



<b><u>Decision Ref:</u></b>	2021-0325
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Mortgage Protection
<b><u>Conduct(s) complained of:</u></b>	Maladministration Delayed or inadequate communication
<b><u>Outcome:</u></b>	Partially upheld

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

#### **Background**

The complaint concerns a Mortgage Protection Policy. The Complainants' mortgage was covered by this policy. The policy was a Decreasing 16 year Term Policy due to expire on **12 February 2019**. It was a Group Policy arranged by a Bank. The Complainants had increased the level of cover in 2003.

On redemption of the mortgage in 2004, the Provider, which is the underwriter of the policy, against which this complaint is made, continued to take premiums in respect of the cover.

#### **The Complainants' Case**

The Complainants contend that they set up the policy with the Provider during the process of arranging a mortgage with their mortgage lender. The Complainants assert that the *"Policy was presented and sold by [the mortgage lender] as a necessary requirement to obtaining the mortgage"* and that they *"understood that this was for however long the mortgage was in existence."* The Complainants state that the mortgage protection policy *"should have ended upon redemption of the mortgage."*

The Complainants assert that:

*"...no policy documents and conditions were presented to us to suggest the policy would continue after the redemption of the mortgage prior to the taking out of the mortgage, by either [the mortgage lender] or [the Provider]"*.

The Complainants state that they:

*"...felt it was absolutely clear that what was intended was that the policy ended when the mortgage ended. In the absence of any information being provided initially, to the contrary we could not be expected to understand any other outcome."*

The Complainants contend that, a letter was issued by the mortgage lender to the Provider dated **23 July 2004**, which *"confirmed that...[the mortgage lender] had no further interest in [the] policy from 16 July 2004"*. The Complainants assert that the Provider:

*"...should have had systems in place and written to us upon receipt of letter of release from [the mortgage lender] to accurately explain the possible ongoing situation, if we so desired to continue with the policy."*

The Complainants contend that premiums were paid by them after **16.07.2004** up until cessation of the policy on **12.02.2019**.

In the Complainants' submission of **23 August 2020** they state that the mortgage protection policy was arranged by the Bank for the express reason of possibly repaying the mortgage in question and for no other reason. The Complainants say they dealt with the Bank at all times and there was no second entity involved. They argue that who the Bank arranged its cover with was of no concern of theirs. The Complainants state the Bank was a tied insurance agent of the Provider. The Complainants submit that at all times the Bank was their contact. The Complainants state they were never in receipt of any policy documents from the Bank or the Provider. The Complainants say this fact has now been confirmed by the Provider who states 'the certificate of cover will be forwarded to your solicitor.' The Complainants say the Provider also state 'This was normal process for [the Bank] to issue the policy in 2004.'

The Complainants question why the Provider assumes this was normal process at the time and that it would appear to be very abnormal to them. The Complainants state that this statement proves that the Bank were acting on behalf of the insurance undertaking in all dealings and that no proof of the sending of the policy documents and certificate of cover to their solicitor has been provided.

The Complainants submit that it is rather convenient that the Provider now 'find' the letter of no further interest from the Bank dated **23 July 2004**. The Complainants refer to the Provider's statement in correspondence of **27 May 2019** *"I cannot find any confirmation having been received from [the Bank] advising that they had released their interest in the policy, hence the premiums continued to be collected."* The Complainants submit that as the Provider had the letter on file all along, this means that the Provider could have and should have stopped collecting further premiums.

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The Complainant's position is that after the redemption of the mortgage there was no mortgage in existence, so if the policy was to continue it would continue as a different product, solely as a life policy and new policy documents would have to issue. The Complainants say the schedule of cover presented by the Provider specifically states it is a "Decreasing Term Mortgage. "The Bank" Group Mortgage Protection Scheme. Premium Details €22.32 throughout the term of the mortgage".

The Complainants say if the mortgage ends the term of the mortgage ends and therefore premiums should not have been collected.

The Complainants submit that the Provider also states, that they continued to receive insurance cover during the period. The Complainants state, however it was not explained that the cover continued to decrease in line with the expected decrease in the amount of the mortgage if it was still in place. The Complainants question what was the decrease in the value of the policy aligned to, if there was no mortgage. The Complainants' position is that there was no communications from the Provider after the redemption of the mortgage to indicate what the expected year on year value would be, and what the figures would be based on, now that there was no mortgage. The Complainants suggest that it would be critical to inform clients if a life policy that was going to decrease in value as they got older.

The Complainants submit that it is not good enough to say that there was no process in place in 2004 to write to policyholders. The Complainant say they can also say the same, that they themselves had no process in place to contact the insurance company after the redemption of the mortgage as they had not dealt with the Provider in the first place. The Complainants state that they also followed normal process in July 2004 in dealing with the arrangers of the policy, the Bank.

The Complainants state that as now confirmed by the Provider, the Bank was the Complainants primary contact and arrangers of the cover for the mortgage. The Complainants say they have no record of having received any policy documentation from the Bank or having received any certificate of cover from their solicitor. The Complainants say that no documentary proof of this has been provided in the schedule of documents and that it proves that the sole purpose of the policy was to cover the mortgage during its existence and was arranged and executed by the Bank. The Complainant therefore say any instructions given by them to the Bank was the same as giving them to the insurance company.

The Complainants say that other policies that they might have had or still have with the Provider are totally irrelevant to this situation.

The Complainants state that the Provider communicated with a third parity broker and transferred information to that party without their authority.

The Complainants state that the Provider appears to be attempting as a diversionary tactic to make an issue of phone calls and the Complainants request for information in 2015. The Complainants say there can be no value put on this activity as it would be normal for a

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person to try and get an understanding of their position. The Complainants states that the telephone call in 2019 (where they expressed concern at the short notice of the expiry of the life cover) was a reactionary call to the letter received, informing them of the expiry of the policy on that same day as the receipt of the letter. The Complainants say it was this letter and phone call that suggested to them to fully investigate the exact nature and origin of this particular policy.

The Complainants state that the term 'Decreasing Term Mortgage' can only be interpreted as a policy that decreases in value as the mortgage decreases. The Complainants say that when the mortgage is redeemed and there is no mortgage, the initial policy should be null and void as the basis it was taken out for no longer exists as per application forms. The Complainants submit that if a person decides to continue the policy solely as life cover it would be critical that they be informed that the cover will continue to decrease over time as the facts underlying the origin of the policy are totally different. The Complainants submit that to isolate the term Decreasing and to say that it is a generic term used in Life Policies is not acceptable and is an attempt to mislead and the use of the term generic in the above context is not an explanation that can be found in any definition of generic.

The Complainants state that they do not understand the Provider's position that: *"Decreasing Term policies from 2003 with no value did not receive Annual Statements"*. The Complainants question if this means that the policy had no value and yet it has been stated previously by the Provider that life cover was in place.

The Complainants state that it is convenient for the Provider to be aware of letters or not aware of letters from the Bank as it suits it. The Complainants say as the arrangers of the policy and signatories to the application forms and handlers of all documents the Bank in its letter of **14 June 2007** irrefutably state that the policy was cancelled. The Complainants say the situation cannot be made any clearer. The Complainants submit as the Bank were their primary contact it now appears to be without doubt that they gave instructions to the Bank to cancel the policy. The Complainants state that it is between the Bank and the Provider to understand any breakdown in their own communications. The Complainants say as the Bank were tied agents of the Provider any instructions or communications given to the Bank or issued by the Bank is the same as if issued by or given to the insurance undertaker as per Insurance Act 2000. The Complainants say the letter confirming cancellation of policy and refund of overcharged premiums issued by the Bank as tied agents of the Provider, has to be deemed by all concerned to be confirmation by the insurance undertaking that the policy was cancelled.

The Complainants submit that it is their view that they are entitled to a refund of all premiums paid since 2004 with appropriate compound interest applied. The Complainants state that it is very clear that the Bank as a tied agent of the Provider aggressively marketed and sold these policies as a prerequisite to approving a mortgage and it is also clear that these policies were for the sole intention of repaying the mortgage in the event of death. The Complainants say they were in no way suitable to be continued as a worthwhile life policy for any person to have. The Complainants submit that the Bank as tied agents of the Provider carried out all particulars in putting in place of the policy and have unequivocally confirmed the cancellation of the policy and issued a refund for an

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overpayment of premiums on behalf of the insurance undertaking as it is obliged to do, being a tied agent of the Provider. The Complainants point out that a letter from the Bank – which does not identify a specific policy – states: *“Further to our recent telephone conversation in relation to the error identified when your insurance policy was cancelled following the early redemption of your loan. At that date you should have received a refund from the Insurance policy. The refund amount should have been €23.80”*.

The Complainants want the Provider to refund the entire premiums paid by them from **16 July 2004** until **12 February 2019** along with an appropriate interest amount.

### **The Provider’s Case**

The Provider states in its Final Response letter dated **9 September 2019**, that the letter from the Complainants’ mortgage lender dated **23 July 2004** *“confirmed that...[the mortgage lender] had no further interest in [the] policy from 16 July 2004”*. The Provider goes on to state that *“this means that [the Complainants] become the policyholders not [the mortgage lender]...It does not lead to cancellation of the policy.”*

The Provider also states in its Final Response letter that:

*“...whilst the primary purpose of the policy is to pay off the mortgage in the unfortunate event of death during the term of the mortgage, the policy is not designed to automatically cease on redemption of the mortgage ahead of the end date of the policy. It is designed to continue to provide life assurance cover up to the end date of the policy”*.

In the Provider’s response of **14 July 2020** to this office’s Summary of Complaint, the Provider says it received a “no further interest” letter from the Bank dated **23 July 2004** on **27 July 2004**. The Provider states that the premiums continued to be paid and the policy continued in force. The Provider says the Complainants could have cancelled the policy but they did not. The Provider states that its letter of **27 May 2019** incorrectly stated that it had not received a letter of release from the Bank, the letter was subsequently located.

The Provider states that there was no requirement to issue revised policy terms when the Bank informed of its no further interest in the policy. The Provider states that Part 5 of the Policy Conditions sets out the Options on a redemption of a mortgage.

The Provider notes that the Bank had advised the Complainants on **23 July 2004** to contact the Provider to discuss the options available.

The Provider considers that the Complainants knew or reasonably should have known that the policy continued in force from July 2004.

The Provider states that there was no process in place to write to an insured when a letter of no further interest was received from the Bank. The Provider notes that the Bank did write to the Complainants in 2004 and that the policy covers this position.

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As regards the furnishing of the policy documentation, the Provider refers to a letter dated February 2003 outlining that the Bank would pass on the policy documentation to the Complainants and a letter of January 2003 stating that their solicitor would receive the Certificate of Cover.

The Provider explains the Decreasing nature of the policy and that cover decreases as the mortgage amount decreases.

The Provider says that the policy which has no value attaching did not result in annual statements being issued.

The Provider states it is not aware of the content of the Bank's letter dated **14 June 2007**, and was not aware of or involved in the "error" that it relates to. The Provider states it is not aware of any premium refund or any discussion regarding a refund. The Provider states that the Complainants are not entitled to a refund of the premiums (€15,113.00) as they had the benefit of the cover up to 2019. The Provider submits that the Complainants were aware that the policy was not cancelled and that they had to contact the Provider to ensure that it was cancelled and contact their bank to ensure that the direct debit was cancelled (as per letter of **23 July 2004**). The Provider points out that the Complainants had contacted the Provider in 2015 for details in relation to the policy. The Provider submits that the information given then showed that premiums for the policy continued to be paid by the Complainants.

## **Evidence**

### **Correspondence**

#### **23 July 2004 – From the Bank to the Complainants**

*"I attach copy of letter of release sent to [the Provider] on redemption of your mortgage.*

*Should you wish to cancel this policy, please contact [the Provider] direct. You should also contact your bank to cancel the relevant direct debit mandate.*

*This policy provides you with some valuable benefits, please contact [the Provider] to discuss any options available to you."*

#### **23 July 2004 – From the Bank to the Provider**

*"I refer to recent correspondence and wish to confirm that [the Bank] has no further interest in the above policy as and from 16<sup>th</sup> July 2004. Please delete our interest accordingly".*

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**14 June 2007** – From the Bank to the Complainants

*“Further to our recent telephone conversation in relation to the error identified when your insurance policy was cancelled following the early redemption of your loan. At that date you should have received a refund from the insurance policy”.*

[This letter does not identify what insurance policy it relates to]

**10 March 2010** – The Provider to the Complainants

*“We refer to your recent contact in connection with the above numbered policy [policy number ending 649 – the policy subject of this complaint]. I wish to confirm that your policy has/have been transferred to ... in accordance with your written instructions”.*

**10 November 2015** – Correspondence on the policy sent to Broker by the Provider

*“Enclosed please find a copy of correspondence sent to the above customer”*

**10 November 2015** - Letter to the Complainants from the Provider

*“Thank you for your recent communication regarding the above policy [policy ending – 649]”.*

The full details of that policy is then set out, its 16 year term, the premium, that policy was “in force” and the Life cover that was in place.

**11 February 2019** – The Provider to the Complainants

*“Your policy, which started on 12 February 2003, is due to end on the 12 February 2019”*

**Personal Illustration 19 June 2003**

*“Can this policy be cancelled or amended by [the Provider]*

*...*

*Should we need to cancel or amend this policy we will write to you and explain the reasons for the actions and inform you of your options. ...*

*Your benefits explained:*

*..This benefit amount will decrease on an annual basis over the term of the policy.*

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*If you die while this policy is in force, we will pay you the higher of the outstanding balance on your original mortgage or the life cover benefit amount at the time of your death”*

### Policy Conditions

#### ***“Contract basis and definitions***

*The Policyholder – the company or person responsible for premium payment and who is legally entitled to the policy proceeds. [The Bank] is the policyholder for the duration of the mortgage. Once the mortgage has been repaid in full the policyholder will be the life or lives assured”*

#### ***“Option on Redemption***

*[The Bank] will remain as the policyholder of this policy, which was taken out by them as part security on [Bank] mortgage taken out by the life or lives assured, until such life or lives assured have redeemed the mortgage in full. When the mortgage has been redeemed in full we must be notified in writing. [The Bank] will then cease to be policyholder and the life or lives assured will be the policyholders of that specific cover”.*

#### ***“Minimum Sum Assured***

*The greater of the minimum sum assured and the outstanding balance on the Mortgage as described in Condition 3”.*

A table is set out in Appendix 1 of the Policy Conditions, setting out the: *“Schedule of minimum benefit by term”*

### **The Complaint for Adjudication**

The complaint is that the Provider incorrectly continued to charge premiums following redemption of the mortgage on **16 July 2004** until **February 2019**.

The Complainants state that the Provider transferred information to a third party entity without their authority. This is a matter more appropriate to the Data Protection Commission and does not form part of this investigation and adjudication.

### **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant 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 **12 August 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.

Submissions dated **27 August 2021** and **21 September 2021** from the Provider and submission dated **14 September 2021** from the Complainant, were received after I issued my Preliminary Decision to the parties. These submissions were exchanged between the parties. I have considered the contents of these additional submissions, and all the submissions and evidence, for the purpose of setting my final determination below.

### Analysis

I note that the Personal Illustration dated **19 June 2003** that was issued to the Complainants stated:

*“Can this policy be cancelled or amended by [the Provider]*

*...*

*Should we need to cancel or amend this policy we will write to you and explain the reasons for the actions and inform you of your options”.*

I also note that the Policy Conditions state:

***“Option on Redemption***

*[The Bank] will remain as the policyholder of this policy, which was taken out by them as part security on [Bank] mortgage taken out by the life or lives assured, until such life or lives assured have redeemed the mortgage in full. When the mortgage has been redeemed in full we must be notified in writing. [The Bank] will then cease to be policyholder and the life or lives assured will be the policyholders of that specific cover”.*

The letter of **23 July 2004** from the Bank to the Complainants advising of the Bank's no further interest in the policy, states:

*"This policy provides you with some valuable benefits, please contact [the Provider] to discuss any options available to you."*

From the above, it is clear that the Illustration, the letter from the Bank and the Policy Conditions all refer to option/s and to the circumstances of a change, or amendment to the policy.

Having an Option available to you, implies that you will have the choice whether to do what is stated in that option, or not do what is stated in the option.

The Illustration specifically states, *"Should we need to cancel or amend this policy we will write to you and explain the reasons for the actions and inform you of your options"*.

In its post Preliminary Decision submissions of **27 August 2021** and **21 September 2021**, the Provider accepts that it would have been best practice, from a customer service perspective, for it to have contacted the Complainants in 2004 upon redemption of the mortgage. However, the Provider's position is that no amendments were made to the Policy upon redemption of the Complainants' mortgage and/or upon receipt of the Bank's release letter dated **23 July 2004** which confirmed that it no longer had any interest in the Policy.

The Provider states that the redemption of the mortgage and the automatic transfer of interest in the Policy from the Bank to the Complainants did not amount to an amendment or cancellation of the Policy and consequently, did not trigger any contractual obligation of the Provider to contact the Complainants and/or requirement to issue revised policy documents.

In the Complainants' post Preliminary Decision submission of **14 September 2021** they state that the original policy was taken out by the Bank, and they would expect engagement from the previously unknown insurance underwriter (the Provider) to not only explain the change of ownership, but to also make itself known as now being the party dealing directly with them, their customers.

I accept that the Provider did not at any time write to, or contact the Complainants directly, regarding the changed position with the policy, to take account of the changed ownership of the policy. While I accept that the contract itself may not have required changing, I consider that some amendment or update of records was required to evidence the change of ownership from the Bank to the Complainants.

I also accept that the Provider failed to communicate to the Complainants in 2004, or thereafter, the policy option/s that were available to them when the mortgage had been redeemed. The Provider merely continued to take the premiums without discussion or communications with the Complainants, or by seeking the Complainants' confirmation that this is what they wanted to happen.

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The Provider has not explained why it did not contact the Complainants upon receipt of the letter from the Bank of **16 July 2004** confirming that the Bank had no further interest in the policy from that date. The Provider's initial response to the complaint was that it had not received this letter of release from the Bank and that it was for that reason the premiums continued to be deducted. While the Provider later stated it had located the release letter it had received from the Bank in 2004, its initial position implies that the receipt of a letter of release, would have triggered an alternative action from the Provider.

The Provider states that there was no process in place for making contact upon receipt of a release letter. I believe this is unacceptable. I would expect that such contact would be made by providers (underwriters of such policies) with the insured persons, to advise of a bank's release of its interest in the policy and clearly explaining the options/benefits now available on transfer of the policy from the mortgage holder.

While I note the failing by the Provider as to the communication of the policy option I accept that the Complainants were on notice, or ought to reasonably have been aware that the policy remained in force. I have come to this conclusion as a result of (i) the letters dated **10 March 2010** and **10 November 2015** from the Provider to the Complainants concerning the details of the policy cover (ii) the continued deduction of premiums by the Provider in respect of the policy from the Complainants' bank account over the years, and (iii) the letter from the Bank dated **23 July 2004** advising the Complainants to contact the Provider if they wished to cancel the policy.

I also accept that some borrowers do choose to continue with this relatively inexpensive form of life assurance even when the mortgage is redeemed.

Having regard to all of the above, I do not consider that the remedy called for by the Complainants is merited, that is, the full refund of premiums with interest. This is because I accept that the Complainants did have the benefit of the life cover over the years, and they could have reasonably taken action themselves if they did not want this cover to continue but they did not.

In this regard, there is a table in Appendix 1 of the Policy Document setting out the "*Schedule of minimum benefit by term*". The Provider had last communicated the then level of "*Sum Assured - Life Cover*" to be €93,174.00, in its letter to the Complainants dated **10 November 2015**.

That said, I would have expected greater communication of the monetary amount of this "*Sum Assured - Life Cover*", to the Complainants from 2004, and over the intervening years.

For the Provider's unreasonable actions of not correctly informing the Complainants of their options in 2004 or in the years thereafter, the Complainants' choice in relation to the specified policy "*Option on Redemption*", I accept that a compensatory payment is merited.

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I therefore partially uphold the complaint and direct the compensatory payment of €3,500 (three thousand and five hundred euro).

### **Conclusion**

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)** *the conduct complained of was unreasonable*.
- 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 €3,500, 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.**



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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

24 September 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.