



<u>Decision Ref:</u>	2022-0036
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Interest Only
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Dissatisfaction with customer service Lapse/cancellation of policy (mortgage)
<u>Outcome:</u>	Upheld

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 accepted as part of 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 from 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. The Complainant asserts that this 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 the Provider, against which this complaint is made. 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 1**.

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 the 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 the Provider dated **21 May 2011**. The Complainant says he:

"continued to make payments to [the Provider] 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 that 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 1** 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 a Provider file note dated **28 July 2011** in this regard.

The Complainant says he also put a representative of the Provider 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 says the Provider 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 himself and the Provider and that he continued to make repayments to bring the loan up to date.

On **7 February 2013**, the Complainant says the Provider 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**.

The Complainant submits that it appears from around **April 2013**, the Provider and the Insurer 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 has been able to ascertain that the Insurer wrote to him (on **4 April, 7 June, 6 July, 27 July, 31 July, 8 August and 23 August 2013** at an address in Rural Ireland, and **16 May 2013** at a 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 Insurer or the Provider 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 neither he nor his wife had ever been personally responsible for the payment of premiums to the Insurer and that they entered the loan in good faith assuming premium payments were part of the agreement.

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

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

The Complainant submits that given the “*very extraordinary*” circumstances surrounding the establishment of the Provider, 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 tenure of the Provider, the Complainant says the terms of the Block Policy were honoured and premiums paid.

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

After **February 2013**, the Complainant says loans were transferred to various entities. In **October 2014**, the Complainant says he contacted the Provider and was advised that his loan had been transferred to a third party (**Entity 2**) and was given a contact number for this entity.

The Complainant says he telephoned **Entity 2** 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 2** reverted, the Complainant says he was informed that the life cover was not in place and that he would need to contact the Insurer directly.

Having contacted the Insurer, the Complainant says he was informed that the policy had been cancelled since **June 2013** due to the Provider ceasing 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 Insurer or the Provider. The Complainant states that the Provider’s 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 advanced stage and there was no possibility of obtaining life cover. The Complainant’s wife sadly passed away sometime later.

The Complainant states that the Insurer is refusing to make a payment under the policy and the Provider has advised that it is not in a position to assist. It has advised the Complainant to contact **Entity 2**. The Complainant also says the Provider has ignored his correspondence.

The Complainant advises that **Entity 2** is threatening legal proceedings and refusing to accept any liability in respect of the manner in which the Provider stopped premium payments. The Complainant says he is not a party to the details of the transfer between the Provider and **Entity 2** 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 2** 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 Insurer, the Complainant submits that premiums were to be paid by the Proposer (the Lender). These responsibilities fell to the Provider.

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 Insurer] 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 Insurer, the Provider or **Entity 2** write to or attempt to contact the Complainant seeking consent to vary the agreement.

The Complainant is seeking to have the terms of the life policy implemented and mortgage account number ending 962 discharged in full.

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The Provider's Case

The Provider explains that the Complainant's loan was drawn down on **23 April 2003** for a 20 year period. The loan also included mortgage protection insurance arranged through a block scheme on the lives of the Complainant and his wife. The Provider advises that the annual premium was €939.65 which was included in the monthly loan repayments of €926.07.

At the time, the Provider explains the Lender acted as insurance intermediary for the Insurer. The Provider advises that pursuant to a 'Transfer Order' of the High Court dated **1 July 2011**, all assets and liabilities of the Lender were transferred to the Provider. The Provider further states that during this time, the Provider continued to act as insurance intermediary for the Insurer in respect of the Complainant's policy until the Insurer took over the administration of the policy from **1 April 2013**. The Provider also advises that the Complainant's loan was sold to a third party (**Entity 2**) on **6 June 2014**.

Under the Master Policy, the Provider explains the Insurer issued a single policy to the insured/policyholder (being the Lender and latterly, the Provider). The policyholder holds the policy on behalf of named beneficiaries (the mortgage holders) subject to their completing an application form and satisfying the eligibility criteria.

The Provider initially stated in its submissions to this Office that its status as 'policyholder' under the Master Policy terminated in tandem with the cessation of its role as insurance intermediary on behalf of the Insurer. However, in subsequent submissions, the Provider stated that it retained its status as 'policyholder' under the Master Policy, until **June 2014** when the policyholder changed to Entity 2. The Provider also refers to email exchanges with the Insurer in **March 2013**.

The Provider says notwithstanding the rights afforded to it by virtue of clauses 13 and 18 of the 'Mortgage Offer', the Complainant was informed by letter dated **12 March 2013** that the Provider would no longer be acting as insurance intermediary regarding the policy, effective from **1 April 2013**. The Provider says the letter also advised there would be changes to how the insurance premium would be paid going forward and that the Insurer would be in contact in relation to this. The Provider says the Insurer subsequently wrote to the Complainant on **4 April, 16 May, 7 June, 6 July, 27 July, 31 July and 23 August 2013** in relation to the changes to the insurance policy but the correspondence went unanswered. The Provider states that these letters explained the consequences of failing to maintain the policy.

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The Provider says it should be noted that this was not the first time the position of insurance intermediary changed during the lifetime of the Complainant's insurance policy. In **July 2011**, the Provider says when the loan transferred from the Lender to the Provider, the Provider took over the role as insurance intermediary from the Lender.

The Provider states that this was communicated to the Complainant and his late wife at the time and the Provider says at no time did the Complainant raise any issues with it. The Provider states it should be noted that there were no material changes to the terms of the policy.

The Provider says the only changes were in relation to who would act as insurance intermediary and how payments would be made going forward, changes that were clearly communicated to the Complainant in the letter of **12 March 2013** and the letters issued by the Insurer. The Provider states that it issued a similar letter to the one issued to the Complainant on **12 March 2013** to a large number of its customers and the Complainant is the only customer to state that he did not receive the letter.

In respect of a call received from the Complainant on **12 June 2013**, the Provider says the Complainant rang to advise that he did not receive the letter dated **12 March 2013**. The Provider says that after the call took place, a direct debit mandate and change of address form were emailed to the Complainant. The Provider states that neither the change of address form nor updated direct debit mandate were returned.

The Provider says the payment of the policy was the responsibility of the Complainant and the Complainant was informed that the Provider was no longer acting as intermediary in **March 2013**.

The Provider argues that it took all steps necessary to inform the Complainant of the changes to the policy.

The Provider also states that pursuant to section 12 of the Irish Bank Resolution Corporation Act 2013, the Provider has a specific power to transfer assets or liabilities to another party without having to give notice to any persons.

The Complaints for Adjudication

The complaints are that the Provider wrongfully or unreasonably:

Varied the payment terms of the policy and mortgage loan agreement; and failed to notify the Complainant of the changes.

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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.

Following the issue of my Preliminary Decision, the Provider made a submission under cover of its letter to this office dated 15 December 2021, a copy of which was transmitted to the Complainant for his consideration.

The Complainant's solicitors under cover of their letter to this office dated 21 December 2021 advised that the Complainant "*was happy with the Preliminary Decision and would not be raising any objection to same*".

Having considered the Provider's additional submission and all submissions and evidence furnished by both parties to this office, I set out below my final determination.

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The Mortgage Loan

As outlined in the Summary of Complaint dated 29 May 2020,

“the Complaint is that, the Provider wrongfully, and unilaterally, varied the agreed terms and conditions pertaining to the collection of the premiums due in respect of the life assurance (mortgage protection) cover required to be maintained in force by the terms of the loan offer by the predecessor of the Provider dated 5th March 2003, which variation caused the mortgage protection cover to lapse such that at the date of death of the deceased, cover was not in force and the life assurance provider has declined payment of the claim.

The Complaint is also that the Provider wrongfully failed to take all reasonable, proper and timely steps to ensure that the Complainant and the deceased were made aware of the aforementioned change that was made to the method for collecting the life assurance premiums required to maintain the mortgage protection cover in force.”

Consequently, in order to adequately address this complaint, it is necessary to consider the terms and conditions pertaining to the collection of the policy premiums which are contained in the mortgage loan agreement as well as in the life insurance policy. I note in this regard that the Complainant stated in the Complaint Form submitted to this Office that the Provider *“unilaterally and without notice...altered the terms of the mortgage agreement and block policy...”*

Consequently, I note the following in relation to the mortgage loan documentation.

The Complainant completed a Lender ‘Home Loan Application’ dated **21 February 2003**. Section 11 of this application outlined certain insurance requirements. In respect of life cover, section 11 stated, as follows:

“LIFE COVER

The [Lender] can arrange Life Cover under our Group Mortgage Protection Scheme. The premiums are charged to the mortgage account and are collected with your monthly mortgage repayments. Please complete the attached proposal form

....

It is the borrower's responsibility to ensure that the necessary policies are put in place and activated and subsequently maintained for the duration of the loan”.

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Section 17 of the application form contains a number of declarations, which state, in relevant part, as follows:

"I/We hereby declare, agree, acknowledge and admit:

[...]

- h) *That the [Lender] may charge to my/our account any premiums in respect of any insurances arranged in connection with the mortgage as and when due and the payment of such premiums may be included in my/our monthly mortgage repayments to the [Lender]."*

The Complainant and his late wife entered a mortgage loan agreement with the Lender on **2 April 2003**. The loan agreement was subject to a number of 'Special Condition[s]'. In particular, Special Condition 11.8 states, as follows:

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

The loan agreement was also subject to a number of 'General Conditions'. General Condition 8 and General Condition 9 deal with the payment of insurance premiums and state, as follows:

8. **Annuity Mortgage.** *In the case of an Annuity Mortgage the applicants must effect a Mortgage Protection Assurance Policy in the amount advanced. The premiums related to any insurances (life or general excluding endowment premiums) arranged through the [Lender] will be added to your monthly repayment. At the borrowers request this amount can be discharged in full advance. All premiums paid by the [Lender] in advance to an insurer will be considered a charge or expense, and when added to the mortgage will be subject to the Mortgage Deed and Memorandum and Rules of the [Lender].*
9. *The premiums relating to any insurances (life or general excluding endowment premiums) arranged through the [Lender] will be added to your monthly repayment. Details will be sent to you on acceptance of this offer."*

In the course of its Complaint Response and post Preliminary Decision submission, the Provider referred to General Condition 2, General Condition 13 and General Condition 18.

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General Condition 2 states, as follows:

- "2. The [Lender] reserves the absolute right to withdraw or alter the terms of the offer at any time".*

General Condition 13 states, as follows:

- "13. The [Lender] shall not be responsible for any loss, damage, expenses, or costs incurred by the borrower arising out of the [Lender] replacing or waiving any of the conditions and requirements set out herein."*

General Condition 18 states, as follows:

- "18. The [Lender] may at any time and from time to time transfer, align, mortgage, and/or charge all or any part of the mortgage, the loan or any part thereof and all the rights and the interests of the [Lender] in and to any life assurances to the [Lender] and all other contracts and policies of insurance and policies of insurance relating to the property on such terms as the [Lender] may think fit, with or without notices to the applicant(s) or any other person."*

The Life and Specified Illness Cover

The Complainant and his late wife completed and signed the Lender's 'Application for Group Life and Specified Illness Cover' on **20 February 2003**.

At the 'Application Form' section 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 Insurer].*

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2. [...]
3. *Agree that the premiums will be paid by the Proposer to [the Insurer] 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."*

The 'Life Cash Cover, Details of Policy Arrangements under the Mater Policy' ("the Policy Document"), states on page 3, as follows:

"How does the master policy work?"

The life assured chooses the type of cover they require, and the proposer is responsible for ensuring premiums are paid as set out in the certificate of membership. [...]"

At Paragraph 4 on page 7 of the Policy Document, it states under the heading, 'Paying premiums', in relevant part, as follows:

"A premium is not paid until we have received it. It is up to the proposer or life assured to make sure that we receive the premium."

At page 6 of the Policy Document, the 'Proposer' is defined, as follows:

"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. [...]."

Correspondence

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 EU Country 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**.

The Complainant appears to have tried to change his address again in **January 2013**.

A file note prepared by the Provider in respect of a telephone conversation with the Complainant on **22 January 2013** states:

"[The Complainant] wanted to make payment for the arrears [...] cleared all arrears, cust stated that the reason he sometimes misses the payments is due to money been in a deposit account and he doesnt always remember to put it into the current account. He said that he wants to change address will send same in."

On **6 March 2013**, the Provider's file notes contain the following record of a telephone conversation with the Complainant, which states, in part, as follows:

"[The Complainant] confirmed that he was aware of the MAR D/D missed and he is going to call again by mth end to mke L/Card pmt by Telephone will hold to review is looking for D/D to be sent to [Second UK Address] and will return with change of address notification also."

While the Provider states that a letter was issued to the Complainant on **12 March 2013**, I note that by letter dated **11 March 2013**, the Provider wrote to the Complainant (and his wife) at the First UK Address as follows:

"You currently have Mortgage Protection Life Cover in respect of the above mortgage loan account in place with [the Insurer] which was arranged for you by [the Provider] acting as insurance intermediary (the "Policy"). We would now like to make you aware of some important changes to the way your Policy will be administered going forward.

With effect from 1 April 2013, [the Provider] will no longer act as an insurance intermediary in respect of your Policy and [the Insurer] will take over the full administration of your Policy directly with you. From this date therefrom the monthly premium in respect of your Policy will no longer be incorporated into your monthly mortgage loan repayment.

As a result, your monthly mortgage repayment figure will be adjusted to €753.73¹ to reflect this change. [The Insurer] will be in contact with you shortly to discuss details of your Policy renewal and payment arrangements and what action you need to take with effect from May 2013.

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If you decide not to keep your existing Policy in place with [the Insurer] you will need to put alternative cover in place, covering the remaining terms and outstanding balance of your mortgage as per the terms and conditions of your mortgage.

Failure to maintain your premiums would result in the lapse of your Policy and could have serious consequences for your estate, any surviving spouse or immediate family member because in the unfortunate event of your death, at any time prior to the above mortgage loan being repaid, the remaining liability in respect of your mortgage loan will fall upon them, to your co-mortgagor, your surviving spouse, or alternatively, your estate who in these circumstances would be liable for the remaining amount of the mortgage. [...].”

A further file note in respect of a conversation on **12 June 2013** states, as follows:

“[The Complainant] 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. Confirmed arrears balance with client and he will EFT funds today to bring a/c up to date [...].”

By email dated **12 June 2013**, the Provider wrote to the Complainant, as follows:

“As promised, find attached the Direct Debit Mandate form [...]

Can you also send through a signed letter (both account holders) requesting for your correspondence address to be amended. [...].”

Analysis

I stated in the Preliminary Decision that, it can be seen from section 11 of the Home Loan Application form concerning the payment of the life policy premium, premiums would be charged to the loan account and collected along with the mortgage loan repayment. At section 17, Declaration h) indicates that the life policy premium would be *included in* (and as such, form part of) the monthly mortgage loan repayment.

I also stated in the Preliminary Decision that in terms of the General Conditions, both General Condition 8 and General Conditions 9 of the mortgage loan agreement expressly state that the life policy premium would be added to the monthly repayment, and that

“[a]ccordingly, on considering the basis on which the mortgage loan agreement was entered, insofar as concerns the monthly payment to be made to the loan account by the borrowers, I am satisfied that this monthly payment comprised an amount in respect of the repayment of the mortgage loan and an amount in respect of the life policy premium. It is my opinion that it was the Lender’s, and subsequently the Provider’s, responsibility to forward the relevant payment, representing the life policy premium, to the Insurer”.

The Provider, in a post Preliminary Decision submission, stated that I erred in interpreting these provisions. The Provider contends that I failed to acknowledge that section 11 of the Home Loan Application Form is subject to the proviso that the borrower is responsible to ensure that the life insurance cover is maintained for the duration of the loan. The Provider also states that section 17(h) provides that the Lender “*may*” rather than shall charge life insurance policy premiums to the mortgage loan account and include life policy premiums in the monthly mortgage repayments. Consequently, the Provider contends that “*these provisions are enabling provisions which permit but do not require the Provider to charge the insurance premium to the mortgage loan account*”.

While I acknowledge that section 11 of the Home Loan Application Form sets out generally that the borrower is responsible for maintaining the necessary policies for the duration of the loan, this must be viewed within the context of the overall Application Form which also provides, that where the Lender arranged life cover (as was the case in this instance), premiums would be charged to the mortgage loan account. Furthermore, although section 17(h) of the Home Loan Application Form, does not, of itself, require the Lender to charge the insurance policy premiums to the mortgage loan account, it is clear that the mortgage loan agreement required that the policy premiums must be added to the Complainant’s and his late wife’s monthly mortgage repayment.

This is because General Condition 9 of the mortgage loan agreement clearly and unambiguously sets out that where an insurance policy is arranged by the Lender, policy premiums must be added to the monthly mortgage loan repayment. General Condition 9 states:

*“...premiums relating to any insurances (life or general....) arranged by the [Lender] **will be added** to [the Complainant’s and his late wife’s] monthly repayment...”.*

[my Emphasis]

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In this instance, and as set out in Special Condition 11.8 of the mortgage loan agreement, the Lender arranged life cover through the Lender's block policy.

While General Condition 8 of the mortgage loan agreement also expressly states that the life policy premiums will be added to the monthly repayment, this condition applies to annuity mortgages only. As the Complainant's and his late wife's mortgage loan is an interest only mortgage loan, and not an annuity mortgage loan, it does not appear that this condition is applicable to the Complainant's mortgage loan.

In terms of the arrangement of the life policy, the Lender's Application for Group Cover states that premium payments would be paid to the Lender/Proposer for onward transmission to the Insurer. It further states that *"premiums will be paid by the Proposer to [the Insurer] by deduction from the Mortgage Account"*. Further to this, it states at page 3 of the Policy Document that *"the proposer is responsible for ensuring premiums are paid"*. At Paragraph 4 on page 7 of the Policy Document, it states that *"It is up to the proposer or life assured to make sure that we receive the premium."* In terms of the definition of the term 'Proposer', this definition identifies the Proposer as being *"responsible for ensuring premiums are paid"*.

While Paragraph 4 of the Policy Document seeks to attribute responsibility for the payment of premiums between the Proposer and the Life Assured, I note that this is done in an alternative manner. However, having regard to the Application for Group Cover and the Policy Document as a whole, I am satisfied that it was the Proposer's responsibility to ensure premium payments were forwarded to and received by the Insurer.

The life policy was arranged by/through the Lender, and the Lender was a party to the life insurance contract, as the proposer/policyholder. Therefore, the Lender was aware of the basis on which the policy was arranged and the terms it would be subject to once the policy was arranged.

Accordingly, on considering the basis on which the life policy was arranged, and the basis on which the mortgage loan agreement was entered, I am satisfied that the Lender, and subsequently the Provider, were responsible for ensuring the payment of the life policy premium.

Insofar as concerns the Life Assured, in the context of the loan terms and the basis on which the life policy was arranged, it is my opinion that the borrowers' obligation regarding the payment of life policy premiums was effectively to make the appropriate payment to the loan account so as to ensure sufficient funds were lodged to the account to cover both the monthly mortgage loan repayment and the life cover premium.

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In **March 2013**, the Provider wrote to the borrowers to inform them that it would be ceasing to act as insurance intermediary, meaning that the life policy premium would no longer be incorporated into the monthly loan payment for onward transmission to the Insurer.

By taking the decision to cease transmitting the life policy premium to the Insurer, it appears that the Provider was seeking to vary, or otherwise bring to an end, its contractual responsibility regarding the payment of premiums.

In my Preliminary Decision I stated that

“[h]owever, having considered the Provider’s letter, I note that the Provider did not identify the precise legal or contractual basis which entitled it to cease transmitting the life policy premium to the Insurer. It appears the Provider took this decision unilaterally and without seeking the prior consent or agreement of the borrowers.

Having considered the Home Loan Application form and the terms of the mortgage loan agreement, I cannot see any provision which would entitle the Provider to unilaterally vary, or cease, its obligation to transmit the life policy premium to the Insurer.”

The Provider contended in its post Preliminary Decision submission that in interpreting General Conditions 8 and 9 and the terms of the Home Loan Application form, I failed to have sufficient regard to General Condition 2 of the mortgage loan agreement which permits the Provider to withdraw or alter the terms of the loan offer at any time.

The Provider states:

“...under the mortgage documents the Provider did not breach any contractual provision or responsibility to the borrowers but merely exercised its contractual right to vary the terms of the loan agreement and payment arrangements which it did acting reasonably and with due notice to the borrowers.”

The Provider also contends in its post Preliminary Decision submission that General Conditions 8 and 9 only apply to insurance arranged by the Provider and that, because the Provider could no longer arrange insurance following the termination of its role as insurance intermediary, it *“...would be an error in law to find that Provider remained responsible for insurance cover it no longer could or did "arrange".”*

However, I do not agree. Although the Provider chose to terminate its role as an insurance intermediary, this does not alter the obligation placed on the Lender (and on the Provider, as the Lender's successor) by General Condition 9 of the loan agreement, to add the policy premiums to the mortgage repayments.

I do however accept that General Condition 2 of the mortgage loan agreement provides that the Lender can "*withdraw or alter the terms of the offer at any time*".

While the Provider now states that it varied the premium collection terms of the mortgage loan agreement in accordance with General Condition 2 of the loan agreement, the Provider has not supplied any evidence that a revised mortgage loan agreement, containing such amended terms, was drafted by the Provider, or that customers were notified which conditions of the mortgage loan agreement were amended or indeed that the mortgage loan agreement had been amended. However, I do not think it necessary at this point to make a finding as to whether such an amendment was validly effected by the Provider.

This is because even if the mortgage loan agreement was so amended, it must also be considered whether the manner in which the Provider altered the arrangements for the collection of policy premiums was reasonable and fair in the particular circumstances of this complaint, and whether the complaint should be upheld on any of the grounds specified in **section 60(2) of the Financial Services and Pensions Ombudsman Act 2017**.

It is clear that the Provider's letter to the Complainant and his late wife in **March 2013**, notifying them of the changes to the manner in which the policy premiums would be paid does not explain that the Provider was varying the terms of the loan agreement by altering the payment arrangements, nor is it explained that the Provider was relying on General Condition 2 of the mortgage loan agreement to effect this change. Indeed, it appears to me that it was not until the Provider's post Preliminary Decision submission that the Provider contended that it had relied on General Condition 2 to vary the mortgage loan agreement. The Provider's failure to draw the Complainant's and his late wife's attention to how these changes affected the conditions of the mortgage loan agreement was, in my view, a very serious failing, as the Provider:

- failed contrary to **provision 4.1** of the **Consumer Protection Code 2012** to bring key information to the attention of the consumer. Provision 4.1 states in this regard that "*[a] regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information*"; and

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- failed contrary to **general principle 2.6** of the **Consumer Protection Code 2012** to make “... *full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer*”.

Furthermore, the Provider failed to supply the Complainant and his late wife with a copy of the revised conditions applying to the mortgage loan agreement contrary to **provision 6.1** of the **Consumer Protection Code 2012**, which states that:

“[w]here 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.”

It is clear that the change to the payment arrangements for the policy premiums was a significant one, insofar as the Complainant and his late wife were required to effect alternative payment arrangements, failing which their life insurance policy would lapse. The Provider’s letter advised that this change would take effect less than one month later on **1 April 2013**. While in my view a period of less than 1 month would not have been an adequate notice period, it appears that this information was in fact incorrect. As explained in subsequent letters issued by the Insurer to the Complainant and his late wife, it was from **1 June 2013** that the change to premium collections was implemented. It is very disappointing to note that the Provider’s letter contained incorrect information regarding when the change would be implemented. It is also disappointing to note that although the Provider now states that this change was “*done in furtherance of the special liquidation of the Provider*”, the purpose of the change was not explained in the letter to the Complainant and his wife issued in **March 2013**, nor was it explained in subsequent letters issued by the Insurer.

For these reasons I am satisfied that the Provider failed to notify the Complainant and his late wife of the changes to premium collections in a transparent manner, particularly in circumstances where the Provider’s notification letter did not inform the Complainant and his late wife that the alteration to the premium payment arrangement varied (or was not in accordance with) the terms of the loan agreement or supply them with a copy of the revised mortgage loan agreement.

This failure seems likely to have arisen because the Provider does not appear to have taken any steps in **2013**, to consider the consequences of varying the premium collection arrangement for the Complainant and his late wife whose lives were insured under the Master Policy. The Provider was unable to locate any evidence documenting such considerations in response to a request from this Office.

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In addition, while the Provider's letter to the Complainant and his late wife regarding the changes to premium collection referred to the option of terminating the policy and putting alternative cover in place, it is clear that in practice, this would not have been an option available to the Complainant and his late wife at that time if they were dissatisfied with the changes outlined to the payment method. This is because it is very unlikely, to put it mildly, that the Complainant's late wife would have been in a position to secure alternative life cover in **2013** due to her cancer diagnosis. While the Provider no longer retained any obligation under the mortgage loan agreement or the life insurance policy with respect to the collection of policy premiums, the Provider states that it "*retained its status as proposer / policyholder under the Master Policy during this period in addition to its ongoing security interest in the cover provided to any borrower "life assured" or "life covered"*".

Consequently, I am of the view that the unilateral alteration to the Provider's premiums collection obligations resulted in this instance, in a significant imbalance in the parties' positions, and that the Provider failed to have due regard to its obligation under **provision 2.1** of the **Consumer Protection Code 2012** to act fairly and in the best interests of its customers (the Complainant and his late wife).

Accordingly, for the reasons outlined above I find that the manner in which the Provider unilaterally ceased incorporating policy premiums into the monthly loan payment for onward transmission to the Insurer was unreasonable within the meaning of **section 60(2)(b) of the Financial Services and Pensions Ombudsman Act 2017**.

In respect of General Condition 13 of the mortgage loan agreement, this condition appears to exempt the Provider from liability arising from "*replacing or waiving any of the conditions and requirements set out herein.*" However, it does not appear to confer the Provider with any right or entitlement to replace or waive the terms of the loan agreement. Further to this, this condition does not appear to confer any right or entitlement on the Provider to cease transmitting the life policy premium to the Insurer. While this clause may exempt the Provider contractually from liability arising from replacing any of the conditions of the mortgage loan agreement, I am satisfied that the manner in which the Provider unilaterally varied the payment arrangement for the policy premiums contained in the mortgage loan agreement was unreasonable.

In respect of General Condition 18, this condition appears to permit the Provider to "*transfer, align, mortgage, and/or charge [...] all the rights and the interests of the [Lender] in and to any life assurances*". However, this condition does not appear to permit the Provider to alter or vary the terms of the loan agreement, nor would it appear to permit the Provider to cease transmitting the life policy premium to the Insurer.

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The Provider also refers to section 12 of the Irish Bank Resolution Corporation Act 2013. Section 12(1) states, as follows:

“(1) The sale or transfer of any asset or liability by IBRC, acting through a special liquidator, or by a special liquidator where such asset or liability has vested in the special liquidator, to any person or the assumption of any obligation or liability relating to such sale or transfer shall take effect notwithstanding—

(a) any provision of any enactment, rule of law, code of practice, contract, or other agreement—

(i) providing for or requiring—

(I) notice to be given to any person,

(II) the consent, approval or concurrence of any person, or

(III) any other step, consent, notification, authorisation, licence or document to similar effect,

or

(ii) prohibiting that sale or transfer,

or

(b) any other legal or equitable restriction, inability or incapacity relating to the sale or transfer of any asset or liability or the assumption of any obligation or liability relating to such sale or transfer.”

Section 12 of this Act appears to relate to the sale or transfer of assets or liabilities by the Provider and permits such sale or transfer to take effect despite any notice or consent requirements. However, section 12 does not appear to deal with notice or consent requirements which arise outside the context of a sale or transfer of assets or liabilities, and which has arisen in this complaint. In particular, I note the transfer of the Complainant’s loan took place in **June 2014**, over a year after the Provider’s decision to cease transmitting life policy premiums. Therefore, section 12 does not appear to permit the Provider to alter or vary the terms on which the policy premium would be paid, nor does it appear to permit the Provider to cease transmitting the life policy premium to the Insurer.

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Accordingly, having considered the terms of the loan agreement and the basis on which the life policy was arranged, it is my opinion that the obligation/responsibility on the Provider/Proposer to make the life policy premium payments to the Insurer was imposed on, and assumed, by the Provider/Proposer, or intended to be in place, for at least the duration of the period for which the life policy was required for the purposes of the loan agreement.

Turning now to the provisions of the life insurance policy relating to the payment of policy premiums. In the Preliminary Decision I stated:

“[i]n terms of the Application for Group Cover, as the borrowers were required to agree, and in fact agreed, that life policy premiums would be paid by the Proposer, I am of the opinion that the borrowers’ agreement was also required if the Provider wished to cease this arrangement, particularly in the absence of an express provision entitling the Proposer to do so. Further to this, there does not appear to be any provision in the Policy Document entitling the Proposer to cease its responsibility for the payment of life policy premiums, which was expressly accepted by the Proposer by reason of the terms of the Policy Document...”

Accordingly, having considered the terms of the loan agreement and the basis on which the life policy was arranged, it is my opinion that the obligation/responsibility on the Provider/Proposer to make the life policy premium payments to the Insurer was imposed on, and assumed, by the Provider/Proposer, or intended to be in place, for at least the duration of the period for which the life policy was required for the purposes of the loan agreement. Therefore, absent any apparent legal or contractual entitlement to cease transmitting the life policy premium to the Insurer, it is my opinion that the prior consent/agreement of the borrowers was required. This was neither sought nor received.

In its Complaint Response, the Provider seems to suggest that by virtue of the fact that it wrote to the borrowers to advise them of its decision, this entitled it to cease transmitting the life policy premium. However, in light of the foregoing analysis, I do not accept that the Provider was entitled to cease transmitting the life policy premium to the Insurer on the basis of the March letter.

Therefore, it is my opinion that the Provider was not entitled to cease transmitting the life policy premium to the Insurer in the manner in which it chose to do so.”

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The Provider stated in its post Preliminary Decision submission, that it has not breached any contractual provisions of the insurance documents by ceasing to transmit the policy premium payments to the Insurer because it is common practice to alter the terms of an insurance policy during the term of the contract. The Provider stated that this is recognised by Article 185 of the Solvency II Directive (2009/138/EC), which

“...anticipates the alteration of insurance policies by providing “the policyholder shall be kept informed throughout the term of the contract of any change concerning... the means of payment of premiums and duration of payments”.

I am of the opinion that Article 185 of the Solvency II Directive (2009/138/EC) does not offer any legal basis for such a unilateral amendment to the policy. Article 185(5) simply specifies that a policyholder must, throughout the term of the insurance contact, be kept informed of changes to items such as the policy conditions and the means of payment of premiums, rather than conferring any right upon a party to an insurance contact to unilaterally vary the policy conditions.

The Policy Document provides that the policy consists of the certificate of membership, the master policy, the master application form and each application form signed by the lives assured. Consequently, it is clear that the Application Form signed by the Complainant and his late wife, forms part of the contract of insurance. The Application Form specifically provides that the Complainant and his late wife “[a]gree that the premiums will be paid by the Proposer to [the Insurer] 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.”

The Policy Document does however state that the policy consists of “...any related information and any extra rules which our head office staff may add in writing”. This provision would appear to permit the Insurer (as opposed to the Provider/Proposer) to amend the policy by adding additional rules. It has not been suggested by the Provider that the Insurer (as opposed to the Provider) amended the premium collection provisions of the policy, in accordance with this provision.

However, notwithstanding whether or not the terms of the insurance contact concerning the payment of premiums were amended (either by the Provider or the Insurer) in my view, and for the reasons already outlined in greater detail earlier in my Decision, the manner in which the Provider unilaterally ceased incorporating policy premiums into the monthly loan payment for onward transmission to the Insurer was unreasonable.

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There were clear deficiencies with respect to how the Provider notified the Complainant and his late wife of the change. When the Provider wrote to the Complainant and his late wife in **March 2013**, to advise them that it would no longer collect the policy premiums, it did not inform them of how this change impacted the terms and conditions of the life insurance policy, contrary to **provision 4.1, and general principle 2.6** of the **Consumer Protection Code 2012**. Indeed, the life insurance policy terms and conditions were not mentioned at all in the letter.

While the Provider maintains that it altered (as opposed to breached) the terms of the insurance contract by changing the premium payment arrangement, even if this were the case, the Provider failed to supply the Complainant and his late wife with a copy of the revised policy terms and conditions, contrary to **provision 6.1** of the **Consumer Protection Code 2012**. Nor, as I have already noted earlier in my Decision, did the Complainant and his late wife have any reasonable prospect of securing alternative life cover if they were dissatisfied with the changes outlined to the payment method (due to the Complainant's wife's illness).

Notification of Alteration to Premium Collections

The Provider says it wrote to the Complainant in **March 2013** at his First UK Address to notify him of its decision to stop collecting premium payments. The Complainant says he did not receive this correspondence.

The Provider has supplied this Office with a draft copy of this letter addressed to the Complainant and his late wife dated **11 March 2013**, which the Provider states is the form of the letter that was ultimately issued, to the Complainant, by an outsourced service provider, although the Provider states that the letter ultimately issued was dated **12 March 2013**.

While the Provider does not have a copy of the final version of the letter issued to the Complainant and his late wife notifying them of its decision to stop collecting premium payments, the Provider has submitted emails between it and its outsourced service provider in or around this time regarding the issuing of such letters. The Provider also states that a spreadsheet containing the details of all customers to whom such letters were to be sent, was supplied to the outsourced service provider which issued the letters. The Provider supplied a redacted copy of this spreadsheet, which contained the Complainant's details.

Consequently, I accept that it is possible that this letter may have been issued by the outsourced service provider on the Provider's behalf, to the Complainant and his late wife in **March 2013** at their First UK Address.

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However, prior to this, it appears that on **22 January** and **6 March 2013**, the Complainant sought to notify the Provider of a change to his address in First UK Address to an address in Second UK Address. The evidence indicates that a written change of address notification was not received by the Provider prior to issuing the March letter and, as a result, the letter was sent to the Complainant's First UK Address.

Although the evidence suggests that the Provider was advised by the Complainant of a change to his address both prior and subsequent to the March letter, it appears that written confirmation was required from the Complainant in order to change his correspondence details. Having considered the evidence, I accept that the Complainant was aware, or ought to have been aware, that written notification was required to change his address and simply telling the Provider over the phone was not sufficient to allow the Provider to amend its records. In such circumstances, I accept that the Complainant should have been aware that until the appropriate notification was given, his correspondence address would remain as the First UK Address.

While Complainant appears to have relocated to a Second UK Address, based on the evidence, it appears that the Complainant did not take any steps to ensure correspondence sent to his First UK Address was forwarded to him at his Second UK Address or that arrangements were made to check whether he was receiving post at his former address. While I understand the Complainant was dealing with difficult circumstances at the time, I believe it is reasonable to expect the Complainant to have had some arrangement in place to ensure he received any correspondence that may have been sent to him in First UK Address following his relocation to Second UK Address, particularly as I accept that the Complainant ought to have been aware that the Provider had not changed his correspondence address.

Therefore, I am satisfied that it was reasonable for the Provider to send the **11 March 2013** letter to the Complainant at his First UK Address. Accordingly, I do not accept that the Provider necessarily failed to notify the Complainant of the changes to his policy, notwithstanding that the Complainant may not have received it.

General Observations

At this juncture, I believe it is necessary to consider whether, or to what extent, the Provider's conduct resulted in the non-payment of policy premiums and the lapsing of the policy.

A condition of the Complainant's mortgage loan agreement and life insurance policy was that the Provider took responsibility for paying insurance premiums on the block policy which covered the lives of the Complainant and his late wife.

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This arrangement was implemented successfully for approximately 10 years until the Provider unilaterally and without the consent of the borrowers ceased collecting and remitting policy premiums to the Insurer.

I acknowledge that the Provider was not responsible for the fact that the Complainant and his late wife may not have received the letter notifying them of this change at their current address at that time. Notwithstanding this, I am satisfied that there were serious deficiencies with regard to the content of that letter, and that the Provider's conduct in unilaterally changing the payment arrangement led to a significant imbalance in the positions of the parties, particularly as the Complainant and his late wife had no realistic prospect of securing alternative life cover if they were dissatisfied with the change to the payment arrangement.

Consequently, I am satisfied that the manner in which the Provider unilaterally ceased incorporating policy premiums into the monthly loan payment for onward transmission to the Insurer was unreasonable within the meaning of **section 60(2)(b) of the Financial Services and Pensions Ombudsman Act 2017**.

I am satisfied that had the Provider continued to deduct the policy premiums from the mortgage account and transmit them to the Insurer, (having either received payment for the premiums from the Complainant or having added premiums to the mortgage account as a charge or expense) the policy would not have lapsed and it is likely that the Insurer would have paid the life cover benefit due on the unfortunate death of the Complainant's wife in **2014** to the policyholder, which in the first instance would be applied to reduce or clear the mortgage loan. While this Office has not been supplied with the balance outstanding on the loan in **December 2014**, it appears from the documentation on file that the balance outstanding on the loan was approximately €169,000, just a few months earlier in **July 2014**. It follows that the payment of the life cover benefit, which appeared to be in the order of €200,000 would have, at a minimum, been sufficient to clear the Complainant's mortgage loan following his wife's death.

In these circumstances, I am satisfied that it is appropriate to uphold this complaint. I am also satisfied that the Provider's conduct was particularly unreasonable in its application to the Complainant and his late wife, such that it is appropriate to direct the Provider to arrange the write off of the mortgage loan and any interest accrued since the date of the Complainant's wife's death and to correct any adverse credit record associated with this remedy (appropriate arrangements should be made by the Provider with the current loan owner to effect this).

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Conclusion

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

Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the consequences of the conduct complained of by arranging the write off of the mortgage loan and any interest accrued since the date of the Complainant's wife's death and to correct any adverse credit record associated with this remedy (appropriate arrangements should be made by the Provider with the current loan owner to effect this).

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 January 2022

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,

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and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

