



<b><u>Decision Ref:</u></b>	2021-0190
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Mortgage Protection
<b><u>Conduct(s) complained of:</u></b>	Failure to process instructions Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Upheld

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

The Complainants accepted a mortgage protection policy with the Provider in **June 2010**. The Complainants arranged to pay the monthly premium by direct debit from their Irish bank account. In early **2019**, this account was closed and the Complainants opened a German based bank account. The First Complainant sought to update the Complainants' bank account details with the Provider and set up a new direct debit using the German account. The Provider, for various reasons, refused to facilitate this. The Complainants maintain that the Provider is subject to the SEPA regulations and is obliged to accept direct debit payments from their German bank account.

**The Complainants' Case**

In their Complaint Form, the Complainants explain that they took out a mortgage protection policy with the Provider. Payments in respect of the policy were made from the First Complainant's bank account. The First Complainant's bank recently announced that as of **1 April 2019**, it was raising the minimum account balance required to qualify for free banking. The interest rate on this account was also subject to further reduction. On principle, the First Complainant advises that it was decided to take his business elsewhere by moving direct debit payments from his current bank to a new online bank account held with a German based financial service provider. It is outlined that because this type of account is relatively new and uses, what appears to be, a German based IBAN, some of the entities with whom the Complainants have direct debits were unable to process the details of this new account over the phone. Some of these entities, including the Provider, sent new direct debit mandates for the Complainants to complete.

It is submitted that all entities except for the Provider, were able to process the Complainants' new payment details. The Provider wrote to the Complainants advising that it could not process payments from non-Irish bank accounts. A formal complaint was made, and the Provider's Final Response was that the Provider would not accept the Complainants' new account details on money laundering grounds. The Complainants acknowledge and understand money laundering policy but consider "... *this reason is breath-taking in its ridiculousness ....*" The Complainants have attempted to resolve this issue with the Provider but to no avail.

In a communication to this Office on 14 December 2020 the Complainant stated, "*I would have expected that when such an issue arises and a company finds that it must amend its systems to do as it should be doing then a company-wide directive would go out. I think this should have been resolved long before now and the fact that it isn't suggests a company-wide, section-by-section, reactive approach, where issues are only dealt with when someone kicks up about it. But that's only my opinion.*"

*I couldn't wait another several months to get the PRSA started so went with someone else. It's a pity though, because my financial advisor thought [the Provider] one was best for my needs".*

### **The Provider's Case**

The Provider explains that the Complainants took out a mortgage protection policy through an independent broker on **14 June 2010**. The policy has a term of 27 years with monthly premium payments of €75.90.

The Provider advises that it is a life insurance company authorised by the Central Bank of Ireland in accordance with the ***European Union (Insurance and Reinsurance) Regulations 2015***. The Provider is authorised to sell life and pension products to individuals habitually resident in the Republic of Ireland only. As a regulated entity, the Provider is also obliged to comply with anti-money laundering requirements set out in the ***Criminal Justice Act, 2010***.

The Provider states that with a view to ensuring its products are only sold to individuals habitually resident in Ireland, to help meet anti-money laundering requirements and to mitigate the risk of fraud, it was the Provider's practice in the past to require that direct debit payments be made from Irish bank accounts only. This was the case when the Complainants took out their policy in **June 2010**. At that time, the Complainants requested that premium payments be deducted from an Irish bank account and a direct debit mandate was completed for that purpose. The Provider submits that it was not represented to the Complainants that the Provider could facilitate direct debits from any other source.

The Provider advises that the Complainants were one of the first policyholders to request that direct debit payments be made from an account held in another Single European Payments Area (**SEPA**) member state. However, it was not possible to facilitate such a request at the time.

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The Provider explains it is taking the necessary steps to facilitate direct debit payments from bank accounts located in all SEPA member states. In the meantime, the Provider advises that it is happy to facilitate premium payments by other means, such as cash, cheque or debit card including a debit card associated with the type of German account held by the Complainants. The Provider outlines that the Complainants closed their Irish bank account in **April 2019** and the Provider has been accepting premium payments over the phone from the Complainants using their German account debit card. In **September 2019**, the Complainants agreed to change the frequency of their payments from monthly to quarterly until the Provider was in a position to accept direct debits from their German account.

The Provider states that it does not dispute the requirements of the SEPA Regulations. When the Complainants' policy was taken out and the original direct debit mandate put in place, the regulations were not in effect. It states that facilitating direct debits from foreign bank accounts was restricted for operational reasons and not as a form of discrimination against a policyholder. Referring to the telephone conversations with the First Complainant, the Provider submits that the First Complainant was aware that the Provider could not facilitate such payments prior to closing his Irish bank account and alternative payment arrangements were outlined to him which he did not wish to consider.

The Provider fully accepts that any anti-money laundering policies it has in place should not operate in contravention of the 2014 SEPA Regulations where it has agreed to accept a SEPA direct debit mandate as a means of collecting premiums. It is submitted that these regulations do not direct the Provider or any other insurer to accept SEPA direct debit mandates, and in the Complainants' case, the agreement to accept direct debits from an Irish bank account pre-dated the SEPA Regulations.

The Provider advises that the direct debit presented to the Complainants' account on **15 April 2019** was rejected by their bank as the account had been closed. No further direct debits were presented to the account after this.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully and/or unreasonably refused to accept direct debit payments from the Complainants' German bank 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 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.

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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 18 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.

### Analysis

The Complainants paid the monthly premium in respect of their mortgage protection policy by way of direct debit through their Irish bank account. This account was closed in **March/April 2019**, and the Complainants sought to set up a new direct debit with the Provider using their German account. The First Complainant attempted to update his bank account details with the Provider during a telephone call on **6 March 2019**. The Provider's agent advised the First Complainant that the Provider could not accept payments from foreign bank accounts. During the call, the Provider's agent suggested that he would email a direct debit mandate to the First Complainant.

The Provider telephoned the First Complainant on **1 April 2019** in response to a SEPA enquiry. The Provider's agent advised the First Complainant that the Provider could not accept direct debit payments from outside of Ireland and the Provider's agent proceeded to explain the reason for this. The First Complainant then asked if the Provider was legally obliged to accept direct debits from non-Irish accounts. The Provider's agent responded that the Provider was not legally obliged to accept such payments. The First Complainant was also advised that the Provider was not in a position to accept SEPA payments at that moment in time and this was in the process of being changed but it was unclear as to when this would occur. A formal complaint was also logged during this call.

**European Union Regulation 260/2012** (the **SEPA Regulations**) was due to come into effect in **February 2014**. This was subsequently postponed to **August 2014**.<sup>1</sup> The purpose of the SEPA Regulations is set out in Article 1 as follows:

*“This Regulation lays down rules for credit transfer and direct debit transactions denominated in euro within the Union where both the payer’s payment service provider and the payee’s payment service provider are located in the Union, or where the sole payment service provider (PSP) involved in the payment transaction is located in the Union.”*

Further to this, Article 5(1) states that payment service providers “... ***shall*** carry out credit transfer and direct debit transactions ....” [My emphasis].

The Provider submits that the SEPA Regulations do not oblige it to accept SEPA direct debit mandates. This is a rather curious position for the Provider to take not only in light of the SEPA Regulations, but also when the Provider’s direct debit mandate form is considered. The Provider wrote to the Complainants on **20 March 2019** enclosing a direct debit mandate. The title of this mandate was *SEPA direct debit mandate*. Prior to this, a direct debit mandate was sent to the First Complainant by email on **6 March 2019**. This mandate is titled *SEPA Direct Debit Mandate* and the bottom right corner contains what appears to be the version date of this particular form which reads *V8.08.18*.

It is very hard to reconcile the Provider’s position regarding the acceptance of SEPA direct debits when its direct debit mandate forms specifically reference the SEPA system and appear to have been in circulation since **August 2018**.

Having considered the SEPA Regulations, I am satisfied these regulations apply to the Provider. This is not disputed by the Provider and the Provider has not identified or cited any legislative or regulatory provisions exempting it from the SEPA Regulations. Separately, I am not satisfied that the Provider is entitled to rely on anti-money laundering regulations for any non-compliance with, or non-acceptance of, SEPA direct debits. Further to this, it is unreasonable to suggest, and I do not accept, that because the Provider is only permitted to offer products to Irish resident individuals, it cannot receive payments from a European bank account such as the Complainants’.

The Provider also refers to the initial agreement to accept direct debits from the Complainants as pre-dating the SEPA Regulations and that direct debit payments were accepted on the basis that payments were coming from an Irish bank account. I do not accept that because the direct debit mandate originally presented by the Complainants was in respect of an Irish bank account meant that the Provider would only accept direct debit payments from Irish bank accounts or that the domicile of the account could never be changed. Further to this, the Provider has not identified whether this was communicated to the Complainants or their broker at the time the policy was incepted or when the direct debit mandate was originally completed.

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<sup>1</sup> European Union Regulation 248/2014.

The Provider has also not identified any contractual provision which confines direct debits to Irish bank accounts or expressly forbids direct debit payments from EU based bank accounts nor has the Provider identified any contractual provisions which state that it will only accept payments from Irish bank accounts.

Accordingly, I am satisfied, having considered the evidence and the submissions of the parties, that the Complainants were entitled to change their nominated bank account to the German based online account, and pursuant to the SEPA Regulations, the Provider was obliged to facilitate this. The Provider was unable to do this for quite some time despite the SEPA Regulations coming into effect almost 5 years prior to the Complainants' request, and it was only on **6 July 2020** that the Provider informed this Office that it was in a position to facilitate such payments.

Therefore, I am satisfied the Provider unreasonably refused and/or failed to accept and process the Complainants' premium payments by way of direct debit from their German bank account.

### **Goodwill Gesture**

In concluding its response to this complaint, the Provider states that:

*"We would like to thank [the Complainants] for their patience and their willingness to work with us by amending their premium payment method and frequency in the short term.*

*For any inconvenience caused while we implement changes to facilitate monthly direct debit payments from their [German] account, we would like to offer them €500. We confirm that this offer will remain open to [the Complainants] until your office has adjudicated on the complaint."*

In response, the First Complainant stated, *"I reject the offer of €500 for the inconvenience but would accept €5,000 to make up for the horror show this has turned out to be."*

In light of the foregoing analysis, I do not consider the goodwill gesture offered by the Provider to be a reasonable sum of compensation in respect of its failure to facilitate the Complainants' direct debit payments from the German bank account. The evidence shows that this caused a lot of inconvenience for the Complainants, particularly the First Complainant, and interfered with their ability to pay for their mortgage protection policy by their chosen method of payment. I believe €3,000 to be a more appropriate sum of compensation.

Therefore, for the reasons set out in this Decision, I 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 upheld, on the grounds prescribed in **Section 60(2) (a), (b), (d) and (g)** for its unreasonable and improper conduct in not facilitating the Complainants' payments in accordance with the applicable regulations.

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €3,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** 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.**



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

14 June 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,

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**(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.**

