The Provider argues that the Complainants have not provided any evidence to confirm that the letter that they now rely on dated 27 October 2015 was issued to the Provider at that time. It states that there has been no proof of postage, confirmation of registered post, or any other indication that the letter was sent at that time. It argues that it has no record of receiving the letter in October 2015 or otherwise. It notes that a copy of the letter was not submitted to the Provider during the initial complaint submitted in May 2018.

The Provider argues that the Complainants' account of the cancellation requests have differed significantly. On the call between the second Complainant and the Provider on 4 May 2018, the Provider argues that the second Complainant advised she had hand-delivered the Provider B policy documents to a branch of the Provider in October 2015. On 5 June 2018, the Provider argues that the Complainants advised the branch manager that their financial adviser submitted a cancellation request to the branch in October 2015. On 6 June 2018, the Provider states that the second Complainant advised the branch manager that she had in fact delivered the relevant policy documents to the branch in person in 2015. It states that during a meeting between the second Complainant, the financial adviser and the branch manager on 14 June 2018, the Complainants' financial adviser stated that she had delivered the Provider B policy documents by hand to the branch in October 2015 addressed to 'Mortgage Services, [area]' together with a cover letter requesting that a deed of assignment be issued to her office for completion. The Provider argues that the cancellation letter dated 27 October 2015 submitted with this complaint is drafted by the Complainants in person, and contains no reference to a Deed of Assignment, and is addressed to the Provider's Mortgage Department.

In addition to its argument that it has no record of receiving any correspondence, policy documents or written request from the Complainants or the financial adviser in October 2015 to cancel the Insurance Provider A policies, the Provider argues that it would not have been in a position to cancel the Insurance Provider A policies on receipt of an instruction alone. It was a condition of the Complainants' mortgage accounts that the Complainants have adequate life cover in place and assigned to the Provider. Therefore, the Provider argues that it would have been required to liaise with the Complainants on receipt of their instruction, and to request copies of the Insurance Provider B policies to ensure that this cover was adequate and sufficient to redeem the mortgage loans in full should a claim be submitted. It argues that the Complainants would also have been issued with a Deed of Assignment for completion and on return of same, the Provider would have been required to contact Insurance Provider B to assign the policies to the Provider.

The Provider argues that the second Complainant and her financial adviser met with the branch manager on 14 June 2018. At this meeting, the Provider argues that the financial adviser provided the Provider with documentation regarding the Provider B policies, including policy schedules and a completed Deed of Assignment noting both policies on the Deed. A Deed of Assignment had been sent by post by the Provider on 6 June 2018. On 19 June 2018, the Provider states that it telephoned the Complainants to advise that it required a letter from Provider B confirming that the policies were still in force, and a further Deed of Assignment was required as there are two policies and a completed Deed of Assignment for each policy had to be completed separately. The Provider states that it followed up by email to the financial adviser on 19 June 2018 outlining what was required. The Provider states that on receipt of the required documentation on 16 July 2018, it requested cancellation of the Provider A policies, and requested that the Complainants' Provider B policies be assigned to the Provider as replacement cover. It states that the cancellation was completed on 18 July 2018 and that the second Complainant was advised of this by telephone call on 23 July 2018 and by final response letter dated 23 July 2018.

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The Provider argues that the premiums paid with respect to the Complainants' life cover policies were made to Provider A, and not to the Provider. While the premiums were billed with the Complainants' mortgage loan account repayments, the funds were paid to Provider A by the Complainants. The Provider states the premiums paid from October 2015 to July 2018 on the first policy amounted to €5,150.32 and €7,379.02 in respect of the second policy.

The Provider reiterates that the life cover policies were held with another financial service provider and therefore the Provider would not be in a position to offer a refund to the Complainants in this case as all premiums were paid to Provider A not to the Provider. The Provider states that it has liaised with Provider A which confirmed that Provider A has no record of having received cancellation requests from the Complainants with regard to either of the life policies and further has no record of receiving alternative policy details from the Complainants.

The Provider argues that its position is that it did not receive a cancellation request from the Complainants in October 2015 and the matter was not raised by the Complainants with it until 4 May 2018. Had the Complainants or their financial adviser submitted the cancellation request in October 2015, the Provider argues it would not have been a sufficient instruction to replace the life cover at the time. It argues that it would have been necessary for the Complainants to complete and sign a Deed of Assignment for each policy and have this witnessed before returning them to the Provider together with policy schedules for the new life cover provider. The Provider would then be required to request the cancellation of the Provider A policies and to contact the new life cover Provider to note its interest on the replacement policies. To complete this process, the Provider argues that it would have had to engage with the Complainants or their financial adviser at the time and has no record of any such communications on file.

The Provider argues that the Complainants' premiums were billed with the mortgage loan account repayments each month. It argues that the mortgage account statements issued to the Complainants every year clearly outlined the policies as part of a separate transaction in the sums of €217.03 and €152.99 per month. The Provider indicates that while it appreciates that it is unfortunate that the Complainants have paid for duplicate life cover between October 2015 and July 2018, it argues that the Complainants could have submitted a claim to both providers during that time, if necessary.

The Complaint for Adjudication

The complaint is that the Provider failed to follow a request by the Complainants in October 2015 to cancel their life policies with Provider A, resulting in the Complainants paying for two sets of life policies on the same mortgage between 27 October 2015 and 18 July 2018.

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 14 May 2021 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 dispute at the centre of this complaint is whether the Complainants submitted, and the Provider received, a request in October 2015 to cancel the Complainants' life cover policies held with Provider A and sold through the Provider as intermediary in February 2006 and January 2008. The Complainants have submitted a copy of a letter dated 27 October 2015 which they claim was hand delivered to a local branch of the Provider on that date. It is the Complainants' position that they understood that the life insurance policies would be cancelled in October 2015 in accordance with the instruction set out in that letter. The Provider's position is that it has no record of any such request being received, despite its usual practice of copying and filing any correspondence relating to customer mortgage accounts. Further, the Provider has argued that if it had received the instruction on which the Complainants now rely, the instruction would have been insufficient for it to cancel the policies in question and it would have had to liaise with the Complainants or their financial adviser to organise the completion of two Deeds of Assignment and further liaise with the new life insurance Provider to ensure that the new life insurance policies were adequate for the purposes of the mortgage accounts and were assigned to the Provider.

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The letter dated 27 October 2015 on which the Complainants rely is handwritten and is in the following terms:

*“[The Provider]
Mortgage Dept*

27th Oct 2015

*Re: [the Complainants]
[the Complainant’s address]*

Re: Mortgage accounts

Dear Sir,

*We refer to the above mortgage accounts held through yourselves balances approx 180k term remaining 11 years and 200k term remaining 12 years approx, and advise that we wish to cancel the existing policies from [Provider A] that you hold to cover these such mortgages. We now enclose policy number [*****97] and policy number [*****03] to be held by yourselves in favour of those mortgages. Please cancel the [Provider A] policies ensuring no further direct debits are debited to our accounts.*

Thanking you

*[signature first Complainant]
[signature second Complainant]”*

The Complainants have submitted an email from their financial adviser dated 31 August 2020 in the following terms:

“In relation to the above clients and the Complainant re non cancellation of [Provider A] life premiums by the Bank [the Provider], I confirm that on the 27th October 2015 I called to [the Complainants] home where I picked up 2 [Provider B] original policies that I as there (sic) Financial Advisor had arranged to cover their borrowings with the understanding the [Provider A] policies would be cancelled as these were cheaper and adequate. I collected these from [the second Complainant] as [the first Complainant] was at work. I then put in a brown A4 envelope with accompanying letter to say these were replacement policies for the Bank to hold, I also asked if any further documentation needed to be signed and if so forward immediately to Clients. I got [the first Complainant] to sign the letter and I also signed as their advisor. I address the envelope to [the Provider’s] Mortgage Department. I then proceeded to [named town] where I parked at back of [the Provider] and handed the envelope in to a female representative of the Bank, at the customer service desk. This was a approx. 1:40 pm, as I had meeting in [named town] with clients at 2.30, So I had lunch in a coffee shop in the shopping centre straight away.

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This was the last I heard until I was doing review clients and noticed the direct debit still been (sic) deducted from their account”.

The Provider states that it has no record of receiving any correspondence, policy documents or written request from the Complainants, or their financial adviser in October 2015 in relation to their intention to cancel their policies. It further argues that its standard practice is to image documents received that pertain to a client’s mortgage account and on a review of its imaging system for the relevant accounts, it states that it has no evidence of receiving the Provider B policies in relation to the mortgage or the request to cancel the Provider A policies.

The Provider further points to certain discrepancies in the Complainants’ account of the method by which they say they instructed the Provider to cancel the policy in question that is, whether the second Complainant delivered the letter in question to the Provider in October 2015 or if the Complainants’ financial adviser did so.

A call log from 4 May 2018 indicates that the second Complainant stated that she cancelled the life policies with Provider in 2015 and that she (that is, the second Complainant) dropped in new policy documents to the local branch in 2015. A call log of 31 May 2018 also indicates that the second Complainant stated that she dropped in new policy documents to the branch in 2015. Similarly, a note from 6 June 2018 from KP, the branch manager, indicates that the second Complainant claimed to have handed in the documents in person in 2015. As set out above, however, the Complainants’ financial adviser has stated in an email supporting the present complaint that it was she (that is, the financial adviser) who submitted the letter and the new policy schedules to the Provider. Further, according to a record of a meeting from 14 June 2018 between the second Complainant, KP and the financial adviser, the financial adviser indicated that she handed the documents into the branch in 2015 along with a letter requesting a deed of assignment be posted.

These discrepancies make it difficult to establish exactly what may have happened in 2015.

Having considered the submissions furnished by both parties to this Office during the course of the investigation of this complaint, while I accept that the Complainants have particular recollections of the events which occurred in October 2015, I have been provided with no evidence to support the Complainants’ contention that the second Complainant “*hand delivered*” the cancellation request and the Insurance Provider policy documents to a branch of the Provider in October 2015, nor have I been provided with evidence to support the Complainants’ financial adviser’s recollection that she “*brought the letter to a local branch of the Provider*” on 27 October 2015.

The recollections of the second Complainant and the financial advisor appear to be at odds with each other. It cannot be that they both hand delivered the documents to the Provider.

Therefore, having carefully considered the evidence of the parties, including the Provider’s System Notes which have been furnished in evidence, I am not in a position to find that the cancellation request and policy documents were furnished to the Provider in October 2015.

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In any event I accept the Provider's position that *"it would not have been in a position to cancel the Provider A policies on receipt of an instruction alone..."* and that *"it would not be in a position to offer a refund to the Complainants in this case as all premiums were paid to Provider A, not to the Provider"*.

I accept the submissions of the Provider that the instruction from the Complainants to cancel the policies would not have been sufficient. I accept that the Complainants did not provide Deeds of Assignment in respect of the new policies and further that the process of cancelling and replacing the life policies in question would have necessitated further communications between the Provider, the new policy provider (Provider B), and the Complainants and/or their financial adviser.

Further, it appears from the record of the meeting of 14 June 2018 that the Complainants' financial adviser was aware that Deeds of Assignment were required and had requested or at least expected that they be posted to her office. The adviser does not appear to have conducted any follow up in this regard, either with the Complainants or the Provider.

It is also noteworthy, in my view, that no correspondence was received by the Complainants from the Provider acknowledging the cancellation request or seeking further information after the letter of October 2015 was believed to have been submitted. I note in respect of other communications between the parties during the relevant period that acknowledgement letters were regularly sent from the Provider to the Complainants. The Complainants (or their financial adviser) could therefore have been expected to have realised that they had received no follow-up whatsoever from the Provider in respect of the instruction, they believed had been given to the Provider, to cancel the life assurance policies and to make further enquiries.

Further, it was apparent from annual mortgage statements sent by the Provider to the Complainants that the life assurance premiums continued to be charged to the Complainants' mortgage account on a monthly basis. For example, by letter dated January 2018, the Provider enclosed a mortgage statement for the year ended December 2017 for one of the mortgage accounts. The cover letter noted a monthly life assurance premium of €152.99 and the mortgage statement enclosed therein itemised "Insurance Billed" of €152.99 on the last business day of each month. This was included as a separate item on the statement to the payment of the mortgage. Similarly, in respect of the second mortgage account, a monthly life assurance premium of €217.03 was noted in a letter of January 2018 and the enclosed mortgage statement similarly included transaction details for "Insurance Billed" of €217.03 on the last business day of each month. In my view, therefore, the Complainants were on notice during the relevant period that the policies that they had sought to cancel in October 2015 continued to be billed on their account and therefore had not been cancelled in accordance with their instructions.

In addition, the Provider A life assurance policies were in place between October 2015 and July 2018. If either of the Complainants had had cause to make a claim on the Provider A policies during that period, they would have been entitled to do so.

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I accept that it was the intention of the Complainants to replace the Provider A life assurance policies with those of Provider B from October 2015 onwards, and that the new policies were effective from 14 October 2015. The fact that they had more than one life assurance policy in place during the relevant period, however, did not mean that the Complainants' entitlements under any of those policies were thereby affected. In other words, it is possible for one life to be insured under multiple policies at the same time. I note from the policy documentation that the policies in question did not acquire a cash or surrender value at any stage. Rather they provided for mortgage protection cover for a fixed term of 20 years or until the policies were cancelled.

As the Complainants had the benefit of the Provider A policies during the relevant period in addition to the benefit of the Provider B policies, I cannot see how it could be appropriate, in any circumstances, to direct that all premiums paid by the Complainants to Provider A during that period would be refunded or compensated by the Provider, simply because no claims were submitted by the Complainants between October 2015 and July 2018.

While I understand the frustration and cost to the Complainants of having two insurance policies in place, this is not something I can hold the Provider responsible for.

For the reasons set out 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**

14 June 2021

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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.

