



<u>Decision Ref:</u>	2021-0526
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Mortgage Protection
<u>Conduct(s) complained of:</u>	Lapse/cancellation of policy Delayed or inadequate communication
<u>Outcome:</u>	Rejected

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

The Complainant and his late wife entered a mortgage loan agreement with a financial services provider in **2003 (Entity 1)**. A life assurance policy was incepted with the Provider, an insurance provider against which this complaint is made (**the Provider**) as part the loan agreement. The premium payment in respect of the policy formed part of the monthly loan repayments. The policy lapsed in summer of **2013** due to the non-payment of premiums.

The Complainant's Case

The Complainant explains that he and his wife purchased a property in Rural Ireland in **2003** with the assistance of a mortgage loan entered into with a financial services provider (the **Lender**). The Complainant says he resided in another EU Country at the time and the property was an investment property which was known by the Lender at all times.

The Complainant says the loan was part of a 'Block Policy' and the repayments included an insurance premium. The 'Proposer' of the insurance policy was the Lender and the insurance premium was to be paid by the Proposer. The Complainant refers to the 'Application for Group Life and Specified Illness Cover' in this regard.

The Complainant says an arrangement was in place where he and his wife made interest only repayments in respect of the loan which included the life cover premium payment. The Complainant explains that in circumstances where the loan was subject to a variable interest rate, the monthly repayments varied in accordance with the applicable rate.

The Complainant states that due to the collapse of the Lender, his loan was ultimately transferred to **Entity 1**. The Complainant advises that the current account from which the loan repayments were made, as part of the restructure of the Lender, were transferred to a savings account with **Entity 2**.

Around this time, the Complainant says his wife was diagnosed with cancer and due to their particular personal circumstances and the treatment required, the couple relocated from another EU Country to First UK Address. The Complainant says that all correspondence regarding the changes at the Lender were sent to the Complainant's EU Country address and it was several months before the Complainant became aware of the situation.

In **May 2011**, the Complainant says his address was updated to his First UK Address and refers to a letter from **Entity 1** dated **21 May 2011**. The Complainant says he *"continued to make payments to [Entity 1] by telephoning every couple of months to get an outstanding balance and transferring that amount over by EFT or debit/credit card payment."* The Complainant says, at all times, the payment included the life cover premium and life cover remained in place in accordance with the terms of the Block Policy.

The Complainant says he tried to set up a direct debit but because his account with **Entity 2** was a savings account, this was not possible; and when he tried to set up a direct debit with his own bank it was rejected because there was no facility to set up a direct debit due to currency fluctuations. The Complainant refers to an **Entity 1** file note dated **28 July 2011** in this regard.

The Complainant says he also put an **Entity 1** representative on notice of the fact that his correspondence address should be updated to his Second UK Address and refers to a file note dated **6 March 2013**. The Complainant states that Entity 1 was also in receipt of his email address and refers to file notes dated **March 2013** and **June 2013**.

The Complainant submits there is documented evidence of frequent telephone communications between the Complainant and **Entity 1** and that he continued to make repayments to bring the loan up to date.

On **7 February 2013**, the Complainant says **Entity 1** was placed into special liquidation and it appears that cessation of the life cover premium payments occurred after this, although premium payments were paid for **1 March** to **1 June 2013**.

/Cont'd...

The Complainant submits it appears from around **April 2013**, the Special Liquidators and the Provider unilaterally and without notice to the Complainant or his wife, altered the terms of the loan agreement and Block Policy by ceasing to make the premium payments to the Provider.

Through Freedom of Information requests, the Complainant says he was able to ascertain that the Provider wrote to the Complainant (on **4 April, 7 June, 6 July, 27 July, 31 July, 8 August** and **23 August 2013** at a Rural Ireland address, and **16 May 2013** at First UK Address) notifying him that premium payments were not being paid in respect of the policy.

The Complainant submits that Chapter 6.1 of the **Consumer Protection Code 2012**, provides that:

*“Where a **regulated entity** makes a material change to its **terms of business**, it must provide each affected **consumer** with a revised **terms of business** as soon as possible.”*

The Complainant submits that neither he nor his wife received any notification from the Provider or the Special Liquidators that the Block Policy was being changed to an independent policy and that monthly premiums were no longer coming out of the loan repayment. The Complainant states that he nor his wife had ever been personally responsible for the payment of premiums to the Provider and they entered the loan in good faith assuming that premium payments were part of the agreement.

Of note, the Complainant says in **August 2005**, the Lender wrote to him following cancellation of his house insurance through the Block Policy scheme when it was decided to take out house insurance separately.

The Complainant says that at no point did he ever give his First UK Address to the Provider and *“on that basis when it suited [the Provider] they obtained information successfully through [Entity 1].”* The Complainant also states that he did not receive any of the above correspondence.

Through a Freedom of Information Request, the Complainant says he has ascertained that the Provider wrote to Entity 1 on **7 June, 6 July, 27 July** and **8 August 2013** notifying **Entity 1** that payments were not being made in relation to the policy.

The Complainant submits that given the *very extraordinary* circumstances surrounding the establishment of Entity 1, there was an ever greater duty of care on the Provider to protect consumers against situations arising from the non-payment of Block Policy premiums through no fault of the consumer. However, during the life of **Entity 1**, the Complainant says the terms of the Block Policy were honoured and premiums paid.

Despite the ongoing communication between the Complainant and **Entity 1** (as evidenced by the file notes), the Complainant says he was not advised by the Special Liquidators or the Provider that they had unilaterally and without notice altered the terms of the Block Policy.

Following the appointment of the Special Liquidators, the Complainant says that loans were transferred to various entities. In **October 2014**, the Complainant says he contacted **Entity 1** and was advised that his loan had been transferred to **Entity 3** and was given a contact number for this entity.

The Complainant says he telephoned Entity 3 straight away and sought clarification that everything regarding his loan was as agreed with the Lender and that life cover payments remained in place as per the terms of the Block Policy. The Complainant says he was advised that these matters would be investigated.

When **Entity 3** reverted, the Complainant states he was informed that the life cover was not in place and that he would need to contact the Provider directly.

Having contacted the Provider, the Complainant says he was informed that the policy had been cancelled since **June 2013** due to the Special Liquidators stopping premium payments. The Complainant refers to Chapter 6.1 of the Code and states that at no stage did he receive written notification of this change from the Provider/the Special Liquidators. The Complainant states that the Special Liquidators' representative was also in regular contact with him and had up to date contact details for him.

By **October 2014**, the Complainant says his wife's cancer was at an advance stage and there was no possibility of obtaining life cover. The Complainant's wife sadly passed away shortly afterwards.

/Cont'd...

The Complainant states that the Provider is refusing to make a payment under the policy and **Entity 2** has advised that it is not in a position to assist, who have advised the Complainant to contact Entity 3. The Complainant says the Special Liquidators have ignored his correspondence.

The Complainant advises that **Entity 3** is threatening legal proceedings and refusing to accept any liability in respect of the manner in which the Special Liquidators stopped premium payments. The Complainant says he is not a party to the details of the transfer between the Special Liquidators and **Entity 3** or the level of due diligence carried out in advance of the transfer of his loan, which the Complainant submits, would have raised the issue of non-payment of the policy premiums.

The Complainant submits that **Entity 3** purchased the loan with full notice of the terms and conditions of the original life cover policy which remained unchanged at the time of the transfer.

Under the terms of the contract between the Complainant and the Provider, the Complainant submits that premiums were to be paid by the Proposer (the Lender). When **Entity 1** went into special liquidation, these responsibilities fell to the Special Liquidators.

The Complainant cites paragraph 3 of the proposal form as follows:

*“Premium Paying Arrangements/Declaration
the premiums will be paid by the Proposer to [the Provider] by deduction from the Mortgage Account and if any premiums are to be so deducted before the Proposer receives payment from the applicant(s) they will be considered to be a charge or expense added to the mortgage in accordance with the relevant rules of the Proposer.”*

The Complainant submits that the terms of the contract could not/cannot be altered without the consent of all parties to the agreement. At no point did the Provider, the Special Liquidators or **Entity 3** write to or attempt to contact the Complainant seeking consent to vary the agreement.

The Provider's Case

The Provider states that the Complainant and his wife entered a mortgage loan agreement with the Lender. The Provider says that while it is a stranger to the terms loan agreement,

/Cont'd...

the Complainant appears to make the case that it was a term of his arrangements with the Lender that the monthly mortgage payment made to the Lender would include an amount towards the life plan underwritten by the Provider. The Provider notes it is further asserted that it was a matter for the Lender to remit the amount in question to the Provider.

The Provider notes it was well publicised that the Lender found itself in difficulties and ceased trading following the economic crisis and its loans were transferred to **Entity 1**, with **Entity 1** being placed into special liquidation in **2013**.

The Provider says that it was **Entity 1** and not the Provider, who decided in **2013** to advise all customers that they were no longer willing to collect premiums and pay them to the relevant life assurance providers. The Provider understands that Entity 1 wrote to customers to advise them of its position in this respect. The Provider says that the Complainant appears to be silent in relation to whether he received any such correspondence from **Entity 1**.

In consequence, the Provider says it had no alternative but to request customers to make their own arrangements to pay premiums if they wished their policies to remain in being. If the Provider had not done so, it says that premium payments would have ceased and all plans under the Master Policy would have been cancelled in accordance with its terms.

The Provider states that it had no power over how the monthly premium payments would be made. Once **Entity 1** had made the decision that it was not willing to collect premiums from the customer by way of their mortgage payments and pay those monies to the Provider, the Provider says it had no power to reverse this decision as it had no access to customers' bank accounts and no ability to effect premium payments from those accounts. Therefore, if the terms on which the premiums were to be paid by the Complainant were changed, those terms were changed by the Lender and not the Provider.

Accordingly, the Provider says it is untrue to say that the Provider unilaterally changed the terms applying to the contract. The Provider submits that if the Complainant believes he has a case in relation to this change, this complaint ought to have been made against **Entity 1** or its successors in title rather than the Provider. Once the Provider became aware of the change, it states that it acted properly and in its customers' interests by making all reasonable efforts to place them on notice of the change and facilitate them in making direct payments.

Prior to **June 2013**, the Provider advises that the Complainant's plan was paid under a 'Block Billing' arrangement. Under such an arrangement, the Provider explains that the cost of the life cover is collected each month by the Lender along with the loan payment. This payment is then forwarded to the Provider to maintain the life cover plan which is in place. The

/Cont'd...

Provider explains that the Lender is the Proposer and the subsequent plan owner, and the lives assured are the borrowers.

The Provider says it is the responsibility of the applicant or life assured to ensure these payments are made to the Lender and it is the responsibility of the Lender to ensure the payments are forwarded to the life cover provider. The Provider advises that this is generally done in one large bulk payment each month.

The Provider advises that this arrangement remained in place when the Complainant's loan transferred to **Entity 1** until **2013** when **Entity 1** decided to cease the Block Billing arrangement, presumably because it entered liquidation and its administrative resources were limited. As such, the Provider says **Entity 1** unilaterally decided they would no longer collect the cost of the life cover which would be paid to the Provider directly by the applicant/life assured going forward.

As a result of **Entity 1's** decision, which the Provider says had nothing to do with it, the Provider understands that **Entity 1** wrote to all affected customers in early **2013** to alert them to the change, following which, the Provider wrote to these customers setting out the relevant payment options under the new process.

Separately, the Provider notes the Complainant makes the case that it sent correspondence to the wrong address and that the Complainant did not become aware that payments were not being made as against the policy. The Provider submits that this position is not borne out by the record. The original correspondence address included on the Complainant's application, and therefore the correct address for correspondence from the outset, was an address in [location] in Rural Ireland.

In a telephone conversation on **12 August 2008**, the Provider says the Complainant specifically requested that his correspondence address be amended to the address of the mortgaged property, also in [location] in Rural Ireland. The Provider says it changed the address and received no further contact from the Complainant until **2014**.

The Provider says the Complainant telephoned it again on **15 October 2014** and spoke with a supervisor. The Provider says the Complainant confirmed that he did not in fact reside at the address he gave in **2008** and this was his holiday home and he had been living in another EU Country. The Provider states the Complainant said that his friend lived in the village where he had directed correspondence to be sent and there was an agreement with the

/Cont'd...

local postman that any correspondence addressed to the Complainant would be delivered to the friend's address. In addition, the Provider says the Complainant confirmed that the Lender's successor did not have his correct address/current address either. The Provider says the Complainant did not state at that stage that he had not received the correspondence.

Once **Entity 1** informed the Provider it was no longer willing to collect premiums from customers and make onward payment, the Provider says it issued a letter to the Complainant dated **4 April 2013** confirming the payment method on the plan needed to be changed. The Provider says it understands that **Entity 1** also wrote to the Complainant regarding the change in payment method. The Provider says that as it did not receive a reply to its initial letter, it wrote to the Complainant again on **16 May 2013**. On this occasion, the Provider says it noted that **Entity 1** had provided a UK address for the Complainant on the spreadsheet it had provided to it and this letter was sent to the UK address. The Provider says that when writing to the Complainant in **April and May 2013**, it used information provided to it by **Entity 1** in spreadsheet form.

The Provider advises that no steps were taken to verify the Complainant's address provided by the then lender/plan owner. Rather, it was reasonable for the Provider to assume the Lender may have a more up to date address. The Provider submits it is unclear what steps might be expected to have been taken to verify the address given that the only other contact details the Provider had for the Complainant was the Rural Ireland address.

The Provider advises that the interest of **Entity 1** in the plan was removed on **27 May 2013**. This meant that all subsequent correspondence advising of non-payment was sent to the Complainant at the last address provided in **2008** on **7 June, 6 July, 27 July, 31 July, 8 August** and **23 August 2013**. The Provider says copies of these letters were sent to **Entity 1's** successor. The Provider also notes that none of the above letters were returned undelivered.

Referring to paragraph 4 of the Master Policy between it and the Lender, the Provider says if premiums were not paid by the end of the period of grace provided for in the policy, all cover was to end immediately. The Provider states that it was only after sending six reminder letters regarding outstanding premiums on the plan that the policy was cancelled in accordance with its terms and conditions.

The Provider submits that it could not have reasonably adopted any other approach. The Provider states that it could only rely on the information provided to it by the Complainant in relation to his correspondence address, and in doing so took pains to send numerous letters warning of the impending cancellation of the plan in the event that the premiums were not paid. While it is unfortunate that the Complainant does not appear to have had

/Cont'd...

regard to, or alternatively received, these letters, the Provider says this is not its fault. The Provider says it acted lawfully and appropriately at all times and provided all due notice of the need for the Complainant to make arrangements as to the payment of monthly premiums.

The Provider says that the Complainant's case is predicated on the claim that he made all mortgage payments to the Lender's successor in title, and that the premium should have been paid from those payments. The Provider states it is for the Complainant to prove he made all loan repayments on time and in full up to the date of his wife's tragic death.

In this respect, the Provider notes that the Complaint Form completed by the Complainant says: "[The Complainant] *continued to make payments to bring the mortgage account up to date*", but no evidence has been furnished in this regard. The Provider states it now asks that the Complainant be directed to produce the statement on his loan account so as to clarify whether payments were in fact being made on time and in full.

The Provider advises that due to the passage of time, it no longer has copies of any correspondence between it and **Entity 1**.

The Provider says it agrees it owed a duty of care to its customers and this is why it allowed customers whose lender no longer wished to collect regular premiums on their behalf to change the billing arrangement on their plans and pay directly. This ensured that plans remained in place. Insofar as the Complainant contends there was a greater duty of care on the Provider because of the circumstances in which **Entity 1** was set up, the Provider states it does not agree that this had any effect on the extent of its duty of care. The Provider states that it did exactly what the Complainant said it should have done in that it "*protected consumers against the situations arising from the non-payment of Block policy premiums through no fault of the customer.*"

The Provider submits it could only rely on the information provided to it by the Complainant in relation to his correspondence address and, in doing so, it took pains to send numerous letters warning of the impending cancellation of the plan in the event premiums were not paid.

The Provider states that a Terms of Business letter was not issued by it when the Complainant effected the plan in **May 2003** as such letters were not in place at this time. The Provider advises that it began to provide these letters in **January 2004** and explains this letter was originally designed in line with the requirements introduced through the *Interim Code of Practice for Insurance Undertakings* issued by the Irish Financial Services Regulatory Authority. The Provider advises that the code was effective from **15 December 2003** and full compliance was required from **31 March 2004**. The Provider says as it was only applicable

/Cont'd...

to new customers going forward and nothing was issued to the Complainant when the plan started.

The Complaints for Adjudication

The complaints are that the Provider wrongfully or unreasonably:

permitted a variation in the payment terms of the policy, refused to re-instate the policy; and declined the Complainant's claim under the policy.

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 was 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 24 November 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

/Cont'd...

Background

The Complainant and his late wife entered a mortgage loan agreement with the Lender on **2 April 2003**. Special Condition 11.8 provided that:

“At the borrowers request, Life Cover will be arranged through the [Lender’s] Group Scheme with [the Provider]. Details of cover and premiums are noted on the letter of acceptance which will be issued in due course.”

The Complainant and his late wife completed and signed the Lender’s ‘Application for Group Life and Specified Illness Cover’ on **20 February 2003**. I note the correspondence address inserted on this form is an address at [location] in Rural Ireland. The address of the mortgaged property is a different address but is also located in [location] in Rural Ireland.

At the ‘Application Form’ section of the application form, it states as follows:

“Please note

- 1. The insurance is being effected by way of security for the benefit of [the Lender]*
- 2. [The Lender] will be named as Proposer under the Master Policy and the Certificate of Membership i.e. [the Lender], (the Proposer) will own the cover ...”*

In the ‘Premium Paying Arrangement/Declaration’ it states that:

“I/We

- 1. Agree that all premiums for this insurance cover will be paid to [the Lender] (Proposer) and credited to the applicant(s) Mortgage Account for onward transmission to [the Provider].*
- 2. ...*
- 3. Agree that the premiums will be paid by the Proposer to [the Provider] by deduction from the Mortgage Account and if any premiums are so deducted before the Proposer receives payment from the applicant(s) they will be considered to be a charge or expense to the mortgage in accordance with the relevant rules of the Proposer.”*

/Cont’d...

The Master Policy defines the 'Proposer' as: *"The person or company named as proposer in the certificate of membership and who is responsible for ensuring premiums are paid and legally entitled to the policy benefits"*

The Master Policy contains the terms and conditions of the Complainant's policy and states as follows:

"Legal basis of cover

Paragraph 1

We have agreed to cover the life assured under the master policy on the understanding that the information given by the life assured in the application form and any related documentation is true and complete ...

...

Paragraph 4

If the premium has not been paid by the end of the period of grace, all cover for the life or live assured under the master policy will end immediately. A premium is not paid until we receive it. It is up to the proposer or a life assured to make sure that we receive the premium. ...

Paragraph 5

If cover under the master policy ends as described in paragraph 4, cover can be restored within 60 days from the date the first unpaid premium became due. ...

Paragraph 6

If, within 180 days of the first unpaid premium being due, we receive a request for cover to be restored, the life assured must fill in an evidence of health form ...

...

Paragraph 10

All cover will end in respect of a life assured under the master policy:

- *at the end of a period of grace, if all or part of a premium is still unpaid; ..."*

The Provider wrote to the Complainant and his wife at the correspondence address contained on the application form on **23 April 2003** in respect of the policy as follows:

/Cont'd...

“In conjunction with your mortgage, [the Lender] have taken out a Term Assurance policy on your lives with [the Provider]. This policy includes life cover benefit. Included with this letter you will find:

- ❖ a copy of the certificate of membership ... You should check this carefully ...*
- ❖ details of the policy arrangement with [the Lender].*
- ❖ a Policy terms and conditions booklet – which gives details and rules of your cover.*
- ❖ a detailed customer information notice ... we advise you to read this carefully.*

As long as there had been no change in the health of the lives assured since the completion of either the paper or online application form, you are now covered. If there has been any change in the health of the lives assured you must let us know immediately.

...

The premium payable under your policy is €939.65 per annum which will be debited from Account Number ... We have noted in our records that [the Complainant] is a smoker and that [the Complainant’s late wife] is a non-smoker. Please notify our Customer Service team immediately of any discrepancies in these details ...”

The Complainant telephoned the Provider on **12 August 2008** to enquire as to whether the policy included critical illness cover. During the course of the conversation, the Complainant asked that a copy of the policy be posted to him explaining that: *“We live in Other EU Country and we have a holiday home here in Ireland and we have no correspondence as such on that. Just post us out the policy on that if I give you the address. ...”*

The Complainant gave the address of the mortgaged property as the address to which the copy of the policy was to be sent. The Provider’s agent advised the Complainant that the address on the Provider’s system was the correspondence address contained on the application form. The Complainant responded to this as follows: *“That was the address we had when we were buying the house.”* In response to this, the Provider’s agent stated that: *“I’ll just update that now and I’ll request an up to date plan details to be sent there.”* The Complainant indicated his agreement to this course of action.

The Complainant provided the Lender with a ‘Change of Address’ form dated **3 June 2011**. On this form, the Complainant’s previous address was stated as his other EU address and the new address was stated as a First UK Address. The change of address was confirmed by the Lender by letter dated **3 June 2011**.

/Cont’d...

The Complainant appears to have tried to change his address again in **January 2013**. A file note prepared by **Entity 1** in respect of a telephone conversation with the Complainant on **22 January 2013** states: *"He said that he wants to change address will send same in."*

On **6 March 2013**, an Entity 1 file note contains the following record of a telephone conversation with the Complainant:

"... is looking for D/D to be sent to [Second UK Address] and will return with change of address notification also."

The Provider wrote to the Complainant at the mortgaged property address on **4 April 2013** advising as follows:

"We are writing to you regarding the change in premium collection for your Life Assurance plan. As recently advised, [Entity 1] will no longer be collecting the premium for the above plan with your Mortgage payment. Plan payments should now be paid to [the Provider] from 01 June 2013."

On **16 May 2013**, the Provider wrote to the Complainant at the First UK Address as follows:

"[We] have not yet received confirmation from you regarding how you wish to make future payments on your Life Cash Cover."

We have now received the last payment from [Entity 1] and they have confirmed that they will not be making any further payments for your plan. Your plan is paid until 01 June 2013 but will go out of force on 23 July 2013 unless we receive your monthly payment ..."

By letters dated **7 June, 6 July, 27 July** and **8 August 2013**, the Provider wrote to the Complainant at the address of the mortgaged property and separately to **Entity 1**, advising that the monthly premium payment was due and requested payment of the outstanding premium.

A further **Entity 1** file note in respect of a conversation on **12 June 2013** states:

"Client rang ... to advise that he hasnt rcvd DDM or change of address form. Advised I will email this to him today - email address is He will scan back along with a scanned letter requesting for the correspondence address to be amended. ..."

The Provider wrote to the Complainant again on **31 July 2013** at the mortgaged property, referring to the letter of **16 May 2013**, advising that the plan was due to lapse unless immediate action was taken. The Provider wrote to the Complainant and **Entity 1** on **23 August 2013** to advise that *“your plan has gone out of force and your benefits have been cancelled.”*

During a telephone conversation with the Provider on **15 October 2015**, the Complainant explained that he did not receive any notification regarding the status of his policy. The Provider’s agent responded and advised that the Provider had been sending correspondence to the Complainant. The Complainant asked: *“Who are you sending them to because I get my post in [location] in Rural Ireland even though I’m not there.”* Shortly after this, the Complainant asked that the Provider’s agent confirm the address in [location] in Rural Ireland held by the Provider. The Provider’s agent then called out the address of the mortgaged property. In response to this, the Complainant explained:

“I’ve never lived at that house, that’s a holiday home. But [location] in Rural Ireland being the village that it is ... every single piece of post that goes to [location] in Rural Ireland, if you put [the Complainant’s name] it goes to my best friend’s house.

I have that house rented but none of my post will ever go there. It’s all picked up with my friend and they’ve never received anything from yourselves.”

Following this, the Provider’s agent asked if the Complainant notified Entity 1 of his change of address. In response, the Complainant explained that: *“I didn’t notify them in writing but I have notified them over the telephone every single time I call ... They won’t do it. It’s not they can’t do it. They won’t do it.”*

Analysis

The Complainant believes the Provider unilaterally changed the premium payment terms of his policy. However, I can see no evidence to show that the Provider was involved in, or responsible for, this decision. The evidence shows that this decision was taken by **Entity 1**/the Special Liquidators. Neither do I accept that the Provider had the authority to make such a decision. I note that the Complainant incepted a life assurance policy pursuant to the loan agreement with the Lender and through the Lender’s group scheme, with the Lender as the proposer and owner of the policy. As such, I am satisfied any decisions regarding the policy, in particular the collection and payment of premiums, was a matter for the Lender (or the relevant successor in title) and not the Provider.

/Cont’d...

It appears that a decision was ultimately taken by **Entity 1**/the Special Liquidators to cease the practice of collecting premium payments for onward transmission to the Provider in early **2013**. In terms of this decision, the Provider says that **Entity 1** wrote to the Complainant to inform him of this change in early **2013**. Separately, the Provider has produced letters sent to the Complainant to notify him of this change in **April** and **May 2013**.

In this respect, I note that the April letter was sent to the mortgaged property and the May letter was sent to the Complainant's First UK Address. This was followed by further letters in **June, July** and **August 2013** regarding the outstanding premium payments, with separate letters also issuing in **July** and **August 2013** regarding the change to the payment method. I note that all correspondence issued between **June** and **August 2013** was sent to the mortgage property and also to **Entity 1**.

The Complainant disputes that he received any of this correspondence. In this respect, I note that the Complainant provided a correspondence address at [location] in Rural Ireland when completing the policy's application form in **February 2003**. The Provider subsequently wrote to the Complainant at this address in **April 2003** enclosing various policy documentation.

In **August 2008**, the Complainant contacted the Provider by telephone to request that a copy of his policy document be sent to him at the address of the mortgaged property in [location] in Rural Ireland. During this conversation, the Complainant was informed that this address was different to the correspondence address on the Provider's system. However, having considered the recording of this conversation, I am satisfied that the Complainant agreed to and was aware that the Provider's agent was updating the Complainant's correspondence address to that of the mortgaged property.

The evidence shows that the Complainant changed his correspondence address with the Lender in **June 2011** to First UK Address. However, this does not appear to have been communicated to the Provider whether by the Lender, **Entity 1** or the Complainant at the time the change was made.

It also appears that certain efforts were made by the Complainant to change his address with **Entity 1** in **January, March** and **June 2013** to an address in Second UK Address. Again, this does not appear to have been communicated to the Provider.

While the Complainant successfully amended his address in **2011**, this does not appear to have been the case in **2013**. The evidence suggests that the Complainant was required to send written confirmation of his updated correspondence details or a change of address form to **Entity 1** in **2013**, but the file notes indicate that this does not appear to have been done by the Complainant.

/Cont'd...

Further to this, during a telephone conversation with the Provider on **15 October 2015**, the Complainant told the Provider's agent that: *"I didn't notify [Entity 1] in writing but I have notified them over the telephone every single time I call ..."*

Having considered this conversation and considered the various file notes, I accept the Complainant was aware, or ought to have been aware, that it was not sufficient to notify **Entity 1** of a change of address over the phone and written notification was required. I also accept that the Complainant was likely to have been aware that his address had not been updated by **Entity 1** in **2013**.

Therefore, I do not accept that it was sufficient for the Complainant to seek to amend his correspondence details with the Lender or **Entity 1** without also furnishing the Provider with these details. Equally, it is reasonable to expect the Lender (or the relevant successor in title) to formally notify the Provider of any changes to the Complainant's correspondence details.

The Provider says when writing to the Complainant in **April** and **May 2013** it used information contained in a spreadsheet provided to it by **Entity 1** and all subsequent correspondence was sent to the address last provided by the Complainant in **2008**.

Although the Provider appears to have been given First UK Address for the Complainant in a spreadsheet prepared by **Entity 1**, the Provider's evidence suggests that it was not aware of the First UK Address until around the time the **May 2013** letter was issued, and as can be seen, the Provider issued correspondence to this address once this information was provided by **Entity 1**.

Further to this, there is no evidence to show the Provider was aware, or ought to have been aware, that the Complainant had attempted to change his address from First UK Address to Second UK Address.

I am also conscious of the absence of evidence to show that the Provider was formally made aware or instructed that the Complainant's correspondence address at the mortgaged property had changed or that the address on the Provider's system was not the appropriate address to which to send correspondence whether by the Lender, **Entity 1** or the Complainant.

While the Complainant says that he was not residing at the mortgaged property and this was a holiday home, I note the Complainant's comments during the telephone conversation on **15 October 2015** that: *"... every single piece of post that goes to [location] in Rural Ireland, if you put [the Complainant's name] it goes to my best friend's house. I have [the mortgaged*

/Cont'd...

property] *rented but none of my post will ever go there. It's all picked up with my friend ...*" Therefore, I accept that the Complainant had an arrangement in place to ensure any correspondence issued to him at [location] in Rural Ireland would be received by his friend.

If the Complainant had any doubts about efficacy of this arrangement, I believe he should have had a more formal system in place to ensure post intended for him and sent to [location] in Rural Ireland was received.

In the circumstances of this complaint, in issuing correspondence to the Complainant the Provider relied on information provided to it by **Entity 1** and the Complainant. Accordingly, I am satisfied it was reasonable for the Provider to issue correspondence to the mortgaged property and the Complainant's address in First UK Address. The evidence shows that the Provider issued several letters to the Complainant to inform him of the changes to his policy and these letters were also sent to **Entity 1**/the Special Liquidators. Therefore, it is my opinion that the Provider made reasonable efforts to contact the Complainant and notify him of the changes to his policy. However, a response was not received to this correspondence and the policy was ultimately cancelled.

I note that paragraph 4 of the Master Policy states that: *"A premium is not paid until [the Provider] receive it. It is up to the proposer or a life assured to make sure that we receive the premium."* Paragraph 10 provides that: *"All cover will end in respect of a life assured under the mater policy ... if all or part of a premium is still unpaid ..."*

Therefore, I accept that the Provider was entitled to cancel the Complainant's policy. Further to this, I accept that the Provider was entitled to refuse to reinstate the policy and decline the Complainant's claim.

For the reasons outlined in this Decision, I do not 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.



/Cont'd...

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

16 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.