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| <u>Decision Ref:</u> | 2021-0545 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Term Insurance |
| <u>Conduct(s) complained of:</u> | Lapse/cancellation of policy (life) |
| <u>Outcome:</u> | Rejected |

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

The Complainants entered a number of loan agreements with the Provider, against which this complaint is made. It was a condition of these agreements that a certain level of life cover be put in place. The Complainants incepted a life policy with an Insurer in **2004** and the policy was amended over time to reflect subsequent loan agreements entered into by the Complainants.

The Complainants' Case

In their Complaint Form, the Complainants state as follows: "2010 - New mortgage taken out on new house. Previous house had mortgage and re-mortgage on it." The Complainants say that:

"It seems that the life assurance premium was based on 3 mortgages since 2010 as the 2 previous mortgages were not removed. [The Provider's] mortgage advisor brought to our attention in January 2018 that this was excessive, €171 monthly confirmed by [the mortgage advisor] ..."

In an email to this Office dated **28 March 2019**, the Complainants submit that:

"[W]e were charged an excessive premium of €171 monthly (based on two open mortgages, our previous mortgage which was closed out and our present mortgage) ... The situation now is that our cover with [the Insurer] have now been drastically

reduced in accordance with our mortgage ... and not the two mortgages as previously passed on by [the Provider] and quoted on by [the Insurer]."

The Complainants continue this email by explaining that:

"[A]t the start of our new mortgage we noticed that we were being charged for 2 house insurances which we did notice as this was taking as two separate transaction from our account which we were subsequently reimbursed for by [the Provider]. With [the Insurer] payment it was under the one transaction so we thought was normal. It wasn't until we spoke to a mortgage advisor that she advised that we were paying an excessive premium ..."

The only defence [the Provider] had ... is a print screen pointing out the paperwork was sent to us and the onus on us to close out our previous mortgage. I can tell you now that we never received the paperwork and would not have ignored it if we had."

In an email to this Office dated **6 June 2018**, the Complainants advised that:

"... The life assurance was withdrawn from our account in one single deduction. We went to the bank in 2017 to renegotiate our rate for our mortgage ... and they said our life assurance seemed high. When we investigated it with [the Insurer] they informed us we were still paying life assurance on the previous house that we had sold. ..."

In a further email shortly after this on **28 June 2018**, the Complainants explained that:

"We are still being charged at an extremely high rate and now they have increased it by 5% today. We were told not to change our cover until this issue is resolved so as you can imagine it is unrealistic to be paying this rate on 2 mortgages that we do not have ..."

In resolution of this complaint, the Complainants explain that:

"As this was an administrative/clerical error on the side of the Bank, we would like to be refunded the difference of the amount we paid as supposed to what we should have paid."

The Provider's Case

The Provider explains that by Offer Letter dated **13 July 2004**, it offered a mortgage loan facility to the Complainants in the amount of €10,000 (**Loan 1**). The Provider advises that pursuant to General Condition 3(a), the Complainants were required to have a 'Life Policy' in place until all money owing to the Provider in connection with the loan was repaid. The Provider says it did not receive policy documentation for this policy.

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However, it did receive details from the Insurer that a policy was inception on **16 August 2004** and that the policy had been assigned to the Provider.

The Provider advises that by Offer Letter dated **30 May 2006**, it offered a mortgage loan facility to the Complainants in the amount of €35,000 (**Loan 2**). The Provider advises that pursuant to General Condition 3(a), the Complainants were required to have a 'Life Policy' in place until all money owing to the Provider in connection with the loan was repaid. The Provider says it was advised that the Complainants were relying on the existing policy which was being increased to cover Loan 1 and this loan, Loan 2. The Provider says it received details of the updated cover from the Insurer on **19 June 2006** and that the assignment remained in force.

The Provider advises that by Offer Letter dated **26 August 2010**, it offered a mortgage loan facility to the Complainants in the amount of €226,500 (**Loan 3**). The Provider advises that pursuant to General Condition 3(a), the Complainants were required to have a 'Life Policy' in place until all money owing to the Provider in connection with the loan was repaid. The Provider says it was advised that the Complainants were relying on the existing policy which was being increased to cover Loan 1, Loan 2 and this loan, Loan 3. The Provider says it received details of the updated coverage from the Insurer on **29 September 2010** and that the assignment remained in force.

The Provider says that Loan 1 and Loan 2 were redeemed on **28 September 2010** and redemption goodbye letters issued in respect of these accounts, which the Provider says is evidenced by the 'Letter History' screenshots in its Schedule of Evidence. The Provider says it cannot produce the letters that were issued to the Complainants owing to the passage of time. The Provider refers to an example of a goodbye letter that would have issued to the Complainants and under the heading 'Things to do now: Life and Fire Policies', the following is stated:

"As the mortgage account is now closed you should contact your Life Company, to cancel your policy or, alternatively, discuss your future options with a Life Adviser. Please ensure your policy is not required for other borrowings prior to cancellation."

The Provider says it is satisfied that this is a clear statement to customers, including the Complainants, to cancel any previously required life policies. The Provider states there is nothing in this statement to suggest that the Provider would be in a position to cancel the policy on a customer's behalf or that it would notify the customer if it had not been cancelled. The Provider says the onus to cancel the policy rests with the Complainants and there is no obligation on the Provider to advise the Complainants to cancel the policy.

The Provider explains that it and the Insurer are part of the same group of companies but are entirely separate legal entities. The Provider says it is not in a position to comment in respect of the operation of the Complainants' insurance policy and it is only the Insurer that has access to the relevant records.

The Provider says that no obligations arise between it and the Insurer from the deeds of assignment signed by the Complainants, and this is a contractual agreement between the Provider and the Complainants, the Insurer is not a party to the agreement.

The Provider says it is clear from the deeds of assignment that the obligations to pay premiums for example, are to be undertaken by the Complainants, and there is no requirement on the Insurer to notify the Provider of a failure to adhere to the terms of the deeds of assignment.

Notwithstanding this, the Provider notes that correspondence would issue between the Insurer and the Provider where certain material changes in the nature of the policy occur. This correspondence would issue by the Insurer to the Provider as the recognised assignee of the policy. The Provider also says that where there is a lapse in the policy, common practice would be for the Insurer to advise the Provider of this.

The Provider says it received a letter from the Insurer dated **30 September 2010**, being a copy of the correspondence issued to the Complainants. This letter confirmed that cover in the amount of €417,944 for both Complainants was in place and effective from **29 September 2010**. The Provider says it was satisfied this was evidence of a life policy in compliance with the conditions of Loan 3. Thereafter, the Provider says it was for the Complainants to amend the policy to reflect that it was only required to cover Loan 3, and it was not for the Provider to advise on a decision to be made by the Complainants with a third party, namely the Insurer.

In terms of informing the Complainants that the policy for the redeemed loans was still active, the Provider says the policy in place for Loan 1 was originally incepted on **16 August 2004** and the policy was 'topped up' in **2006** and **2010** in order to provide adequate cover for Loan 2 and Loan 3. The Provider says that the policy which was incepted in **2004** was topped up and actively used as required by Loan 3.

The Provider submits that it is a matter between the Complainants and the Insurer as to the life insurance arrangements made between the two parties. The Provider states that it has no input into the manner in which life insurance is obtained by a customer provided that whichever life insurance policy selected complies with the requirements of the Offer Letter.

The Provider says in its view, the onus was on the Complainants in **2010** to arrange the appropriate cover with the Insurer. This would include an onus on the Complainants to ensure the cover arranged was only in respect of Loan 3 so as to avoid a situation where they continued to pay premiums for coverage that was not necessary. The Provider says it does not hold records of the application process for the policy in **2010**, and therefore, cannot confirm if the Complainants did indeed inform the Insurer accurately of the insurance cover required. The Provider submits this is a matter for the Complainants and the Insurer and it directly concerns negotiations on contracts which the Provider is not a party to. The Provider says there is no obligation on it to advise the Complainants as to how their policy operates.

The Complaint for Adjudication

The complaint is that the Provider failed to inform the Complainants that life cover in respect of their previous mortgage loan facilities was still active.

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 10 May 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. E-mail from the Complainants to this Office dated 11 May 2021.
2. Letter from the Provider to this Office dated 20 May 2021.
3. E-mail from the Complainants to this Office dated 21 May 2021.
4. E-mail from the Provider to this Office dated 2 June 2021.

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Copies of the above submissions were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Pursuant to Mortgage Loan Offer Letters dated **14 June 2004**, **30 May 2006** and **26 August 2010**, the Complainants entered separate mortgage loan agreements with the Provider. The wording of clause 3 of the General Conditions for each of these loans is essentially identical and deals with 'Insurance and Assurance Policies'. Section 3 of Loan 1's General Conditions states as follows:

- "(a) Prior to draw down of the Loan the Lender must be furnished with evidence that the Borrower had effected the Life Policy (or Endowment Policy as appropriate). The Borrower must pay all premiums on the Life Policy ... when due and must maintain the Life Policy ... in full force and effect until all money owing to the Lender in connection with the Loan had been repaid in full. The original Life Policy ... must be furnished to the Lender prior to draw down of the Loan. ...*
- (b) ...*
- (c) The terms and conditions of all or any Life Policy ... must be acceptable to the Lender. No responsibility whatsoever is implied or accepted or warranty given by the Lender as to the suitability of any policy accepted by the Lender for the purposes of the Loan.*
- (d) The Borrower has the right to arrange the Life Cover ... with any insurer or through any intermediary of the Borrower's choice. ..."*

It is not disputed that the Complainants incepted a life assurance policy with the Insurer in **August 2004**, in compliance with clause 3 of the General Conditions. It is also not disputed that this policy was subsequently relied on by the Complainants in compliance with clause 3 of the General Conditions applicable to Loan 2 and Loan 3.

I also note that the parties signed one of the Provider's 'Assignment of Life Policy' deeds in respect of each of the loans.

It appears that Loan 1 and Loan 2 were redeemed around the same time that Loan 3 was drawn down. Provider records indicate that a 'Redemption Goodbye Letter' issued to the Complainants in respect of Loan 1 and Loan 2 on **28 September 2010**. In an email dated **28 March 2019**, the Complainants dispute receiving any such letters. The Provider has provided a template of the goodbye letter it says issued to the Complainants.

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I note the second page of this letter states, as follows:

“Life and Fire Policies

As the mortgage account is now closed you should contact your Life Company, to cancel your policy or, alternatively, discuss your future options with a Life Adviser. Please ensure your policy is not required for other borrowings prior to cancellation. ...”

By letter dated **30 September 2010**, the Complainants received a letter from the Insurer in response to a request to modify their policy. This letter confirmed the Complainants revised policy details with a monthly premium of €120.36 and life cover of €417,944 in respect of each of the Complainants.

Analysis

It appears from the Complainants’ evidence that their understanding of the policy premium is that it is linked or influenced by the number of loans covered by the policy, and because the Provider did not remove Loan 1 and Loan 2 from the policy when they were redeemed, the Complainants were paying an excessive monthly premium for the policy.

While I accept that the decision as to the level of life cover benefit under the policy is driven by the amount of each of the loans the policy is required to cover, the monthly premium payment is generally based on the amount of life cover benefit in place rather than, and regardless of, the number of loans. Therefore, the higher the level of life cover benefit in place, the higher the premium.

The policy was originally incepted to satisfy the Provider’s loan condition, clause 3(a), that an appropriate level of life cover be in place in respect of Loan 1. The Complainants later amended the policy by increasing the life cover benefit to satisfy the Provider’s loan conditions in respect of Loan 2 and Loan 3 rather than incepting a new policy for each of these loans. This gave rise to a higher level of life cover benefit under the policy which was accordingly reflected in the monthly premium amount.

Having considered the evidence, it seems that rather than this being a case of Loan 1 and Loan 2 not being removed from the policy, what appears to have occurred is that the level of life cover benefit under the policy was not reduced when these loans were redeemed.

I think it is important to note that although the policy was assigned to the Provider, the Complainants were responsible for deciding the appropriate level of life cover benefit to have in place, with the only requirement being that a sufficient level of cover be in place to

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cover each of the loans. The General Conditions are clear in that life cover was required in respect of each loan until the relevant loan had been repaid in full. Once a loan was repaid, life cover was no longer required in respect of that particular loan and the Complainants were entitled to reduce the level of life cover in place.

The Provider has furnished system records to show that Redemption Goodbye Letters were issued to the Complainants on **28 September 2010** following the redemption of Loan 1 and Loan 2. The Provider has been unable to produce copies of these letters, but has provided a copy of a template for these letters. The Complainants say they received no such correspondence from the Provider.

While I cannot resolve this difference, I note that the Complainants received a letter from the Insurer on **30 September 2010** expressly stating that the amount of cover in place was €417,944 in respect of each Complainant. As is evident, this greatly exceeded the amount of the remaining loan, Loan 3, which stood at €226,500.

In my Preliminary Decision, I noted that having considered the matter in detail, I accepted that the Complainants ought to have been aware from the clear language of clause 3 of the General Conditions that once a loan was redeemed, life cover in respect of that loan was no longer required. Furthermore, the Complainants were aware or ought to have been aware of the level of cover in place following the letter from the Insurer in **September 2010**.

The Complainants have, in a post Preliminary Decision submission, stated that while the Provider states it issued a *“Goodbye letter to us the complainants in respect to Loan 1 and Loan 2 but we can confirm we never received it and a template is not proof of receipt. With that in mind it does not matter what it states if it was not available for review. Is it conceivable that because we were paying on 2 mortgages that [the Provider] issued the Goodbye letter to the wrong address. Can you request [the Provider] to furnish proof that they sent the letter to the correct address”*.

I note that the Provider has in response to the above detailed that it *“can confirm that the address to which all correspondence was issued was [address redacted] being the security property for mortgage loan accounts [XXXXXXXX] and [XXXXXXXX]. From a review of the Provider’s records, there has never been any other correspondence address associated with the mortgage loan accounts, nor has there been a change of address request made by the Complainants over the life of any of the loans”*.

While it is regrettable that the Provider cannot, due to the passage of time, submit a copy of the letter which it states was issued, having fully considered the matter it remains my view that I cannot resolve this difference. However, it remains the case that the Complainants ought to have been aware from the clear language of clause 3 of the General Conditions that once a loan was redeemed, life cover in respect of that loan was no longer required. Furthermore, it remains my view that the Complainants were aware or ought to have been aware of the level of cover in place following the letter from the Insurer in **September 2010**.

It is my opinion that the Complainants were sufficiently notified of the amount of the life cover benefit in place under the policy, the Provider's loan conditions regarding of the level of life cover required, and the extent of their borrowings following the redemption of Loan 1 and Loan 2.

Therefore, I believe it was a matter for the Complainants to have taken steps to reduce the level of cover in place under the policy and it was not a case of needing to remove loans from the policy.

While the Complainants are dissatisfied with the amount of their premium, I note from a letter sent by the Insurer to the Complainants dated **12 December 2017**, that the policy was subject to indexation.

On pages 1 and 5 of this letter it states, in respect of indexation: "*Your premium and benefits ... increase each year by the greater of 5% and the increase in the Consumer Price Index.*" As such, indexation of the Complainants' policy would have caused the premium and life cover benefit amounts to increase each year the policy was subject to indexation. However, I note that there were no indexation requirements contained in the loan conditions for any of the Complainants' loans. Therefore, this is a matter between the Complainants and the Insurer.

I do not believe there was an obligation on the part of the Provider to advise the Complainants that life cover was no longer required in respect of Loan 1 or Loan 2. In addition to this, I do not consider that simply because there is a life policy requirement contained in clause 3 of the General Conditions that the Provider was required to monitor or advise on the level of cover in place. When Loan 1 and Loan 2 were redeemed, it was for the Complainants to decide the level of cover to maintain under the policy, so long as it was sufficient to meet the Provider's life cover conditions in respect of Loan 3.

Taking these matters into consideration, 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.



GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

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21 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.