



<b><u>Decision Ref:</u></b>	2021-0515
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Multiple Products/Services
<b><u>Conduct(s) complained of:</u></b>	Mis-selling Disputed transactions Mis-selling (banking)
<b><u>Outcome:</u></b>	Rejected

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

The Complainants entered mortgage loan agreements with the Provider in **September 2004** and **March 2009**. A condition of these loans was that the Complainants incept mortgage protection insurance. The Complainants subsequently took out mortgage protection policies through the Provider. The Complainants believe these policies were mis-sold to them by the Provider.

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

The Complainants explain that in **2004** they entered a loan agreement with the Provider and *"a staff member said the bank required we take out life policies on this home loan."*

When the Complainants topped up their loan in **2009**, the Complainants say they were told they would need *additional protection*. The Complainants say they were not advised on either occasion, that the life policies could be waived arising from the fact:

1. they already had life assurance polices in place;
2. the First Complainant was over 50 years of age; and
3. the loan was for a buy to let property.

The Complainants explain that during a review of their finances in **2017**, they discovered that the life policies the subject of this complaint, were not assigned to the loan and were therefore not required. The Complainants say these policies were mis-sold as a result of

incorrect information being given and they believe this was a sales tactic on the part of the Provider.

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

The Provider advises that the Complainants were sanctioned mortgage loan facilities in **September 2004** in the sum of €29,000 repayable over 11 years. The Provider says it was a requirement of the loan that mortgage protection insurance of €29,000 for a term of 11 years be put in place, on both the Complainants' lives.

The Provider says the Complainants were referred by their branch in or around **September 2004** to meet with Financial Planning Consultant 1, to discuss their lending related life cover requirements. The Provider says it was a tied agent of the Insurer and there was no obligation on the Complainants to take out the required mortgage protection cover with this financial planning consultant. The Provider says the Complainants could in fact have taken out life cover policies with any life assurance provider of their choice and the financial planning consultant will have explained the tied agent arrangement, as part of the normal sales process introduction to his role and the service he provided.

The Provider says Financial Planning Consultant 1 carried out a financial review consultation and provided the Complainants with a number of quotations for convertible term life cover both on a joint life basis, and a single life basis, for €30,000. The Provider says the Complainants were also provided with quotations for level term life cover and PRSA pension in respect of the First Complainant. It says that the Complainants each signed separate proposals for convertible life cover of €30,000 over 12 years, on a single life basis.

The Provider explains that the Complainants were sanctioned further mortgage loan facilities in **March 2009** in the sum of €40,000 repayable over 13 years, on the same property as the previous loan. The Provider states it was a requirement of this loan that mortgage protection insurance of €40,000 for a term of 13 years, be in place on both of the Complainants' lives.

The Provider says the Complainants were referred by their branch to Financial Planning Consultant 2 who carried out a 'Lending related' financial review consultation with the Complainants in relation to their lending life cover protection requirements only, and provided them with a number of quotations for level term life cover again, on both a joint life basis and single life basis for €40,000. The Provider wishes to reiterate that there was no obligation on the Complainants to take out the required mortgage protection life cover through this financial planning consultant, and the Complainants could in fact have taken out life cover policies with any provider of their choice.

Arising from this meeting, the Provider says that in **March 2009**, the Complainants each signed separate proposals for the Provider's '**Temporary Protection Plan**' level term cover of €40,000 over 13 years, on a single life basis.

The Provider continues its complaint response by setting out various aspects of the life assurance application forms completed by the Complainants, the quotations and

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illustrations prepared for the Complainants, the Statement of Suitability, plan brochures, and policy documents. The Provider also sets out its compliance with the provisions of the **Consumer Protection Code**.

The Provider states that neither the convertible protection plan nor the temporary protection plan were mis-sold to the Complainants. The Complainants were sanctioned loan facilities in **September 2004** and **March 2009** and it was a requirement of these loans, that mortgage protection insurance be in place.

The Provider says the Complainants were referred by their branch in **September/October 2004** and **March 2009** to meet with financial planning consultants to discuss their lending related life cover requirements and financial reviews were completed. The Provider says it would like to emphasise that the financial planning consultants were trained to follow a detailed process when engaging with customers to discuss their protection requirements and the Provider states that it is satisfied that both financial planning consultants acted in the Complainants' best interests and in accordance with the Complainants' instructions based on the information provided by the Complainants in **2004** and **2009**.

The Provider says that the Complainants were fully aware of the policies open to them and that they chose to hold separate policies. The Provider says the policies met the needs of the mortgage protection cover conditions of the loan facilities. The Provider also says that the Complainants were at all times free to accept or reject its credit decision and associated conditions.

### **The Complaint for Adjudication**

The complaint is that the Provider mis-sold life cover to the Complainants in respect of their loans in 2004 and again in 2009.

### **Jurisdiction of the FSPO**

Owing to the date when these policies were incepted, by letter dated **27 March 2019**, the Provider expressed the view that this complaint was not made within the time limits prescribed by **section 51** of the **Financial Services and Pensions Ombudsman Act 2017**. In a letter dated **15 April 2019**, the Complainants explained that they did not become aware of the conduct the subject of this complaint until **23 October 2017**.

On **14 October 2019**, this Office issued a preliminary opinion as to jurisdiction. In this respect I note the following passages from this letter:

*"In this instance, the letter from the Complainants to the Provider dated 1 December 2017 has raised a presumption that the Complainants became aware in the course of "a recent review of our finances" i.e. within a short period of the letter of 1 December 2017 being written, of the conduct giving rise to the complaint, i.e. that it had not been necessary for them to incept the life assurance policies in question.*

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*In circumstances where the complaint was made to the FSPO in July 2018, it is the preliminary opinion of this office that the Complainants' complaint was made in adequate time to meet the provisions of **Section 51** of the **Financial Services and Pensions Ombudsman Act 2017.**"*

Following this correspondence, the Provider confirmed in late **October 2019** that it accepted the determination of jurisdiction by this Office, and the formal investigation of the complaint was then commenced.

### **Decision**

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

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

A Preliminary Decision was issued to the parties on **25 March 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

When the Preliminary Decision of this Office was issued in March 2021, it was understood that the Complainants' dissatisfaction had arisen, because they believe that they ought not to have been required by the Provider to have any such mortgage protection insurance in place, because the First Complainant was over 50 and they also already held other life assurance.

The Complainants in a further submission in **April 2021** advised that they are aggrieved, not because the consultants each mis-sold the policies, but rather because the Provider misled them to believe that they needed "new" life policies, in order to draw down the sanctioned funds.

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*assignment of the Mortgage Protection ... mentioned in Part 1 of the Particulars of Offer of Mortgage Loan. ...”*

I note that the Complainants indicated their acceptance of these terms of the loan offer, by signing Part 7, ‘**Acceptance and Consent**’, on **6 October 2004**.

### **2009**

I note that subsequently, pursuant to ‘Letter of Offer of Mortgage Loan’ dated **2 March 2009**, the Provider agreed to advance to the Complainants a mortgage loan in the amount of €40,000 repayable over 13 years. Part 1, ‘**Particulars of Offer of Mortgage Loan**’, contains a mortgage protection insurance requirement in the following terms:

*“Additional Mortgage Protection Insurance required €40,000 for 13 years/156 months*

*Life or lives to be insured*

*[The Complainants].”*

Part 3, ‘Pre-Drawdown Requirements’, stated as follows:

*“(b) (i) The policy document relating to the Mortgage Protection Policy stipulated in Part 1 of the Particulars of Offer of Supplemental Mortgage Loan and any additional or substituted policy or policies approved of and accepted by the Bank must be lodged with the Bank. The policy document will be held by the Bank for the duration of the Supplemental Mortgage Loan term but may be substituted with an alternative policy with the Bank’s prior consent. ...”*

*(ii) A Mortgage Protection Policy for the amount and the period specified in Part 1 of the Particulars of Offer of Supplemental Mortgage Loan ... must first be exhibited to [the Provider] and, where required by the Bank, legally assigned to the Bank. Where assigned, the policy document will be held by the Bank for the duration of the Supplemental Mortgage Loan term, but may be substituted with an alternative policy with the Bank’s prior consent. ...”*

Part 4, ‘**General Terms and Conditions Governing Supplemental Home Mortgage Loans**’, states as follows:

***“2 Agreement***

*... In addition the Customer agrees with the Bank to comply with all of the relevant Terms and Conditions hereof and of the Letter of Offer and further agrees if so required in the Letter of Offer to grant to the Bank a legal assignment over any Mortgage Protection ... policy insurance required by the Bank ....”*

The Complainants indicated their acceptance of the terms of this loan offer by signing Part 7, ‘**Acceptance and Consent**’ on **9 March 2009**.

### **Analysis**

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The Complainants indicated in a letter dated 1 December 2017 that they believed the policies which are the subject of this complaint had been mis-sold because they were not advised by the Provider that the mortgage protection insurance requirement for their loans could be waived.

The reasons advanced by the Complainants in support of this position, at that time, were that:

1. life assurance policies were already in place;
2. the First Complainant was over 50 years of age;
3. the loan was for a buy to let property; and
4. the life policies were not assigned to the loan/the Provider.

As a result, the Complainants' position on that basis was that the policies were mis-sold, because of the Provider's requirement for mortgage protection insurance, as a pre-condition of the borrowings.

As part of the documentation supplied by the Complainants in support of their complaint on **4 September 2018**, I note an excerpt from the Citizens Information website regarding mortgage protection insurance. The Complainants have underlined the heading 'Exceptions to legal requirement'. This section states:

*"You do not have to take out mortgage protection insurance if:*

*You are aged over 50 or*

*The mortgage is not on your principal private residence (your home) or*

*You cannot get the insurance, or can only get it at a much higher premium than normal or*

*You already have enough life insurance to pay off the home loan if you die"*

This appears to have originally formed the basis of the Complainants' belief that the policies were mis-sold. However, I note the above passage continues as follows:

*"... some lenders may insist that you take out mortgage protection insurance as a condition of giving you a mortgage, even if there is no legal requirement in your case."*

Having reviewed the Complainants' loan offers, it is clear that it was indeed a requirement of the Provider, for each of the loans that a particular level of mortgage protection insurance be in place. This was a pre-condition to drawing down the loans. In such circumstances, the Complainants were free to accept the loan offers subject to those conditions or alternatively, they could have rejected those loan offers and sought credit facilities elsewhere.

If the loans were accepted, they were to be accepted subject to all of the Provider's terms and conditions and, as mentioned, one of these conditions was that mortgage protection insurance must be put in place.

While it may not have been a legal or regulatory requirement that mortgage protection insurance be put in place, in respect of the Complainants' loans, this does not mean that the Provider was not entitled, in its commercial discretion, to make loan facilities available to the Complainants, only if they were willing to put the required insurance cover in place. In such circumstances, the Complainants were not entitled to simply waive this requirement, as it was part of the basis upon which the Provider was willing to lend the funds.

Where there is no legal requirement for mortgage protection insurance, it is still a matter for any provider to decide whether or not to include a condition, as part of a loan offer, that the borrowers have a particular level of mortgage protection insurance in place in respect of a proposed loan. It is also a matter within the discretion of a provider to give the borrowers the option of choosing whether or not to put mortgage protection insurance in place.

In this instance, the Provider chose to include such a pre-condition in the Complainants' loan offers which was a clear indication that it was neither electing to waive the need for mortgage protection insurance, nor was it giving the Complainants the option of choosing for themselves, whether to put mortgage protection insurance in place. The Complainants' age, the fact that the mortgaged property was a buy to let property, or the fact that the Complainants may have had certain existing life cover policies in place, do not change the fact that the Provider was nonetheless entitled, within the loan offers, to require that mortgage protection insurance policies be put in place in respect of each loan offered to the Complainants. Such factors did not prevent the Provider from including such a requirement, including that insurance cover be held at a certain level.

In terms of the assignment of the policies to the Provider, I note that it was not a condition of either loan that the policies be assigned to the Provider. The Provider was however, conferred with the option of requiring that the policies be assigned to it. I do not accept that the Complainants' policies were required to be assigned to the Provider, nor do I accept that because the policies were not assigned, that they were in any way ineffective or mis-sold.

I am of the opinion that it was reasonable for the Provider to require that a particular level of mortgage protection insurance be in place, while at the same time not directing that the relevant policy be assigned to the Provider. In this respect, the Provider's requirement was that the Complainants have an appropriate level of cover in place, and to demonstrate that to the Provider's satisfaction. Accordingly, I am satisfied the Provider was entitled to require that mortgage protection insurance be put in place as a condition of each of the Complainants' loans. I do not accept, in the context of this complaint, that the policies were mis-sold to the Complainants.



In a submission dated **31 March 2021**, the Complainants put forward a new argument that the mis-selling in fact arose because the Provider misled them to believe that they needed “new” life policies, in order to draw down the sanctioned funds. Having considered the matter at length however, I am not satisfied that the evidence available to this Office, bears out this position suggested by the Complainants.

I am conscious that at the time of the Complainants’ application for protection policies in 2004 (before the Central Bank of Ireland’s Consumer Protection Code 2006) it was not necessary for the Provider to issue a Suitability Statement regarding the policies, but I note that the proposal forms themselves, one of which was completed by each of the Complainants, confirmed that they had completed a full Fact Find consultation, on foot of which the application for cover progressed. Such cover however came to an end nine years before this complaint was made to this Office, owing to the events of 2009.

I note in that regard that in 2009, the Provider issued a Suitability Statement in respect of each of the policies incepted by the Complainants at that more recent time, noting that a full financial consultation had been declined; the Suitability Statements were therefore issued only regarding the Complainants’ lending protection requirements.

I note in that regard, that the policy cover incepted at that time was considered suitable because:-

*“It will provide a cash sum to help maintain your family’s standard of living, provide financial security and could be used to repay all or part of any outstanding debts.”*

The Suitability Statement noted the product solution, as a protection plan providing life cover of €40,000 on a single life basis for a term of 13 years. I note indeed that on the Complainants’ respective applications for the policies in 2009 under the heading **“Replacement for any existing policy or policies”**, the Complainants each confirmed to the effect that the policy was to replace an existing policy, because:-

*“Need 40,000 of cover for borrowing and only want one policy/need higher level of cover over 13 year term.”*

Although the wording is slightly different on each of their respective application forms, this is the essence of the documented rationale for each of the Complainants incepting the new policy of mortgage protection, in 2009. In those circumstances, I do not accept, on the evidence before me that the Provider misled the Complainants to believe that they needed new life policies in order to draw down the sanctions funds.

Having considered the matter in detail, I do not accept that it would be appropriate to uphold this complaint.

## **Conclusion**

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

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



**MARYROSE MCGOVERN**  
Deputy Financial Services and Pensions Ombudsman

15 December 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.