



<u>Decision Ref:</u>	2021-0426
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Delayed or inadequate communication Failure to provide correct information Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a mortgage life insurance policy that the Complainants held with the Provider.

The Complainants' Case

The First Complainant submits that the Provider cancelled their mortgage life insurance policy from **29 August 2015** without their knowledge or without any instructions for them to do so.

The First Complainant submits that on the **12 March 2020** she contacted the Provider to inform it that they were switching mortgages and that it was at this time that the Provider informed them that the policy in question had been cancelled five years previously.

The Provider has confirmed that the policy was cancelled in error, and it submits that this occurred when it received correspondence from a different customer on **3 September 2015**, which had listed the Complainants' plan number ending in 435 in error, within the correspondence and had requested a change in the address on the plan and to cancel the plan in place. The Provider submits that it followed the instructions on this correspondence under plan number ending in 435 and changed the address and cancelled the policy.

The First Complainant submits that she was shocked when she became aware that the policy had been cancelled five years earlier. The First Complainant asserts that she only became aware of this because she phoned the Provider on **12 March 2020** to query her policy as she

was looking to switch mortgage provider. The First Complainant submits that upon receiving this information from the Provider, she requested that it reinstate the plan. The First Complainant states that the Provider apologised for its error but refused to reinstate the plan, as too much time had passed since it had been cancelled.

The First Complainant submits that the Provider's actions on the policy had left the Complainants and their three young children in a very vulnerable position whereby unbeknownst to them, they did not have any insurance cover for their mortgage of circa €340,000.00 (three hundred and forty thousand Euro) for a period of more than five years.

The First Complainant states that the policy's nominated address was changed in error by the Provider, so they received no communication from it in respect of the cancellation of the policy or indeed the change of address on the policy.

The Complainants submit that they held two different policies with the Provider, a joint life assurance policy and a mortgage insurance policy. The First Complainant submits that the premium payments, for the two policies held with the Provider were being collected from the Second Complainant's bank account. The First Complainant submits that as the premium payments were set up as direct debits under the policy and the prices of the premiums were set under the policy, they had no reason to question that the premium payments would not be collected as normal.

The First Complainant questions why the Provider did not query why the two plans, ending in 435 and 444, had two different addresses for the Complainants on its database.

The First Complainant submits that the Provider's refusal to reinstate the plan had caused them much distress and panic as they were required to seek mortgage insurance cover elsewhere at a time when a) their mortgage loan remained uninsured and b) their request to switch mortgages had been accepted by two separate mortgage providers and they were unable to finalise the switch until such time as mortgage insurance cover had been put into place.

The First Complainant submits that as they were now seven years older than when they incepted the plan in question, the term cost of a new mortgage insurance plan has been more expensive than if they had been able to remain on the plan with the Provider. The First Complainant asserts that resolving this issue caused added inconvenience and distress, aggravated by the fact that she was trying to secure the insurance and re-mortgage during the restrictions as a result of the COVID-19 pandemic.

The First Complainant submits that the Provider wrote to them on **31 March 2020** and apologised for the error and made a customer service offer of €500.00 (five hundred Euro) in full and final settlement of the complaint. The First Complainant submits that this settlement offer was subject to them accepting the offer by **16 April 2020**, which she contends was an unfair timeframe given the circumstances.

The First Complainant submits that it is unacceptable that the Provider cancelled and changed the address of the policy in question due to human error on its part and upon doing

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so, it failed to notify them and the bank to which the mortgage loan account was held, of its actions. The First Complainant states that when she purchased the plan in question, she understood that they would never have to look at it again as it would last for the lifetime of the mortgage.

The First Complainant states that had they not contacted the Provider in **March 2020**, they would still be unaware of the Provider's actions, and they would have continued to have no mortgage insurance policy in place, for perhaps the entire life of the mortgage.

The First Complainant submits that they had to purchase a new mortgage life insurance policy with a different provider as they could not continue to have their mortgage loan uninsured, and they needed to secure a mortgage life insurance policy so they could switch their mortgage loan to a different bank. The First Complainant submits that there was urgency to do this to avoid losing the offer with the new mortgage provider. The Complainants submits that for these reasons they no longer require the Provider to reinstate the plan ending 435.

The First Complainant states that it is irrelevant that as a result of the decision to switch mortgage provider that the policy would have had to be changed anyway. The First Complainant asserts that the main issue for the complaint remains - that they were left with *"a very large mortgage not insured for 5 years"*.

The First Complainant stated that initially she was sent an offer for re-mortgage at lower interest rate from Bank A but because of the issues relating to the cancellation of the insurance policy by the Provider and its refusal to reinstate the policy, she had to turn down the offer.

The First Complainant submits that the consequence of having to seek alternative cover will cost the Complainants €3,120.00 (three thousand one hundred and twenty Euro) more by comparison to the policy they held with the Provider.

The Complainants want the Provider to provide them with satisfactory monetary compensation as a result of its actions in relation to the plan in question.

The Complainants, by email to this office on the **27 October 2020** seek confirmation as to the validity of their second policy, ending in 444, for life insurance with the Provider.

The Provider's Case

The Provider submits that prior to the plan being cancelled the Complainants had two plans with it, the plan in question ending in 435 and another plan ending in 444. The Provider submits that the last monthly payment under plan 435 which amounted to €47.12 (forty-seven Euro and twelve cent), was collected by it on **17 August 2015**.

The Provider submits that the billing date of both plans were recorded on its database as the **15th day** of each month. The Provider submits that its normal process is to collect the

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monthly payments as one lump sum payment, rather than two separate premium payments when two plans are billed from the same bank account on the same billing date and consequently, it would collect a total sum of €127.76 (one hundred and twenty-seven Euro and seventy six cents) at one time in respect of both plans.

The Provider submits that since the plan ending in 435 was cancelled in **September 2015**, the monthly payment collected from the Complainants' bank account decreased from €127.76 (one hundred and twenty-seven Euro and seventy six Cents) to €80.64 (eighty Euro and sixty four Cents) per month.

The Provider states that it acknowledges the error made on its part in cancelling the policy. It says however, that there was some responsibility on the Complainants to ensure that the premium payments were being collected in respect of the plan in question and that the Complainants did not contact them to query the difference in premium payments, when policy ending 435 was cancelled.

The Provider submits that a letter confirming the cancellation of the policy was sent to the named broker Agent on the **5 September 2015** through which the policy had been bought. The Provider states that it was not sent to the Complainants' bank as it does not have on record details of the identity of the mortgage lender because the cover was purchased through the named Agent.

The Provider submits that letters sent to the new address confirming the change of address and cancellation of the policy were not returned as undelivered.

In its response letter dated **31 March 2020** the Provider states that the policy was cancelled in error and that the Provider was not able to reinstate the plan. The Provider states that it wishes to offer a Customer Service Award of €500.00 (five hundred euro) by way of an apology for the error on its part.

It is the Provider's position that it was unable to reinstate the policy due to the time that had passed, and the number of premium payments not made.

The Provider refutes the assertion by the Complainants that they will incur financial expense as a result of having to take out a new mortgage cover. The Provider asserts that the Complainants chose to go with a mortgage at a higher interest rate, after they became aware that their old plan could not be reactivated. The Provider states that it was possible for the Complainants to go with a lower rate mortgage initially, as the Complainants would have had to effect new policy cover regardless. The Provider submits that as a result it "*does not feel it is appropriate to make an offer in respect of any costs associated with the higher rate mortgage*" selected by the Complainants.

Furthermore, the Provider refutes the Complainants' claim that the cancellation of the policy resulted in a delay in arranging the re-mortgage, or caused undue stress to them. The Provider states that:

"[I]t is clear that they had to replace plan ending in 435 with another life cover (of a longer terms), in order to proceed with their arranged re-mortgage. It is also clear

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that while the new application (to cover the re-mortgage), was ready to issue on 2 March 2020, they [the Complainants] chose not to proceed with it at that time”

The Provider draws the above conclusion from an application made by the Complainants with the Provider on the **28 February 2020**. This application was not concluded.

The Provider submits that it fully accepts the plan should have never been cancelled and that there were errors in its administration that led to this. The Provider states that it accepts that this would have caused stress for the Complainants and submits that it made a Customer Service offer of €500.00 (five hundred euro).

The Provider in its Final Response Letter dated **13 August 2020** increased its offer to €2,000.00 (two thousand Euro) *“in recognition of its failing and by way of apology to the Complainants”*.

In relation to the second policy for life cover, the Provider submits that the address was also updated incorrectly. The Provider submits by email correspondence to this Office dated **3 November 2020**, that the cover under plan number ending 444 will remain valid as long as the payments due are paid. The Provider states that the *“life cover policy covers the person and not the address, or a house at an address”* and that the plan has not been invalidated as a result of the incorrect address.

The Complaint for Adjudication

The Complaint is that the Provider wrongfully cancelled the Complainants’ mortgage insurance policy and changed the address, without the Complainants’ knowledge or instructions, leaving them without any mortgage insurance cover for more than 5 years.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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

The Complainants held two different policy accounts with the provider, a joint life assurance policy and mortgage insurance policy. The mortgage life insurance policy was incepted on **9 December 2013** and cancelled from **29 August 2015** due to an administrative error on the Provider's part.

I note that the Provider has submitted a copy of the handwritten letter requesting the cancellation of the policy which incorrectly quotes the policy number ending in 435 held by the Complainants. I note from the Provider's submissions that the names signed on this letter were different from the names of the Complainants.

The Provider has stated that while there was an administrative error on its part the Complainants had some responsibility and should have made enquiries when the direct debit being charged was reduced from €127.76 (one hundred and twenty-seven Euro and seventy-six cents) to €80.64 (eighty Euro and sixty four cents) per month.

The First Named Complainant submitted that unless a letter was received for a direct debit not being processed, she would have no reason to go checking the sum of the direct debits, which she submits were "*securely set up for the term of the mortgage*".

I note from the outset that the Provider recognised the error made and apologised for it to the Complainants. The Provider initially made an offer of €500.00 (five hundred euro) to settle the complaint. The offer was increased to €2,000.00 (two thousand euro) in August 2020. The Complainants refused the offer and requested a determination from this Office.

I note the explanation given in letter dated **13 August 2020** to this Office in relation to how the standard procedure for the changing of an address should operate. The Provider notes:

" [t]he Provider's standard procedure in the event of an amendment request, is to first check if the plan number is included in the request. It then checks if all plan owners (as per our records), have signed the request, before proceeding.... It should have become obvious that the names of the instructions did not match the names of those noted on the Provider's records."

From evidence submitted, I note that the error by the Provider is a grave one. The Provider in processing the cancellation request had no regard to the names of the individuals,

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different addresses or different phone numbers which if considered would have made it abundantly clear that the cancellation request was in relation to different customers.

I have considered the audio evidence submitted by the Provider and note the submission by the Complainants that it was only because they telephoned to query the policy for the purpose of their re-mortgage application, that the error was discovered.

I accept the submission by the Complainants relating to the vulnerable position they were left in for five years as a result of this error. I also accept the submission from the Complainants that having set up direct debit with the Provider, they had no reason to double check the specific amount debited each month, albeit that they were essentially saving and benefitting by approximately €47 each month, over a 5 year period, which ought to have been collected from them by the Provider during that time.

I note both parties' submissions in relation to the incurred expenses relating to the inception of the new policy for the purpose of the re-mortgage application. I note the Complainants state that they sought a number of quotes to facilitate this.

The First Named Complainant submits that they turned down an offer with a lower interest rate with Bank A, as she did not want to seek a new mortgage insurance policy which she states she would have had to do, through Bank A because the Provider refused to reinstate the policy.

The First Named Complainant has submitted that as a result of this error and having to incept a new mortgage insurance policy, the Complainants will have to incur an extra expense of €3,120.00 by comparison to their position if they remained on the old policy with the Provider. To support this, the First Complainant submitted terms of the new mortgage insurance policy incepted through Bank B, which the First Complainant asserts has had to be increased from 25 years under the old policy to 26 years, to lower the repayments.

I accept that the Complainants have been put to significant inconvenience as a result of the Provider's error, and the need to incept a new mortgage policy. Had it arisen that the Complainants had not discovered that the policy was cancelled, the Provider might well have been exposed to a more significant claim from them, in the event of a need arising to claim on the policy which didn't exist. Happily, however, it transpired that the error was discovered, and the Complainants have since put in place an alternative mortgage protection policy. Whilst they maintain the overall additional cost to them to rectify this error is more than €3,000, I am conscious that they have benefitted financially over the period of 5 years during which no premium payments were made to the Provider.

In those circumstances, taking account of that financial benefit of almost €3,000, I take the view that the Provider's compensatory offer of €2,000, at the time when it issued its Final Response Letter in August 2020 was adequate in the circumstances, given that the situation had happily been rectified by that time.

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This is not to overlook the gravity of the Provider's error, but I take the view that it is appropriate to recognise the particular circumstances of the Complainants' situation which have now been resolved.

Lastly, I would suggest that the parties liaise directly with a view to ensuring that the details of the Complainants' address for the existing policy number ending 444 are correct so that the Complainants will be in receipt of the appropriate periodic correspondence when issued by the Provider.

Accordingly, on the basis that the compensatory payment of €2,000 previously offered by the Provider to the Complainants, remains open to them for acceptance, I take the view that it is not necessary or appropriate to uphold this complaint. Rather, it will be a matter now for the Complainants to communicate directly with the Provider if they wish to accept that appropriate compensatory payment, in order to conclude.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

18 November 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.