An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0199
Sector:	Insurance
Product / Service:	Critical & Serious Illness
Conduct(s) complained of:	Rejection of claim - late notification
Outcome:	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants incepted a joint mortgage protection policy with a named Insurer on **1 July 2004**, through the Provider, a broker. This policy included both life assurance and serious illness cover.

The mortgage protection policy was a decreasing term assurance plan, where benefits decrease throughout the term of the policy.

The First Complainant was diagnosed with cancer in **March 2015**. The Complainants submitted a claim, through the Provider, to the Insurer for a serious illness benefit under the policy in or around **March 2018**, arising from which the Insurer issued a payment of €121,485.83 in settlement of the claim. The Insurer calculated the amount payable based on the serious illness benefit in place on **23 March 2018**, which was the date on which the Insurer received proof of the First Complainant's serious illness, in accordance with the terms and conditions of the policy.

The Complainants' Case

The Complainants submit that in **2015**, the Provider furnished them with incorrect information regarding their policy cover on two occasions, resulting in financial loss:

- during the course of a phone call between the Second Complainant and the Provider's representative, Mr. Y, in **the Spring of 2015** when Mr. Y. advised that the Complainants did not have serious illness cover that would apply in the circumstances; and

- during the course of a phone call between the First Complainant and Mr. Y in **late September/early October 2015,** when Mr. Y. advised that the Complainants did not have serious illness cover.

In a letter to this Office dated **19 January 2020**, the Complainants submit, *inter alia*, as follows:

> *"It is our firm position that the Provider's office was first informed of the* [First Complainant's] *diagnosis during a phone call sometime in early Spring of 2015…*
> *I've dealt with [the Provider] in a personal business capacity for over thirty years (and continue to do so), without any problems of note until this matter arose …*
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> *Following* [the First Complainant's] *diagnosis in March 2015, I phoned the Provider's office at some stage over the following months to enquire whether we had any serious illness cover that might apply under the circumstances. Following holding on the line for a short period, I was told that there was not. I took this at face value and moved on.*
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> *In the context of a phone call with the Provider's office dealing with another unrelated matter, the subject of serious illness cover came up again,* [the First Complainant] *made this call around late September/early October 2015. This discussion prompted another "checking of the file', while* [the First Complainant] *held on line. Once again,* [the First Complainant] *was informed that there was no serious illness cover in place.*
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> *In February 2018,* [the First Complainant] *attended a meeting in the Provider's office to discuss her pension. Again, during the course of this meeting* [the First Complainant's] *diagnosis came up, prompting another "checking of the file". It is important to note that the file checked was a large physical folder of what appeared to be loose documents with no apparent index or filing system. This file was leafed through as the conversation continued and initial indications were as previously stated, i.e. there was no serious illness cover in place. Then a document which referenced a quotation for serious illness cover was located and shortly thereafter a call was made to* [the Insurer]. *Following this call* [the First Complainant] *was informed that there was indeed an* [Insurer] *mortgage protection policy [Ref. Policy Number xxxxx120], with serious illness cover in place.*
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> [The Second Complainant] *would later witness this same large paper folder of documents referred to above, during the course of a subsequent meeting in the Provider's office which took place in April 2018, to discuss the situation. This folder was too large to contain information on* [mortgage protection policy xxxxx120] *alone. It's likely this folder contained documentation on all our family business, including another* [Insurer's] *mortgage protection policy [Ref. Policy Number xxxxx225] which was taken out through the Provider in 2006…It is important to note, that this policy <u>does not have any serious illness cover</u> on it.*

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> *We believe that one possible explanation for what has occurred here is that the Provider inadvertently failed to review the* [Insurer mortgage protection policy xxxxx120] *with serious illness cover, only seeing the* [other Insurer policy xxxxx225] *without serious illness cover"*.

The Complainants submit that if the Provider had correctly advised them of the serious illness cover on their mortgage protection policy in the **Spring of 2015**, they would have submitted a claim to the Insurer at that time and received a benefit in the amount of €140,555, rather than the lower claim settlement amount of €121,329 that they received, having only lodged a claim in **March 2018**. In this regard, the sum assured on the Complainants' policy decreased on an annual basis to reflect the anticipated mortgage balance.

The Complainants state that they *"are at a loss of €23,899.88"*, that is, the €19,226 difference between what the claim settlement amount would have been in **March 2015** when the First Complainant was diagnosed with cancer, and the lower amount they received in **April 2018**, as well as 36 monthly premium payments of €129.83 they made in the period from **March 2015** to **February 2018**, totalling €4,673.88.

The Provider's Case

The Provider states that the Complainants incepted a joint mortgage protection policy with a named Insurer on **1 July 2004**, via the Provider, a broker. This policy included serious illness cover. The Complainants were provided with a copy of the policy terms and conditions in **June 2004**, before the cover commenced, for their own records.

The Provider denies that the Complainants informed it of the First Complainant's cancer diagnosis during the course of a telephone call with Mr. Y in **Spring 2015** or during the course of a telephone call with Mr. Y in **late September/early October 2016**.

The Provider contends that it first became aware of the First Complainant's cancer diagnosis, during the course of a meeting on **2 February 2018**, when the First Complainant called to the Provider's offices by appointment to discuss her pension provisions. The Provider states that as the Complainants' joint mortgage protection policy provided serious illness cover, the Provider immediately telephoned the relevant Insurer to notify it of a claim.

In this regard, in its correspondence to the Second Complainant dated 12 October 2018, the Provider states, as follows:

> *"I have investigated your complaint within my office and am satisfied that neither yourself nor* [the First Complainant] *ever advised us in 2015 that* [the First Complainant] *had been diagnosed with cancer.*

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> *In fact we only became aware of* [the First Complainant's] *diagnosis on the 2nd of February 2018 when she called in to our office to discuss her pension arrangements. Once she mentioned the cancer diagnosis I immediately checked your client files as is our normal procedure. I then advised* [the First Complainant] *that she had serious illness cover in force on your joint mortgage protection policy with* [the Insurer].....
>
> *When we met on the 16th of April 2018, after* [the Insurer] *had declined to backdate your claim to the cancer diagnosis date in 2015, you said that you had phoned our office in the spring of 2015 and spoken to my colleague,* [Mr. Y]*. You advised me that during the telephone conversation with* [Mr. Y] *that you had discussed the cover on your mortgage protection policy and that you were told that your policy did not cover the type of cancer that* [the First Complainant] *had been diagnosed with.*
>
> *I have spoken to* [Mr. Y] *and he has confirmed that he is certain that he never had any such conversation with you. Please note, in addition, that neither* [Mr. Y] *nor myself would ever confirm that no cover operated for a particular form of cancer without checking the cover with the Life Assurance Company first – as it is only the Life Assurance Company who can determine the acceptability, or otherwise, of a claim. Again…*[Mr. Y] *and myself are certain that we were not advised that* [the First Complainant] *had been diagnosed with cancer until the 2nd of February 2018 and once we were made aware of same we acted immediately as is out standard practice.*
>
> *We therefore confirm that we do not bear any responsibility for any shortfall you may have suffered as a result of the claim not being made in 2015 as we were unaware of any circumstance that could have given rise to a claim on your policy until that conversation with* [the First Complainant] *in our office on 2nd February 2018".*

In addition, the Provider notes that Mr. Y has advised in his statement dated 25 November 2019, as follows:

> *"I,* [Mr. Y.]*, can categorically confirm that at no time did I ever speak, discuss or advise* [the First Complainant] *or* [the Second Complainant] *in relation their Mortgage Protection/Serious Illness policy as alleged in their statement.*
>
> *I can further confirm that no such phone call took place between myself and* [the First Complainant] *in the Spring of 2015 in relation to their Serious Illness policy. Nor could I, would I and didn't advise as to what type of cancer was covered or not covered under their serious illness policy. I refute that this phone call ever took place"*.

As a result, the Provider is satisfied that the first time it was made aware of the First Complainant's cancer diagnosis was during a meeting with her in its offices on **2 February 2018**, when it then correctly advised that the Complainants' joint mortgage protection policy did provide serious illness cover and it notified the Insurer that day by telephone of the claim.

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Accordingly, the Provider is satisfied that it did not furnish the Complainants with incorrect information regarding their policy cover in 2015, resulting in financial loss.

Furthermore, the Provider states that the Complainants failed to read the policy documents issued to them in 2004, or the annual statements issued to them from 2014 to 2017 by their insurer, which clearly outlined that the Complainants did have serious illness cover.

The Complaint for Adjudication

The complaint is that the Provider furnished the Complainants with incorrect information regarding their policy cover in **2015**, resulting in financial loss.

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 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 formed the view that the submissions and evidence furnished disclosed certain conflicts of fact, such that an Oral Hearing was desirable to resolve those conflicts. Accordingly, an Oral Hearing took place on **15 September 2020,** at which the parties gave their sworn evidence. It was determined at that Oral Hearing that further written particulars were also required by this Office, and on **21 September 2020**, these details were requested from the parties. Thereafter, a further exchange of submissions and evidence took place. This office is now satisfied that the submissions and evidence furnished are sufficient to enable a Decision to be made in this complaint.

A Preliminary Decision was issued to the parties on **26 May 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 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.

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Timeline

The complaint at hand is that the Provider supplied the Complainants with incorrect information regarding their policy cover in 2015, resulting in financial loss to them.

At the outset, I consider it useful to set out a timeline of key events relating to this complaint.

Date	Event
1 July 2004	Policy incepted with a named Insurer on 1 July 2004, via the Provider, a broker. This policy included serious illness cover.
July 2014 May 2015, May 2016, and May 2017	Annual statements issued to the Complainants by the Insurer
March 2015	First Complainant was diagnosed with cancer
Spring 2015	The Second Complainant contends that he phoned the Provider's representative Mr. Y, to advise of the First Complainant's diagnosis and that Mr. Y advised him that the Complainants did not have serious illness cover that would apply in the circumstances.
Late September/early October 2015	The First Complainant contends that she phoned Mr. Y regarding an unrelated matter and that when the subject of serious illness cover arose, Mr. Y. advised her that the Complainants did not have serious illness cover.
2 February 2018	Meeting between the First Complainant and Mr. C at the Provider's office to discuss her pension arrangements. The First Complainant informed Mr. C of her cancer diagnosis and Mr. C notified the Insurer of the claim for a serious illness benefit under the policy.
March 2018	Proof of the First Complainant's illness was submitted to the Insurer
5 April 2018	Insurer issued a payment of €121,485 in settlement of the claim.
16 April 2018	Meeting between the Provider's representative, Mr. C, and the Second Complainant regarding the Complainants' grievances.

A crucial question to be considered in this complaint is the level of information supplied by the Provider to the Complainants regarding their policy cover, during the course of two phone calls which the Complainants state occurred in the **Spring** of **2015** and in **late September/early October 2015**.

There is very limited documentary evidence available in relation to the telephone calls in question. No telephone recordings are available for this period as the Provider has confirmed that it did not begin to record telephone calls until **May 2018.** Nor has this office been supplied with any contemporaries notes or records of these phone calls by either the Complainants or the Provider.

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Phone Call: Spring 2015

The Provider has however furnished this office with handwritten notes composed by Mr. C relating to meetings he had with the Complainants in **2018**, which reference the phone call in **Spring 2015**. These handwritten notes state:

> *"2/2/18* [The First Complainant] *called into office by appointment to discuss her pension provision. During the conversation she said she was diagnosed with cancer …. in April 2015.* ***She said that*** **[the Second Complainant]** ***had called the office in 2015 and was told by*** **[Mr. Y]** ***that they did not have serious illness cover on their mortgage protection policy.*** *I checked the file and they do have serious illness cover …..*
>
> *16/4/18 Meeting with* [the Second Complainant]. *He is 100% certain that he called our office about 3 years ago to check about serious illness on their [mortgage protection] policy. I told him that* [Mr. Y.] *was 100% certain that he didn't take that call.* ***I told*** **[the Second Complainant]** ***that I have a hazy recollection that he might have spoken to me and that I may have looked at the*** **[mortgage protection policy with a different insurer]** ***which was Life Only Cover and told him that they did not have serious illness cover. I told him I had no recollection of him telling me that*** **[the First Complainant]** ***had cancer.*** *He said that* [the First Complainant] *is sure she would have mentioned it to me over the last few years. We agreed to wait and see what* [the Insurer] *decides before sitting down again.* ***He also said that he was told at the time that the cancer that*** **[the First Complainant]** ***had was not covered under the policy****".*
>
> [my Emphasis]

The handwritten notes indicate that in **April 2018**, the Second Complainant told Mr. C that he had called Mr Y in **2015**, who informed him that ***"****that the cancer that* [the First Complainant] *had was not covered under the policy".*

The handwritten notes also indicate that in **April 2018,** Mr. C (rather than Mr. Y), had some recollection of speaking with the Second Complainant in **2015**, and of having looked at the Complainants' other mortgage protection policy that provided life cover only, and of having advised the Complainants that they had no serious illness cover, though it is noted that he had no recollection of the Second Complainant advising him of the First Complainant's diagnosis. It is disappointing that in **2015**, the Provider kept no contemporaneous record or summary of the information that Mr. C recalls giving the Second Complainant at that time. In this regard, I note that provision 11.5(e) of the Consumer Protection Code 2012 ("**CPC 2012**") states, that:

> *"11.5 A regulated entity must maintain up-to-date records containing at least the following: …*
>
> *e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service"*.

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In the absence of any contemporaneous record of the phone call in question, I must rely on the parties' recollection of events, including the detailed evidence given at the Oral Hearing with respect to the phone calls which the Complainants suggest occurred in the **Spring of 2015** and in **late September/early October 2015** respectively.

The Second Complainant described his phone call with Mr. Y in the **Spring of 2015**, in the following terms at the Oral Hearing:

[Second Complainant]	*"…at some stage in the Spring of 2015 I did make a phone call to* [the Provider] *for the sole purpose of determining whether there was any policy in place that could be, could be relevant under the circumstances and I communicated clearly that* [the First Complainant] *had been diagnosed with a cancer. So the outcome of that --*
[Ombudsman]	*maybe, maybe you could explain who you spoke to, if you can remember?*
[Second Complainant]	*Yeah. I spoke to* [Mr. Y] *at the time and, as I said, the outcome of that conversation was that there wasn't any, any mortgage protection policy or any critical illness policy in place for us that would be relevant…*
	……..
[Provider's Rep.]	*Well could you be mistaken about the content of the conversation that you say you had with* [Mr. Y]?
[Second Complainant]	*No.*
[Provider's Rep.]	*Just to be clear, you say that you told* [Mr. Y] *that sadly your wife had been diagnosed with cancer?*
[Second Complainant]	*That's correct*.
[Provider's Rep.]	*Can you tell me exactly what the words were and what the response was from* [Mr. Y] *to what you told him?*
[Second Complainant]	***No.***
[Provider's Rep.]	*You can't?*
[Second Complainant]	***Exactly, no. It would be unrealistic to attempt to suggest that I could****.*
	……..
[Provider's Rep.]	*…**do you accept that you say that*** **[Mr. Y]** ***told you that this particular type of cover or cancer was not covered under the Policy?***
[Second Complainant]	***Yes, I accept that I would have*** *-- the purpose of my phone call was to confirm whether we had any mortgage protection policy that was relevant under the circumstances with serious illness cover on it.*
	……

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[Ombudsman] *So you need to be very clear as to whether you told* [the Provider] *that you were told in 2015* by [Mr. Y] "*that type of cancer isn't covered*".

[Second Complainant] *I'm pretty clear, I'm clear, the phone call was very clear and concise. I would have said* [the First Complainant] *has been diagnosed with …. cancer.* ***His exact response to that I can't be 100% sure, okay, in all honesty, okay, but the outcome of the conversation was that there was no basis for pursuing a claim against the Policy.***

[Ombudsman] *Okay, so again I don't think you're actually answering the question. So there's a big difference between being told in 2015 there's no policy to cover that and being told that type of cancer isn't covered. They're two different things. Is this what you're getting at*?

[Provider's Rep.] *That's the exact point, Ombudsman.*

[Ombudsman] *Okay. So we need to understand your position as to whether you're saying that he told you at that time there's no policy to cover that sort of thing, you don't have critical illness cover or alternatively you have a policy but it doesn't cover that type of cancer.*

…….

[Second Complainant] ***So the point we are trying to clarify is did* [Mr. Y] *say to me that I don't have a policy in place "that covers that type of cancer"? In all honesty I couldn't be 100% sure on that, okay.*** *But certainly the outcome of the conversation was that it was clearly established that* [the First Complainant] *had … cancer and having reviewed our insurance policies* [Mr. Y] *clearly indicated to me that there was no serious illness cover in place that would be applicable under the circumstances. So the outcome is –*

……

[Provider's Rep.] *….let's stick with the basis that you say you had a conversation with* [Mr. Y] *and I'm trying to elicit what was the content of the conversation?* ***You told* [Mr. C at a meeting in April 2018] *that during the telephone conversation with* [Mr. Y] *that you had discussed the cover on your mortgage protection policy and that you were told that your policy did not cover the type of cancer that* [the First Complainant] *had been diagnosed with. Is that the conversation that you say you had with* [Mr. Y]?**

[Second Complainant] ***That is how I verbalised the conversation to* [Mr. C] *at that meeting, yes.***

[Provider's Rep.] *No, I don't understand "the verbalisation". Is that what* [Mr. Y], *is that what* [Mr. Y] *told you, is that what you say he told you; "this type of cancer is not covered under the Policy"?*

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[Second Complainant] ***So did -- so I cannot be 100% sure that* [Mr. Y] *used the words "that type of cancer" to me in our conversation, okay, I can't.*** *In all honesty I want to be as fair as I possibly can be. I can't be 100% sure that that was the phrase or the terminology that was used but as far as I'm concerned the outcome of the conversation was the same; I didn't have serious illness cover in place that was applicable or relevant under the circumstances.*

[my Emphasis]

It is apparent from the Second Complainant's evidence that the Second Complainant has some difficulty in recalling what precisely was said during the suggested phone call with Mr. Y in the Spring of 2015. In particular, the Second Complainant is very unclear as to whether Mr. Y informed him that:

a) the Complainants' policy did not include serious illness cover; or
b) the Complainants' policy did include serious illness cover, but the First Complainant's type of cancer was not covered.

While the Second Complainant stated in **April 2018**, at a meeting with the Provider, that Mr. Y informed him that the First Complainant's type of cancer was not covered by the policy, the Second Complainant was unable at the Oral Hearing to confirm with any level of certainty that his recollection of this conversation was accurate. The Second Complainant's evidence was that he was only able to recall the outcome of the conversation, which was that he "*didn't have serious illness cover in place that was applicable or relevant under the circumstances"*, rather than the actual content of the conversation with Mr. Y. This must lead me to conclude that there are significant gaps in the Second Complainant's recollection of this call.

It is also notable that the Second Complainant is unable to attribute an exact date to the phone call which he suggests occurred in **Spring 2015**. This again tends to suggest that the Second Complainant does not have a complete or full recollection of the phone call.

Furthermore, there is a stark contradiction between the evidence of the Second Complainant and Mr. Y in respect of the suggested phone call in **Spring 2015**. Mr. Y. flatly denies that the phone call which the Second Complainant describes, ever occurred. Mr. Y. gave the following evidence at the Oral Hearing in this regard:

[Provider's Rep.] *In relation to this particular case whose client, in terms of the management of the client, was* [the Complainants]?
[Mr. Y.] [Mr. C's]
[Provider's Rep.] *If you had had a conversation with* [the Second Complainant] *which I know you deny, and there was a query in relation to the life insurances of* [the Complainants] *what would you have done?*

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[Mr. Y.] *The file would be left on* [Mr. C's] *desk and an e-mail sent to check that file and the policy.* ***I don't deal with*** **[Mr. C's]** ***life clients, never have and never will.***

…….

[Ombudsman] *So* [Mr. Y], *as I am sure that you can appreciate, there is a complete conflict here between your evidence and the evidence that we've heard this morning which suggests that the phone call in the Spring of 2015 was made to you so I just want to, I want to hear from you one more time, you know, is it possible that you are simply overlooking this call that was made?*

[Mr. Y] ***Absolutely not****.*

[Ombudsman] *And why do you* --

[Mr. Y] ***I'm 100% certain****.*

[Ombudsman] *Just explain to me why you believe that?*

[Mr. Y] ***Because, again I'll go back to the basics, the*** **[Complainants]** ***would be clients of*** **[Mr. C.]** ***and I would not, never have and never will discuss a life policy that of*** **[Mr. C.]** ***looks after, I just don't do it****.*

[my Emphasis]

Taking all the evidence into account, on balance, I accept Mr. Y's evidence that he did not discuss the policy with the Second Complainant in the **Spring of 2015**. It is notable that Mr. Y described himself as being "*100% certain*", that he did not discuss the policy with the Second Complainant on the basis that it was not his practice to do so as the Complainants were Mr. C's life assurance clients. His firm evidence that it was Mr. C rather than he himself who dealt with the Complainants' policy, is supported by the documentary evidence that is available. The Complainants accept that it was Mr. C and not Mr. Y who put in place the policy in 2004. Furthermore, it is clear from the documentation on file that it was Mr. C and not Mr. Y who dealt with the Insurer in relation to the Complainants' claim for serious illness cover in 2018. I have not identified any documentary evidence demonstrating interactions between Mr. Y and the Complainants in relation to their mortgage protection and serious illness policy.

I must also contrast Mr. Y.'s adamant evidence that the call did not occur with the less certain recollections of the Second Complainant of the call in question. As I have previously stated the Second Complainant was unable to recall the exact date of the phone call in question, and while the Second Complainant was sure of the outcome of the phone call, that they "*didn't have serious illness cover in place that was applicable or relevant under the circumstances"*, he was unable to recall the detail of the conservation. In light of the Second Complainant's inability to remember the call in any detail, I must accept Mr. Y's more certain recollection that he did not discuss the policy with the Second Complainant in early 2015.

While it is unsurprising that the Second Complainant does not have a full recollection of the call, given the passage of time, in this context I must also consider the evidence of Mr. C, whose "*hazy recollection*" was that he, rather than Mr. Y. spoke to the Second Complainant in 2015.

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At the Oral Hearing, Mr. C. gave the following evidence regarding the information he furnished to the Second Complainant regarding the policy:

> *"During that conversation* [in 2018] *I volunteered to* [the Second Complainant] *that I had a brief recollection or a hazy recollection* ***that I might have taken a phone call from*** **[the Second Complainant]** ***a number of years previously where he had asked me a specific question, basically "have we got serious illness cover on our mortgage protection policy?"****. Again a hazy recollection, it was going back a number of years, you know pulling the file. The mortgage protection would have been at the end of the file insofar as they would have been the oldest policies in force but there was, there was two mortgage protection policies and two mortgage protection schedules and the first one was the latter one which was life only.* ***Again I have a hazy recollection of saying to*** **[the Second Complainant]** ***"no, you don't have serious illness cover on your mortgage protection. policy".*** [The Second Complainant] *at no stage said to me* [the First Complainant] *has cancer.* [The Second Complainant] *at no stage said we want to make a claim on our serious illness policy.*
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> *……*
>
> *Well I checked, I had checked already with* [Mr. Y] *on foot of the meeting I'd had with* [the First Complainant] *in February* [2018] *and he said absolutely 100% he didn't have that conversation but like I don't think* [the Second Complainant] *is going to tell a lie, maybe I shouldn't say that but like, and I had a hazy recollection. Now whether that was just in my head or that, you know but, you know* ***but I do believe that*** **[the Second Complainant]** ***did make a call, he spoke to me and he asked a question did he have serious illness cover?"***
>
> [my Emphasis]

Taking into account (i) Mr. C's evidence and (ii) the fact that although the Second Complainant was adamant that he phoned Mr. Y in the **Spring of 2015**, his own evidence demonstrated gaps in his recollection of the call in question, I consider the most likely explanation to be that the call in the **Spring of 2015** did take place, but that it was between the Second Complainant and Mr. C, rather than between the Second Complainant and Mr. Y.

Turning to the content of that call in the **Spring of 2015**, between Mr. C and the Second Complainant, I am not satisfied that there is sufficient evidence to conclude that the Provider informed the Second Complainant, during the course of this call, that the type of cancer the Second Complainant had was not covered by their serious illness policy. The Second Complainant was unable to say with any degree of certainty that this was the case.

Furthermore, the suggestion that the Second Complainant was informed by Mr. C that the policy included serious illness cover, but that the particular type of cancer which the First Complainant had was not covered by the policy, is contradicted by the Complainants' own submissions, insofar as they have also outlined their belief that [Mr. C] referred to the wrong mortgage protection policy, which <u>did not include serious illness cover</u>, during the course of the call in Spring 2015. The Complainants have stated in that respect:

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"As has been stated by the Providers, they would never make a decision themselves regarding what type of cancer would or would not be covered on a given policy. This would appear to be a sensible rule. So, as would be expected, in looking at a serious illness policy, on hearing the word "cancer" it is assumed the Provider would immediately seek a medical report or such like, to be passed to the insurer for them to establish the position regarding cover. [**The Second Complainant]** ***was not asked for any such medical report or anything else.*** *If he had been, he would have acted on it immediately. Why were there no actions stemming from that call****? A possible explanation is again, the wrong policy with no serious illness cover, was erroneously referred to at the time of that call.***

- *"Cancer" + Serious Illness Cover -> Action Required*
- *"Cancer" + No Serious Illness Cover -> No Further Action Required"*

[my Emphasis]

If, as the Complainants suggest, Mr. C looked at the wrong serious illness policy, it seems likely to me that he would have informed the Second Complainant during the call in Spring 2015, that they did not have serious illness cover at all, rather than informing the Second Complainant that the type of cancer in question was not covered by the policy, without taking any steps to check this with the Insurer.

Finally, the suggestion that the Second Complainant was informed that the First Complainant's type of cancer was not covered by the policy (as opposed to being informed that serious illness cover was not included in the policy) was contradicted to some extent by the First Complainant. The First Complainant at the Oral Hearing, gave evidence regarding a conversation she had with the Second Complainant in **late September /early October 2015**:

[First Complainant] *I was talking to* [the Second Complainant] *the previous evening and I said "I am ringing* [the Provider] *in the morning to discuss different matters" and he said "****look would you mind mentioning it again to them that have we critical illness cover? I am surprised, I feel that we have. I've been told prior that we don't have it****". I subsequently was talking to* [Mr. Y], *who usually answers the phone in the* [Provider], *and I spoke with him about personal matters and mentioned about had we critical illness,* ***that*** **[the Second Complainant]** ***had asked me to ask the question, that he was surprised we didn't have critical illness cover.***

……

[Provider's Rep.] Is it your and your husband's case that in fact the deficiency on their part here is that they told you that cancer of [cancer type redacted] wasn't covered?

[First Complainant] **They told us that we did not have a policy in place** and when they looked at their files, which to me were very disorganised, **they said we did not have critical illness cover**.

/Cont'd…

[Provider's Rep.] Well now that's two, they're two different propositions and I'd like to understand which proposition we're dealing with? Is it the proposition now that you say that regardless of having been told by [Mr. Y] in March/April of 2015 that type of cancer is not covered that in fact the case is, that you were told you don't have any cover at all?

[First Complainant] My conversation in the September/October 2015 was you do not have critical illness cover when I asked that question.

[Provider's Rep.] Okay. Which is a different answer to the question that you got, that you were told [the Second Complainant] had got from Mr. Y. in March/April of 2015?

[First Complainant] **What [the Second Complainant] said to me was "I'm surprised that we don't have critical illness cover, can you check with Mr. Y.** or whoever you're on the call to tomorrow, can you check tomorrow?".

I do not accept that the evidence demonstrates that Mr. C wrongly informed the Second Complainant during the course of the **Spring 2015** call that the First Complainant's type of cancer was not covered by their policy. That is not to say however, that Mr C. did not furnish any incorrect information to the Second Complainant, during this call.

I must consider Mr. C's own evidence, which was that:

> *"there was two mortgage protection policies and two mortgage protection schedules and the first one was the latter one which was life only. Again I have a hazy recollection of saying to* [the Second Complainant] *"no, you don't have serious illness cover on your mortgage protection policy".*

I found Mr. C to be a very forthcoming and credible witness who made a genuine effort to offer his recollection of the content of a conversation he believed he had with the Second Complainant in 2015, albeit that Mr. C.'s recollection was by his own admission hazy. Mr. C's belief is that he did tell the Second Complainant that their policy did not include serious illness cover, after mistakenly reviewing only one of the Complainant's mortgage protection policies, which did not include serious illness cover, and overlooking to review the other.

It is notable that Mr. C's evidence does not contradict, or run contrary to the Second Complainant's evidence, that the outcome of the Spring 2015 call was that the Complainants did not have serious illness cover that was relevant in the circumstances. Taking all of the above into account, I am satisfied that on balance, the evidence confirms that the Second Complainant was wrongly informed by Mr. C in the **Spring of 2015**, that the Complainants' policy did not include serious illness cover. Mr. C also stated in his evidence at the Oral Hearing, that the First Complainant's cancer diagnosis was not mentioned during the call in the **Spring of 2015**, (which the Second Complainant disagrees with). I do not consider it unusual for a client to telephone their broker and to enquire as to whether or not they have a policy providing serious illness cover without also setting out the circumstances giving rise to the query. I believe that many customers are likely to wish to keep their sensitive medical details private, pending receipt of an answer as to a query of that nature.

/Cont'd…

However, I do not believe that anything material turns on this point. Even if I accepted that the Second Complainant failed to disclose the First Complainant's diagnosis to Mr. C during the call, I am of the opinion that it was remiss of Mr. C not to ask the client the circumstances giving rise to the query regarding serious illness cover, so as to ensure that the context was understood, and indeed it was very seriously remiss not to properly check all of the client's mortgage protection policies in order to answer the query thoroughly and correctly, and to also appropriately record on file the nature of the query and the information supplied.

Policy Statements

However, I must also take into consideration the statements issued to Complainants in respect of their mortgage protection policy, by the Insurer in **July 2014, May 2015, May 2016, and May 2017.**

In **July 2014** and **May 2015**, the Insurer issued a two page statement to the Complainants. Page 2 of these statements stated:

"*Your protection benefits*

Lives covered	*[The Second Complainant*	*[The First Complainant]*
Your benefits	*Currently*	*Currently*
Life Cover	*€140,555.00*	*€140,555.00*
Accelerated Serious Illness Cover	***€140,555.00***	***€140,555.00***

…….

Important notes for your plan:

- *….As this is a decreasing term assurance plan* ***your benefits reduce throughout the term of the plan*** *based on an assumed mortgage interest rate of 6%....*"

[my Emphasis]

In **May 2016**, and **May 2017**, the Insurer issued a two page statement to the Complainants in the same format as above, however the accelerated serious illness cover was detailed as €134,515.00 and €128,114.00 respectively. As explained in the entry in Mr. C's handwritten notes dated 3 May 2018, the policy benefits reduce on 1 July every year, on the anniversary of the policy start date, as follows:

"*1/7/14 - Sum Assured = 140,555*
1/7/15 - Sum Assured reduced to 134,515
1/7/16 - Sum Assured reduced to 128,114
1/7/17 - Sum Assured reduced to 121,329"

/Cont'd…

It is not entirely clear whether the phone call in **Spring 2015** occurred before or after the Complainants received the **May 2015** statement from the Insurer. However, the First Complainant stated at the Oral Hearing that "[the Second Complainant] *said it was March or April or early Spring he was in touch with* [Mr. C]" and that she received her official cancer diagnosis on **2 April 2015**, after having been told the week before, that cancer was a possibility. On this basis, it seems to me to be more likely than not, that the **Spring 2015** phone call occurred at some point in **April 2015**, and that the Complainants received the **May 2015** statement **after** the phone call between the Second Complainant and Mr. C had taken place.

The policy statements do not contain any information on what type of serious illnesses or cancers are covered by the policy. Consequently, if I had accepted that that the Second Complainant was wrongly informed in **Spring 2015** that the Complainant's type of cancer was not covered, these statements would not have imparted any further knowledge to the Complainants about their entitlement to a serious illness benefit under their policy. However, as I confirmed above, I do not accept that the Second Complainant was wrongly informed by the Provider, that the First Complainant's type of cancer was not covered.

The policy statements issued to the Complainants from 2014 -2017, clearly contradict the incorrect information, supplied to the Second Complainant during the phone call in 2015 that the Complainants had no serious illness cover. Consequently, in my view these statements are relevant to the Complainants' state of knowledge regarding their entitlement to make a claim for serious illness benefit.

Both Complainants acknowledged at the Oral Hearing that they failed to read the statements issued to them by the Insurer.

[Provider's Rep.]	*Do you accept that had you read the letters or indeed had your wife read the letters that were received from* [the Insurer] *subsequent to her diagnosis in March 2015 and the meeting that she had with* [Mr. C] *in January of 2018, that it would have been immediately obvious to both of you that in fact you did have accelerated serious illness cover in place with the* [Insurer], *as we know is the case?*
[Second Complainant]	*In hindsight, yes, if we had that would have, yes.*
	……..
[First Complainant]	*…….Yes, the letters come in and you're right...*
[Provider's Rep.]	*I'm sorry to be somewhat rude about this.*
[First Complainant]	*.....we didn't look at them.*
[Provider's Rep.]	*Well that's the point I'm was going to make to you. Your broker doesn't have a responsibility to read correspondence that you receive from your insurance company, does he?*
[First Complainant]	*No, he doesn't*.

/Cont'd…

The Complainants must bear responsibility for their failure to read the policy statements issued to them by their insurer. It was incumbent on the Complainants to do so, as such periodic statements contained important information about their policy benefits. All of the statements clearly stated that the policy benefits included "*Accelerated Serious Illness Cover*", and that the benefits reduced throughout the term of the plan. In my opinion, the statements were clear, concise and readily understandable. It would not have been an onerous task for the Complainants to have reviewed both pages of the statements. Had the Complainants done so they would have been alerted to the fact that they did have serious illness cover in place.

It is clear that if either Complainant had read the statement issued to them in **May 2015,** some weeks after the First Complainant's diagnosis, these would have alerted them to their serious illness cover, and they would have been a position to apply for the serious illness benefit in **May or June 2015** without any financial loss arising, notwithstanding the incorrect information furnished to them by the Provider during the phone call in **Spring 2015**, as the annual decrease in the serious illness benefit did not occur until **July 2015**.

Phone Call: Late September / Early October 2015

Turning now to the phone call which the First Complainant states occurred between herself and Mr. Y. in **late September/early October 2015**. At the Oral Hearing the First Complainant explained that she called Mr. Y in relation to her son's car insurance and that the subject of serious illness cover arose during the course of this conversation. The First Complainant described this call in the following terms:

[First Complainant] ….*I subsequently was talking to* [Mr. Y], *who usually answers the phone in* [the Provider]*, and I spoke with him about personal matters and mentioned about had we critical illness, that* [the Second Complainant] *had asked me to ask the question, that he was surprised we didn't have critical illness cover.* [Mr. C] *or, sorry,* [Mr. Y], *I correct myself there,* [Mr. Y] *then checked, there was a pause and as far as I know I was put on hold, came back and he said "there isn't critical illness cover in place".*

……

[First Complainant] My conversation in the September/October 2015 was you do not have critical illness cover when I asked that question.

Mr. Y denies that he spoke to the First Complainant about the Complainants' mortgage protection and serious illness policy. In response to a question at the Oral Hearing about the suggested phone call in **late September/early October 2015**, Mr. Y stated

> *"Most definitely not. Again, if I was aware that* [the First Complainant] *would have had cancer* [Mr. C] *would have been made aware of it straightaway as well. These conversations did not happen. I possibly spoke to* [the First Complainant] *in that time on an unrelated matter, absolutely. I know the following year I dealt with a household claim but definitely nothing to do with a life policy or a serious illness policy."*

/Cont'd…

There remains a sharp contradiction between the evidence of the First Complainant and Mr. Y. However, it is notable that Mr. C's handwritten notes relating to the meeting between himself and the First Complainant in **February 2018** do not contain any reference to the phone call in **late September/early October 2015.** Instead, the only reference is to the **Spring 2015** call with the Second Complainant:

> "2/2/18 [the First Complainant] *called in to office by appointment to discuss her pension provision. During the conversation she said that she was diagnosed with* [cancer] *in April 2015.* ***She said that*** **[the Second Complainant]** ***had called the office in 2015 and was told by*** **[Mr. Y]** ***that they did not have serious illness cover on their mortgage protection policy.*** *I checked the file and they do have serious illness cover*"
>
> [my Emphasis]

This note suggests that the First Complainant did not reference this later phone call in September/October 2015, during the course of her meeting with Mr. C in **February 2018**. It would seem likely that if the First Complainant had referred to this phone call during the course of this meeting, Mr. C would have made a note of it, in the same manner that he noted what the First Complainant said about the phone call between Mr. Y and her husband. I consider it very strange that the First Complainant did not reference the **late September/early October 2015** phone call in her meeting with the Provider in **February 2018**. In 2018, the First Complainant's recollection of the events of 2015 would have been fresher than it was at the Oral Hearing.

Similarly, while there is a reference in Mr. C's handwritten notes in the entry dated 16 April 2018, to the First Complainant being "*sure she would have mentioned* [her cancer diagnosis] to [Mr. C] *over the last few years*", there is no reference in Mr. C's handwritten notes to a phone call between the First Complainant and Mr. Y. in **late September/early October 2015**.

When cross-examined on this point, the First Complainant stated that she had in fact referenced her call with Mr Y. during her meeting with Mr. C in February 2018:

[Provider's Rep]	*Yes. You see when you met with* [Mr. C] *in February 2018 you never told* [Mr. C], I have to put it to you, *that you'd had a conversation with* [Mr. Y] *in the late September or October when you had also told him that you had contracted cancer of* [cancer type redacted].
[First Complainant]	**Yeah**
[Provider's Rep]	……*You never told* [Mr. C] *that you too had rung the Provider's office and had spoken to* [Mr. Y] *and* [Mr. Y] *had also confirmed to you that you did not have the type of cover that would cover* [cancer type redacted] *cancer, is that correct?*
[First Complainant]	***I said to*** **[Mr. C]** **"*we've made calls on this,*** **[the Second Complainant]** ***has and I have". In that meeting I said to*** **[Mr. C]** ***that both*** **[the Second Complainant]** ***and I have made calls.***

[my Emphasis]

/Cont'd…

However, I am not convinced by the First Complainant's evidence in this regard. The Complainants did not at any point prior to the Oral Hearing, state in their submissions that the First Complainant discussed the **late September/early October 2015** call with Mr C. in **2018.** I must also consider the fact that the final response letter issued by the Provider to the Complainants on 12 October 2018, does not reference a call made in late **September/early October 2015**, and instead refers only to a call made by the Second Complainant in the **Spring of 2015**. While unfortunately I have not been supplied with the details of the complaint that the Complainants submitted to the Provider at that time, the contents of the final response letter would again tend to suggest that the Complainants did not at that point, in 2018, raise the issue of a call in **late September/early October 2015**, with the Provider when discussing the matter.

In my view the fact that the Complainants do not appear to have raised the issue of the late **September/early October 2015** call with the Provider in 2018, when their recollection of the events of 2015 was fresher, would tend to suggest that this call may not have occurred.

It is also notable that the First Complainant states that the topic of serious illness arose when speaking to Mr. Y about her son's car insurance. An email on file dated **17 September 2015**, from Mr. C to the First Complainant relating to the First Complainant's son's car insurance states

> "*I have attached the cancellation endorsement and proof of NCB for* [the First Complainant's son] *as requested. Originals with a cheque for €1,175.13 will go to* [the First Complainant's son] *in the post today"*

While I acknowledge that the First Complainant contends that she dealt with both Mr. Y and Mr. C in relation to the car insurance, and that Mr. Y usually answered the phone when she called the Provider, the content of this email would suggest that in **September 2015**, the First Complainant was dealing with Mr. C and not with Mr. Y in relation to her son's car insurance. The contents of this email would also tend to suggest that the First Complainant's dealings with Mr. C regarding her son's car insurance had concluded in mid-September, when Mr. C actioned the cancellation and proof of NCB request. There are no further emails in 2015 relating to car insurance. This would tend to contradict the First Complainant's assertion that she contacted the Provider in late September / early October 2015 regarding her son's car insurance policy, at which point a discussion regarding the serious illness policy ensued.

Finally, I note that Mr. Y has denied discussing the Complainants' serious illness cover with the First Complainant on the basis that it was Mr. C. who dealt with the Complainants' life assurance and serious illness cover. As I have previously stated, this would also appear to be supported by the documentary evidence available. The Complainants accept that it was Mr. C and not Mr. Y who put in place the policy.

Furthermore, it is clear from the documentation on file that it was Mr. C and not Mr. Y who dealt with the Insurer in relation to the Complainant's claim for serious illness cover in 2018. I have not identified any documentary evidence demonstrating interactions between Mr. Y and the Complainants in relation to their mortgage protection and serious illness policy.

/Cont'd…

While the above documentary evidence is not conclusive, it supports Mr. Y's version of events in so far as he states that he did not discuss the Complainants' policy with the First Complainant in **late September/early October 2015**.

I must reiterate that is very disappointing that the Provider did not keep notes or records of the phone calls between the Complainants and the Provider, although clearly there was some contact between the Complainants and the Provider by phone, in the **Spring of 2015**. Notwithstanding, having considered the available evidence, and in particular Mr. Y's very adamant testimony at the Oral Hearing, I have concluded that on balance, the First Complainant did not discuss her serious illness cover with Mr. Y in **late September / early October 2015.**

Meeting: 2 February 2018

Having addressed the events of 2015, I must now consider the meeting between the First Complainant and the Provider's representative Mr. C, on **2 February 2018**. The First Complainant attended the Provider's office to discuss her pension arrangements. Both parties accept that during the course of the meeting the First Complainant disclosed her cancer diagnosis, and that the question of serious illness cover arose.

The First Complainant contends that the Provider leafed through "*a large physical folder of what appeared to be loose documents with no apparent index or filing system*" , and wrongly informed her that she had no serious illness cover, only to subsequently locate a document which referenced a quotation for serious illness cover, and to then place a call to the Insurer, after which the Provider confirmed that the Complainants did in fact have serious illness cover.

Mr. C however, at the Oral Hearing stated that upon learning of the First Complainant's cancer diagnosis, he took out the file, had a look though and that:

> "*… I then told* [the First Complainant] *that, you know, you do have serious illness cover*."

Mr. C did agree with the First Complainant's evidence that the documents on the Complainants' file were loose. However, he described the file as "*less than an inch thick*" with documents filed in chronological order, and that the Complainants' mortgage protection policies are kept at the very back of the file.

Both parties' accounts differ in respect of whether Mr. C initially told the First Complainant, incorrectly, that she did not have serious illness cover. However, I do not consider it necessary to make any finding in this regard. Irrespective of the stage in the meeting when Mr. C advised the First Complainant that the Complainants' policy included serious illness cover, it is clear that ultimately, this is what occurred, and that it was arising from this meeting, that the Complainants submitted a claim to the Insurer for serious illness benefit. The issue arising in this complaint is not the information furnished to the Complainants in 2018 regarding their policy, but rather whether the Provider furnished the Complainants with incorrect information regarding their policy cover in 2015, resulting in financial loss.

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Matters Raised During the Oral Hearing

During the course of the Oral Hearing, the First Complainant gave new evidence, to the effect that she believed that Mr. C became aware of her cancer diagnosis when dealing with her and her employer in 2015 regarding her pension arrangements:

> "*I believe that* [Mr. C] *was informed I'd cancer. I'm not sure that he was informed of what particular cancer. As I said there is an e-mail in 20, in August 2017, shortly before my relapse, where we were discussing my pension and he was talking to* [my Employer] *by e-mail…. Yes, my apologies. Yes, it was August 2015*."

However, having reviewed the correspondence submitted to this office relating to the First Complainant's pension, I have not identified any reference to the First Complainant's cancer diagnosis.

There is an email from the First Complainant's Employer to Mr. C dated **6 April 2016** on file, in which the First Complainant's employer explains that the First Complainant's pension contributions from April 2015 to March 2016 were "*lower than expected as* [the First Complainant] *was absent for a number of weeks during the year on reduced pay*". However, this email does not explain that this was because the First Complainant had been diagnosed with cancer, and indeed in my opinion, such sensitive details were unnecessary and might indeed have been inappropriate, if they had been included. Following the Oral Hearing the Complainants made the following submission regarding this email:

> "*Because of this reduction in payment contributions due to* [the First Complainant's] *illness and reduced income, she is confident she would have had to discuss the matter with* [Mr. C], *so he could implement this change to her policy*. [Mr. C] *implemented this change on* [the First Complainant's] *behalf, as confirmed in the letter dated, 13th May 2016 received by* [the First Complainant] *from* [the Insurer] *confirming that the change had been made. Unfortunately*, [the First Complainant] *spoke verbally to* [Mr. C] *about this and as has been shown, the Provider did not keep a record of verbal conversations or phone calls from their clients*."

While the Complainants appear to suggest in their submission after the Oral Hearing that the First Complainant informed Mr. C of her cancer diagnosis while discussing her pension in 2015 or 2016, when questioned at the Oral Hearing on this point, the First Complainant gave the following evidence:

[First Complainant]	*I believe at the time* ***I would have said to*** **[Mr. C]** ***can you talk to*** **[my Employer]*, communicate with*** **[my Employer]?** ***I'm, you know, off work at the moment and we need to look at the pension and the payments, et cetera,*** *and I believe that is what I would have said at the time.*
[Ombudsman]	*Okay.*
[Provider's Rep]	***And no more than that?***
[First Complainant]	***No more than that; that I was off ill.***

/Cont'd…

[Provider's Rep] *So in those circumstances apart from knowing that you were off work at that time and making representations to your employers presumably about the level of contributions that you would make to your pension?*

[First Complainant] *Yeah*.

[Provider's Rep] ***There was no discussion with* [Mr. C] *specifically in relation to the fact that I'm recovering from surgery, I've had cancer …, I've had a relapse, et cetera?***

[First Complainant] ***I cannot categorically say what I said in that conversation***.

[my Emphasis]

In my opinion, based on the evidence available (in particular the First Complainant's own evidence) she informed Mr. C. at most, that she was off work because she was ill. The First Complainant was unable to recall whether she mentioned any information, such as her cancer diagnosis or relapse, to Mr. C that would have alerted him to the fact that she had a serious illness.

Consequently, I am satisfied that the Complainants have not established that Mr. C was informed of the First Complainant's cancer diagnosis, or indeed that she was seriously ill, when he was dealing with her pension arrangements, as suggested by the First Complainant during the Oral Hearing.

Finally, during the course of the Oral Hearing a question arose as to the date on which the Complainants submitted a claim for a serious illness benefit under a different policy (*****887) which the Complainants' held with another insurer. This policy was not arranged by the Provider and was entirely separate from the policy that is the subject of this complaint.

After the Oral Hearing, the Complainants supplied this office with the claim form they submitted to the third party insurer, which was signed by the First Complainant on **19 April 2018** and by the First Complainants' doctor on **22 February 2018**.

The Provider then made the following submission in respect of this claim form:

> *"….it is clearly of significance in showing as it does the failure on the part of the Complainants to may [sic] any enquiry of any insurer with regard to critical illness at the time when it was most needed."*

While this claim form may suggest that the Complainants did not turn their attention to their insurance policies, and any claims they may have been entitled to make, arising from the First Complainant's cancer diagnosis, until **February 2018**, this is not conclusive evidence to that effect. I do not consider that the date on which the Complainants submitted a claim for a serious illness benefit to a third party insurer to be determinative in respect of the issue arising in this complaint, i.e., the information given to the Complainants by the Provider in 2015 about whether or not they had serious illness cover.

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Record Keeping

As I have already addressed earlier, there is very limited documentary evidence available in relation to telephone calls which took place between the Complainants and the Provider during 2015. It is clear that the Provider failed to adequately document the call between it and the Complainants in the **Spring of 2015**, in contravention of provision 11.5(e) of the CPC 2012.

Furthermore, I consider that the manner in which the Provider documented its meetings and phone interactions with the Complainants, to have been somewhat haphazard. It became apparent during the course of the Oral Hearing that the 2 pages of handwritten notes submitted to this office relating to the Provider's dealings with the Complainants in 2018 regarding their complaint, had been compiled by Mr. C in or around May 2018, from various handwritten contemporaneous notes written by the Mr. C on the bottom of statements and other correspondence issued by the Insurer to the Complainants. In my opinion therefore, the evidence suggests that the Provider had no particular system for documenting meetings or phone interactions with its customers. The Complainants' file did not contain a dedicated section in which the Provider's meetings or calls with the Complainants were recorded. Nor does it appear that the Provider had any particular system for documenting phone calls that occurred before 29 May 2018, when the Provider began to record such calls.

In my view, the absence of an appropriate system is unsatisfactory, bearing in mind the regulatory obligation on the Provider to:

- maintain up-to-date records containing all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service, as set out in provision ***11.5(e) of the CPC 2012***; and
- maintain up to date and comprehensive records for each complaint received from a consumer, as set out in provision ***10.11 of the CPC 2012***.

General Observations

For the reasons outlined above, I am satisfied that the evidence suggests that the Second Complainant was wrongly informed by the Provider, that his policy did not include serious illness cover, in the **Spring of 2015.** I do not however accept, that the Provider wrongly informed the First Complainant, in **late September/ early October 2015** that the policy did not include serious illness cover.

This was a very serious error by the Provider in early 2015, particularly in the context of a decreasing term assurance plan, where the policy benefits reduced on an annual basis, and it is clear that the Complainants relied on this information.

However, there were also serious errors by the Complainants, insofar as they failed to read any of the annual statements issued to them by the Insurer from **2014 – 2017** with an appropriate level of attention.

/Cont'd…

To this extent, it is clear that the Complainants' actions contributed to a large extent to the situation that has now arisen whereby the Complainants' serious illness benefit had reduced by €19,226 by the time they submitted a claim to the Insurer. Had the Complainants read any of the statements issued to them or indeed the policy documents, it would have been immediately apparent that they did in fact have serious illness cover.

Furthermore, in the event that the Complainants had read the **May 2015** statement issued to them by their Insurer, shortly after the Second Complainant's call with the Provider in the **Spring of 2015**, they would have been alerted to the fact that the information supplied to them by the Provider in the **Spring 2015** call was incorrect. They would have been in a position to submit a claim to the Insurer in May or June 2015, without suffering any financial loss, in circumstances where the policy benefits reduced annually in **July** of each year. Therefore, although the Provider has a case to answer to the Complainants, I do not consider it appropriate to direct compensation of €23,899.88, as requested by the Complainants.

However, I do appreciate that the **Spring of 2015** was a very difficult time for the Complainants personally. In the context of the likely stress and anxiety caused by the First Complainant's cancer diagnosis it is perhaps less surprising that the Complainants did not pay the attention to the statement issued to them in **May 2015** that they ought to have, instead relying on the information supplied to them by the Provider in the Spring of that year. However, the Complainants have not supplied this office for any explanation as to why they did not read the statements subsequently issued to them in **2016** and **2017**, which again contradicted the information furnished to them by the Provider in the **Spring of 2015.** Indeed, the Second Complainant acknowledged that if they had done so, it would have been immediately apparent to them that they did have serious illness cover.

I accept that the Provider furnished the Complainants with incorrect information in the **Spring of 2015** regarding their policy. It appears that the Provider may have relied on the wrong policy when informing the Second Complainant that they did not have serious illness cover. While I have no doubt that this was a genuine mistake on the Provider's part, this does suggest a poor system of record keeping and a degree of carelessness in the manner in which the Provider checked the Complainants' file when responding to the query.

Taking all the circumstance into consideration, I believe it is appropriate to uphold the Complainants' complaint that the Provider made incorrect information available to them in the spring of 2015. To mark that decision, my directions are stipulated below.

<u>Conclusion</u>

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is substantially upheld on the grounds prescribed in ***Section 60(2)(g).***

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- 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 **€5,000**, 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.

MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

18 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,
(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.